Strasbourg, 22 January 2020

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EUROPEAN SOCIAL CHARTER

GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2018 OF THE EUROPEAN SOCIAL CHARTER (revised)

(Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands, Netherlands in respect of Aruba and Curacao, Republic of North Macedonia, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Sweden, Turkey, Ukraine)

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 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, the Republic of North Macedonia, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Turkey and Ukraine. 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.

[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.

6. Conclusions 2018 of the European Committee of Social Rights were adopted in January 2019 (Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Estonia, Georgia, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Aruba, the Netherlands in respect of Curaçao, Republic of North Macedonia, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Sweden, Turkey and Ukraine). Albania did not submit its report and the report of Hungary could not be examined because was not submitted in time.

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 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 also 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 28 warnings as set out in Appendix V to this report in respect of the following countries: Azerbaijan (12), Armenia (4), Ukraine (4), Georgia (2), Republic of Moldova (2), Estonia (1), Lithuania (1), Netherlands (1) and Romania (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 with respect to 8 States (Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal) which concerned a total of 49 decisions on the merits. For 5 of these 49 decisions the ECSR found that the violations had been remedied and so were able to close the procedure. 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 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 Article C of Part IV thereof;

[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.

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 Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Estonia, Georgia, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Aruba, the Netherlands in respect of Curaçao, Republic of North Macedonia, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Sweden, Turkey and Ukraine;

Having regard to the failure to submit a report by Albania and the failure to submit the report in due time by Hungary;

Considering Conclusions 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,

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

III. Examination by article[4]

REVISED EUROPEAN SOCIAL CHARTER

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

RESC 2§1 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 2§1 of the Charter on the ground that the daily working time of some categories of workers can be extended to 24 hours.

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

At the beginning of 2018 a new draft Labour Code has been submitted to the Government for approval and was then supposed to be sent to the Parliament. The issue of non-conformity under this article has been addressed in the draft. However, following a change of

[4] State Parties in English alphabetic order.

Government, the new draft Labour code was sent back for additional review and public discussion taking into account the priorities of the new Government. According to the Government priorities, the new Labour Code should be adopted in 2019. More information about this ground of non-conformity will then be provided once the new Labour Code is adopted.

19. The ETUC representative asked in which way the issue was addressed in the new draft Labour Code and to what extend this issue could be in jeopardy in the new draft giving the fact that it was sent back for public consultation.

20. The representative of Armenia explained that there is a provision in the new draft Labour Code which abolishes a 24-hour working time for any category of workers in Armenia. Regarding the second question, it depends on the outcomes of the public discussion but there is hope that this provision will remain in the new Labour Code of Armenia. ILO experts have been also invited to provide assistance for the organisation of the public discussion and raise awareness on these issues.

21. The Governmental Committee welcomed the positive developments and invited the Armenian Government to provide all necessary information in its next report.

RECS 2§1 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly hours for seafarers.

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

As we understand there are two separate negative conclusions concerning this article.

Taking into consideration the time we spent on seafarers working time issue after intervention from Iceland, I will not have an intervention that I prepared. We will answer the questions that were raised by the Committee concerning seafarers in our next written report.

I would like to thank a colleague from Iceland for explaining very clearly the issue of seafarers working time. And would also like to thank representative from Netherlands for pointing out that we have a Maritime Labour Convention that is a tripartite document and countries that have ratified it live by it.

I agree that we should solve the issue - Social Charter versus other international instruments - as soon as possible. Otherwise we will gather here after every 4 years and talk about the same problems.

Now I will address the issue of working more than 13 hours over a 24-hour period. The Employment Contracts Act indeed establishes the opportunity to work more than 13 hours a day. The restriction of daily rest time can be made by a collective agreement in the cases of activities requiring a permanent presence or involving the need for continuity of service or production specified in EU working time directive (Council Directive 2003/88/EC) and provided working does not harm the employee's health and safety. The Employment Contracts Act also provides that the restriction on daily rest time shall not be applied to

health care professionals and welfare workers, provided working does not harm their health and safety.

The Employment Contracts Act does not set an absolute limit on daily working time in these situations and employee can work maximum of 24 hours. Of course, there have to be breaks during the working day. The employers must grant a rest period to an employee working more than 13 hours over a 24-hour period. Compensatory time-off must be granted immediately after the end of the working day and be equal to the number of hours by which the 13 working hours were exceeded.

Unfortunately, I can´t say today that we have a concrete action plan to change the situation. We have and will discuss the situation with our social partners in the future. But the previous experience has shown that there is a need for that kind of working arrangement in sectors mentioned above. Both social partners have been on that opinion. In case of the Rescue Service the opportunity to work in 24-hour shifts was abolished a while ago but it was recreated mainly because the demand by rescue workers. So, we have tried but haven't succeeded.

But I would like to point out that the next limits on time for performing work apply. According to paragraph 46 of the Employment Contracts Act, the summarised working time shall not exceed on average 48 hours per a period of seven days over a calculation period of up to four months, unless a different calculation period has been provided by law.

The Committee also asks about legal nature of the on-call time, but I don't think it´s relevant to answer it here and now. We will give our answer to the Committee in our next written report.

23. The Governmental Committee decided to invite the ECSR to explain its position regarding the working time of seafarers as a specific group and to raise this question at the next meeting between the Bureau of the ECSR and the Bureau of the Governmental Committee. Regarding the second ground of non-conformity relating to the 13-hour working time, the GC invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RESC 2§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§1 of the Charter on the ground that there is no appropriate authority that supervises that daily and weekly working time limits are respected in practice.

24. The representative of Georgia provided the following information orally and in writing on the ground of non-conformity:
The Ministry of IDPs, Labour, Health and Social Affairs of Georgia undertook concrete steps for elaboration of special mechanism in order to ensure inspection of working conditions at workplaces. The mechanism is equipped with corresponding administrative and executive rights and in charge to introduce gradually the International Labour Organization's standards.

Government of Georgia have sought to ensure a high degree of protection for workers, through commitment to elaborate organic law on safe working conditions and labour rights protection.

On February 19 2019, the Parliament of Georgia adopted a new extended law Organic Law of Georgia on "Occupational Safety". Transforming OSH law into an organic law makes it more protected from political leverage, fluctuations and guarantee establishment of effective labour rights protection system. New law extends mandate of labour inspectors meaning that labour officials are entitled to conduct unannounced inspections (without court order) in enterprises in all economic sectors and imposing sanctions on identified violations. The mentioned provision shall enter into force from September 1, 2019 and apply to all workers including public sector and public officials. The Organic Law of Georgia on "Occupational Safety" defines obligations of the Government of Georgia, meaning that GoG shall prepare a legislative act on establishment of legal entity of public law i.e. LEPL Labour Inspection. Government of Georgia intends to transform current Labour Conditions Inspecting Department into an independent Labour Inspectorate.

Number of labour Inspectors was increased to 40. In addition, two divisions were established, in particular, Inspecting Division and Monitoring and Supervising Division. Government of Georgia is committed to increase the number of labour inspectors to 100. (In order to effectively enforce the OSH law across all the sectors, 80 labour inspectors would be needed based on the ILO standard, 1 labour inspector per 20,000 workers in transition economies). Labour officials are being constantly trained and retrained while the institution is being gradually developed. Recently, international certificates in OSH have been granted to the inspectors. Besides qualification rising of labour officials, a lot of technical assistance has been provided. Meaning that, department was equipped by body cameras, special clothes, special boots, helmets, tablets, computers and work on software for centralized database and mobile application is in the process.

In addition to on-going work to strengthen OSH legislation and implementation systems, the Government of Georgia is continuously working on expansion of Organic Law of Georgia "Georgian Labour Code". Numerous changes have been made to the Labour Code since 2013, targeted towards strengthening the rights of workers at the workplace. As to the recent amendments to labour legislation, on February 19 this year the Parliament of Georgia adopted amendments to the labour legislation. The legislative package was prepared in compliance with EU directives (2000/78/EC, 2000/43/EC, and 2004/113/EC) and includes following organic laws and laws of Georgia: Organic Law of Georgia "Georgian Labour Code", Law of Georgia on "Elimination of All Forms of Discrimination", Law of Georgia on "Public Service", and Law of Georgia on "Gender Equality".

The above-mentioned amendments aim to establish those principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations, employment and occupation based on religion or faith, disabilities, age, sexual orientation, racial or ethnic origin and applies to all persons employed in public and private sectors.

To highlight, the Law of Georgia on "Elimination of All Forms of Discrimination" defined sexual harassment as any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. While Law on "Gender Equality" defines that harassment and sexual harassment in labour relations/at workplace are prohibited.

Government of Georgia will continue to sophisticate Organic Law of Georgia "Georgian Labour Code", thus introducing international labour standards into Georgian labour market, as per Georgia's Association Agreement with EU, Annex XXX. The amendments will be covering issues, such as implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, an employer's

obligation to inform employees of the conditions applicable to the contract or employment relationship, measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, part-time work , fixed-term work, progressive implementation of the principle of equal treatment for men and women in matters of social security, collective redundancies, transfer of undertakings, fixed-duration or temporary employment relationship, certain aspects of the organization of working time.

To guarantee that the rights of employees at workplace are protected and Labour Code is enforced, amendment will be made to the Organic Law of Georgia "Georgian Labour Code" in 2019 introducing an article/sub-paragraph, providing that enforcement of labour legislation will be supervised by the competent authority i.e. labour inspectorate. The Law will include a reservation determining that the article will apply to high risk, harm, harmful and hazardous works from 2020 and to all economic sectors by 2022.

Forced labour, including, child labour is being monitored by the Labour Conditions Inspecting Department since 2016, labour officials are authorized to inspect labour conditions (unannounced) with the aim to identify and respond the violation/possible cases of forced labour/labour exploitation.

Apart from that, mediation system is in place and operational since 2013 and employers and employees are given a mechanism to solve the disputes free of charge, in a short period of time and without involvement of the court. The mechanism is building trust between the parties and prevents them from necessity of strikes.

Labour Code and Law on Public Service

For the last years, Georgia has undergone deep changes in its labour legislation and institutions and practices in managing human resources. The law amending the labour Code did enter into force on 4th July 2013. Therefore, the workers' right to reasonable limits on daily and weekly working hours, including overtime is guaranteed through new national legislation – Labour Code and collective agreements. Georgian Labour Code and Georgian Law on Public Service define limits of working hours.

According to the article 14 of Labour Code:

1. An employer shall determine the duration of working time not to exceed 40 hours a week; and the duration of working time in enterprises with specific operating conditions requiring more than eight hours of uninterrupted production/work process must not exceed 48 hours a week. Working time shall not include breaks and rest time.

11. If an employer's activities require 24 hours of uninterrupted production/work process, the parties may conclude a shift labour agreement considering the requirements of the second paragraph of this article and containing the condition of granting the rest time to an employee adequate to the hours worked.

2. The duration of rest between working days (or shifts) must be at least 12 hours.

3. The duration of working time for minors from 16 to 18 years of age must be a maximum of 36 hours a week.

4. The duration of working time for minors from 14 to 16 years of age must be a maximum of 24 hours a week.

On 11 December 2013, the "Resolution of the Government N 329 on approval of the list of fields with the specific work regime" was adopted. In the Framework of this resolution, the Government of Georgia shall compile a list of industries with specific operating conditions.

The resolution does not apply to persons working in the enterprise with the specific work regime whose working process does not require 8 hours uninterrupted work process and his/her work is not somehow related to non-interruption of working process (article 3). Pursuant to the article 2 of the resolution if there is an unconformity between parties during the determination of such employees the case shall be discussed by the Tripartite Social Partnership Commission (TSPC) (article 4).

Working hours and holidays at public institutions are determined by the Law of Georgia on Public Service, adopted on 27 October 2015 and came into force on July 1, 2017. According to this law (article 60) the work time of an officer is part of calendar time during which he/she is obliged to perform official duties; an officer shall work five days a week and the duration of work time shall not exceed 8 hours a day and 40 hours per week; the rest time of an officer and public holidays are determined by the Organic Law of Georgia - the Labour Code of Georgia.

The issues related to organization of working time, including daily rest time, break time, weekly rest time, overtime work, night work (examination of health conditions of employees working at night) are envisaged in Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time. Amendments based on the mentioned directive are being currently elaborated and will be adopted in 2020.

25. The representative of Greece welcomed the positive developments in Georgia and underlined that this is what situations of non-conformity should do, encourage States Parties to take action to address the situation.

26. The representative of Estonia acknowledged the efforts made by Georgia to address the situation.

27. The Committee took note of the positive developments in Georgia and decided to await the next assessment of the ECSR.

RESC 2§1 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 2§1 of the Charter on the ground that, during the reference period, for certain categories of workers a working day of 24 hours was permitted.

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

With regard to the European Committee of Social Rights conclusion that the situation in Lithuania is not in conformity with the Paragraph 1 Article 2 of the European Social Charter on the ground that during the reference period, for certain categories of workers a working day of 24 hours was permitted, we welcome this opportunity to outline our response to the Governmental Committee and provide information regarding the developments that the Government of Lithuania has taken during the reference period.

It should be noted that during the reference period the old Labour Code was still valid, as the revised Labour Code of the Republic of Lithuania was adopted on 14 September 2016. It

came into force only on 1 July 2017 and therefore developments made in the recent Labour Code fell out of the reference period and wasn't taken into account.

Seeking to implement Committee's recommendations to refuse the 24 hours on-call working time limit for certain categories of workers, the Government has attempted to set a shorter limit for on-call time, however, organisations representing both the employers and the workers disagreed with this proposal: the Ministry of Social Security and Labour had drawn up a draft law on the amendment of respective articles of the Labour Code of the Republic of Lithuania in 2013 and submitted it to the Tripartite Council as well as to other stakeholders for harmonization.

The draft law envisaged to establish that the duration of on-call time at the premises of certain categories' employees (health care, guardianship, children-rearing/education, energy, specialized communication services and specialized emergency services as well as other services operating at a continuous on-call mode) and of persons on duty/watchers would be up to sixteen hours per day instead of twenty-four hours per day. This regulation would take into consideration the conclusions provided by the Governmental Committee of the European Social Charter.

However, it should be mentioned that according to the Labour Code that was valid during the reference period, the duration of 24 working time for specific categories of workers was allowed for on-call mode and not for active carry out of the functions.

During the reference period the national legislation clearly indicated that the working time may not exceed 40 hours per week and the maximum working time, including overtime, must not exceed 48 hours per 7 days.

We do believe that recent developments that have entered into force after the adoption of the New Labour Code and fell out of the reference period during the last Committee's examination will be considered in the next evaluation period.

29. The GC examined the situation and took note of the new Labour code adopted. The GC decided to await the next assessment of the ECSR.

RESC 2§1 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 2§1 of the Charter on the ground that the law does not guarantee the right to reasonable weekly working hours.

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

As regards the conclusions of non-conformity on the grounds that the law does not guarantee the right to reasonable weekly working hours, it is to be noted that in practice we occasionally find situations where employees work more than 48 hours with their consent.

In such cases, inspectors from the Department of Industrial Relation and Employment monitor the situation to ensure that working conditions regulations and health and safety regulations are not breached.

In cases where it is found that there is no written consent, the inspectors investigate the situation and work with both the employer and employee to ensure that they are compliant with all rules while safeguarding the rights of the employees.

Furthermore, it is to be noted that the above provisions are acceptable to the social partners who form the Employment Relations Board, which board is entrusted with proposals/changes required to Employment and Industrial legal amendments in Malta.

31. The ETUC representative asked to what extend safeguards are provided by collective agreements.

32. The representative of Malta explained that the majority of big or medium enterprises have collective agreements and these agreements include safety regulations including excessive working hours, overtime pay, leave etc. Collective agreements do not exist in small enterprises composed of one or two persons.

33. The Chair asked the representative of Malta to include in the next report information about the number of collective agreements, the number of persons covered by collective agreements, to clarify the length of working time agreed upon in the collective agreements and if there are exceptions. This information would be useful for the next assessment of the ECSR.

34. The ETUC representative agreed with the Chair's proposal. Nevertheless, he underlined that there are still sectors or companies which are not covered by collective bargaining and it seems to be a considerable number of such companies. Therefore, it would be interesting to see statistics or other relevant data in relation to the number of cases the Labour expectorate had to deal with in situations of excessive working hours.

35. The representative of Malta informed the GC that these statistics will be included in the next report.

36. The GC invited Malta to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

RESC 2§1 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§1 of the Charter, on the ground of the exclusion of certain categories of workers from the statutory protection against unreasonable working hours.

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

It is true that in the Netherlands certain categories of workers are excluded from the statutory protection and indeed it concerns the following professions: sports professionals, performing artists, medical specialists and scientists. They are not covered by the Netherlands Working hours Act.

However, the conclusion of the ECSR that military personnel and police are also excluded from the legal framework is not true. They are both covered. Only in the case that compliance with the Working hours Act would disrupt the maintenance of public order, the Working hours Act does not apply to them. This is a case of exceptional circumstances.

I would like to describe the general framework in the Netherlands. The Working hours Act in the Netherlands sets out limits for daily or weekly working hours. The Act is established in order to protect employees and particular workers who are not free to organise their own work in order to determine when they work and when they rest. In fact, all employees are covered.

However, some categories are excluded. These are the categories we call in the Netherlands "free professions". Their labour contract does not require being present on the workplace during a certain number of hours per day or per week, but rather ask to provide certain achievements.

Here is an example. A musician who plays in an orchestra has to perform once or twice a week in a concert. He is furthermore obliged to take part in repetitions with the whole orchestra during the week. The same is for an actor. He has some performances, repetitions, but for the rest of the week, he is free. Since in these periods they need to study themselves and in some case for a musician or an actor 10 hours should be enough. But if you are not that talented, you would need to study more than 10 hours, perhaps 20 or 30 hours per week. These hours are not laid down in the labour contract and there is no employer who's enforcing them. Bu this work is what the employee has to do in order to meet the commission he assigned for, in order to give a good performance. In other words, employees of this kind of professions are very free to organise their own work. In which case, according to the Netherlands Government and according to social partners there is no need for applying to them the heavy protecting Working hours Act.

Like I stated before, these exceptions are only allowed for sports professionals, performing artists, medical practitioners and scientists.

Moreover, these exceptions were made at the request and with the consent of the social partners in the relevant sectors. These employees are working very autonomously, and they are in best position to determine their own working schedule.

Furthermore, I want to mention that in the last decades there has been no case law with respect of these categories of workers or with respect with their working hours. Moreover, the social partners in the Netherlands did not make any observations in the last report 2017 that these categories of workers are inadequately protected against unreasonable working hours.

To conclude, the Netherlands Government is of the opinion that with the national Working hours Act in place, which covers almost 95% of the employees, and the very specific arrangement for certain categories of workers, the Netherlands meets the criteria of Article 2§1 of the Charter.

38. The GC invited Netherlands to provide relevant statistics on the number of persons concerned by the specific working hours' arrangements in its next report and decided to await the next assessment of the ECSR.

RESC 2§1 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 2§1 of the Charter on the grounds that

- ***daily working hours can be authorised to go up to 16 hours, and***
- ***weekly working hours can exceed 60 hours.***

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

As the Committee notes, there has been no changes in these limits, and there is no plans anything about it, so I will be brief in my statement.

I would however like to make some important points in the matter.

In January 2016, a Committee of experts delivered an Official Norwegian Report to the Minister of Labour about working time regulations in Norway. The Committee consisted of experts in the field of law, economy, labour medicine, employment and more. The social partners were represented in a consulting committee and had several meetings with the experts presenting their views and commented on the different topics of the report. The report was also sent to a public hearing where all organisations could comment.

The conclusion in this report is that the working time regulations in Norway as a whole are functioning well and they are well balanced. There were some problematic areas and suggestions from the committee, but not on the limits of daily or weekly working time. The point is that neither the experts, nor the social partners consider this to be a problem.

My other point is to try to explain why this limit of 16 hours is acceptable to the social partners and, in our view, a good and important rule.

The long periods of work that we talk about is, as the Committee knows, only applicable in cases where there is already in place a collective agreement at the workplace authorising working days up to 12,5 hours. It then there is a situation that is not predictable and special circumstances demand that work cannot be postponed, the worker can work up to 16 hours, but will have an extended rest period after that and can take the extra hours out as free time later. No one can work more than 40 hours a week on average.

A modern work life demands flexibility. Allowing workers, in extraordinary circumstances to work longer days in exchange for extended rest time later is good for both employers and employees.

We know that these situations will happen, and the view of the Norwegian Government and the social partners is that it is better to have regulated this rather than employers and employees allowing this outside of the law. As it is now long working days are recorded and documented and this documentation is available to the workers representatives, as well as the Labour Inspection Authority for control and to uncover if the rule is used wrong or too much.

I will finish with a couple of additional points that comes to my mind in this case.

I see that the Committee has reached the conclusion that 14 hours is always acceptable but not 16, based on their own conclusion from 1998. I would like to point out that working methods are changing and may be the Committee should look at a broader picture of working time regulations and how they are applied now, 20 years later.

The Committee states that these long working hours are allowed only in extraordinary circumstances and concludes that the exceptions allowed in Norway cannot be considered as extraordinary. It is possible that our reports are not good enough on this point and we will be happy to provide more in-depth information and statistics on this in the next report.

40. The Chair recalled that in 2010 the GC expressed concern about the possibility provided by the legislation of extending working time to 16 hours and urged the Government to take adequate measures to bring the situation into conformity with the Charter. In 2014, the GC noted that there had been no change in the legislation on reasonable working hours and that the Norwegian government considered itself to be in conformity with the Charter. It encouraged the Norwegian government to contact the ECSR about its finding of non-conformity and decided to wait for the ECSR's next assessment.

41. The representative of Norway informed the GC that there has been no contact between the ECSR and the Norwegian Government so far. He insisted on the fact that the Norwegian Government has a very clear position on the subject.

42. The Secretariat underlined that the ECSR is always open to have discussions with States Parties on specific issues where States feel that there is a need to explain situation in depth. This can also happen through the meetings between the Bureau of the ECSR and the Bureau of the GC.

43. Furthermore, the Secretariat asked States Parties to provide, because of the very large spectrum of cases, clear and exhaustive information in the next report what "exceptional circumstances" according to the relevant national legislation means. The provisions for long extensive working days have to be explained precisely: what are the circumstances, how often these are applied, what is the nature of the work, how many persons are concerned, etc.

44. The representative of ETUC expressed the same opinion as the Charter's Secretariat.

45. The GC invited Norway to further clarify the exceptions that allow longer working hours in its next report and decided to await the next assessment of the ECSR.

RESC 2§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§1 of the Charter on the ground that the length of the authorized working week is excessive and that the legal guarantees are insufficient.

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

The Slovak Republic believes this case of non-conformity is a case of misunderstanding of the Slovak legislation related to the working time, so let me explain the situation.

As is written in the conclusions, in accordance with article 87 paragraphs 4 of the Labour Code, within a 24-hour period the working time cannot exceed 12 hours. This provision allows for no exception. Article 92 of the Labour Code states that an employer is obliged to arrange working time in enterprises with uneven distribution of working time in such a way that between the end of one shift and the beginning of another, an employee has the minimum rest period of 12 consecutive hours within 24 hour period. Such a rest period may be shortened to 8 hours in relation to urgent repair work concerning the averting of a threat endangering the lives or health of employees and in case of extraordinary events. These urgent cases apply to sudden hazardous situations, e.g. accidents in power plants, malfunction of crucial medical equipment in hospitals, etc.

However, even if the rest period was shortened to 8 hours, this does not mean that 16 hours working time is possible, due to the already mentioned provision of the Labour Code which allows a maximum 12 hours working time within a 24-hour period.

It has to be pointed out that the maximum 12 hour working time period concerns employees with uneven distribution of working time. Employees with even distribution of working time cannot work longer than 9 hours within a 24-hour period, in accordance with article 86 paragraph 2 of the Labour Code.

The maximum length of the working week is 40 hours, less for workers performing shift work (38 and ¾ hours and 37 and ½ hours) or working in hazardous working conditions (33 and ½ hours). Workers working in hazardous working conditions cannot work overtime, as is prescribed by Article 97 par. 11. The Labour Code explicitly states all the limits in several articles, depending on the category of workers concerned.

In conclusion, it has to be stressed again that the maximum working time within a 24-hour period is 12 hours for employees with uneven distribution of working time and 9 hours for employees with even distribution of working time, in accordance with article 87 paragraph 4 of the Labour Code. Even if a shortening of the rest period occurs for an employee with uneven distribution of working time due to an urgent hazardous situation occurs, the total length of work shifts for this person cannot exceed 12 hours, meaning 8 hours the usual shift + 4 hours in case of an urgent situation. The length of the working week for all categories of workers is in line with the EU requirements. Taking into account what I just said, the Slovak Republic is strongly of the opinion its legislation provides strong guarantees of proper limitation of the working time.

47. The representative of ETUC asked the Secretariat to what extend the information provided is new and thus could have led to a misunderstanding. The representative of ETUC mentioned that the information exists in the national report and in the GC working document.

48. The Secretariat said that the information provided by the Slovak Representative is not exactly new. The conclusion refers to Article 87 paragraph 4 of the Labour Code saying that 12 hours per day is the maximum and cannot be exceeded. It was not clear to the ECSR what is the maximum working time per week, and could it be more than 60 hours a week (12 hours per day for 6 days).

49. The representative of the Slovak Republic explained that this is not possible. The maximum weekly working time according to the Labour Code is 48 hours a week. If a person works 12 hours a day, he/she would reach 48 hours in 4 days.

50. The Secretariat asked if there are exceptions to that rule.

51. The representative of the Slovak Republic confirmed that there are no exceptions.

52. The Secretariat said that the case has to be brought back to the ECSR for a new assessment.

53. The representative of ETUC mentioned that the ground of non-conformity is not only about the excessive length of working time, but also about the lack of safeguards. ETUC proposed the Slovak Republic to explain in the next report to what extend the safeguards, which the ECSR considers to be insufficient according to the law, can be further regulated, in law and in practice, by collective bargaining.

54. The representative of the Slovak Republic reiterated that the provisions mentioned in his presentation are clear, that there is a limited working time for specific categories of workers and that there is a provision stipulating that the maximum daily working time is 12 hours and the maximum weekly working time is 48 hours, which takes into account the overtime work.

55. The representative of the Czech Republic supported the explanation given by the Slovak Republic.

56. The Secretariat reminded the GC that the ECSR does not take exactly the same line as the European Union when it comes to working time regulation. The ECSR would probably not accept exceptions that are purely for reasons of economic expediency. We have to accept that, when it comes to working time, there is no complete correspondence between the requirements of the EU law and the requirements of the Charter.

57. The ETUC representative proposed to ask the Slovak Republic to provide clear information on the national legal framework and to what extend there is scope left to collective bargaining and/or individual negotiations to derogate from that.

58. The representative of the Slovak Republic confirmed this information will be provided in the next report.

59. The GC examined the situation. The GC invited the Government to provide all the relevant information regarding the length of the authorised working week and the legal guarantees applied, as well as and to what extend there is scope left to collective bargaining and/or individual negotiations to derogate from that in its next report and decided to await the next assessment of the ECSR.

RESC 2§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 2§1 of the Charter on the ground that in some collective agreements on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest periods.

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

The Government of Slovenia would like to emphasize that the legislator has no competence to interfere with collective bargaining and thus amending collective agreements referred to in the non-conformity conclusions.

Furthermore, only the Labour Code is responsible for verifying conformity of collective agreements with the law (in case collective labour dispute is initiated). From the case law of the Higher Labour and Social Court of the Republic of Slovenia, it is not evident that the court would conduct any conformity assessments of any collective agreements with the provisions of the Employment Relationship Act (ZDR and ZDR-1) on daily and weekly rest periods.

According to the publicly available information, there has been no change of the relevant collective agreements (insurance business, banking sector, metal product industry, railway transport industry) since the last relevant report (submitted in 2018).

However, since the last relevant report submitted by Slovenia, the total number of breaches of the provisions of the Employment Relationship Act (ZDR-1) on weekly and daily rest decreased significantly (from 167 to 108 – weekly rest, from 177 to 94 –daily rest) in the period 2016 – 2018 according to the data of the Labour Inspectorate.

To be more specific, here is the data for the relevant branches: in the period 2013-2018 the Labour Inspectorate found no breaches of the provisions regarding daily and weekly rest in insurance business and banking sector. In metal products industry and electricity industry, the Inspectorate found less than three breaches on average per year, and in the whole transport industry (there is no separate data for railway transport industry) less than five breaches on average per year.

61. 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, Slovenia has to comply with the EU legislation and the case law of the EU Court of Justice.

62. The Secretariat pointed out that if the social partners agree on something which runs counter to the international obligations of Slovenia, the State has a responsibility to intervene to ensure that the situation is brought into conformity. The ECSR does not consider that on-call work as a rest period.

63. The representative of Slovenia asked advice from the Secretariat and the GC.

64. The Secretariat pointed out that in in many counties is possible to declare collective agreements “null and void” when they contain provisions that run counter to higher law.

65. The representative of Slovenia clarified that only the collective agreement relating to railway transport is in question.

66. The ETUC representative suggested looking at how change came about in the other collective agreements. The other possibility would be to inform the social partner, without interfering in its autonomy, about the existence of the problem through an independent institution.

67. The Slovenia representative informed the GC that Slovenia has a Tripartite Social and Economic Council, which is aware of the ECSR conclusions. The national report is regularly submitted to the Council for comments. Most of the sectors are represented in the Council.

68. The representative of the Netherlands pointed out that on specific matters social partners are not allowed to deviate from the law. For example, in cases such as equal treatment between men and women, payment of wages in case of illness etc. social partners are not allowed to make specific arrangements.

69. The GC took note of the information provided by Slovenia and invited the Slovenian government to take action and amend the collective agreement relating to railway transport in consultation with social partners with the aim of bringing it in line with the Charter and decided to wait for the ECSR's next assessment.

RESC 2§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 2§1 of the Charter on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements.

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

First, I'd like to give some information about the provisions of the Labour Law and the related Regulations, regarding the overtime work.

According to Article 63 of the Labour Law titled "Working Period", "The working period shall be maximum forty-five hours a week in general aspect." Unless otherwise agreed, such period shall be applied by equally assigning it to working days of the week.

And according to the provision added in 2014, "The working period of the workers in underground mining shall be maximum seven and a half hours per day, and maximum thirty-seven and a half hours per week."

The normal weekly working period may be differently assigned to working days of the week, on the condition that it does not exceed eleven hours a day, upon agreement of the parties. In this case, the average weekly working period of the worker shall not exceed normal weekly working period within a period of two months, which is called the compensation period.

"Compressed work week and compensation period" regulated with this Article is a type of flexible working model.

Although employers are given the opportunity to employ their workers for a maximum of sixty-six hours in compressed work weeks with this arrangement, the average weekly working time in the total of the compensation period is not more than forty-five hours, which is the maximum number of working hours per week specified in the law. Within the compensation period, employees have the opportunity to work less than normal weekly working hours or rest.

The implementation of this provision is inspected by the Labour Inspection Board. During the reporting term 2013-2017, administrative fines were imposed for 2.546 employers.

Workers cannot be employed on the week holiday, during a compressed working week. Therefore, the work done cannot exceed sixty-six hours. In addition, the maximum time a worker can be employed during the compressed work week is eleven hours per day. Overtime working is not possible after this period. It's not possible to work for 12 or 16 hours a day, as it is the case in many countries.

On the other hand, this application can only be carried out if the parties agree. In other words, the employer cannot unilaterally conduct a compressed work week at the workplace. The employer and the employee have to sign a written agreement about the compressed work week.

Overtime work is defined in the Labour Law as "the work exceeding forty-five hours a week".

Some amendments have been made to the Labour Law in September 2014. Accordingly, except for certain conditions due to force major, the mine workers shall not work overtime. If they work, their wage for each extra hour shall be paid by increasing the amount of normal working wage per hour by not less than a hundred percent.

In addition, special restrictions have been introduced in the law, regarding the overtime work of certain groups of workers.

- *One of them is about the mine workers as mentioned.*
- *According to the Regulation on the Working Conditions of Pregnant or Breastfeeding Women, a pregnant or nursing woman cannot be employed for more than seven and a half hours a day.*
- *And Workers who cannot be employed for overtime are indicated in the Regulation on Overtime Work or Works with Extra Periods. These are:*

  a. Workers under 18 years of age,

  b. Workers who have a physician's report showing that their health do not allow overtime work,

  c. Pregnant women, women who have given birth, and nursing women,

  d. Workers who are employed with a part-time employment contract,

  e. Workers working in underground mining.

- *On the other hand, the types of work where the daily working time must be seven and half hours maximum or less for health reasons have been listed under 23 headlines in the Regulation about these types of works. These include heavy works with occupational health and safety risks, such as underground works and works in metal industry.*
- *Apart from these regulations, there are certain limitations on night work. Night-time work shall not exceed seven and a half hours.*
  In this context the working time is set as maximum forty-five hours a week in general in the Labour Law dated 2003. This time can be increased to 11 hours a day, only with the written consent of the worker.

  After the approval of the Labour Law, certain amendments have been made and exceptions for certain groups of workers have been introduced with the law and the regulations. These groups include those working underground, workers under 18, pregnant, breastfeeding women and those who have given birth, part-time workers and workers with health problems.

Lastly, certain restrictions are indicated for the workers performing heavy works in the industry. Weekly working time cannot reach even 45 hours for these groups of workers.

Although the weekly working hours are still above 60 hours, the daily working hours is set as maximum 11 hours, which cannot be increased.

The assessment of the Committee will be taken into consideration in the possible legislative amendments.

71. The ETUC representative noted that according to the presentation the situation in Turkey has not changed.

72. The representative of the Netherlands asked about a clarification regarding the maximum daily (11 hours) and weekly working time (66 hours).

73. The representative of Turkey clarified that there are changes in the daily working hours (11 hours maximum a day) and that the maximum working time per week is 66 hours, but the average is 45 hours a week (compensatory reduced week) in a period of 2 months.

74. The ETUC representative asked how this is framed apart from individual agreements between employers and employees and how this is controlled.

75. The representative of Turkey replied that the application of this rule is controlled by the Labour Inspectorate and the results are recorded. During the reporting period (2013-2016) and administrative fine was sent to 2500 employers.

76. The GC noted that there is an improvement with regard to daily working hours and urged the Government to bring the situation in conformity with the Charter.

Article 2 - The right to just conditions of work

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

ESC 2§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that Georgian law ensures that work performed during public holidays is adequately compensated.

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

Article 20 of the organic Law of Georgia "Georgian Labour Code" defines holidays. Pursuant to the same article, an employee may request other days off instead of the holidays under this Law to be defined by a labour agreement. If an employee works during the holidays under the first paragraph of this article, it shall be deemed as overtime work and the

terms for its compensation shall be determined by Article 17(4)(5) of this Law. Article17 of the Code determines that overtime work shall be compensated by increasing the amount of hourly pay rate. The amount of the compensation shall be determined by agreement of the parties. The parties may agree on granting additional time off to an employee in return for overtime compensation.

Pursuant to the article 58 of the Law of Georgia on Public Service, which determines the salary increment, an officer shall be paid a salary increment when his/her is assigned additional functions, including for performing activities during night-time hours, on rest days or public holidays and under heavy working conditions.

Georgia adopted a Law of Georgia on the Remuneration in Public Institutions on December 22 2017 defining amount of salary increment of an officer. The law defines that salary increment is given to an officer for overtime work or/and performing additional functions, including, for working at night, days off/holidays and while performing harm, hazardous and harmful activities.

The salary increment is given based on endorsement by the authorized persons in frames of limits defined by the law and allocated budget. Salary increment shall not be more than 20% of the annual salary of the public official.

According to the same Law working part-time, night hours, holidays and holidays, the rule of activity in health-related working conditions is defined by the Resolution of the Government of Georgia N201 adopted on April 21, 2017(Article 61 (5)).

78. The representative of Poland asked if Georgia could provide information on how the legal framework is implemented in practice.

79. The representative of Georgia replied that there is no competent authority to monitor the protection of labour rights in Georgia. As the labour inspectors are not entitled to monitor all the labour rights, it is difficult to provide information on how the legal framework is implemented in practice.

80. The ETUC representative drew attention to the fact that nor Georgia, neither the United Kingdom, have provided information on to what extend this situation is or can be further framed by collective agreements and not only by individual ones. In the case of Georgia, the luck of enforcement and inspection aggravates the situation.

81. The representative of Georgia informed the GC that is very difficult to collect information on collective agreements. In Georgia there is a labour mediation mechanism and collective agreements are dealt with under this mechanism where issues like over time remuneration, remuneration in general, leave etc. are discussed.

82. The GC invited Georgia to provide more information on the current legislative amendments in its next report and decided to await the next assessment of the ECSR.

ESC 2§2 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated for all workers.

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

As regards the conclusions of non-conformity that in certain sectors, workers are only being paid "time and a half" for work performed during public holidays falling in the period Monday to Friday and that this 50% increase is not being considered as adequate compensation, it should be noted that overtime rates are regulated by Wage Regulation Orders which regulate certain conditions of employment of employees working in specific sectors of industry.

It should be also noted that out of 31 Wage Regulations in force, only seven Wage Regulation Orders do not provide for double payment rate. These seven Wage Regulation Orders cover employees working in the following sectors: Beverage industry; Cinemas and theatres, Printing, Public Transport, Seamen, Sextons and employees working in hotels, however maintenance workers in hotels are paid double time on public holidays. All the other 24 Wage Regulation Orders provide for double time payment for work carried out during public holidays.

As regards comments regarding how employees covered by collective agreements are paid for work on public holidays, we can safely say that normally, collective agreements provide for double rate payment for work done on public holidays.

Furthermore, it is to be noted that the above provisions are all acceptable to the social partners who form the Employment Relations Board, which board is entrusted with proposals/changes required to Employment and Industrial legal amendments in Malta.

84. The Chair noted that the situation has not changed with regard to the ground of non-conformity.

85. The ETUC representative asked if there are collective agreements in the sectors not covered by the Wage Regulations and if these agreements provide for double pay.
86. The representative of Malta had no information on how many collective agreements provide for a double pay. This is information can be provided in the next report.

87. The GC invited Malta to provide information on collective agreements that provide for a double pay for work on a public holiday in its newt report and decided to await the next assessment of the ECSR.

ESC 2§2 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated.

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

The Netherlands has two national holidays (Kings day on 27 April and Liberation day on 5 May). There are also several other recognised public holidays which are mainly Christian holidays. In total the Netherlands has 11 public holidays.

There is no law or legal provision governing work during public holidays. This is regulated in the context of collective labour agreements or the individual employment contract.

The Netherlands feels that social partners are best equipped to conclude provisions in their labour agreements that are most fit for the specific sector involved.

Employees can only be required to work on public holidays if they have agreed to do so. In some branches employees are required to work in public holidays. This is also regulated in the collective labour agreements.

As just states, the Netherlands has no law or legal provision governing work during public holidays. Neither a law governing pay for work performed on public holidays.

Compensation measures for work on a public holiday are additional pay or time off in lieu for each hour worked and depends on the employment contract or collective agreement that has been concluded by social partners.

Regarding the rates, paid in addition to the regular wage on a public holiday, it is possible that not all employers pay at least the double of the usual rate as required by the ECSR. The percentage, depending on the individual employment contract or collective agreement, can vary between 45 and 250%.

To conclude, the Netherlands considers it is very important for social partners to be free to reach whatever collective agreement they consider reasonable and in their joint interest.

89. The Chair asked if civil servants work on public holidays.

90. The representative of the Netherlands replied that if the public holiday falls on a normal working day, from Monday to Friday, all civil servant need to work. Civil servants in the Netherlands do not have a special status.

91. The ETUC representative noted the fact that employees have to work during public holidays.

92. The GC invited the Netherlands to bring the situation in conformity with Article 2§2 of the Charter and decided to await the next assessment of the ECSR.

ESC 2§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 2§2 of the Charter on the ground that work performed on a public holiday is not adequately compensated, when the minimum standards of compensation are applied.

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

The Slovak Republic would like to inform the Committee that due to the recent legislative development. Previously, only some categories of workers were entitled to 100% wage bonus for work during public holidays, while the majority of workers were entitled only to 50% bonus. As of the beginning of this year, the compensation for overtime work has been increased to 100% of the employee's average wage for everyone. This applies to all sectors of the economy, as well as the private and public sphere, all categories of workers and for all types of employment contracts. Each worker performing work during public holidays receives their usual wage and a 100% bonus, at the minimum. The Labour Code also allows for even higher compensation on the basis of collective agreements between the social partners.

94. The Chair noted the positive development in the Slovak Republic and decided to await the next assessment of the ECSR.

Thursday 16 May

Article 2 - Right to just conditions of work

Article 2§3 - to provide for a minimum of four weeks' annual holiday with pay

RESC 2§3 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§3 of the Charter on the ground that the minimum period of paid annual leave is less than four weeks or 20 working days.

95. The representative of Bosnia and Herzegovina provided the following information:

In 2018, the both Entity Labour Laws were amended and, in accordance with the new amendments, workers are guaranteed a minimum period of paid annual leave of 20 working days or 4 weeks and a maximum of 30 working days. Exceptionally, an annual leave may last longer than 30 20 working days if this is provided for by a collective agreement, in accordance with the nature of the work and working conditions.

A worker who takes a job for the first time or his employment was terminated for a period longer than 30 working days is entitled to annual leave after 6 months of continuous work with the employer. An annual leave is increased based on the length of service and other grounds in accordance with the collective agreement.

Workers can take a leave in one or two parts, with the first part not being shorter than two weeks continuously (10 working days during the calendar year).

An annual leave does not include the period of temporary inability to work (illness or injury), the period of holidays that are non-working days and other periods of absence from work that are recognized as pensionable service periods. Therefore, if a worker sustains an injury or illness during his annual leave, he may interrupt the annual leave and take it later whenever he wishes until June 30 of the following year at the latest Worker cannot receive financial compensation for unused days of annual leave.

When it comes to civil servants, the Law on Civil Service of BiH and the Labour Law in the Institutions of BiH were also amended in 2018, so that civil servants are provided with a minimum period of paid annual leave of 20 calendar days or 4 weeks.

In addition to an annual leave, every worker is allowed to use a paid leave of no more than seven working days in the calendar year, in case of marrying, his wife's delivery and serious illness or death of a core family member or for satisfying religious or traditional needs determined by the employer's by-law. The employer decides upon a written request for paid leave by an employee.

At present, only the Labour Law of the Brčko District of BiH keeps the situation unchanged, that is, it guarantees a minimum period of 18 days of paid annual leave. Juvenile workers are entitled to a minimum period of paid annual leave of 24 days and workers in jobs with health hazards have a minimum of 30 days of paid annual leave, which is determined in detail by the employer's by-law. However, a working group is currently being appointed to work on amending this Labour Law.

96. The representative of Poland asked to clarify whether it is possible to carry out the annual leave to the next year or the period of leave not taken a given year expires. First the question was not clear, and the representative of Bosnia and Herzegovina stated that the annual leave should be used during the calendar year. However, after some clarifying questions asked by the Chairperson, the representative of Bosnia and Herzegovina stated that the annual leave can be used by June 30 of the following year.

97. The Committee took note of the information provided by the representative of Bosnia and Herzegovina and decided to await the next assessment of the ECSR.

RESC 2§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova was not in conformity with Article 2§3 of the Charter during the reference period on the ground that in certain circumstances, the law allowed all annual leave to be carried over to the following year, without guaranteeing the workers' right to take at least two weeks' uninterrupted holiday during the year the holidays are due.

98. The representative of Moldova provided the following information:

In the Republic of Moldova, the right of the employee to paid annual leave is guaranteed by Article 43, paragraph 2, of the Constitution of the Republic of Moldova.

Article 113, paragraph 1, of the Labour Code states that all employees are granted paid annual leave, for a minimum period of 28 calendar days, with the exception of non-working holidays.

Paragraph 2 of Article 113 indicates that for employees from some branches of national economy (education, healthcare, public service, etc.), by an organic law, can be established another duration of annual leave (calculated in calendar days).

Article 115, paragraph 5, of the Labour Code establishes that annual leave may be granted in full or, on the basis of a written request by the employee, can be divided into parts, one of which will have a duration of at least 14 calendar days.

Under Article 118 of the Labour Code, the employer has the obligation to take the necessary measures so that the employees can use the paid annual leave in each calendar year. The annual leave may be postponed or extended if the employee is on sick leave, performance by him of a state duty or in other cases provided by law.

In 2017, paragraph 3 of Article 118 of the Labour Code was amended as following: In exceptional cases where the granting of full annual leave for current working year may have a negative impact on the functionality of the unit/company, part of the annual leave, with the written consent of the employee and with the written consent of the employees' representatives, may be postponed for the next working year. In such cases, in the current working year, the employee will be granted at least 14 calendar days of the annual leave, the remaining part being granted until the end of the following year.

According to paragraph 4 of Article 118, the non-granting of annual leave for two consecutive years is prohibited, as well as the non-granting of annual leave to employees aged up to 18 years and to employees entitled to additional leave in connection with harmful working conditions. Paragraph 5 of the same article indicates that it is not permissible to replace annual unused holiday by means of cash compensation, except in cases of termination of the individual labour contract of the employee who has not used his/her leave.

Article 121, paragraph 3, of the Labour Code, provides that employees in some branches of the national economy (industry, transport, construction, etc.) are granted additional paid annual leave for length of service and for shift work, according to current legislation. According to the amendments made in 2017 in paragraph 4 of the article 121, one of the parents with 2 or more children under the age of 14 years (or a child with disabilities) are given, on the basis of a written application, additional annual paid leave with duration of 4 calendar days.

Paragraph 6 of Article 121, introduced in the Labour Code of the Republic of Moldova in 2017, stipulates that additional paid annual leave is added to the basic paid annual leave.
In the practice, there are still cases of non-respecting the provisions on annual paid leave by the employers. Based on the information provided by Labour Inspectorate, in 2018, about 2% of complaints (from total number of 2099 complaints) received by Labour Inspectorate had been on non-respecting by the employers the provisions of annual paid leave. The Labour Inspectorate for each separate situation did take concrete measures in order the provision of the.

99. The Committee took note of the information provided by the representative of Moldova and decided to await the next assessment of the ECSR.

RESC 2§3 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§3 of the Charter on the ground that not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

100. The representative of the Netherlands provided the following information:

According to the legislation, employees are entitled to the annual paid leave amounting to four times of the agreed working time per week. The employers are obliged to give the employees the opportunity to take the leave each year to which they are entitled by law. According to the Art 7638 of the Civil Code, the leave should be taken when the individual employee wishes, unless agreed differently under of collective agreements or individual employment contracts (e.g. education, construction). Even if the employer has a "compelling reason" why the preferred period of leave is undesirable, the law provides that the employee should be allowed to take a leave of two consecutive weeks. Only in the case when the employee wished to take two one-week periods, this is granted. So in that case the employee's wishes prevail. The Government of the Netherlands considers that it is very important to grant a freedom of choice, since the employees can decide the best when they need to take a leave. The Government is of the opinion that the annual right to leave of employees is adequately ensured and protected in accordance with the Article 2§3 of the Charter.

101. The Committee asked the Netherlands to provide more detailed information 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

RESC 2§4 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§4 of the Charter on the ground that there is no adequate prevention policy, covering the whole country, for the risks in inherently dangerous or unhealthy occupations.

102. The representative of Bosnia and Herzegovina presented the following information:

As we reported in the previous report, competences in terms of health and safety at work in BiH are vested in the Entities and the Brčko District.
Given the fact that the entire field of labour and social rights are within competence of authorities at the Entity level, the Law on Protection at Work, which will be applicable throughout the country, has not been passed at the state level.
However, significant steps have been taken by Entity authorities in this regard. Namely, since the last report, the Entities have agreed on the Draft Laws on Safety and Health at Work that are in line with EU regulations, that is, with the Framework Directive of the Council of the European Community on the introduction of measures to encourage improvements in the safety and health of workers at work.

The main principles of the new Entity Laws place an emphasis on the responsibility of the employer for safety and safety at work, that is, the obligation of the employer to ensure that the work process is adapted to the physical and psycho-physical abilities of workers, and that the means of work and equipment for personal protection are manufactured in such a way that they do not endanger worker's safety.

The legal obligation of the employer in both Entities is to provide its funds to ensure health care of employees that includes at least: 1. medical examinations for determining fitness for work; 2. information of employees about occupational health and safety measures and their training education in relation to specific working conditions; 3. providing hygienic and technical conditions at work; 4. continuous monitoring of working conditions and improvement of working conditions in accordance with abilities of employees, as well as 5. providing adequate and urgent medical assistance in the event of injury at work.
It is important to note that legislation is applicable equally to the public and private sectors.

The Laws on Safety and Protection at Work regulate systematic risk assessment in the process of work, which can cause injuries at work, diseases or harm to health and determination of the possibilities for preventing and eliminating risks, as well as inspection supervision over all aspects of work, from safety and protecting the health of workers to checking the means of work and the production process in general.

In by-laws, each employer determines particularly serious and harmful work, such as work in mines and quarries, work in the police and fire department, work on railways, work with chemical substances and work in jobs where workers are exposed to radiation or heavy noise.

Therefore, as a conclusion of this presentation, I will say that, given the division of competencies in BiH regarding this area, it is not possible to pass the Law on Protection at Work at the state level, but that new drafts of Entity laws and the Law on Safety and Health of Workers at Work of Brčko District has uniform provisions, i.e. harmonized principles for risks in unhealthy or dangerous occupations.

103. The Committee noted the developments in Bosnia and Herzegovina and decided to wait for the next assessment by the ECSR.

RESC 2§4 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§4 of the Charter, on the ground that workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

104. The representative of the Netherlands provided the following information:

From the perspective of the Netherlands Government the need to minimize dangerous or unhealthy aspects of work is very important. This is why employers in the Netherlands have a duty under the Working Conditions Act, to perform a full risk assessment and evaluation to identify dangerous and/or unhealthy elements of the work and indicate how the risks can be prevented (for example by adequate information to the employees, security measures, tailored security measures).

In case if there are accidents at work, the employers are obliged to inform the labour inspectorates. With respect to statistics, I don't have the statistics with me but in the Netherlands we gather statistics per type of accidents, for example, hazardous substations, fire, explosions, other forms of contact with objects. Also we have statistics available per sector, for example painting industry and construction work. In occupations which could involve dangerous or unhealthy work, the arrangements to obviate the risks are either made in collective agreements, for example as it was done in carpentry industry for working at heights and in maintenance and cleaning industry for cleaning asbestos or at the level of individual enterprises. What level of risk is reasonable and how the work done can be performed safely and healthy is to be determined by mutual consultations between employers and employee organisations, social partners. One element of such arrangements may be that the workers performing dangerous work are entitled to extra compensation or extra leave. So, this is in the arrangements, not in the statutory or legal laws.

I want to emphasise that it is important to acknowledge the facts that it should be not extremely high rewords for dangerous works, because: 1. Employers should not buy off the risks, and 2. Employees should not be tempted to perform more dangerous or unhealthy work just because they receive financial incentive. To conclude, the Netherlands Government thinks and believes that it has adequate policy framework to prevent workers from dangerous and unhealthy work. Therefor the Netherlands does not consider it necessary to introduce statutory measures related to the payment of extra wages and/or extra leave for dangerous or unhealthy occupations.

105. The Chair suggested adopting the same approach as for Luxembourg and UK, ask Netherlands to provide additional statistics 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

RESC 2§5 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter on the ground that it has not been established that a weekly rest period is guaranteed.

106. The representative of Georgia provided the following information:

Pursuant to the Article 14(2) of the Georgian Labour Code the duration of rest between working days (or shifts) must be at least 12 hours. Pursuant to the article 60 (3) of the Law of Georgia on Public Service there are 5 working days a week and the duration of working time not to exceed 40 hours a week and 8 hours a day. The rest time of an officer and public holidays are determined by the Organic Law of Georgia - the Labour Code of Georgia. The Law of Georgia on Public Service provides for a five-day working week for public servants with Saturday and Sunday considered as days off.

The Government of Georgia started work on amending the labour legislation based on EU Directives (Authority and Obligations – information under article 2.1.) and the next report will be providing information on updates and more information how the article is being implemented in practice, how weekly rest period is determined by collective or individual agreements.

107. Following several questions from different representatives to which concrete responses were not given due to lack of necessary data, the Chair suggested to postpone the consideration of the case until September and requested Georgia to present the required information and additional data.

108. Thus, the Committee decided to postpone the consideration of the situation against Georgia until the GC's September meeting and requested to provide all the necessary information.

RESC 2§5 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 2§5 of the Charter on the ground that, in certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

109. The representative of the Netherlands provided the following information:

It was a bit surprising to receive this decision of non-conformity given the limited information in the documents.

In the Netherlands the legal framework regarding the rest period is arranged in the Working Hours Act. And there it is stipulated that the employees may not work for more than 11 days in a row. Requiring the employees to work longer period than 11 days constitutes a breach of the Act. In fact, like you said, we consider two exceptions (you have mentioned three).

The one exception to the rule of 11 consecutive days that is the offshore mining, because they have separate arrangements that allows employees to work for 14 days on and 14 days off and which are quite normal in the offshore mining industry. The second exception has been made for the maritime shipping and fishing sectors, as that would be little point in having the cure spending weekly rest period on board of the ship. These specific arrangements are contained in Working Hours Transport Decree, are based on the ILO legislation, EU Directives and indeed these are the two (if you wish-three) exceptions from the general rule. In normal situations, employees are not allowed to work more than 11 days in a row and to be quite honest we are not planning to change our legislation.

We believe that the special arrangements for maritime industry, offshore mining, fishing and shipping sectors meet the criteria of this article.

110. The representative of the ETUC requested the Secretariat to explain how to read the 'safeguards' in the given conclusion: only legal or legal and enforcement. He also asked whether the information submitted by the Dutch trade unions were taken into consideration.

111. The representative of Netherlands noted that based on the ECSR conclusion, their assumption was that the non-conformity was found in respect of the two (three) categories mentioned above. In this respect, indeed, it could be stated that the Netherlands was not in conformity with the Charter. However, the question to the ECSR (and the Secretariat) asked by the ETUC was whether this conclusion related only to those categories or to the practice.

112. The Secretariat responded that the finding on non-conformity was simply on these three sectors.

113. To this end the representative of the Netherlands confirmed that indeed with regard to these 3 categories they were not in conformity. However, there was no intention to change the legislation on this regard. It was considered that the provided special arrangements protect the interests of the employees.

114. Following exchange of views and the different interventions the Chair noted that this question would be included in the agenda of the next bureau meeting and would relate the outcomes of the joint discussions with the bureau of the ECSR.

115. The Committee took note of the information provided and decided to await the next assessment of the ECSR.

Article 2 - Right to just conditions of work

Article 2§7 - to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

RESC 2§7 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 2§7 of the Charter on the ground that there is no provision in the legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter.

116. The representative of Andorra provided the following information:

L'article 19 de la Loi 34/2008 du 18 décembre, de la sécurité et la santé au lieu de travail, établit que l'entreprise doit veiller pour la surveillance périodique de l'état de santé des travailleurs en fonction aux risques inhérents à l'activité de travail et que l'exécution de la surveillance exige que la personne travailleuse donne son consentement, sauf si l'examen médical est indispensable pour vérifier si l'état de santé d'une personne peut supposer un risque pour elle-même, pour les autres travailleurs ou pour d'autres personnes dehors de l'entreprise.

L'article 5.3 du Règlement qui réglemente les services de santé au travail du 14 novembre 2012, établit que les examens de santé au travail sont obligatoires dans les supposées suivants :

a) Travailleurs qui doivent effectuer des activités dangereuses, insalubres ou nocives
b) Mineurs de 18 ans
c) Travailleurs qui soient spécialement sensibles à des risques déterminés
d) Travailleurs qui reviennent au travail après un congé de plus de 6 mois
e) Dans tous les autres cas ou l'examen médical est indispensable pour vérifier si l'état de santé d'une personne peut supposer un risque pour elle-même, pour les autres travailleurs ou pour d'autres personnes dehors de l'entreprise.

Cependant, bien que le Règlement ne le spécifie pas, si les techniciens supérieurs des services de prévention, en se basant en normes techniques et les circonstances spécifiques de chaque poste de travail, ils considèrent que le fait que une personne travaille pendant la nuit pourrait supposer un risque pour la santé, conformément avec la lettre e) de l'article 5.3, la surveillance de la santé du travailleur ou les travailleurs concernées n'est plus volontaire, c'est-à-dire, que le travailleur peut refuser à l'effectuer, et devient obligatoire.

Mais c'est vrai que le fait de que le Règlement n'inclut pas de façon spécifique que l'examen médical est obligatoire pour tous les travailleurs qui travaillent pendant la nuit peut causer que dans certains cas les techniciens de prévention de risques considèrent que la surveillance de la santé ne soit pas obligatoire et que les travailleurs affectés ne donnent pas son consentement pour effectuer les preuves médicales.

Afin d'éviter cette possibilité, et avec la volonté que l'Andorre s'adapte complètement aux dispositions de la Charte Sociale Européenne, le Gouvernement va modifier le Règlement qui réglemente les services de santé au travail et va inclure, de façon plus spécifique, dans les supposées en que les examens de santé au travail soient obligatoires, celui des travailleurs qui travaillent pendant la nuit.

117. In reply to the question of the representative of the ETUC whether the Andorran Government intended to amend the statute in question and what concrete measures had been taken in this regard, the Andorran representative said, that amendments were discussed not to the statute but to the regulation, as a compromise solution. Since the decision on the non-conformity was received in March, the Andorran Government had made a note and expressed intention to amend the regulation.

118. The Committee noted the information on the intention of the Andorran Government to amend the regulation and decided to wait for the next assessment by the ECSR.

RESC 2§7 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 2§7 of the Charter on the ground that a free compulsory medical examination was not provided by law to all workers about to take up night work.

119. The representative of Bosnia and Herzegovina provided the following information:

The area of worker protection at work carried out at night is regulated by the Entity Labour Laws and the Brčko District Labour Law. As I mentioned earlier, the Entity Labour Laws were amended in 2018. In this sense, all workers working at night are covered by night work regulations.

The Entity Labour Laws provide that, when organizing night work or shift work, an employer must provide the night workers and shift workers with safety and health care in accordance with the nature of the work they perform, as well as periodic medical examinations at least once every two years. If a medical examination establishes that there is a risk health for a worker and in particular a risk of disability due to work at night, the employer is obliged to offer the conclusion of an employment contract for the same or similar job not performed at night if such job is available or for other job if it is available provided that the worker should undergo retraining or additional training.

By-laws of the employer in both Entities may specify that the medical examinations of night workers are performed more often in case of high-risk jobs, in accordance with the principles and risk assessment of the job.

Statutory fines are imposed on employers who violate the above provisions in the amount of BAM 1,000 to 20,000.

I note that pregnant women from the sixth month of pregnancy, mothers, adoptive parents, persons entrusted with the custody and upbringing of a child until the age of 2 years and minors are excluded. Night work is forbidden for the listed categories of persons.

So, as a conclusion of the presentation, I will say that Entity Labour Laws provide medical examinations for all workers who perform night work at least once every two years and, if necessary, more often. In Brcko District, is currently being appointed to work on amending this Labour Law with a view to harmonizing these regulations so that they will be in line with the Labour Laws of the Federation of BiH and the Republika Srpska.

120. To the clarifying question whether it was required to pass the medical check-up before starting night wok, the representative of Bosnia and Herzegovina could not reply, due to lack of information.

121. To the clarifying question by the representative of Poland regarding the situation in Brcko district, the representative of Bosnia and Herzegovina once again underlined, that the working group has been assigned and the amendments to the legislation were expected by the end of the year.

122. Following several exchanges of views, the Chair proposed to take a note of the information provided by Bosnia and Herzegovina.

123. The Committee took a note on the information provided by Bosnia and Herzegovina and decided wait for the next assessment by the ECSR, given the new detailed information to be provided by Bosnia and Herzegovina.

RESC 2§7 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§7 of the Charter on the ground that it has not been established that night workers are effectively subject to compulsory regular medical examination.

124. The representative of Georgia provided the following information:

Employing minors, pregnant women, women having recently given birth, or nursing mothers for a night job (from 22:00 to 6:00), as well as babysitters of children under the age of three, or persons with limited capability without their consent shall be prohibited (Labour Code).
According to the Law on Public Service working part-time, night hours, holidays and holidays, the rule of activity in health-related working conditions is defined by the Resolution of the Government of Georgia N201 adopted on April 21, 2017(Article 61 (5)). The resolution defines that officers may enjoy the right to part-time work for

health reasons, or for raising a child of less than one year old and during pregnancy or based on his/her request (Article 5). Length of working hour for an officer performing part-time job shall not be less than 4 hours a day and transfer of an officer to a night work is allowed only with his/her written consent. Work and rest hours for persons with disabilities, pregnant women and nursing mothers and the conditions for remuneration of overtime and part-time work are determined by the Law of Georgia on Remuneration in Public Institutions.

As already mentioned, Organic Law of Georgia on Occupational safety was adopted. The law defines obligations of employers and rights of employees. When it comes to medical examination, the law defines that considering the nature of the enterprise, in order to ensure safe and healthy working conditions and prevent accidents and occupational diseases, the employer is obliged to ensure preventive and periodic medical check-up of the employees according to Georgian legislation. Besides that an employee has a right to base on the medical opinion, ask the employer to transfer him/her to another permanent or temporary workplace, or to alleviate working conditions, also to transfer to the day shift, if the night shift is harmful for the employee's health and if the employer has a relevant vacancy and the employee has relevant qualifications for the available vacancy
Considering all legislative or institutional developments and obligations taken by the Government, Georgia has to be given time before the next assessment/report which will be providing more information.

125. The representative of the ETUC noted the information provided regarding the new legislation, which was however limited in scope, as it was understood. He found it to be an exaggeration, to give more time to Georgia for providing updated information to the ECSR, considering repeated non-conformity.

126. The representative of France suggested taking into consideration not only the legal text, but also the country context and to consider giving time to Georgia for providing more information.

127. To the question by the representative of the Czech Republic on who was paying for the medical examination, the representative of Georgia replied, that it should be paid by the employer.

128. The Committee noted the information provided by Georgia and decided to wait for the next assessment by the ECSR.

RESC 2§7 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 2§7 of the Charter on the ground that the legislation makes no provision for a medical examination before being assigned to night work.

129. The representative of the Republique of Moldova provided the following information:

Article 43, paragraph 2, of the Constitution of the Republic of Moldova guarantees the right of employees to work protection. Protection measures concern work safety and hygiene, working conditions for women and young people, establishing a minimum wage, weekly resting, paid annual leave, work in difficult conditions and other specific situations.
Article 103 of the Labor Code indicates that night work is considered work performed between 22.00 and 6.00 (paragraph 1). According to paragraph 4, the same article, every employee who, in a period of six months, provide at least 120 hours of night work is subject of a medical examination at the expense of the employer.

According to amendments made in 2017 in paragraph 5, Article 103, it is not allowed night work of employees aged less than 18 years, pregnant women, women who have recently given birth, nursing women and the people whose night work is contraindicated under the medical prescription. Article 250, paragraph 4, indicates that pregnant women, women who have recently given birth and nursing women will be removed from night work by giving them day-to-day work while maintaining the average salary at the previous job.
In 2016, the Government of the Republic of Moldova approved the Health Regulation on the health surveillance of individuals exposed to the occupational risk factors, which sets out the requirements and responsibilities for the health surveillance of individuals in relation to the risk factors (chemical, physicochemical, biological and other factors provoked by the work process) from the workplace, including periodicity of medical examination of the employees. The Regulation transposes Article 14 of Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

The Government of the Republic of Moldova acknowledges that all these measures do not ensure the creation of conditions that would comply with the provisions of article 2, paragraph 7, of the European Social Charter, regarding ensuring for a medical examination prior to beginning night work to employees who perform night work.

The conclusions of the European Committee of Social Rights on the article 2, paragraph 7, as well as the conclusions on other articles of the Social Charter have been addressed by the working group established by the Ministry of Health, Labour and Social Protection (subordinated institution: Labour Inspectorate, the National Employment Agency), the Trade Unions and the Employers' Representatives for amending Labour Code and other labour and social protection regulations and laws.

Within meetings of working group, the Trade Union together with the Ministry of Health, Labour and Social Protection have proposed to introduce in the national legislation the regulation on performing medical examination prior to beginning night work to employees who work at night. The proposal was not supported by the

Employers' Representatives who argued that this regulation request additional effort/resources. In the same time, the issue remains on the agenda of the working group and additional discussions will take place on this issue.

In the next periodical report, the Government of the Republic of Moldova will provide information on measures undertaking for ensuring the implementation of provisions of article 2, paragraph 7, of the European Social Charter.

130. The Chair noted that this non-conformity was a long-standing problem.

131. The representative of the ETUC agreed with the statement made by the Chair adding that it was warring that one of the stakeholders was not supportive to the amendments as it would be additional burden on the employers.

132. The representative of Moldova replied that this issue has started to be discussed recently and expressed hope that the Government could find a solution for the future.

133. The representative of Netherlands suggested applying working methods, considering the situation in Moldova, thus, helping the Government of Moldova to have more arguments showing the importance of this question.

134. The Chair suggested putting the issue on vote.

135. The Committee voted as follows: 0 in favour of recommendation; 5 in favour of a warning, 8 against and 15 abstained. Both recommendation and warning were not carried.

136. The Committee decided to wait the next assessment by the ECSR and wait for Moldova to bring the situation in conformity with the Charter.

RESC 2§7 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 2§7 of the Charter on the grounds that:

- ***possibilities of transfer to daytime work are not sufficiently provided for;***
- ***laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work;***
- ***there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.***

137. The representative of Ukraine provided the following information.

I would like to inform the Governmental Committee that the Government of Ukraine has taken measures aimed at bringing the national situation into conformity with the Charter.

The Government has developed the draft Law on ratification of ILO Night Work Convention No.171 and another draft on amendments to certain legislative acts in order to introduce the terms "night work" and "night worker" into legislation and practice.

The current Labour Code of Ukraine defines only the "night-time period" without regulating such a category as "night worker".

Above mentioned draft on amendments to certain legislative acts in the context of ratification of the ILO Convention No. 171 provides for provisions regulating possibilities for transfer to daytime work; regular medical examinations, including a check prior to employment on night work; as well as consultation with workers' representatives on night work conditions.
Moreover, European Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time is also under consideration whose provisions are similar to ILO Convention No. 171 with regard to aspects of night work.
Both drafts have been submitted for consideration by the Presidential Administration of Ukraine.

Updated information will be provided in the next report.

138. To the question of the Chair on the possible timing for the ratification of the ILO Convention 171, the representative of Ukraine replied mentioning that the draft legislative package has been submitted to the Presidential administration and hopefully a positive decision will be taken during this year.

139. The representative of the ETUC noted that already in 2010, the new legislation was drafted, and it was the second time that the same information was provided.

140. On clarifying questions on the developments, the Ukrainian representative replied, that during the previous meeting on this thematic group, it was mentioned about the adoption of EU regulations and not the draft laws. The new draft Labour Code was developed and waiting for the second reading at the Parliament.

141. The representative of the Ukraine further clarified that together with the ratification of the ILO convention, the relevant legislation would be amended with relevant necessary provisions; particularly the definition of the night work would be introduced.

142. Following the interventions of several representatives that expressed serious doubts on the development of the situation in Ukraine, the representative of the Netherlands suggested to apply the working methods and called for vote.

143. The Committee voted as follows: 0 vote in favour of recommendation; 24 in favour of a warning, 4 against and 10 abstained.

144. The Committee adopted a warning against Ukraine.

Friday 17 May

145. The first vice Chair of the GC Ms KIRINCIC ANDRITSOU opened the morning session, replacing Mr FABER (chair) who was unable to attend the meeting. The GC then continued with the examination of the cases of non-conformity, starting with Article 4.1.

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

RESC 4§1 ANDORRA

Following the request of the representative of Andorra, the Committee decided to consider the situation in respect of Andorra vis-à-vis Art 2.7 and 4.1 of the Charter earlier then it was scheduled according to the agenda (Thursday16 May)

The Committee concludes that Andorra is not in conformity with Article 4§1 of the Charter on the ground that the minimum interprofessional wage does not ensure a decent standard of living to all workers.

146. The representative of Andorra provided the following information:

Le Comité Européen de Droits Sociaux, dans ses conclusions de 2018, il conclut que la situation de l'Andorre n'est pas conforme à l'article 4.1 de la Charte Sociale Européenne, puisque le salaire minimum interprofessionnel pendant le période de référence 2013-2016 n'était pas suffisant pour assurer un niveau de vie décent pour tous les travailleurs.

Les conclusions du Comité Européen de Droits Sociaux pour le période de référence antérieur (2009-2012) indiquaient déjà la non-conformité de l'Andorre avec l'article 4.1 de la Charte Sociale Révisée, en ce qui concerne à la proportion du salaire minimum interprofessionnel en relation avec le salaire moyen.

Produit de la recommandation du Comité, le Gouvernement de l'Andorre, conscient de ce problème, s'engagea à faire monter le salaire minimum interprofessionnel, sans des cotisations à la Caisse Andorrane de Sécurité Sociale (CASS), jusqu'à la réalisation du 50% du salaire moyen. Cet engagement se ratifia devant le Comité Gouvernemental de la Charte Sociale Européenne qui a eu lieu à Strasbourg, du 5 au 9 octobre 2015.

L'augmentation indiquée a été planifiée de façon progressive tout au long de la législature, de façon que dans les années 2016, 2017 et 2018 le salaire minimum interprofessionnel augmenta un 1,5% chaque année et l'année 2019 augmenta un 3,4%.

Depuis que le Gouvernement a pris l'engagement mentionné jusqu'à aujourd'hui, le salaire minimum interprofessionnel a évolué de la façon suivante :

- *Année 2015 : 962,00 €*
- *Année 2016 : 976,43 €*
- *Année 2017 : 991,47 €*
- *Année 2018 : 1.017,47 €*
- *Année 2019 : 1.050,40 €*

Ainsi il faut souligner que le salaire minimum entre l'an 2016 et l'actualité a augmenté un 7,67% et a changé des 976,43 euros jusqu'aux 1.050,40 euros actuels et que le pourcentage du salaire minimum interprofessionnel en ce qui concerne au salaire global moyen a évolué depuis un 47,92% de l'année 2016 jusqu'un 49,74% de l'année 2019.

Pour finir dire qu'avec toute vraisemblance, cette évolution en hausse du salaire minimum interprofessionnel va continuer pendant les prochaines années, puisque les forces politiques qui avaient obtenu une représentation parlementaire majoritaire dans les élections générales organisées le 7 avril, dans ses programmes électoraux ils proposaient l'augment progressif du salaire minimum.

147. To the clarifying question of the ETUC representative on the plans by the Andorran Government to further increase the inter-professional average wage, the Andorran representative replied that the minimum wage and the inter-professional average wage were increased, and it was expected that this trend would continue. It was further noted that 58% in Andorra were micro-enterprises with small number of workers and this area was the challenging one.

148. The Committee noted the considerable efforts by Andorra to increase the minimum wage and decided to wait for further developments and the next assessment of the ECSR.

RESC 4§1 AZERBAIJAN

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

149. The Secretariat recalled that the situation was not in conformity for the third time. The situation has been not in conformity since 2010.

150. The Representative of Azerbaijan provided the following information:
We have positive developments. Azerbaijan has embarked on a comprehensive process of reforms in the field of social protection and employment. Among them, there is also the increase of minimum wage in the Country. As of March, 1° 2019, the minimum wage in Azerbaijan increased 38.4% to reach 180 Manat. Thus, the minimum wage has reached the minimum subsistence level established in the Country. To enable the increase of the minimum wage additional 450000 Manat will be allocated from the State budget in annual basis. This increase in the monthly minimum wage is significantly felt in education, health, art, culture. According to

estimates the rate of the net minimum wage to the net average wage is equal to 32.4%. In the past years this indicator was 26%- 27%.
In Azerbaijan we have other calculation systems. Should the medium calculation system be applied in the country, this indicator would be higher.
The subsistence level in the Country amounted to 155 Manat in 2017, 173 Manat in 2018 and 180 Manat 2019. In 2017, the monthly minimum wage was 116 Manat; the monthly average wage was 528 Manat. In 2018 the monthly minimum wage was 130 Manat and the monthly average wage was 540 Manat. As of March 2019 the monthly average wage was 554 Manat.

151. The ETUC representative asked whether despite the increases which happened recently the data is still around 32%. The representative of Azerbaijan confirmed the data.

152. The representative of Estonia asked the representative of Azerbaijan whether they have any further plans to increase the minimum wage in the future. In reply to the question asked by the Representative of Estonia, the representative of Azerbaijan pointed out that negotiations with the social partners, the Ministry of Labour and the Ministry of Finance are planned in order to prepare some drafts to submit to the cabinet of Ministers with the aim to increase the minimum wage in the country in the future years.

153. The representative of the United Kingdom underlined that on one hand there have been improvements and increment but on the other hand it is a long way off from where the Charter wants the countries to be. He pointed out that it is necessary for the GC to take a decision.

154. In reply to the question asked by the Representative of Estonia and its reply, the ETUC representative asked whether there are any concrete target sets on how and with which percentage Azerbaijan intent to increase it, considering that it is far from the level of 60%. He underlined that the last time also despite some progress the GC decided to vote on a recommendation or a warning.

155. The vice Chair asked to the Committee whether it feels that give some positive message to the delegate of any country that needs to put the legislation in conformity with the Charter is something that could be helpful for them. According to the Chair, voting for a recommendation is helpful for the representative, changes in the country would be faster and it would help them to be in conformity the next time. In her view the recommendation is something good for the States Parties. Nonetheless, she pointed out that not all the States Parties have the same position and they are afraid of recommendations.

156. The representative of the Netherlands supported what has been said by the representative of the United Kingdom and proposed a vote on a recommendation or a warning.

157. The representative of Ukraine pointed out that the GC should take into account the economic situation in the country concerned. She suggested to take note of the information provided and to urge the government to take all measures to bring the situation in conformity with the Charter. In relation to the intervention of the

representative of Ukraine, the representative of the United Kingdom suggested to encourage that in the next report Azerbaijan could make a reference to the economic situation in the country.

158. The vice Chair reminded that the percentage of 60% is in relation of the wage in a certain country. She recalled that voting for a recommendation is a way to help the representatives of every State Party, also when they come back home. It is not a way to punish them but it is a way to help them. According to the Chair, the mentality regarding recommendations and warnings has to change. It is just a way to give incentive to change something in a positive direction.

159. She recalled that the representative of the Netherlands already proposed to vote on a recommendation or a warning.

160. The representative of Greece stated that she was in favour to vote on a recommendation or a warning. She pointed out that it is difficult to get from 30% to 50% or 60% and that it takes time and that the developments in the country and the will to change the situation should be taken into account by all delegates when voting.

161. The GC voted on a recommendation, which was rejected (0 votes in favour). It then voted on a warning, which was also rejected (14 votes for, 8 against and 16 abstentions).

162. The GC took note of the positive developments and urged the government of Azerbaijan to increase the monthly minimum wage considerably in order to bring the situation in conformity with the Charter.

RESC 4§1 LITHUANIA

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

163. The representative of Lithuania provided the following information:

We welcome this opportunity to outline our response and provide information regarding recent developments in this regard.

Minimum wage in Lithuania is guaranteed by the Labour Code. The minimum wage fixing system includes all paid employees in all types of companies, institutions and organisations. It should be noted that minimum wage can only be paid to an employee for unqualified work. Unqualified work is considered to be work that does not require any special qualification skills or professional expertise.

The minimum hourly rate and the minimum monthly wage is approved by the Government upon recommendation of the Tripartite Council and taking into account the indicators and trends of development of the national economy.

In 2018 Lithuanian Tripartite Council has agreed to depoliticize the minimum wage fixing and to set the amount of the minimum monthly wage each year according to the formula, when minimum gross monthly wage should be between 45-50 % of the average gross wage. It was agreed that concrete ratio should be equal to the average of the four EU countries with the highest ratios.

Currently minimum monthly wage is 555 euros before taxes. This amount has increased after the tax reform in Lithuania, when employee and employer taxes were consolidated and the social insurance contributions were transferred to the employee, the gross wages of all employees were indexed and all employers, whose social insurance contributions are by law transferred to their employees are required to recalculate their employees' gross wages by increasing them by 1,289. It should be noted, that due to these regulatory changes only the gross wage has changed, meanwhile the net wage for the employee remained the same.

Net minimum monthly wage currently stands at 395 Euros. It should be noted at the end of 2018 only 10, 9 percent of all workers of the whole economy including individual enterprises received minimum monthly wage. This amount has even decreased by 2, 7 percent comparing to 2017. And as regards the full-time workers that received minimum wage, it comprised only 2, 5 percent of the whole economy in 2018.

Average monthly wage in Lithuania is consistently increasing as well. In IV quarter 2018, against IV quarter 2017, average gross monthly earnings in the whole economy increased by 9.7 per cent: in the public sector – 12.5 per cent, in the private sector – 8.3 per cent. Average gross monthly wage stood at 970, 3 Euros in IV quarter in 2018.

Over the year, average net monthly earnings in the whole economy increased by 8.9 per cent: in the public sector – 11.4 per cent, in the private sector – 7.7 per cent. In IV quarter 2018 average net monthly wage stood at 751, 7 Euros. It means that the net minimum wage as a proportion of the net average wage was 52, 5 %.

Wage growth is mainly driven by the tensions in the labor market and the increase of the minimum monthly wage. Labor supply is negatively affected by the economic emigration of the working age population and the aging population. In theory, wage developments should depend on changes in labor productivity, but this is not the case.

Wages do not correspond to changes in labour productivity. Wages in the country's economy are growing faster than the productivity. The growing average gross and net wages in Lithuania show the impact of labor shortages and favorable internal and external economic situation on the labour market, which makes most of the companies pay more for their employees, regardless of the changes in labour productivity.

One of the reasons is that low and medium-low tech economic activities generate about 75 percent value added while employing as much as 85% of all employed. Over the last decade, the contribution of high and medium high technology segments to the national economy has not changed at all.

Turning to the costs of living, it should be mentioned that Lithuania has recently established the methodology, which calculates the amount of persons minimum consumption needs. This is one of the first attempts to objectively define the amount, which is needed to meet the minimum needs. Following this methodology the amount is calculated annually by taking into account food and non-food costs. The minimum composition of the food basket used in the methodology is based on the order of the Minister of Health, which is set according to recommendations from nutritionists and specific characteristics of local cuisine. The amount needed to meet food needs is calculated on the basis of the averages of the 12 months recorded by Statistics Lithuania. Secondly, amount needed to meet the non-food needs is determined on the basis of the Household Budget Survey data and is updated every 4 years as the new data of Household Budget Survey data appears. The expenditures on alcohol and tobacco products, restaurants and hotels are not included. Amounts of minimum consumption needs stood at 245 Euros for 2018 and 251 Euros for 2019.

To conclude, as it was mentioned in the beginning, according to the recent statistical data it can be seen that since 2018 net minimum monthly wage in the labour market has reached the level above 50 % of the net average monthly wage as it is required by the Charter. However, there is a strong concern that growth in wages do not correspond to changes in labour productivity.
We hope that positive developments in the ratio of the net minimum and average wages in our economy will be duly taken into account during the next period of evaluation.

Statistical information

Gross and net minimum and average monthly wage
GROSS

Year	*MMW minimum monthly wage*	*AMW average monthly wage*	*%*
2013-01-01	*289,76*	*646,87*	*44,8*
2014-10-01 *Average 2014*	*299,76* *Average 294,8*	*676,4* *Average 676,4*	*44,3* *Average 43,6*
2015-01-01 *2015-07-01* *Average 2015*	*300* *325* *Average 312,5*	*712,1* *712,1* *Average 712,1*	*42,1* *45,6* *Average 43,9*
2016-01-01 *2016-07-01* *Average 2016*	*350* *380* *Average 365*	*770,8* *770,8* *Average 770,8*	*45,4* *49,3* *Average 47,4*
2017-01-01	*380*	*840,1*	*45,2*
2018-01-01	*400*	*884,8*	*45,2*
2019-01-01	*555 (430*)*	*970,3*	*57,2*

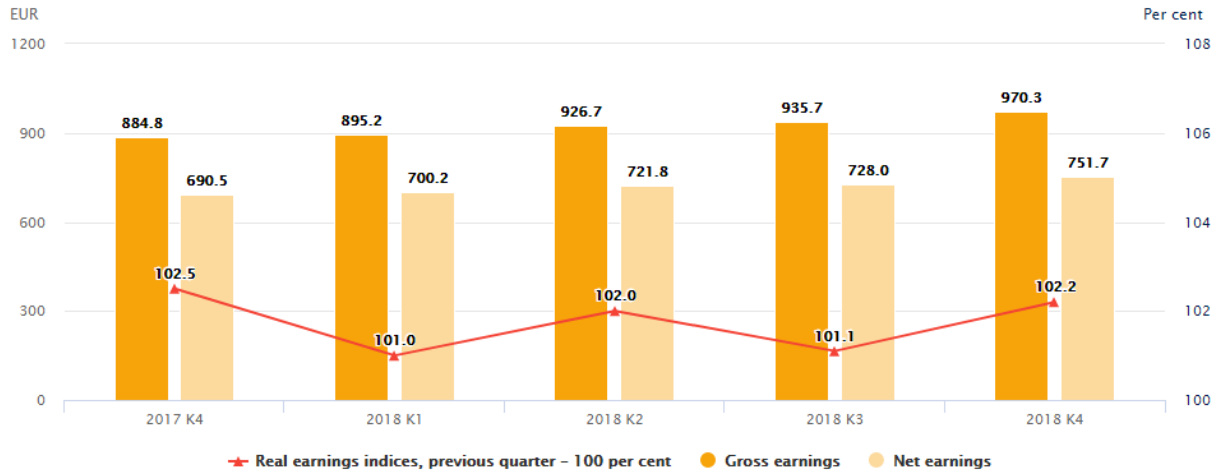
**Before tax reform*

NET

Year	*MMW minimum monthly wage*	*AMW average monthly wage*	*%*

2013-01-01	*220,22*	*491,62*	*44,8*
2014-10-01 *Average 2014*	*227,82* *Average 224,0*	*514,06* *Average 514,06*	*44,3* *Average 43,6*
2015-01-01 *2015-07-01* *Average 2015*	*228* *247* *Average 237,5*	*541,2* *541,2* *Average 541,2*	*42,1* *45,6* *Average 43,9*
2016-01-01 *2016-07-01* *Average 2016*	*266* *288,8* *Average 277,4*	*585,8* *585,8* *Average 585,8*	*45,4* *49,3* *Average 47,4*
2017-01-01	*288,8*	*638,5*	*45,2*
2018-01-01	*361*	*690,5*	*52,3*
2019-01-01	*395*	*751,7*	*52,5*

Average monthly earnings in the whole economy (individual enterprises excluded)



Source: Statistics Lithuania

Change in average gross monthly earnings by sector, quarters

Source: Statistics Lithuania

Share of full-time emploees that received minimum monthly wage in the whole economy

	2014	2015	2016	2017	2018
Share of full-time emploees that received minimum monthly wage	9,2	8,8	9,8	3,3	2,5

Annual change in earnings and labor productivity, %

Indicators	2014	2015	2016	2017
Annual change in average gross monthly earnings	4,8	5,4	8,4	8,6
Annual change in average net monthly earnings	5,2	5,1	8,7	9,6
The annual change in value added, at comparative prices, generated in one actually worked hour	1,9	-0,7	-1,0	7,0
The annual change in value added, at comparative prices, created by one employed person	1,5	0,7	0,4	4,7

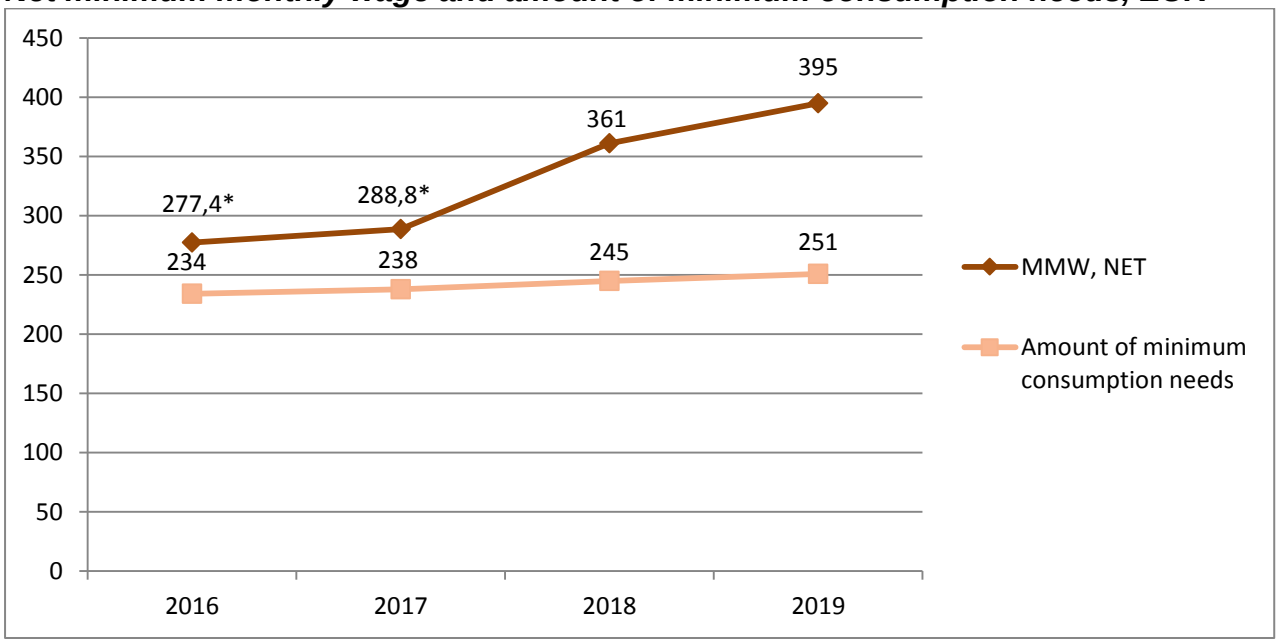
Harmonised indexes of consumer prices (march data for the relevant year)

	Harmonised indexes of consumer prices (2015 – 100) | -			
	2016M03	**2017M03**	**2018M03**	**2019M03**
Consumer goods and services	100,41	103,58	106,15	108,88
Food and non-alcoholic beverages	101,41	104,03	106,24	108,82
Alcoholic beverages, tobacco and narcotics	102,83	114,06	118,74	123,34
Clothing and footwear	101,07	100,11	101,47	99,62
Housing, water, electricity, gas and other fuels	100,06	99,71	104,22	109,55
Furnishings, household equipment and routine household maintenance	100,98	102,18	102,74	103,93
Health	102,43	103,55	103,87	109,41
Transport	94,17	99,78	102,04	103,86
Communication	99,77	96,22	94,37	93,67
Recreation and culture	102,05	102,9	105,63	107,55

Education	103,11	105,41	108,09	111,3
Restaurants and hotels	102,66	109,38	115,07	121,17
Miscellaneous goods and services	102,15	108,19	111,77	114,93

Source: Statistics Lithuania

Net minimum monthly wage and amount of minimum consumption needs, EUR



** averages*

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

RESC Article 4§1 THE NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter on the ground that the reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

165. The Secretariat recalled that the situation has been not in conformity since 1985.

166. The representative of the Netherlands provided the following information:

Since the Netherlands ratified in 1980 the Charter of 1961, the ECSR has always concluded that the Netherlands has always been not in conformity on the ground that the reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair. The scope of interpretation by the ECSR with respect to the statutory minimum wage is that it must amount to at least 60% of the net national average wage. According to the ECSR it may be permissible to pay a lower minimum wage to younger persons. The reduction must be for a legitimate aim and be proportionate to achieving that aim.

The Netherlands has a new Statutory Minimum Wage in place, which falls outside the reference period we are now discussing.

The Netherlands does not specify a single minimum wage for all covered employees. In other words, the coverage of the statutory minimum wage is not universal. We still have a reduced minimum wage level for young workers. However, recently the Government has reduced the differences in minimum wages between young and adult workers. From 2019, the statutory adult minimum wage applies to all employees aged from 21 years and over. Previously the adult minimum wage applied to employees aged from 23 years and over.

At the moment, the youth minimum wage only applies to employees under the age of 21. The youth minimum wage is set at an age dependent percentage of the statutory adult minimum wage. The youth minimum wage increases gradually in small steps per year of age, in order to prevent young people from being dismissed when they reach a certain age. With regards to the percentage, the youth minimum wage at the age of 18 is 50% of the statutory adult minimum wage. At 19 are 60 at 20 it became 80 and at 21 reaches the 100%.

As stated, the reduction to pay a lower minimum wage for younger persons must be for a legitimate aim and be proportionate in achieving that aim.

In the Netherlands, the youth minimum wage is relatively low in an international comparison especially for those who are aged between 18 and 19. However, it is also true that the youth unemployment is low in the Netherlands compared to other countries. The main reason to have still a youth minimum wage was previously the youth unemployment of the 1980s. The fear was that starting a career in the labour market as a long term unemployed would have had negative effects on the career during one's employment life.

In order to prevent masses of youth unemployment, the Government introduced at the time a specific reduced minimum wage for young workers.

At the time social partners agreed and were involved in this policy measure as well. However, employee's organisations have always expressed their concern.

The most important reason currently to still continue with youth minimum wage is to avoid young from education to the labour market. This policy measure had and currently has positive effect on school enrolment and leads to an improvement of employment probability of youngsters.

The Netherlands believes that a balance between on one side the reduce minimum wage level for youngsters and people on the other side the creation of jobs,

internship for young is a positive effective measure for the labour market in the Netherlands.

167. The representative of the United Kingdom noted that in the conclusion on Aticle 4.1 on Netherlands the ECSR stated that whether there is a lower minimum wage for younger persons the reduction must be for legitimate aim and proportionate to achieving that aim. Given the evidence provided by the Netherlands regarding youth unemployment and the explanation regarding the rationale being to do with youth unemployment, it sounds that while the lower minimum wage for younger persons is relatively low it is nevertheless proportionate to achieving the aim that Netherlands it is trying to achieve. The UK representative, together with the representative of Ireland, wished the ECSR to take note of this.

168. The vice Chair noted that the decrease in the age from 23 to 21 is information that Netherlands already provided in 2003 and 2007. The Chair asked why the ESCR continued to issue a non-conformity if Netherlands have already shown to the ECSR the evidence that the measures are effective.

169. The representative of Netherlands pointed out that the government started in 2016 with lowering the age from 23 to 22 and that this information was included in the report provided to the ECSR. The Netherlands are still currently decreasing the age. As of 2019, the age limit is set at 21. During the reference period it was still a bill. After the reference period, it became into force and in 2018 it was adapted from 23 years old to 22 years old and as from the 1st January of 2019 the statutory minimum wage starts at 21 years old. These are improvements, but according to the ECSR starting from the age of 18 someone needs to receive the statutory minimum work.

170. The ETUC representative pointed out that the Netherlands have now understood that they had to do something about this longstanding conclusion of non-conformity. According to the ETUC representative, there have been developments outside the reference period that will only partially solve the problem and that very likely will not be included in the next non-conformity. According to the representative of the ETUC, the GC could take note of the developments and await the next assessment, unless it considered voting on a recommendation or a warning for the part that it is not solved.

171. The representative of Greece pointed out that usually when there are developments the GC takes note of them and gives the ECSR the time to evaluate again the situation. The problem has not been solved entirely, but still the GC should take note of the new law in force since 2019 and suggest to the Netherlands to mention in the next report other benefits that exist in order to help young people aged from 18 to 21 years old.

172. The representative of the United Kingdom supported what the representative of Greece said and suggested not to underplay what the representative of the Netherlands said. There is evidence that shows that raising the minimum wage for young people too high can have an adverse effect. The consideration of these other factors is really important.

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

RESC 4§1 ROMANIA

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

174. The Secretariat recalled that the situation of non-conformity dates back to 2003.

175. The representative of Romania provided the following information:

In addition to the data contained in the report, after the reference period, in Romania, the minimum wage was increased year by year, as follows:

- *In 2017, the monthly minimum wage was increased so the net minimum monthly wage as a proportion of the net average monthly wage was 45.5%.*
- *In 2018, the monthly minimum wage was increased again so the net minimum monthly wage as a proportion of the net average monthly wage was 52, 84%.*
- *Also, in 2019, the monthly minimum wage was increased again but we don`t have yet the necessary data to calculate the proportion of the net average monthly wage. I provided all the figures in writing.*

Also, according to Parliament's Decision no. 1/2018, the net minimum wage will increase annually by 100 lei (21.5 euros), so that in 2020 it will be higher than the equivalent of 300 euros.

Although the information presented does not fall within the reference period, we believe that it highlights the constant progress of the net minimum wage, in 2018 succeeding to fall within the 50% to 60% threshold, namely 52, 84%.

Moreover, according to the ECSR 's state of interpretation of the provisions of the Charter, "remuneration" relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities.

In this context, in Romania, employees benefit from a series of rights, namely:

Food vouchers (since 1998) - are granted monthly as an individual food allowance, used only to pay for meals or to purchase food. The employee may use a number of meal tickets a month at most equal to the number of days worked.

Gift vouchers (since 2006) - are given occasionally to employees for social expenses. Employers, together with trade union organizations or employees' representatives, agree on the frequency of granting them, as well as their value.

Nursery vouchers (since 2006) are granted on a monthly basis to employees who do not benefit of parental leave and allowance for up to 2 years, respectively up to 3 years for the disabled child. The maximum value cannot exceed 450 lei (97, 8 euros) for one month for each child in nursery.

Holiday vouchers (since 2009) are granted to employees in order to cover expenses of the annual holiday/vacation in domestic tourism. The maximum amount that may be granted to an employee over a fiscal year in the form of holiday vouchers is 6 gross minimum wages.

Cultural vouchers (since 2018) are granted on a monthly or occasional basis for the payment of cultural goods and services.

Also, the staff in the budgetary sector benefit from a food allowance of 347 lei (74.6 euros) per month.

Moreover, the staffs with a PhD title is entitled to a PhD monthly allowance in the amount of 50% of the gross minimum wage, if the employee is working in the field in which he or she holds the title.

The total amount of bonuses, compensations, and allowances, including those for food and holiday, granted cumulatively may not exceed 30% of the amount of basic salary.

All this information will be included in detail in the next reporting cycle of article 4 para.1.

176. The GC took note of the positive developments and decided to wait for the next assessment of the ECSR.

177. The vice Chair then started the examination of the cases of non-conformity on Article 4§2.

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

RESC 4§2 ARMENIA

The Committee concludes that situation in Armenia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee an increased time off in lieu of remuneration for overtime.

178. The representative of Armenia provided the following information:

Referring to historic elements, in 2010 we had 2 cases of non-conformity under this Article. Now we have increased remuneration for overtime, and it is already considered in conformity with the Charter by the ECSR. The problem is now just the increased time off for overtime. For overtime work the employer should pay hourly regular wage plus not less than 50% extra compensation. In regard the increased time-off for overtime as I said under Article 2 para. 4 this year we are going to submit new draft labour code to the government. This issue is under consideration and

discussion, there is a clear position that we will take into consideration the issue of guaranteeing increased time off for overtime.

179. The GC took note of the positive developments and decided to wait for the next assessment.

RESC 4§2 ESTONIA

The Committee concludes that situation in Estonia is not in conformity with Article 4§2 of the Charter on the ground that time off granted in lieu of increased remuneration for overtime is not sufficient.

180. The Secretariat recalled that the situation has been in non-conformity since 2014.

181. The representative of Estonia provided the following information:

I actually hope that on this case there is a misunderstanding that caused the non-conformity.
The thing that makes me think that maybe there is a misunderstanding is the following section from digest. It says: Mixed systems for compensating overtime, for example where an employee is paid the normal rate for the overtime worked but also receives time in lieu, are not contrary to Article 4§2. I believe that the situation I will describe next looks actually like the mixed system in digest.
And now I will explain Estonian situation.
In Estonia overtime may be compensated in two ways - with money or with free time.
In case the overtime is rewarded in time off, the compensatory element is even higher compared to the compensatory element in case the overtime is rewarded in increased wages.
Upon compensation for overtime work in money, it costs for employer 50% more than normal working hour. It means that the employer must pay the regular wage for the overtime worked plus 50% extra.
When a rest period is granted in compensation for overtime (instead of increased pay), this rest time may not be deducted from standard rest periods and must be paid as working hours. It means that employer has to pay the regular wage for the overtime worked plus give free time in the same amount as overtime worked and pay the regular wage also for that free time. Thus, overtime costs for employer in this case 100% more than normal working hour. That is even more expensive.
So, are we really not in conformity with the Charter or this is a misunderstanding?
Employers have repeatedly expressed their opinion that the compensation of overtime with the rest time is too expensive.
If we make compensation in rest time even more expensive, the use of that method of compensation will probably lessen even more. We would not consider that as a good thing.

182. The Secretariat suggested specifying the situation better in the next report so that the ECSR will more effectively understand the situation.

183. The representative of Estonia asked the Secretariat to send the contribution to the ECSR and to have clarification directly from them. The representative of Poland pointed out the existence of the same regulations in Poland and in other States Parties, which would also be interested in receiving a clarification from the ECSR.

184. The GC took note of the information and questions and decided to wait for the next assessment after the clarification from the ECSR.

RESC 4§2 NETHERLANDS

The Committee concludes that situation in the Netherlands is not in conformity with Article 4§2 of the Charter on the ground that the workers may be asked to work extended hours without being remunerated an increased rate.

185. The representative of the Netherlands provided the following information:

In the Netherlands since 1st of January 2018 -which falls outside the reference period – legislation is in place to regulate the right of employees earning the statutory minimum wage to payment of overtime. For all those employees who earn more than the statutory minimum wage we have no legislation.
Overtime and compensation is dealt with collective agreements, because according to the Netherland's Government social partners are best equipped to conclude provisions in their collective labour agreements that are most fit for the specific sector involved.
In general overtime is extra compensated either by pay or time- off in the collective agreement. However, no legal framework is in place for those employees earning more than the statutory minimum wage.

186. The ETUC Representative noted that the developments will only solve the problem partially. This is a second time negative. He suggested taking note of the developments and awaiting the next assessment, unless the GC is willing to vote on a recommendation or a warning.

187. The Representative of Estonia proposed to vote on a recommendation or a warning.

188. The GC voted on a recommendation, which was rejected (0 votes in favour). It then voted on a warning, which was carried (11 votes for, 1 against and 19 abstentions).

RESC 4§2 NORTH MACEDONIA

The Committee concludes that the situation in the Republic of North Macedonia is not in conformity with Article 4§2 of the Charter on the ground that the legislation does not guarantee public officials an increased time off in lieu of remuneration for overtime.

189. The Secretariat recalled that the situation was not in conformity for the first time.

190. The representative of the Republic of North Macedonia provided the following information:

According to the Conclusions, the situation in North Macedonia has been properly assessed by the ECSR in this context. The legal acts that govern this issue related to the overtime work are mainly the labour law - so called law on labour relations in our case - which sets up the general rules and the provisions related to the overtime work in terms of in cases in which worker could be requested to work the maximum weekly and yearly duration of the overtime work, the payment of wage bonus for overtime work, the payment of one extra average wage in terms of overtime work exceeds 150 hours per year, etc. The specific non-conformity case here relates to public officials and the non-conformity says that an increased time off has not been provided as a compensation for overtime work. This issue regarding the public sector in addition to the law on labour relation is related to the specific law on so called administrative servants and general collective agreements. The law on administrative servants says that "for the worker who has been working overtime he has the right to as much free hours or days as he was engaged for the overtime work". So, what we do not provide is the extended time off for overtime work. This is the case for the time off but when it comes to the second option which is offered to the worker this is the payment for overtime work then the law anticipates the 35% bonus more than the normal pay for this particular working hour which is being provided to the worker for his overtime work. In terms of pay we are ok, where we are not in conformity is the case that within the law, we provide the exact same hours of free time.
The case was properly assessed by the ECSR. What I can say is that right now we have just recently started a preparation for signing of new collective agreements for the public sectors - because the existing agreements do not cover this issue for the moment. The working group has been established for preparing and signing new collective agreements. We promise that we will make the counterpart in this process aware of this non-conformity situation hoping that they will also find a way to include this particular issue in the negotiations and in the new collective agreement. We hope that by the end of the year we will have the new collective agreement. Whether it will have a provision like this we will do our best from the side of the Ministry to inform the counterpart also having in mind that one of the sides that are involved in collective bargaining is also the state, so this is an issue that is definitely going to be raised.

191. The GC took note of the information provided and decided to wait for the next assessment of the ECSR.

192. Due to the lack of time, the GC decided not to proceed with the analysis of the remaining situations of non-conformity. The examination of the situations of non-conformity concerning Lithuania, Slovak Republic and Turkey on Article 4.2 will be postponed to the 140th meeting to be held on 16-20 September 2019.

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

RESC 2§5 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 2§5 of the Charter on the ground that it has not been established that a weekly rest period is guaranteed.

193. The representative of Georgia provided the following information:

During the last GC May meeting it was asked to bring some statistics regarding collective and individual agreements, indicating the weekly rest period. The Ministry of IDPs, Labour, Health and Social Affairs of Georgia does not record collective agreements. In order to get information, the Ministry addressed the Georgian Trade Union Confederation and was informed that there are 54 collective agreements (at the primary union level) and 1 sectoral (educational sector).
Presenting information on practical implementation of the article and how weekly rest period is determined by the individual or collective agreements is not available at this stage, as the existing labour inspection is not full-fledged and does not have a mandate to monitor how labour rights are being protected. Though as already mentioned the Government of Georgia is working on amendments to the labour legislation based on EU directives envisaged in Annex XXX of the EU-Georgia Association Agreement covering working-time regulations, weekly rest period, etc.

194. The Chair asked if the amendments to the Georgian Labour Code are going to give the possibility to the labour inspectors to visit the workplace without the authorisation of the employer.

195. The representative of Georgia replied affirmatively saying that this is also the aim of the amendments to the Labour Code.

196. The ETUC representative pointed out the urgency of the situation in Georgia on this issue. He referred to the recent Human Rights Watch report of August 2019 called “No Year without Deaths, A Decade of Deregulation Puts Georgian Miners at Risk” – See https://www.hrw.org/news/2019/08/22/georgia-worker-rights-safety-risk ; (for a download of the full report: https://www.hrw.org/sites/default/files/report_pdf/georgia0819_web.pdf). The main issues in Georgia are not only in relation to the Legislative/Regulatory framework on the weekly rest period, but also in relation to the lack or insufficiency of the Labour inspection services. He indicated that this is the third time of non-conformity and that the situation should be considered seriously by the GC also in light of the Human Rights Watch report mentioned above.

197. The Irish representative agreed with the ETUC representative and asked the Georgian representative to reply.

198. The Georgian representative said that the Georgian authorities are aware of the Human Rights Watch report and of the urgency of the situation. She is confident that the amendments that will be introduced to the Labour Code will help to improve the situation on the matter. She also stressed that Georgia has started the process of reforming the system in 2013-14 and that takes time to change the situation.

199. The ETUC representative said that without being too pessimistic, but realistic, the situation should be addressed by the GC urgently reiterating that is the third time of non-conformity.

200. The Chair suggested applying the GC working methods. The GC agreed on this proposal.

201. The GC voted first on a recommendation, which was not carried (0 votes in favour). The GC then voted on a warning which was not carried (11 votes in favour, 9 against and 17 abstentions).

202. The GC invited the Georgian authorities to put in place the necessary measures including the amendments to the Labour Code to bring the situation back into conformity with the Charter and decided to wait for 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

RESC 4§2 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 4§2 of the Charter on the ground that the exception to the right to increased remuneration does not apply exclusively to senior officials and management executives.

203. The representative of Lithuania provided the following information:

The European Committee of Social Rights recalled that the Article 150 of the previous Labour Code of the Republic of Lithuania, provided that the working hours performed by administrative officials outside the standard working hours were not classified as overtime work and consequently not reimbursed at an increased rate.

The previous Labour Code permitted to establish better working conditions than the mentioned provision of the Article 150 required therefore there was a different regulation in public and in private sectors. The Article 150 of the previous Labour Code could be applied only in the private sector, because in public sector the overtime was paid according to the special legal acts. But there were no complaints

from private sector concerning that provision in practice as employee and employer could agree to pay for the overtime differently than it was provided in the Article 150.

Therefore, the Lithuanian Government believes it had been established that the exception to the right to increased remuneration applied only to senior officials and management executives.

During the reference period (2013-2016) Lithuania adopted the new Labour Code and provided relevant informaton related to overtime work in the last report, but ECSR noted that new Labour Code entered into force outside the reference period, and it would examine the situation during the next cycle of control.

204. The ETUC representative noted that this is a very specific problem and in the meanwhile the Lithuanian Labour Code was reformed in 2017. The representative asked if in the new Labour Code are included the amendments for paying overtime work to senior officials.

205. The Lithuanian representative said that to her knowledge in the new Labour Code are included the necessary amendments for overtime work and she believes that the situation should be brought back into conformity with the Charter in the next ECSR assessment.

206. The Chair since there were no other interventions suggested to conclude that the GC took note of the information provided and asked the Lithuanian government to include the relevant information in the next report and decided to wait for the next assessment of the ECSR.

RESC 4§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 4§2 of the Charter on the ground that the time off to compensate overtime work is not sufficient.

207. The representative of Slovak Republic provided the following information:

According to the findings of the ECSR, the situation in the Slovak Republic is not in conformity with the charter in that the time-off compensation for overtime work on a one-to-one basis is not sufficiently long and that it should be longer. The Slovak Republic believes it needs to clarify the situation, as our reports might have been unclear in this respect.

I would like to inform the Committee that as far as the compensation for overtime work is concerned, the primary way of compensating the overtime work is a wage compensation bonus amounting to at least 25 % of the person´s average wage for each hour of overtime work, in accordance with Article 121 of the Labour Code. This level is a minimum level stipulated by the Labour Code, which can be increased via collective bargaining. Each and every employee is entitled to this compensation for overtime work together with their usual wage for each hour of overtime work performed.

The Labour Code also provides for a possibility of granting the employee a time-off compensation on a one-to-one basis, meaning for one hour of overtime work they get one hour of time-off. This is why the ECSR considers the situation not be in conformity. However, it is important to stress that if a worker decides to take time-off as a compensation for overtime work, they are still entitled to their normal rate of pay during the time-off period. Therefore, the worker gets fully paid and they are also provided with a time-off compensation on top it.

To sum up, the overtime work compensation can have two forms in the Slovak Republic. The first one is a pure monetary compensation made of the worker´s usual wage and a bonus amounting to at least 25% for each hour of overtime work. The second one is a mixed form of time-off and their normal rate of pay which is given to the worker on top of the time-off period. The Slovak Republic will provide the ECSR with this explanation in the next report, as it seems the previous reports were not detailed enough with.

208. The ETUC representative noted that the situation is not changed since 2007 and that didn't hear any new information from the Slovak representative. Therefore, asked if there is an intention by the Slovak authorities to change the situation.

209. The Slovak representative pointed out that the situation is changed since 2007 because at that time the workers were not entitled to get time off compensation for overtime work. After the negative ECSR conclusion of 2010, the situation is changed and the time off compensation for overtime work option is applied.

210. The GC took note of the information provided and decided to wait for the next ECSR assessment.

RESC 4§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 4§2 of the Charter on the ground that civil servants are not entitled to an increased time off in lieu of remuneration for overtime hours.

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

The principle of this provision is that work performed outside normal working hours, because it requires an increased effort on the part of the worker, should be paid at a rate higher than the normal wage.

According to the Digest of the Committee, "Granting leave to compensate for overtime (instead of granting an increased remuneration) is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked."

In our case, there are different provisions regarding overtime work in the Labour Law and Law on Civil Servants. According to Article 63 of the Labour Law entitled "Working Period", "The working period shall be a maximum of forty-five hours a week in general". Unless otherwise agreed, such a period shall be applied by equally assigning it to working days of the week.

Overtime work is regulated in Article 41 of the Labour Law. "Overtime is the work exceeding forty-five hours a week". The wage payable for each hour of overtime shall be paid by increasing the amount of normal work wage per hour by 50 %. If the worker who is working overtime wishes, he/she may utilise one hour and thirty minutes for each hour of overtime as free time instead of an increased wage in return for this work. The worker shall use the free time that he/she is entitled within six months, during working time and without any deduction from his/her wage. There are no exceptions for certain categories of workers in the Labour Law.

However, the provisions regarding overtime work are rather different in the Law on Civil Servant, under which the weekly working hours is forty hours. The working week is organised leaving Saturday and Sunday as week holiday. The work done by the Civil Servants over 40 hours is defined as overtime.

Overtime wage is regulated in Article 178 of the Civil Servants Law and also in the Regulation Regarding the Procedures of Overtime Work. Accordingly, in the following cases, overtime wage is paid to the civil servants:

a. *It is mandatory to complete the duty within a certain period of time set by law,*
b. *The occurrence of extraordinary conditions such as diseases related to humans, animals and plants, malfunctions and natural disasters (during the continuation of these conditions),*
c. *It is mandatory to work outside the working hours and days together with the workers in the scope of Labour Law, as a requirement of the service,*
d. *To work in jobs that exceed the working hours as a matter of duty.*

The principles and procedures of overwork are jointly determined by the State Personnel Presidency and the Ministry of Finance. According to the Article 178 of the Law on Civil Servants, public institutions can employ civil servants out of the daily working hours, without extra wage if necessary. In this case, the employees shall be given a day off, to account for every eight hours of overtime work. The leave to be granted in case of overtime shall be used in a year during which the overtime is performed. However, in case of not having enough time within the year, the leave shall be granted as soon as possible within the following year.
Finally, the representative of Turkey underlined that overtime work is exceptional for the civil servants and the working week is forty hours in general, leaving Saturday and Sunday as the week holiday. The civil servants are entitled to an increased time off instead of payment for overtime hours but the time off is equal to the overtime worked hours. In the legislation, as mentioned before, the employees shall be given a day off, to account for every eight hours of overtime work. The Collective agreement for the years 2016 and 2017 includes increased remuneration for certain groups of civil servants such as the employees of the Social Security Institution and Directorate General of Civil Registration and Citizenship Affairs. The Collective agreement for the years 2018 and 2019 includes similar articles.
The scope of the collective agreements includes coefficients and indicators to be applied to public officials, wages, all kinds of raise and compensations, additional payments, overtime wages, per diem, bonuses, birth, death and family allowances, funeral expenses, food and clothing. But the issue of leave for overtime work was not on the agenda.

Overtime work is exceptional for civil servants, except for certain institutions for limited time and increased payment for overtime is added to the collective agreements by the request of these institutions.
In conclusion, regarding the employees in the private sector, the situation is in conformity with the Charter, in terms of both increased remuneration and time-off. Regarding civil servants, increased remuneration is stipulated in the law for certain cases and leave is granted to civil servants equal to their overtime work. The government is going to consider further the findings of non-conformity of the Committee.

212. The representative of Turkey, in reply to the requests for clarification from the Chair and the ETUC representative, explained that additional remuneration is paid for certain cases as stipulated in the law, whereby the amount is determined through collective bargaining, and in practice this applied to most civil servants. The non-conformity concerned a small percentage of civil servants who receive time off instead of payment, equal to the number of hours of overtime worked.

213. The representative of Lithuania recalled that Article 4§2 required an increased rate of remuneration for overtime work, subject to exceptions in particular cases.

214. The GC took note of the information provided and invited the Government to review the situation and include all the necessary information in the next report. Meanwhile, the GC decided to await the next assessment of the ECSR.

Article 4§3 - To recognize the right of men and women workers to equal pay

RESC 4§3 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 4§3 of the Charter on the ground that the enforcement of the right to equal pay is not effective, as demonstrated by the persistently high gender pay gap.

215. The Secretariat recalled that the ECSR has registered 15 individual Collective complaints (CC) lodged against the 15 States Parties to the Protocol providing for a system of collective complaints. The CC concerns the lack of appropriate measures to achieve equal pay for equal work issues tackled by Article 4.3, in conjunction with issues tackled by article 20 on equal opportunities and equal treatment. The ECSR it is expected to reach its final decision on these CC by the end of the year.

216. The representative of Estonia provided the following information:

We thank the Committee for active concern regarding gender pay gap in Estonia and can confirm that it is shared by our Government. We have been taking and continue to take a range of measures to tackle this problem from different angles. Some progress can be seen - compared to 2015, when the gender pay gap was 26,9%, by 2017 it had decreased to 25,6%.
In order to decrease gender pay gap by tackling its various causes, Estonia has mainly implemented legislative, research and awareness-raising measures. Next, I will present some examples.
The Committee wished to be informed about the developments of the draft amendments to the Gender Equality Act, regarding establishment of supervisory measures for the requirement of equal pay for women and men in the public sector

organisations. In August 2018, after two years of drafting and consultations, the Government approved and sent the draft to the Parliament. Unfortunately, the Parliament did not adopt the draft and due to parliamentary elections in March earlier this year, upon the expiry of the mandate all draft legislation on which the proceedings were not completed, were dropped from the proceedings. The present Government has not made any decisions yet concerning restarting the proceedings.

However, several changes have been designed to the parental leave and benefits system. The changes can be expected to especially support women`s active participation in the labour market and their career possibilities and thereby also help to decrease gender pay gap. More specific aim of the changes has been to encourage more fathers to share care responsibilities with mothers. For example, from July 2020, fathers will have an individual right for paternity leave and benefit for 30 days (until that time, the paternity leave duration is 10 working days). Another aim is to provide more flexible possibilities for parents to combine the use of parental leave and participation in the labour market. For example, parents may receive parental benefit as well as earn income and the parental benefit will be reduced only when the monthly income exceeds 1.5 times Estonian average salary (1660 euros in 2019). This would enable both parents to work part-time and share the care responsibility accordingly.

In addition, with the help on the European Social Fund, the Ministry of Social Affairs has supported creating new childcare places. In 2015-2018, altogether 1193 childcare places were created all over the country to alleviate the shortage of childcare facilities. Also, during 2014-2020, the Ministry of Finance is coordinating a 34 million euros funding scheme from the European Regional Fund for the construction of nearly 2200 new places in childcare facilities and kindergartens in the three major urban areas of Estonia.

The Government is also working towards easing the care burden of caregivers. In autumn 2017, the Government made a decision to finance the most urgent long-term care measures. Among these are, for example, a state financed daily and weekly special care service for people at working age with multiple disability and providing new service places in care homes to elderly with dementia. At the end of 2018, the Government discussed an additional action plan for changes in the long-term care system. The main aim of the changes is to increase the availability of long-term care services to reduce the care burden on informal carers and through that, support the reconciliation of work and care. In June 2019, the newly formed Government coalition agreed that the Ministry of Social Affairs should continue to develop long-term care reform plan and should submit planned policy measures to Government for decision in November 2019.

Moreover, the Government has also taken steps to ensure adequate wages in female-dominated sectors, such as education. There has been a pan-party political commitment to raise the (average) salaries of basic school and upper-secondary school teachers over the last years, with an aim to reach 120% of the average salary in Estonia. Their salaries have almost doubled during the last eight years, although actual salaries of both primary and secondary school teachers still need to increase to reach the OECD average.

From January 2019, a three-year research project is carried out to decrease the still unexplained part of the gender pay gap. The aim is to design evidence-based policy scenarios through linking together different existing databases, adding qualitative analysis and using simulation and prognosis models. The project also creates an user-friendly, low-administrative-cost database for up-to-date data on gender pay

gap. The digital solutions can have an empowering effect on women, providing information about the average pay level and the average pay gap in a certain field or position-level.
As mentioned at the beginning of my intervention, these were some examples of our activities aimed at reducing gender pay gap in the light of a wide variety of its causes. There have also been several awareness raising campaigns and projects, which we don't have time to go over at the moment. More thorough overview will be given in the next report, as requested by the Committee in the 2018 Conclusions.

217. The representative of ETUC underlined that the measures put in place by the Estonian Government to tackle the issue are marginal factors on the enforcement of the right to equal pay and unfortunately the law that was announced did not get adopted and the government has not in the agenda to adopt new measures in the near future. He mentioned that not only the ECSR, but also the European Union has been criticising the Estonian authorities for not taking any effective measures to tackle the gender pay gap issue.

218. The Lithuanian representative said that since it is the first time that this case has been discussed, the GC could take note of the information provided and urged the Estonian authorities to make the necessary amendments and to put in place efficient measures to tackle the issue.

219. The French representative said that the equal pay issue is a very central topic in France and that the GC should use its working methods. She recalled that in the last GC May meeting there was a request to all representatives to not be reluctant when voting on a recommendation. Instead of postponing a decision, if there is a vote on a recommendation to bring back the situation into conformity, the country concerned will be encouraged next time to report on what kind of remedies they have adopted following that sanction.

220. The Dutch representative pointed out that in her view Article 4.3 is a very crucial one. The fact that Estonia has not put in place any effective domestic legislation is worrying and, considering also that the ECSR is dealing with a Collective complaint on this Article in conjunction with Article 20, makes this topic essential and the GC should decide on the Estonian case without waiting four additional years.

221. The Danish representative said that the dispute at stake is not the lack of legislation on the matter, but its enforcement, and that Estonia could be encouraged to tackle the issue also without deciding to vote on a recommendation.

222. The Estonian representative confirmed that there is a law on equal pay and the amendments that were not adopted aimed precisely to make the legislation more effective by introducing a supervisory body.

223. The Irish representative after this explanation said that the GC should take a softer view and follow the suggestion of the Lithuanian representative.

224. The Chair stated that following all the different interventions there wasn't any request to vote.

225. The GC therefore took note of the information provided and urged Estonia to remedy the situation as soon as possible and wait for the next assessment of the ECSR.

RESC 4§3 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 4§3 of the Charter on the ground that the statutory guarantee of equal pay only exists in public service.

226. The Secretariat said that it seems there is a slight improvement in the situation, since Georgia in 2015 adopted a new law in the public service sector. Article 57 provides that the remuneration system shall be based on the principles of transparency and fairness which means equal pay of men and women for equal work performed. In the private sector the situation remains unchanged, but there are some promising measures foreseen in the future, since Georgia it seems will soon transpose the EU directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

227. The representative of Georgia provided the following information:

On February 19 2019, the Parliament of Georgia adopted amendments to the labour legislation. The legislative package was prepared in compliance with EU directives (2000/78/EC, 2000/43/EC, and 2004/113/EC) and includes following organic laws and laws of Georgia: Organic Law of Georgia "Georgian Labour Code", Law of Georgia on "Elimination of All Forms of Discrimination", Law of Georgia on "Public Service", Law of Georgia on "Gender Equality".

The above-mentioned amendments aim to establish those principles that serve to eliminate and prohibit discrimination in labour and pre-contractual relations, employment and occupation based on religion or faith, disabilities, age, sexual orientation, racial or ethnic origin and apply to all persons employed in public and private sectors. To highlight, the Law of Georgia on "Elimination of All Forms of Discrimination" defined sexual harassment as any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. While Law on "Gender Equality" defines that harassment and sexual harassment in labour relations/at workplace are prohibited.

In addition to above-mentioned work the Government of Georgia is continuously working on expansion of Organic Law of Georgia "Georgian Labour Code". Numerous changes have been made to the Labour Code since 2013, targeted towards strengthening the rights of workers at the workplace. GoG will continue to sophisticate Organic Law of Georgia "Georgian Labour Code", thus introducing

international labour standards into Georgian labour market, as per Georgia's Association Agreement with EU, Annex XXX. The amendments will be covering issues, such as implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, part-time work , fixed-term work, progressive implementation of the principle of equal treatment for men and women in matters of social security, ***collective redundancies,*** *transfer of undertakings, fixed-duration or temporary employment relationship,* ***certain aspects of the organization of working time.*** *In terms of equal pay for work of equal value it is important to mention EU DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation which is the part of legislative package to be submitted to the Parliament in autumn session. The directive defines, that for the same work or for work to which equal value is attributed, and direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.*

Apart from that work on "National Strategy of Labour Market and Employment Policy of Georgia 2019-2023" is in the process, the strategy will be adopted in the nearest days. One of the tasks of the strategy is to promote gender equality and women's participation in the labour market. Pursuant to the strategy llegislation on discrimination and gender inequality will be improved which will play an important role in safeguarding the equality principle, improving the mechanisms to protect women's labour rights as well as taking measures to ensure that pregnant, newly given birth and breastfeeding women enjoy better measures of safety and healthcare and that their social guarantees are improved. Ensuring that employees receive equal remuneration for equally valuable work will be guaranteed on the legislative and practical levels alike, guidelines on methodology will be elaborated so that the principle of equal remuneration is ensured and guaranteed. These issues are also incorporated in the strategy realization action plan 2019-2021.

Currently Government of Georgia is carrying out a public service reform which aims to establish fair remuneration system. To this end Georgian legislation governing remuneration in public service fully determines procedures and rules of granting coefficients to specific positions in the public entity. Article 57 of the Law of Georgia on "Public Service" defines that the remuneration system for officers shall be based on the principles of transparency and fairness, which means equal pay for equal work performed. At the same time Article 3 of the Law on Remuneration in Public Service determines that the basic principle of issuing labour remuneration according to which the system of remuneration rests on principles of equality and transparency which imply the receipt of equal pay for the performance of equal job in accordance with rules established in advance. Pursuant to the same law determination of functions for specific positions is based on assessment of each case. Assessment of each case means that the entities evaluate different features such as level of responsibility, stress, relevant competencies, qualification and work experience.

Accordingly, determination of coefficients for each position is based not only essential/principal similarity of functions but above-mentioned factors – responsibility, complexity, relevant competencies, qualifications and work

experience. This in aggregate implies evaluation of the value of work which is the main principle of the Convention.

Guarantees of enforcement and judicial safeguards

Every person in Georgia is free to appeal to court when his or her rights violated, including in case of wage discrimination. The burden of proof for the claim submitted in the case possible discrimination shall lie on employers (Labour Code of Georgia)

The Ministry addressed civil courts of Georgia and Public Defender. There were no cases of wage discrimination discussed by the courts so far, while during the period of 2015-2018 the Office of Public Defender of Georgia discussed 3 cases out of which 2 cases were stopped and in one case Public Defender issued a recommendation. No ceiling to compensation for pecuniary and non-pecuniary damage that may be awarded to a victim of pay discrimination is established and is determined based on details and characteristics of each case

When it comes to methods of comparison in public sectors this is to highlight the ***Measures*** **Taken in the Context of Civil Service Reform for Developing an Objective Job Evaluation Method to Ensure that Job Classification and Remuneration in the Public Service is Free from Gender Bias.** *In order to implement the activities envisaged by the Decree of the Government of Georgia on approving of the Civil Service Reform Concept[5], inter alia, the new Law on Civil Service (CSL) and the package of secondary legislation, prescribed by the transitional provisions of the CSL, were adopted. The CSL introduces new understanding and scope of civil service system. The provisions of the CSL are dealing with revised rules on transparent selection, equality before the law, equal opportunities, impartiality, promotion and dismissal of civil servants, continuous needs-based professional development of civil servants, etc.*

Equality before the law is ensured by new CSL and its section 9 states one of the principles of civil service according to which the exercise of legal rights, freedoms and legal interests of any citizen of Georgia involved in official legal relations may not be restricted or obstructed, irrespective of their race, colour, language, sex, age, nationality, origin, place of birth or residence, property or social status, religion or faith, national, ethnic or social origin, profession, marital status, health status, disability, sexual orientation, gender identity and expression, affiliation with political or other associations, including trade union, political or other views, or other characteristics.

Secondary legislation, thus, aims at ensuring equal opportunities for gender mainstreaming in civil service through, requiring, for example, involvement of a person responsible for the gender issues of a public institution in the activity of the selection commission.[6] The requirement to permanently have person responsible for gender issues is considered, however at the moment only recommended and heads of HR units instructed accordingly.

Also, the decree of the Government of Georgia on "Ethics and General Rules of Conduct for Civil Service"[7] requires that public institution facilitates attainment of a gender balance at a public institution and ensures the creation of equitable

[5] The Decree of the Government of Georgia #627 adopted on November 19, 2014 on "Approving Concept for Civil Service Reform and Several Measures Related to its Implementation"

[6] The decree of the Government of Georgia #204 adopted on April 21st on "Conduct of Competitions in Civil Service", Article 15

[7] The decree of the Government of Georgia #200 adopted on the April 20, 2017 "General Code of Ethics and Conduct for Civil Service"

conditions and opportunities of work to different genders.[8] *Also, the article on prohibition of sexual harassment at workplace is introduced.*[9] *The purpose of it is to emphasize the existence of relevant general or internal procedures for preventing and for resolving allegations of sexual harassment and also to ensure compliance with the international standards regarding this issue. These regulations seek to encourage the equal environment for all employees regardless their gender identity or sexual orientation, keep them informed about the phenomena of sexual harassment and the relevant procedures on disclosure and stress the responsibility of supervisors in handling the unwelcome behavior of the employee by using effective measures. The new classification system was introduced by the new CSL and secondary legislation prescribed by the CSL. Before the new CSL came into force in 1st of July 2017, all public institutions, including the local self-governmental institutions, rearranged the staff according to the law and new classification system. For this purpose, the functions were categorized into core functions and support functions. The CSB was actively involved in implementation of new classification and ranking system by preparing the guidelines and recommendations for the public institutions. To ensure the systematize completion of ranking process the CSB developed the plan of actions and draft version of change management action plan. The CSB has also prepared the sample of rearrangement of staff by providing the relevant and necessary information for each rank and position.*

CSL provides for the obligation to conduct an annual compulsory assessment of professional civil servants, which allows identifying needs for motivation and enhancement of adequate qualification. To this end, it is necessary to establish a unified and systematic performance evaluation system to ensure an objective approach to evaluating civil servants in public institutions at the central and local levels. For this purpose, training sessions and informational meetings were organized in public institutions in regions as well as in the line ministries.
The CSB has been designated as a principal body to explore and monitor job performance evaluation practices and develop corresponding recommendations. The CSB is committed to provide professional assistance and advice to all government institutions in the implementation of the uniform job performance evaluation methods. Principles of rule of law, fairness, objectiveness, transparency, integrity, conflict of interest, credibility and protection of interest of civil service institution and servant are equally observed in appraisal process.
*As to the c*oncrete steps in order to promote the use of objective job evaluation or develop such method in the private sector*, methodology is being elaborated with the support of international organizations and active participation of social partners, in particular, trade union confederation.*
Thinking through the actual situation, statistical data showing a gender wage gap of 37.7 pec cent is not based on the calculation of monthly wages of both sexes but includes benefits and other wage components, for instance, bonuses. Pursuant to the recently conducted labour force survey (2017) percentage of wage gap decreased from 35% to 18% when different methodology was used, in particular when calculating based on hourly wages. The survey also saying that women work less hour and men mostly overtime. When it comes to gender equality and equal pay it is worth to bear in mind that Georgia is a country with distinguished traditional values where gender stereotypes and social roles of men and women play a

[8] *Ibid.,* Article 14
[9] *Ibid.,* Article 15

decisive role. The pay gap is not primarily conditioned by legal or regulatory environment but traditional norms and attitude where women are combining their roles in household chores and career development.

Average monthly nominal earnings of employees by occupation, 2017

35% difference

				GEL
Groups, ISCO-88	Occupation	Total	*of which:*	
			Female	Male
	Total	**999.1**	**770.2**	**1197.4**
1	**Legislators, senior officials and managers**	**2177.4**	**1651.1**	**2432.7**
11	Legislators and senior officials	2550.0	2205.7	2636.9
12	Corporate managers	2502.3	1809.7	2860.1
13	Managers of small enterprises	1730.3	1406.5	1879.2
2	**Professionals**	**960.4**	**807.3**	**1242.0**
21	Physical, mathematical and engineering science professionals	1542.4	1146.6	1650.8
22	Life science and health professionals	1015.0	898.2	1375.0
23	Teaching professionals	648.4	622.2	768.1
24	Other professionals	1078.9	946.1	1241.8
3	**Technicians and associate professionals**	**897.5**	**636.2**	**1148.0**
31	Physical and engineering science associate professionals	1346.6	1157.9	1383.0
32	Life science and health associate professionals	662.9	603.2	941.7
33	Teaching associate professionals	448.5	407.8	648.6
34	Other associate professionals	918.2	679.3	1099.0
4	**Clerks**	**957.6**	**840.1**	**1131.9**
41	Office clerks	972.7	790.6	1201.2
42	Customer services clerks	937.8	895.7	1016.0
5	**Service workers and shop and market sales workers**	**683.1**	**522.5**	**810.4**
51	Personal and protective services workers	744.0	550.5	833.0
52	Models, salespersons and demonstrators	601.7	503.1	757.1
6	Skilled agricultural and fishery workers	525.1	479.2	538.0
61	Skilled agricultural and fishery workers	525.1	479.2	538.0
7	**Craft and related trades workers**	**1073.0**	**572.3**	**1170.5**
71	Extraction and building trades workers	1393.0	1117.4	1395.9
72	Metal, machinery and related trades workers	934.8	855.9	937.2
73	Precision, handicraft, craft printing and related trades workers	840.9	672.9	933.8
74	Other craft and related trades workers	796.2	541.0	962.0
8	**Plant and machine operators and assemblers**	**934.7**	**761.9**	**945.8**
81	Stationary plant and related operators	932.4	803.4	960.8

82	Machine operators and assemblers	909.3	615.5	928.6
83	Drivers and mobile plant operators	941.9	570.8	944.2
9	**Elementary occupations**	**581.2**	**388.6**	**700.8**
91	Sales and services elementary occupations	422.3	364.6	497.4
92	Agricultural, fishery and related labourers	435.4	441.1	433.0
93	Labourers in mining, construction, manufacturing and transport	835.1	499.8	891.4
Source: Statistical survey of organizations and enterprises.				

37% difference

Average monthly nominal earnings of employees by economic activity (Nace rev. 2) and sex , 2016-2018

									GEL
	2016			**2017**			**2018***		
	Total	*of which:*		Total	*of which:*		Total	*of which:*	
		Female	Male		Female	Male		Female	Male
Total	**940.0**	**731.2**	**1116.6**	**999.1**	**770.2**	**1197.4**	**1124.1**	**856.2**	**1360.5**
Agriculture, forestry and fishing	570.2	518.9	584.8	642.8	617.0	651.2	732.4	777.0	718.8
Mining and quarrying	1154.1	1210.3	1147.0	1260.4	1191.8	1268.3	1344.0	1189.7	1363.4
Manufacturing	783.2	572.6	894.8	868.1	629.0	994.7	973.3	692.8	1127.9
Electricity, gas, steam and air conditioning supply	1348.0	1489.8	1315.9	1414.1	1514.0	1391.7	1513.1	1644.7	1485.1
Water supply, sewerage, waste management and remediation activities	711.5	601.2	760.1	753.4	664.3	789.8	790.5	672.8	838.7
Construction	1265.9	924.1	1297.8	1465.7	949.5	1523.2	1757.2	1327.5	1802.4
Wholesale and retail trade; repair of motor vehicles and motorcycles	790.4	594.4	957.5	844.2	633.0	1034.0	1045.2	783.9	1271.0
Transportation and storage	1155.5	869.9	1235.8	1238.1	847.2	1362.8	1356.0	1047.5	1451.5
Accommodation and food service activities	625.6	545.6	747.9	671.9	592.4	785.3	885.5	781.1	1038.3
Information and communication	1339.0	1130.9	1487.3	1425.7	1185.1	1592.2	1759.6	1446.2	1985.8
Financial and	1834.9	1287.1	2669.7	2008.3	1394.7	3024.6	2241.2	1498.7	3461.2

insurance activities									
Real estate activities	1016.6	771.3	1122.7	1093.3	764.6	1283.6	1110.8	793.1	1266.6
Professional, scientific and technical activities	1463.6	1467.1	1460.7	1594.5	1498.7	1671.6	1892.5	1421.3	2355.5
Administrative and support service activities	739.6	571.9	830.8	767.9	627.8	844.4	1006.0	1072.8	968.7
Public administration and defence; compulsory social security	1254.7	1201.0	1276.2	1236.1	1185.7	1256.3	1268.3	1178.0	1307.0
Education	534.2	514.7	599.3	577.0	559.0	637.9	600.6	581.8	664.8
Human health and social work activities	914.6	789.0	1253.3	953.3	831.3	1289.1	1000.6	884.9	1313.9
Arts, entertainment and recreation	833.7	703.7	964.0	876.9	754.7	992.1	999.5	864.8	1134.2
Other service activities	729.6	570.6	1001.9	685.5	625.1	780.9	863.2	715.4	1095.5
*Preliminary data. Revised data will be available on 8 October 2019.									
Source: Statistical survey of organizations and enterprises.									

228. The representative of Georgia indicated that the right to equal pay of men and women for work of equal value needs to be recognized both in private and public sector. At the moment only the law introduced in 2015 on the Public sector recognizes the principle of equal pay between women and men. She confirmed that Georgia will soon transpose the 2006/54/EC directive. Amendments to the Labor Code have been discussed in a tripartite consultation and will be introduced in autumn on anti-discrimination and equal opportunities in the workplace as well as on the Labour inspection. Moreover, a new strategy on Labour and employment policy (2019-2023) is going to be put in place by the Government concerning also equal opportunities between women and men on the labour market, tackling gender issues inequalities, including equal remuneration principles. Finally, she pointed out that in Georgia all workers have the right to appeal to the Court, if they think that their

working rights, concerning also antidiscrimination issues in the workplace, have not been respected.

229. The Chair asked when the amendments to the Labour Code are going to be introduced and if it is included the principle of equal pay for women and men also in the private sector.

230. The representative of Georgia confirmed that it is foreseen that the Parliament will adopt the amendments in autumn.

231. The representative of Lithuania and France welcomed the positive developments and said that the GC should invite/encourage the Georgian authorities to proceed in this direction.

232. The representative of Greece said that, since the amendments have not been introduced yet in the legislation, the GC should urge the Georgian authorities to improve the situation as soon as possible.

233. The Chair suggested to conclude by saying that the GC took note of the positive developments announced by Georgia and invite the Georgian authorities to improve the situation in relation to gender issues and bring back the situation into conformity.

234. Before moving to the examination of the next article, the Chair explained that due to the upcoming possible changes to the ECSR case law on Article 4.5, it was decided not to hold the examination of the two cases of non-conformity on the agenda (Estonia and Latvia).

Article 5 – The right to organise

RESC 5 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 5 of the Charter on the grounds that:

- **the minimum membership requirements set for forming trade unions and employers' organisations are too high;**
- **the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the security service, all members of the police force (including civilians), self-employed workers, those working in liberal professions and informal sector workers.**

235. The representative of Armenia provided the following information orally and in writing:

Concerning the first ground of non-conformity:

Currently a working group has been established which includes representatives of the Government, Trade Union and Employers' Union, as well as ILO local and

international experts. The aim of the group is to develop and finalize the amendments to the Labour Code, Law "On Trade Unions" and Law "On Employers' Unions". The issue on minimum membership requirements for forming trade unions and employers' organizations is also under review.

Concerning the second ground of non-conformity:

The Constitution of the Republic of Armenia which was amended in 06.12.2015 states that:

1. *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests (Article 45 part 1).*

2. *The freedom of associations may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others (Article 45 part 1).*

Meantime, according to the Articles 2 and 3 of the Law "On Service in Police" the civilians employed by the police are not considered as police force/servants. The prohibition to form or join the trade unions prescribed by Article 6 of the Law is not applied for civilians working in the police. Thus, they can form or join the trade unions.

The same is also applicable for civilians employed by the security service according to several legislative acts such as Law "On National Security Bodies", Law "On Civil Service", etc. So the civilians of National security service can form or join the trade unions.
Regarding the rights of non-civilian employees in the police, the Prosecutor's Office, National Security Service, the RA legislation prescribes a range of guarantees, procedures for rights implementation and protection of violated rights aimed to protect the economic and social rights of those employees, particularly these are defined by RA Laws "On Police", "On Military Service and Status of Military Servant", "On Service in Police", "On Prosecutor's Office", "On National Security Bodies", etc.
Full information would be provided in the next report.

236. The Chair asked for clarification with regard to caegories of workers not being able to set up or join a trade union, such as self-employed, liberal professions and informal sector workers.

237. The representative of Armenia said that there appeared to be some misunderstanding with regard to the finding of non-conformity as there were no specific regulations concerning these categories.

238. With regard to the first ground of non-conformity, the representative of the ETUC welcomed the fact that a Working Group thad been set up. However he pointed out that the government alrady indicated in 2014 that discussions were underway.

239. The representative of Armenia said that an amendment to the Labour Code had been drafted in 2014 following the discussions, however certain provisions regarding minimum membership requirements were not passed, so further discussions were underway. The Working Group had been initiatiated in the context of a new Government,. It was difficult to know exactly the outcome but she expressed hope that the amendments put forward would be adopted.

240. The representative of the ETUC pointed out, with regard to the second ground of non-conformity, that apart from reference to civilians employed by the police and national security service, there was no apparent progress concerning the categories of workers who did not enjoy the freedom to form or join an association.

241. The representative of the Netherlands hoped that the Working Group would not only discuss minimum membership requirements but also categoreis not allowed to form or join Trade Unions.

242. The representative of the ETUC called for the GC to apply its working methods concerning the second ground of non-conformity as it was a serious situation and no changes had taken place since the last finding of non-conformity.

243. The representatives of Greece and the Netherlands expressed support for holding a vote.

244. With regard to the second ground of non-conformity, the GC proceeded to vote first on a recommendation, which was not carried (0 in favour, 12 against and 25 abstentions). The GC then voted on a warning, which was carried (19 in favour, 4 against and 15 abstentions).

RESC 5 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 5 of the Charter on the grounds that

- ***the right to form and join trade unions is not ensured in practice in multinational companies;***
- ***all members of the police force are denied the right to organise***

245. The representative of Azerbaijan provided the following information orally and in writing:

Article 58 of the Constitution of the Republic of Azerbaijan sets out the basis for citizens' rights to joining. According to this Article everyone is free to join other people. Everyone has the right to establish any union, including political party, trade union and other public organisation or enter existing organisations. Unrestricted activity of all unions is ensured.

According to Article 19 of the Labour Code of the Republic of Azerbaijan a trade union may be established on a voluntary basis without discrimination among employees or without prior permission from employers. Employees may join the appropriate trade union and engage in trade union activity in order to protect their labour and socio-economic rights and legal interests. Rights, duties and mandate of

trade-unions are determined by the Law of the Republic of Azerbaijan on "Trade-unions" and their statutes.

According to Article 3 of Law "On Trade Unions", employees, pensioners, persons, being educated have all uniform right to voluntary set up trade unions at their choice and without preliminary permission, as well as to join trade unions for the protection of their legal interests, labour, social - economic rights and conduct trade union activity.

Military service members are not allowed to join trade unions. At the same time, we inform that in military units and enterprises, along with military personnel there are also civilian employees, each military unit and enterprise has a trade union organisation and these trade union organisations are united in the United Trade Union Committee of the Ministry of Defense of the Republic of Azerbaijan.

The Law of the Republic of Azerbaijan "On Civil Service" establishes the right of civil servants` to join trade unions in state bodies. According to Article 19 of the Law, association in trade unions is included in the basic rights of civil servants.

The trade union organisation has been established and operates in all state bodies of the Republic.

More than 90 percent of employed persons in the Republic of Azerbaijan are members of trade union organisations. Attempts by the Trade Union Confederation of Azerbaijan to create trade union organisations in some of the transnational and foreign companies operating in the republic have failed. These companies did not welcome the initiative of the Trade Unions Confederation of Azerbaijan to establish trade union organisation in those companies. It has been stated that employees (at least seven people) working in this company do not want to create a trade union organisation putting forward factors such as high salaries of employees, well organised work and leisure regimes, decent workplaces and successful organisation of employees' social security at this companies. While reviewing this issue, the state considered the position of transnational companies acceptable as addressing from the position the rule of law and the principle of equality of parties.

Nevertheless, the Trade Unions Confederation of Azerbaijan established trade unions in 56 private enterprises in 2017, in 47 private enterprises in 2018 and 60 in the first 6 months of 2019.

Police officers working in police agencies cannot join trade unions. However, civilian employees working in police agencies can join trade unions.

246. The representative of Ireland wished to know what changes had taken place since the last finding of non-conformity with regard to the situation in multi-nationals and the police force.

247. The representative of Azerbaijan said that there had not been any changes. There had been discussions to address the issues concerned which were inconclusive.

248. The representative of France wished to have further clarity regarding the dialogue within the companies concerned in order to better understand the obstacles to setting up a professional association.

249. The representative of Azerbaijan did not have precise details at this stage but further information would be provided in the next report.

250. The representative of the ETUC believed, with regard to the first ground of non-conformity, that there appeared to be some form of unionisation in practice in multinational companies and it would be useful to know the legal framework. With regard to the second ground of non-coformity, he said that there did not appear to be any new information and the government did not indicate any intention to change the situation.

251. The representative of Azerbaijan, in reply to a question by the representative of Spain, confirmed that Azerbaijan had ratified ILO Convention Nos. 87 and 98.

252. The representative of the ETUC said it would be useful to know how the figures of unionisation compared to the total number of multinational companies in the country.

253. The Chair considered that there appeared to be signs of social dialogue in respect of multinational companies, however as far as the rights of the police to join or form a Trade Unon were concerned, there had apparently been no change.

254. The representative of Norway pointed out that there appeared to be a blanket ban on the police in forming or joining a Trade Union and it seemed appropriate to apply the GC's working methods.

255. The representative of Lithuania supported the proposal to hold a vote concerning the second ground of non-conformity.

256. With regard to the first ground of non-conformity, the GC took note of the information provided and invited the government to provide all the details in its next report and bring the situation into conformity with the Charter.

257. With regard to the second ground of non-conformity, the GC proceeded to vote, first on a recommendation, which was not carried (0 in favour, 9 against and 27 abstentions). The GC then voted on a warning, which was carried (21 in favour, 3 against and 14 abstentions).

RESC 5 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 5 of the Charter on the ground that it has not been established that:

- ***employees are adequately protected against discrimination on grounds of trade union membership in practice,***

- ***trade unions are entitled to perform and indeed perform their activities without interferences from authorities and/or employers;***
- ***the conditions possibly established with respect to representativeness of trade unions are not detrimental to the right to organise;***
- ***members of the police and those employed in internal affairs, customs and taxation, in judicial bodies and the office of the public prosecutor enjoy the right to organise.***

258. The representative of Georgia provided the following information:

Members of the police and those employed in internal affairs, customs and Taxation, in
judicial bodies and the office of the public prosecutor enjoy the right to organise.

Georgian Legislation prohibits discrimination on a number of grounds, including trade union membership. The Constitution of Georgia regulates freedom of labour, freedom of trade unions, right to strike and freedom of enterprise and determines that everyone has the right to establish and join trade unions in accordance with the organic law, etc.

Pursuant to sub-paragraph 3 of the article 2 of Georgian Organic Law "Georgian Labour Code" labour and pre-contractual relations shall prohibit any type of discrimination due to race, skin color, language, ethnicity or social status, nationality, origin, material status or position, place of residence, age, sex, sexual orientation, marital status, handicap, religious, public, political or other affiliation, including affiliation to trade unions, political or other opinions.

Moreover, on 2 May 2014 the Law of Georgia "On the elimination of all forms of discrimination" was adopted. This Law is intended to eliminate every form of discrimination and to ensure equal rights of every natural and legal person under the legislation of Georgia, irrespective of race, skin color, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics (Article 1). Pursuant to the same law all forms of discrimination shall be prohibited in Georgia (Article 2(1)). The Public Defender of Georgia shall monitor issues regarding elimination of discrimination and ensuring equality (Article 6(1)) and discusses the applications and complaints of natural and legal persons or groups of persons, who consider themselves to be victims of discrimination (Article 6 (2-a)).

As to the interference from authorities, the Law of Georgia on Trade Unions defines that trade unions and federations (associations) of trade unions are independent from state and local self-government bodies, employers, employers' confederations (unions, associations), political parties and organisations, and are not accountable to or controlled by them.

Pursuant to the same law various representative (elected) bodies of enterprises, institutions and organisations may not be used to limit the lawful activities of trade unions. Pursuant to the Law of Georgia "Georgian Criminal Code" unlawful interference with the establishment of political, public or religious associations or with

their activities using violence, threat of violence or official position, - shall be punished by a fine or corrective labour for up to a year, or with restriction of liberty for up to two years, or with imprisonment for the same term.

Currently, there are 12 cases before the courts (various instances) concerning discrimination on grounds of trade union membership.

The report asked for the details of formation of trade unions:

1. Trade union is the non-entrepreneurial (non-commercial), .legal entity established on the basis of the rule determined by the civil code, according to activities — voluntary public union (organisation) of persons (workers) related by common entrepreneurial, professional interests with the aim to protect and represent labor, social-economic and legislative rights and interests of its members. (14.12.2006. N 3983)

2. Everyone has the right to establish and get united in the trade union according to the Georgian constitution.

3. Trade union can be established in any enterprise, establishment, organisation and other working place.

4. Peculiarities of establishing trade unions within defense, internal affairs, state security, tax, customs, court bodies are determined by the legislation on these bodies.

5. The person (worker) of the age of 15 and above who carries out labuor (professional) activities or studies at the high educational, secondary-professional, vocational institutions, has the right to establish and enter the trade union, participate in professional activities and freely leave trade unions. Those being temporarily unemployed or retired can remain members of trade unions.

6. The trade union is established according to branch, entrepreneurial, territorial or another trait of professional specific nature.

7. Trade unions have the right to establish:
a) primary trade union organizations in enterprises, establishments, organizations and other working places
b)professional organisations and unions (associations) of national character, autonomous republics of Abkhazia and Ajara, regional, city, enterprise, establishment, organization professional organizations and unions (associations)

8. In order to establish a trade union, coalition (association) of trade unions, the task force group (organizational group) calls for the meeting (conference, assembly), of founders which adopts the statute and elects managing trade union bodies

9. Establishment of the trade union can be with the initiative of at least 50 persons (100 Georgian aLri for registration)

10. All trade unions enjoy equal rights

There are no specific criteria set by the law, any trade union is entitled to be involved in collective negotiations and sign collective agreements.

The Law of Georgia on Trade Unions was transformed into organic law, making it more protected and giving high legitimacy.

Work of police and those employed in internal affairs, customs and Taxation, in judicial bodies and the office of the public prosecutor is determined by specific law and not explicitly prohibits membership.

259. The representative of Georgia, in reply to a request for clarification by the Chair, said that there is no law in Georgia prohibiting the police or other workers from forming or joining a Trade Union.

260. The representative of Georgia, in reply to a question by the representative of the ETUC, confirmed that the organic law on Trade Unons was recent, dating from 2018-2019, and that the ECSR had not yet been informed of this development.

261. The representative of the ETUC requested clarification with regard to the minimuim requirement of 50 persons to form a Trade Union. He pointed out that such a requirement would be problematic if there were many small companies in the country.

262. The representative of Georgia confirmed that this was a requirement and that negotiatons on this matter had been started between the social partners and the state.

263. The representative of the ETUC also requested clarification with regard to the provision that any person as from the age of 15 who was working or studying could establish a Trade Union.

264. The representative of Georgia confirmed that this this was stipuated in the law.

265. The representative of Ireland believed that there had been positive developments

266. The GC took note of the positive developments and invited the Government to include all the necessary information in the next report. Meanwhile, it decided to await the next assessment of the ECSR.

RESC 5 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the ground that a minimum of at least one quarter of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to form a trade union outside an undertaking which constitutes an excessive restriction on the right to organise.

267. The representative of Latvia provided the following information orally and in writing on the ground of non-conformity.

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

The Committee concludes that the situation in Latvia is not in conformity with Article 5 of the Charter on the ground that a minimum of at least one quarter of the employees of an undertaking are required to form a trade union in an undertaking, and 50 founding members are required to form a trade union outside an undertaking which constitutes an excessive restriction on the right to organise.

Argumentation of Latvia:

Latvia considers that the ratio legis of the amendments and the thresholds of the Law on Trade Unions of 6 March 2014 required to form a trade union are appropriate (see the table below). Moreover, the Law on Trade Unions was drafted in collaboration with the Free Trade Union Confederation of Latvia (LBAS), and afterwards received LBAS support.

LBAS took active participation in the drafting of the Law on Trade Unions. Within the legislative process, LBAS analysed the ILO supervisory bodies' interpretation regarding thresholds for the establishment of trade unions.

The ILO convention No 87 "Freedom of Association and Protection of the Right to Organise Convention" (hereinafter - Convention No. 87) is the main instrument guiding to the realisation of trade union liberties. According to Article 2 of the Convention No. 87 workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their choosing without previous authorisation.

Furthermore, Article 3 of the Convention No. 87 provides that workers' and employers' organisations have the right to draw up their constitutions and rules, elect their representatives in full freedom, organise their administration and activities and formulate their programmes. The public authorities must refrain from any interference which would restrict this right or impede the lawful exercise thereof. Finally, according to Article 7, the acquisition of legal personality by workers' and employers' organisations, federations and confederations cannot be made subject to conditions of such a character as to restrict the application of the provisions of the Convention No. 87.

Therefore, LBAS concluded that the ILO instruments protect freedom of trade unions and prohibit public authorities to put obstacles to the realisation of trade union

liberties, including the freedom to establish trade union organisations. At the same time, the ILO instruments do not provide guidance for the thresholds (minimum number of workers) for the establishment of trade unions, which can be further explored in the interpretations of the ILO supervisory bodies.

The ILO Committee on Freedom of Association (hereinafter - the ILO Committee) has concluded that the legally required minimum number of members must not be so high as to hinder in practice the establishment of trade union organisations. While a minimum membership requirement is not in itself incompatible with Convention No. 87, the number should be fixed in a reasonable manner so that the establishment of organisations is not hindered.

What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed. The ILO Committee considers that the minimum number of 30 workers is excessive in the case of enterprise unions and should be reduced so as not to hinder the establishment of such bodies, particularly when a country has a very large proportion of small enterprises and the trade union structure is based on enterprise unions. At the same time, the legal requirement that there should be at least 20 members to form a union does not seem excessive and, therefore, does not in itself constitute an obstacle to the formation of a trade union.

When it comes to expressing the threshold in percentage, the ILO Committee concluded that a membership requirement of 30 per cent of the total number of workers employed in the establishment or a group of establishments concerned for a union to be registered falls below that level and is not in conformity with Article 2 of Convention No. 87.

After studying the interpretation provided by the ILO Committee, LBAS concluded that the minimum requirement of 30 workers or 30 per cent of workers in an enterprise would be incompatible with the Convention No. 87, whereas the minimum requirement of 20 workers to establish a trade union in an enterprise could be considered acceptable. Therefore, LBAS welcomed the proposal made by the Government that the threshold for registering a trade union could be 15 workers or one-fourth of workers in an enterprise (25 per cent of workers), which may not be less than five workers. This proposal is below the threshold accepted by the ILO Committee.

LBAS draws attention that the two types of the threshold, namely 15 workers or one-fourth of workers in an enterprise, are alternative and not cumulative. Workers wishing to register a trade union can choose one of them considering which suits their particular situation and size of the enterprise. For instance, in a medium (50-249 workers) or large enterprise (more than 250 workers), workers would choose the requirement of 15 workers, while, in a small enterprise (10-49 workers), workers would choose the requirement of one-fourth. In practice, this would allow establishing a trade union with 5-12 workers. The minimum requirements implemented in practice could be as follows:

Regulation on the number of founders of a trade union to be established in a company[10]

Number of workers in the enterprise	*Minimum number of workers to establish a trade union*	*Comment*
1-4	*5*	*it is not possible to form a trade union in a company with less than 5 workers due to the requirement of minimum 5 workers*
5	*5*	*1/4 of 5 would be 2, but the number of founders cannot be less than 5*
10	*5*	*1/4 of 10 would be 3, but the number of founders cannot be less than 5*
20	*5*	*1/4 of 20 would be 5*
40	*10*	*1/4 of 40 is 10 founders*
60	*15*	*1/4 of 60 is 15 founders*
70 and more	*15*	*1/4 of 100 would be 25, but since the law provides the alternative requirement, that the number of founders may not be less than 15 workers, the minimum number of founders is 15*

It is important to note that all LBAS affiliates – sectoral trade union organisations – provide for an opportunity in their by-laws to establish a permanent trade union unit in an enterprise with a minimum requirement of three workers. In such a way a trade union unit is, on the one hand, bound by the by-laws of the sectoral trade union. On the other hand, it has collective, financial and expert support of the sectoral trade union. Moreover, according to Article 11 of the Law on Trade Unions, a permanent trade union unit can be granted the status of a legal person and registered in the Register of Associations and Foundations.

Besides, a permanent trade union unit operates within the scope of the competence defined for trade unions by regulatory enactments and may have its own property. It is responsible for its liabilities. If its property and financial resources are not sufficient for covering its liabilities, the trade union is held responsible for the liabilities of its permanent unit. Finally, a permanent trade union unit can be registered and excluded from the register based on the application and the decision of the respective trade union.

LBAS draws attention to the fact that trade union power is closely connected to its solidarity, unity and collective strength. A small independent trade union with less than 5-10 workers and not related to a sectoral, territorial or national trade union, has very limited capacities. It refers to the possibility to influence processes, provide collective pressure to the employer and thus represent the interests of its members.

[10] Racenajs K., Mickevica N., Trade Union Law with Commentary, LBAS, 2015, p.46.

Avoiding trade union fragmentation, in LBAS view, is also very important considering the structure of economy - dominated by small and medium enterprises.

To conclude, the minimum threshold for the establishment of a trade union in Latvia provides for an opportunity to establish a trade union in small enterprises with 5-12 workers. It is considered in conformity with the ILO Convention No. 87.

Regarding the minimum requirement of 50 workers to establish a trade union outside an undertaking, LBAS explains that such a trade union would be registered as a professional, territorial or sectoral trade union. In this case, such a trade union would, for instance, represent workers in sectoral social dialogue and conclude sectoral collective agreements, including erga omnes collective agreements. In LBAS view, considering the functions of a professional and sectoral trade union, a minimum requirement of 50 workers cannot be deemed to be excessive.

137. The representative of Latvia, in reply to a request for clarification by the representative of the ETUC, said, as indicated in her statement; that there were two types of threshold namely 15 workers or one-fourth of workers in an enterprise. With regard to small companies, it was not possible to form a trade union in a company with less than 5 workers due to the requirement of a minimum of 5 workers.

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

RESC 5 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 5 of the Charter on the ground that it has not been established hat:

- ***protection against acts of anti-union discrimination and interference is effectively ensured;***
- ***the right of the police to organise is guaranteed.***

139. The representative of the Republic of Moldova provided the following information:

In Republic of Moldova the right to organize is guaranteed by the Law on Trade Unions. Article 10 of the Law on Trade Unions provides explicit the way of registering of Trade Unions in any branch and level. Public Service Agency from Republic of Moldova has to register a primary trade union organization, territorial and national (at branch level or intersectorial) Trade Union for 15 days. Refusal to register a Trade Union can be challenged in the court.

Presented in the conclusions of the Committee cases of refusals to register Trade Unions in Republic of Moldova took place because of different provisions on registering of Trade Unions in the Law on Trade Union. Amendments introduced in 2018 in the Law on Trade Unions make now explicit the procedure of registering of Trade Unions in Republic of Moldova.

Nowadays, National Confederation of Trade Unions is only national intersectorial Trade Union in Republic of Moldova. There are no restrictions to be created and registered new national intersectorial trade unions. At the same time, we specify that association in a Trade Union is voluntary (Article 1, Law on trade Union). The issue related to creation and reorganization of a Trade Union is decided by the members of a Trade Union during the common conference of members. In this context, the merging of the Confederation of Trade Unions and Trade Union Confederation "Solidaritate", mentioned by the Committee, happened in 2007, by open vote of members, during the common conference.

Existing of just one national Trade Union in Republic of Moldova, can be is justified, probably, by quite good collaboration of Trade Unions at branch level and small number of population. Generally speaking, the association of employees in Trade Unions is conditioned by a certain degree of usefulness of Trade Unions and understanding by workers of the role of Trade Unions in protection of their rights.

In Republic of Moldova is functioning Trade Union of Public Administration "SINDASP", including local and central public authorities, having 29 thousand members and Trade Union "SINDLEX", including Police and other services of the Ministry of Internal Affairs of the Republic of Moldova and National Anti-Corruption Center employee ("Demnitate", "Frontiera", "Salvatori", "Sindmai", having 10 thousand members. The Trade Unions of armed forces still not exist. Consultations and negotiations to join "SINDILEX" are taking place in present with the armed forces from Republic of Moldova.

What is challenging in Moldova for creating new Trade Unions - is the lack of employers at territorial level and quite unclear regulations on representativeness of Trade Unions and Employers Organizations. Developing of the principles of representativeness of Trade Unions and Employers Organization is on the agenda of the Government of Republic of Moldova.

In order to ensure the protection against the acts of anti-union discrimination and interference, in 2016 have been increased the fines established by Contravention Code. Since then the fines have not been revised. Conclusions of the Committee on review of fines and including other types of sanctions will be considered by the Government of Republic of Moldova.

Conclusion:

- Protection against the acts of anti-union discrimination and interference is ensured by establishing fines in Contravention Code, reviewed in 2016. Increasing existing fines and introduction of other sanctions will be considered by Government of Republic of Moldova;

- There are no restrictions for registration of Trade Unions in any branches and any level. The right of police in Republic of Moldova to organize is guaranteed. Trade Union "SINDLEX", including police and other services of the Ministry of Internal Affairs of the Republic of Moldova and National Anti-Corruption Center employee ("Demnitate", "Frontiera", "Salvatori", "Sindmai", has been functioning since 2009, having 10 thousand members.

140. The ETUC representative highlighted that at the time no information had been provided regarding the second ground of non-conformity. He suggested asking

Moldova to provide all the relevant information including all the active trade unions and the number of members. As regards the first ground of non-conformity, he asked whether the information about the increase of the level of the fines in 2016 had been known to the ECSR. He also inquired about the other types of sanctions envisaged, whether there was any calendar foreseen in that respect.

141. The representative of Moldova replied that internal discussions had taken place with the Ministry of Justice. Fines are generally low in the Contravention Code, but the Ministry of Justice is now starting to revise the Code.

142. The representative of Lithuania noted that the two grounds of non-conformity were due to lack of information. She suggested asking Moldova to send all the relevant information. She pointed out that the missing information concerned the reference period covered by the the conclusion (2013-2016).

143. The ETUC representative thanked the representative of Lithuania and noted that Moldova had admitted that the fines were of the same level as for any other violation of labour rights. He stressed that higher sanctions and penalties are provided throughout Europe for anti-union discrimination and interference.

144. The Chair invited Moldova to provide all the relevant information for the next assessment.

145. The representative of Lithuania agreed and proposed to take note of the positive developments.

146. The Chair asked when the police trade union had been created.

147. The representative of Moldova replied that it had been created in 2009.

148. The ETUC representative stressed that this information had not been given orally in 2010 and that lack of information was an impediment to the monitoring carried out by the GC.

149. The GC on the first ground urged the Republic of Moldova authorities to bring back the situation into conformity, on the second ground took note of the positive developments in Moldova and decided to wait for the next assessment of the ECSR.

RESC 5 SERBIA

The Committee concludes that the situation in Serbia is not in conformity with Article 5 of the Charter on the ground that the conditions imposed by legislation in order to form an employer's organisation constitute an obstacle to the freedom to organise.

150. The Secretariat recalled that the situation has been in non-conformity since 2014.

151. The representative of Serbia provided the following information:

In accordance with the Action Plan for the alignment of the legislation of the Republ ic of Serbia with the EU acquis in the Chapter 19 and in accordance with the National Programme for the alignment of the legislation of the Republic of Serbia with the EU acquis, the adoption of the new Labour Law is planned for the Quarter IV 2021.

The work on this regulation has already started with identification of the parts of the Law to be revised, taking into account the opinion from ILO, EC and the European Committee of Social Rights. Article 216 of the Law - the conditions for the establishment of employers' organization is among the provisions that are going to be revised .
When changes and amendments to the Labour Law were adopted in 2014, the standpoint of the Ministry of Labour was that this article should have been revised, but it was not amended at that time, since the agreement was not reached with social partners - they insisted for the articles of the Labour Law, concerning the conditions for the establishment of employers' and workers' organization, not to be changed at that time, but to wait for a comprehensive revision of the Labour Law and to introduce the amendments at that time.

152. The representative of Ireland thanked the representative of Serbia for this information and asked whether she could provide any further information concerning cases of anti-union discrimination lodged with the competent authorities, as requested by the ECSR in its conclusions.

153. The representative of Serbia replied that this had not been a ground of non-conformity with the Charter and that the information would be submitted in the future.

154. The GC took note of the information provided and decided to wait for the next assessment of the ECSR.

RESC 5 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 5 of the Charter on the ground that right of nationals of other Contracting Parties to the Charter to form trade unions is restricted.
155. The Secretariat recalled that the situation of non-conformity on this ground was first established in 2014.

156. The representative of Ukraine provided the following information:
The national situation remains unchanged since last report.

The Law of Ukraine "On Trade Union, Their Rights and Guarantees of Activity" provides for that foreign citizens and stateless persons may not form trade unions, but they can be member of trade unions, if it is provided in their statuses. I would like to emphasize, that Ukraine ratified the European Convention on the Legal Status of Migrant Workers with Reservation - Ukraine recognizes the migrant workers' right to organize for the protection of their economic and social interests except political parties and trade unions.

It should be noted that in accordance with the Law of Ukraine "On Public Associations" the founders of a public organization may be citizens of Ukraine, foreigners and persons without citizenship who are staying in Ukraine on lawful grounds and have attained 18 years of age. The number of founders of a public association may not be less than two persons".

It should be mentioned, that the rights of public association are quite wide.

To realize its purpose (goals), a public association shall have the right to:

- distribute information about its activity, promote its goals;

- address government authorities with proposals, requests, and complaints in accordance with established procedure;

- get information on issues of public interest;

- take part in the drafting of legal acts related to the area of activity of the public association and important issues of public life;

- conduct peaceful assembly and others.

In our opinion, nationals of other Contracting Parties to the Charter have the right to organise taking into account that Article 1 of the Law of Ukraine "On Public Assosication" says that Public association is a voluntary association of physical persons and/or legal entities under private law for the purpose of exercising and protecting rights and freedoms and satisfying public, among them economic,, social, cultural, environmental, and other interests.

157. The ETUC representative noted that the situation had not changed. He asked the representative of Ukraine whether according to the law on associations mentioned above, foreigners could form an association similar to a trade union.

158. The representative of Ukraine replied that foreigners have the right to organise for the protection of their social and economic interests. She also indicated that the number of members of an association cannot be less than two persons.

159. The Chair also asked whether there were any differences between this type of association and a trade union.

160. The representative of the Netherlands stressed that irrespective of Ukraine's reservation to the European Convention on the legal status of migrant workers, this is an issue of discrimination on the grounds of nationality which falls under the Charter.

161. The representative of Ireland pointed out that the possibility of forming a public association did not address the non-conformity found by the ECSR. He suggested applying the working methods of the GC.

162. The representative of France noted that there had been three successive findings of non-conformity and that the GC should be consistent in applying its working methods.

163. The representative of Bulgaria underlined that there is no hierarchy between the Charter and the European Convention on the legal status of migrant workers and that the Charter refers only to migrant workers of other States Parties. He supported applying the GC's working methods.

164. The representative of Lithuania asked whether there was any political reason which could explain the situation of non-conformity on this point.

165. The representative of Ukraine referred again to the European Convention on the legal status of migrant workers and the reservation made by Ukraine. She stated that she should consult with the Ministry of Foreign Affairs.

166. The GC voted on a recommendation, which was rejected (0 votes in favour; 15 against; 22 abstentions). It then voted on a warning, which was carried (19 votes in favour; 5 against, 14 abstentions).

Article 6 - The right to bargain collectively

Article 6§1 – to promote joint consultation between workers and employers

RESC 6§1 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§1 of the Charter on the ground that it has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.

167. The Secretariat explained that the ECSR rarely finds non-conformity on this article. It was mainly a question of lack of information.

168. The representative of Azerbaijan provided the following information:

"With initiative of social partners Tripartite Commission on Social and Economic Affairs was established in the Republic of Azerbaijan with joint decision No 6, dated September 30, 2016 of the Cabinet of Ministers of the Republic of Azerbaijan, Trade-unions Confederation of the Republic of Azerbaijan and National Confederation of Entrepreneurs (Employers) of the Republic of Azerbaijan for the purpose of reviewing social and economic issues with participation of social partners and further developing social partnership in the country.

With its Decree No 366, dated June 24, 2016 the Cabinet of Ministers of the Republic of Azerbaijan delegated the authority to sign joint decision of social partners for establishment of Tripartite Commission on Social and Economic Affairs in the Republic of Azerbaijan on behalf of the Cabinet of Ministers of the Republic of Azerbaijan to the Ministry of Labour and Social Protection.

Tripartite Commission includes equal number of representatives of social partners. In recent years, socially important decisions have been discussed

at the Trilateral Commission on Social and Economic Issues and adopted taking into account the position of the trade unions.
In 2018-2019 Draft Law of the Republic of Azerbaijan "On unemployment insurance", Draft Law of the Republic of Azerbaijan "On Settlement of Obligations on Compulsory State Social Insurance Fees" and consultations on other issues were held and projects were discussed in detail by this Commision. Chief Collective Bargain signed with joint decision No 36, dated February 7, 2018 of the Cabinet of Ministers of the Republic of Azerbaijan, Trade-unions Confederation of the Republic of Azerbaijan and National Confederation of Entrepreneurs (Employers) of the Republic of Azerbaijan is in force during 2018-2019".

169. The ETUC representative recalled that the ECSR rarely finds non-conformity on this point and stressed that the lack of sufficient information dated back to 2010. He drew the GC's attention to Article 17 of its working methods and to the possibility of adopting a sanction.

170. The representative of Lithuania understood the concerns of the ETUC but noted that the information had been provided at this meeting by the representative of Azerbaijan.

171. The Secretariat underlined that a tripartite commission in itself would probably not be sufficient to satisfy the requirements of Article 6§1. There should be consultation between the two parties at all levels. The GC would need more detailed information.

172. The representative of Azerbaijan said that they would provide more information in the next report.

173. The Chair recalled Article 17 of the rules of procedure of the GC and asked whether the GC should wait four years more for the information to be received or vote on a recommendation or warning.

174. The representative of the United Kingdom asked if this was a case of repeated lack of information.

175. The Secretariat confirmed that this was a case of repeated lack of information.

176. The representative of Ireland pointed out that the consultation should cover many different matters and asked if the Tripartite Commission mentioned by Azerbaijan covered all these.
177. The representative of Azerbaijan confirmed that this was the case.

178. The representative of Denmark asked if all these matters were indeed covered by the Tripartite Commission and about the legal nature of the joint decision establishing it.

179. The representative of Azerbaijan replied that she would verify this.

180. The representative of the Netherlands was not satisfied with the information provided. She stressed that Article 6 of the Charter refers to all matters of mutual

interest at all levels, not only at the national level. She believed that the information was not sufficient to conclude that Azerbaijan was in compliance on this point.

181. The GC voted on a recommendation, which was rejected (0 votes in favour; 9 against; 27 abstentions). It then voted on a warning, which was carried (29 votes for, 2 against, and 9 abstentions).

RESC 6§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 6§1 of the Charter on the grounds that:

- ***joint consultation does not take place at several levels;***
- ***joint consultation does not cover all matters of mutual interest of workers and employers;***

joint consultation does not take place in the public sector including the civil service.

182. The Secretariat explained that even the tripartite commission mentioned in the report would probably not satisfy the requirements under Article 6§1 of the Charter.

183. The representative of Georgia provided the following information:

The Tripartite Social Partnership was introduced in Georgia in 2013 by adopting amendments to the Organic Law of Georgia "Georgian Labour Code". Pursuant to the Labour Code Tripartite Social Partnership Commission (TSPC) shall be a consultative body accountable to, the Chairperson of the Tripartite Commission, the Prime Minister of Georgia. The Tripartite Commission shall conduct its activity according to the Constitution of Georgia, international agreements of Georgia, laws of Georgia, resolutions of the Parliament of Georgia, decrees and edicts of the President of Georgia, resolutions and directives of the Government of Georgia, orders of the Prime Minister of Georgia, and other legal acts. Parties to the Tripartite Commission shall be the Government of Georgia, employers' associations and employees' associations acting in various sectors across the country. In the Tripartite Commission each party shall have 6 members who may represent different organizations. The Chairperson of the Tripartite Commission shall decide on admitting representatives of the above organizations to the composition of the Tripartite Commission. The Government of Georgia, along with the Chairperson of the Tripartite Commission, shall be represented in the Commission by top officials of the following government agencies:
a)Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia;
b)Ministry of Justice of Georgia;
c)Ministry of Economy and Sustainable Development of Georgia;
d)Ministry of Regional Development and Infrastructure of Georgia;
e)Ministry of Education, Science, Culture and Sport of Georgia.
Functions of the Tripartite Commission shall be:
a) facilitating the development of social partnership and social dialogue at all levels in the country between employees, employers and the Government of Georgia;

b)drafting proposals and recommendations on different issues in labour and other concomitant relations.
For discharging its functions within its competence, the Tripartite Commission may:
a)Review issues raised by parties as determined by the legislation of Georgia;
b) Hear information of parties on issues falling within its competence at the sessions of the Tripartite Commission;
c)Request from executive and local self-government bodies, as well as from other agencies, the materials required for the Tripartite Commission to review issues, as determined by the legislation of Georgia;
d)Invite, if necessary, as determined by the legislation of Georgia, the representatives from
different agencies, specialists, and experts of the respective fields for drafting appropriate proposals and recommendations; conflict of interest must be excluded when inviting the above persons;
e)Draft and submit proposals on issues falling within its competence to interested persons.
Following amendments to the Labour Code the Government of Georgia on October 7 2013, adopted a Resolution N258 on "Approving a Statute of the Tripartite Social Partnership Commission". Since establishment of TSPC the Government of Georgia is actively working on development and strengthening social dialogue in the country. In order for the TSPC to become credible and functional Government of Georgia made a decision to amend the Resolution N258 of 7 October 2013. The amendments defined that in case of absence of or by the order of the Prime-Minister, Minister of IDPs, Labour, Health and Social Affairs is entitled to call and lead the Commission meetings.
Since establishment, here have been five meetings of the commission.
Development of Social Partnership at the regional level is one of the priorities of GoG. To this end, based on the decision made at the TSPC meeting (February 10, 2017) Tripartite Social Partnership Commission of Autonomous Republic of Adjara was set up. On March 15 2019, meeting of Tripartite Social Partnership Commission of the Autonomous Republic of Adjara was held in Batumi. Commission adopted an action plan 2019-2020 and established a working group.
The Statute of the TSPC defines that the Commission is entitled to form working groups aiming at studying and discussing issues that fall under the competencies of the body. Accordingly, the main guiding document for the Tripartite Social Partnership Commission and the working group under the Commission is action plan.
The International Labour Organization has been continuously supporting Georgia and with its technical and financial support a strategic planning meeting for Tripartite Social Partnership Commission (TSPC) was held on February 18, 2018, in Kachreti, Georgia. The event was attended by the representatives of International Labour Organization, Government of Georgia, Parliament of Georgia and the social partners. Review of the 2016-2017 strategic plan of the Tripartite Social Partnership Commission was presented and forthcoming plans for 2018-2019 were discussed at the meeting (approved on April 19, 2018 at the TSPC meeting)).
Draft amendments are being currently elaborated introducing provision related to joint consultations based on EU directives.
Following the decision made by the Tripartite Social Partnership Commission the Parliament of Georgia ratified Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) in November 2017.

184. The representative of Denmark asked to clarify the second ground of non-conformity concerning the type of matters covered by the tripartite commission.

185. The representative of Georgia indicated that all matters concerning labour and employment were covered, such as amendments on labour legislation, active market policy, labour inspection, occupation health and safety law or ratification of ILO conventions.

186. The representative of Denmark asked whether consultations took place in the public sector.

187. The representative of Georgia could not confirm that joint consultations took place in practice for the public sector at every level and stated that Article 67 of the Law of Georgia on "Public Service" defines that officers may form or join a trade union to protect their rights in public service. Pursuant to the same article officers may be elected to management bodies of a trade union and participate in its activities without pay, on their free time. This means that public servants are entitled to the same rights and freedoms that trade union members have.

188. The ETUC representative asked whether consultation throughout the public sector took place in an organised way or not.

189. The representative of Georgia replied that there were no consultations in an organised manner and said that she did not have comprehensive information on the consistency of consultations at every level.

190. The ETUC representative stressed that if joint consultation does not exist in the public sector there will also be a problem under Article 6§2. This ground of non-conformity remains problematic.

191. The Chair asked who would need to start negotiations if public servants wanted for instance a salary increase.

192. The representative of Georgia underlined that if there was no trade union in that department public servants might use the sectorial trade union for negotiations. She was not aware about the practice of if it ever happened.

193. The Chair suggested asking about all this information for the next report and applying the working methods for the third ground of non-conformity.

194. The GC voted on a recommendation, which was rejected (1 vote in favour, 9 against and 27 abstentions). It then voted on a warning, which was carried (15 votes in favour, 1 against and 21 abstentions).

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

RESC 6§2 ARMENIA

The situation in Armenia is not in conformity with Article 6§2 of the Charter on the ground that it has not been established that the promotion of collective bargaining is sufficient.

195. The representative of Armenia provided the following information:
The trade union may act as an employee representative in collective labour relations with an employer, if more than half of the workers who have signed labour contract with the employer are members (participants) of a trade union. The provisions of a collective agreement concluded with the employer by the trade union with such representative authority shall also apply to all those employees who have signed labour contract with the employer but who are not members(participants) of the trade union.

If members (participants) of a trade union of the organization are not more than half of the workers who have signed an employment contract with the employer, in the collective labour relations with an employer, trade union can represent and defend only the interests of those employees who are members of the union.

In case of absence of a trade union in the organization, the functions of protecting the interests of employees may be transferred to the relevant regional or branch trade union in the manner prescribed by the law.

Part 1 of the Article 23 of the RA Labour Code states that the rights and interests of employees in labour relations may be represented and protected by the representatives of employees: trade unions, the representatives (body) selected by staff meetings.

Where an organization has no trade union (trade unions) or any of the existing trade unions fails to unite more than the half of the number of employees, then the staff meeting of the employees may elect representatives (body).

The existence of elected representatives (body) in the organization by the staff meeting should not interfere the implementation of trade unions functions.

In the absence of representatives of the employees in the organization, the functions of defending the representation and interests of staff meeting may be transferred by the staff meeting to the appropriate territorial or sectorial trade union.

In that case, the staff meeting elects a representative (representatives) who takes part in collective bargaining with the given employer within the delegation of the branch or regional trade union.

In accordance with Article 56 of the RA Labour Code:

1. In case several trade unions exist in the organization the collective contract of the organization is concluded between the joint representative entity of trade unions and the employer.

2. The joint representative entity of the trade unions is formed by trade unions through relevant negotiations. If the trade unions failed to reach an agreement on the formation of a joint representation of the trade unions, the decision on the formation of representative entity may be adopted by the staff meeting (forum).

In case the functions related to representations and protection of interests of employees are transferred to the corresponding territorial or sectorial trade union because of the absence of a trade union within the organization, the employer and the corresponding territorial or sectorial trade union are considered to be the parties of the collective agreement.

Thus, by combining paragraph 5 of Article 16 of "RA Law on Trade Unions" and parts 2 and 3 of Article 56 of the Code, it becomes clear, that even in case if no more than 50 per cent of the employees participate in the trade union, the trade union has the opportunity to represent and defend the interests of its members in collective labour relations.

Meantime, according to the part 2 of Article 56 of the Code, when there are more than one employees representatives in the organization (in which case the trade union that does not represent more than 50% of the employees may also act as such), a collective agreement of the organization is concluded between the employer and unified representative body of employees formed by employees representatives.

Therefore, it should be stated that according to the current regulations of the RA legislation, the trade union that unites not more than 50% of employees also has the opportunity to participate in the collective bargaining.

196. The Chair stated that answers were received in relation to the questions that were raised by the ECSR concerning the representativity of unions were half or more of the workers signed a contract with the employer and those with less than 50 workers.

197. The ETUC representative pointed out even though a union does not represent more than 50% of the workers there are possibilities to take part in the negotiations and asked since when the new system (legal framework) was introduced.

198. The Armenian representative stated that the new system came into force in 2014 when the amendments when the Labour Code was amended.

199. The ETUC representative asked if the information is completely new to the GC.

200. The Secretariat responded that it was new information, although there was another question concerning the coverage of collective agreements were information was not provided.

201. The Armenian representative in reply to the ETUC question said that the information was not provided in detail and some information was new. In regard to

the collective agreements, the numbers were not available, and the representative hoped that they will be available for the next report.

202. The GC took note of the information and decided to wait for the next evaluation of the ECSR.

RESC 6§2 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 6§2 of the Charter on the ground that there is not adequate promotion of voluntary negotiations between the social partners.

203. The representative of Azerbaijan provided the following information on the grounds for non-compliance:
According to Article 25 of the Labour Code of the Republic of Azerbaijan trade-union organizations, labour collectives, employers and relevant executive authority and representative bodies of employers within their mandate are entitled to initiate collective bargaining regarding the drafting of collective agreement, its signing and making amendments to it. The Party receiving written proposal to start collective bargaining shall start negotiations within 10 calendar days and send to the other Party initiating the collective bargaining information on their representatives who will take part in the bargaining. Collective bargaining starts on the day after the Party initiating the collective bargaining receives the respond letter. In case there is no trade-union organization at an enterprise, the labour team shall set up a commission with special bargaining power. If there are several trade-union organizations at the national, territorial and district level, a commission shall be established proportionate to employee members to conduct bargaining. Employers, as well as individuals representing executive bodies, local municipalities and organizations that are established and funded by them shall not be permitted to conduct bargaining or sign collective treaties and agreements on behalf of workers. The Rules of collective bargaining are established in Article 26 of the Labour Code. According to this Article, the parties shall set up a commission consisting of an equal number of representatives from each party to bargain for the purpose of drafting a collective contract or agreement or amendment to it. The structure of the commission, the agenda, venue and time of bargaining is determined by mutual consent of the parties. The parties are free to choose and discuss issues regarding the contents of collective agreement or contract. At the request of the commission the parties shall present necessary information for bargaining within five days. The bargaining parties shall be liable under the law for disseminating state or trade secret in accordance with legislation. In case of disagreement between parties during negotiations, protocol shall be drafted on cleavage of opinion. Final proposals of the parties on eliminating divergence of opinions, as well as date of resuming of bargaining are included in the Protocol. With a view to ensuring exercise of the right of workers to take part in the determination and improvement of working conditions and working environment trade-union organizations succeed in including commitments, such as organization of socio-cultural facilities, utilization of those facilities, organization of cultural events with workers and their family members within the undertaking, etc. in

the collective agreements with the employers. According to Article 32 of the Labour Code, a collective contract may be prolonged. The duration of a collective contract may be from 1 to 3 years. A collective contract take effect from the day of signing or the date indicated in contract. After the expiry of the specified period, a collective contract shall remain in effect until a new one is executed, but not exceeding 3 years. A collective contract shall not be nullified due to organizational-structural changes at the enterprise, termination of labour contract with the employer, as well as termination of activities of trade-union organizations, except the cases when the ownership of an enterprise changes or it is liquidated. In case the ownership of an enterprise changes, a collective contract remains valid for three months. Within this period parties shall start negotiations regarding the signing of a new collective contract or validating the previous one and making amendments or additions to it.

204. The Chair noted that the information presented was totally new.

205. The Secretariat stated that some of the information provided is new, but not enough information was provided on the procedure for collective bargaining which is the issue at stake.

206. The Lithuanian representative stated that in the working documents it has been repeatedly requested to Azerbaijan to provide information on collective bargaining and asked if collective bargaining is covered in the civil service.

207. The representative of Azerbaijan replied that in the civil service the collective agreements and collective bargaining are covered by Article 25 and 26 of the Labour Code.

208. The ETUC representative supported the intervention of the Secretariat that some information is new, but some of it maybe also not relevant. In addition, concerning the conclusions given in 2014, in that occasion was not provided any information on collective bargaining. The ETUC claimed that there is a lack of sufficient information on the part of Azerbaijan and asked to apply the working methods of the GC.

209. The United Kingdom’s representative asked if there was information on the coverage of collective bargaining agreements.

210. The representative of Azerbaijan stated that unfortunately the figures are not available on coverage rate and that hopefully in the next report figures will be given.

211. The Lithuanian representative asked whether Azerbaijan registers all collective agreements.

212. The representative of Azerbaijan responded affirmatively.

213. The Lithuanian representative asked whether in Azerbaijan all agreements of enterprises are registered and if it is possible to illustrate this figure.

214. The representative of Azerbaijan responded that the figures were not handed out by the ministry.

215. The Lithuanian representative said that private agreements are not registered in Lithuania, so it is a problem for the country to supply them. However, it is positive to hear the same does not apply for Azerbaijan.

216. The Chair stated that the registration of all agreements is one thing but the number of employees that are covered is another. The new information was noted on the one hand on the other hand the other information provided is not linked to the issue.

217. The ETUC representative mentioned that the relevant information was already received in 2014 and all the other information was not relevant to the questions that were asked. The information was only provided orally in the meeting and not in the national report examined by the ECSR in order for it to take a conclusion on conformity. So, there is a similar situation with the previous cycle.

218. The Chair asked whether the working methods of the GC should be applied, or should the information given orally be noted and ask for the government to send the information in the next report.

219. The United Kingdom's representative asked for two questions to be clarified. First, if there is a repeated lack of information and second if Article 17 of the GC rule of procedure should be applied.

220. The Secretariat responded affirmatively that this is a repeated lack of information although the conclusion is not formulated in the usual way. It is also added that in the 2014 conclusion there is reference to certain measures, but in the present case it was provided very general information. Ultimately it is lack of information.

221. The ETUC representative responded to the 2nd question of the UK's representative that indeed article 17 should be applied for issuing directly a warning and not a recommendation.

222. The GC decided on the application of Article 17 for a vote of issuing a warning for the repeated lack of information. The GC voted on a warning which was carried with 25 in favour 2 against and 14 abstentions. The warning was carried, and Azerbaijan was invited to provide the necessary information in the next report.

RESC 6§2 ESTONIA

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

223. The representative of Estonia provided the following information:
We thank the Committee and understand its concern regarding promotion of collective bargaining. The level of trade union membership in Estonia has been low over the years. Whether it comes from historical point of view or from the significantly high rate of micro companies (that is 94%), which have under 10 employees and who are not keen on concluding collective agreements, we have to admit still tackling with sufficiently promoting collective bargaining.

The representatives of social partners continue to be involved in work of different governmental work groups and reform committees. So social partners are very much involved in composing new regulations and in choosing new directions for Estonian labour and social policy. In addition, although the Employment Contract Act § 29 states, that The Government of the Republic shall establish the national minimum wage, then in established practice, since 1994 (if I am not wrong), the minimum wage, is actually agreed between the social partners - the Estonian Trade Union Confederation and the Estonian Employers' Confederation. Although the agreement is not formally a collective agreement, the Government is guided by this, and sets a minimum wage on a national level as agreed by the social partners without changing it.

At the same time, I feel the need to explain, that although the collective bargaining in enterprise level is not so common, it does not mean, that employees' rights are not guaranteed. At first point, Employment Contract Act already thoroughly covers the rights of employees, and therefore leave quite few aspects that actively could be even more improved by collective agreements. Of course, it is always possible to bargain individually or collectively over certain benefits and reach more favourable agreements. But secondly, in practice, it is more common that such benefits are established on the initiative of the employers on the company level and are part of the internal rules, that already cover all their employees. This is the main essence of the culture of employment relationship, and both employees and employers have been satisfied with such practice.

However, Estonian Government has set a goal in its Action Plan for 2019-2023, to specify the organization of strikes and negotiations procedures. The analysis and proposals for possible amendments should be made by April 2020.

From this summer, at the initiative of the Ministry of Social Affairs, in order to promote open government partnership and address possible problems of employers, employees and collective bargaining, regular tripartite meetings are urged to beheld with the Estonian Trade Union Confederation and the Estonian Employers' Confederation. The first meeting took place in August and the next one is taking place already in the end of September. In addition, earlier this month, Estonian Parliament set up a trade union support group to support the trade union movement and protect the interests of workers in legislative work.

To conclude, we hope, that the parliamentary support group will be as successful as other parliamentary support groups have been on promoting different topics, and all in all broader discussions among the society would rise.

224. The ETUC representative pointed out that there is room for improvement, but looking at the figures in the so-called benchmarking ETUC/ETUI Benchmarking Working

Europe 2019 (chapter 3, p. 56 ff.), the figures illustrate a very low percentage with 90% not covered by collective agreements in the years 2014-2016. When the current figures are compared to previous figures there is a decline which represents a negative trend. He said that it is worrying for an economy like Estonia's which is comprised of many small companies, that even in companies with more than 250 employees only 27% of employees are covered by collective agreements. The ETUC representative said that the situation is far from satisfactory even if new initiatives are heard, but collective bargaining issues needs to be improved.

225. The Lithuanian representative asked the secretariat what is the sufficient coverage rate required by the ESCR on collective agreements. The representative notes that the region has historical and political issues on collective agreements and bargaining and the governments do what they can to improve the situation, but it is difficult to make people join trade unions. For that reason the figures are so low.

226. The Secretariat noted that concerning the coverage rate the ECSR has not a fixed threshold or a level in the abstract on the sufficient coverage rate. It is examined case by case, with 34% considered to be too low, but the committee situates that percentage in the context of the measures taken by the government. Conversely, above 50% for the ECSR it is considered satisfactory.

227. The representative of the United Kingdom pointed out that although the coverage rate is examined on a case by case, in the working document there are no details on what measures the government has taken. Consequently, it is hard for the GC to make an assessment based on measures, as the only evidence is the report of Estonia, and the statement concerning the historical and regional issues.

228. The Chair underlined that the rate is low on collective agreements and asked the Secretariat on the coverage rate. If a company has signed a collective agreement and 14% percent are covered, then 14% covers the whole sector of the enterprise or the national level.

229. The Secretariat replied that the ECSR is looking at national level coverage rate, although it would be of interest to look into a more defined area. Concerning Estonia, it is acknowledged that measures are being taken and examples provided, and as new information was provided these reflects that Estonia is taking the issue seriously and is attempting to remedy it.

230. The Estonian representative asked what is the true aim of the article 6.2. If the aim is just to have a high figure regardless of the society's true mindset. Then theoretically with some changes in the legislation we could say that with the national minimum wage agreement that was described in the statement, we could be having 100% coverage.

231. The Secretariat pointed out that the aim is to allow employees and workers to conclude collective bargaining agreements. The Secretariat mentioned that it is not

in his belief that a 100% rate coverage can be achieved, but the aim is to try to increase collective bargaining coverage with whatever means possible.

232. The Chair mentioned that besides figures an advertisement campaign could also be launched in favour of collective bargaining agreements, in certain cases figures have shown that this sort of campaigns was successful.

233. The GC took note of the information provided and decided to wait for the next decision of the ECSR.

RESC 6§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 6§2 of the Charter on the ground that: The promotion of collective bargaining is not sufficient It has not been established that an employer may not unilaterally disregard a collective agreement.

257. The representative of Georgia provided the following information:

Currently, the Ministry of IDPs, Labour, Health and Social Affairs of Georgia does not record collective agreements, but in order to get information, the Ministry addressed the Georgian Trade Union Confederation and was informed that there are 54 collective agreements (at the primary union level) and 1 sectoral (educational sector). Currently, Ministry of IDPs, Labour, Health and Social Affairs of Georgia is working on the amendments to the decree N301 on "Labor Dispute Settlement Procedures" in order to make the mechanism more functional and effective. The aim of the amendments is to establish a mechanism for effective resolution of collective labor disputes. Disputing parties will be able to resolve a collective labor dispute in a short period of time and no expenses. The amendments encompass setting ground rules, defining rights and obligations of parties, etc.
Promotion of collective bargaining and awareness raising on the rights of employees to benefit from labour mediation is one of the activities under the Labour and Employment National Strategy. Organic Law of Georgia "Georgian Labour Code" determines collective bargaining and collective agreements. In particular, chapter X defines that: A collective agreement shall be concluded between one or more employers, or one or more employers' associations and one or more employees' associations. When one of the parties conies up with an initiative to conclude a collective agreement, the parties shall be obliged to bargain collectively in good faith. When bargaining collectively, the parties shall provide each other with information on the issue(s) of the bargain. A party may not give the other party confidential information, but when providing confidential and/or other information, the party may require keeping the information confidential. The state or local self-government bodies shall not interfere in the process of concluding a collective agreement. An agreement concluded as a result of similar interference shall be void. When concluding or terminating a collective agreement or changing its conditions, or for protecting the rights of employees, an employees' association shall act through its representatives. Representation shall be confirmed by a written power of attorney signed by the employees concerned and by the person vested with the right of representation.

258. The Chair noted the negative conclusion of the ECSR that an employer may not unilaterally disregard a collective agreement. Furthermore, the Chair asked in case an employer was to disregard a collective agreement if then the case could be taken to court.

259. The Georgian representative responded affirmatively, in Georgia an employee can go to court when they have a dispute and their labour rights are violated. However, the employer and the minister can appoint a mediator at an initial stage who can resolve such disputes more quickly and without expense.

260. The Secretariat mentioned on the point that an employer may not unilaterally disregard a collective agreement; it is not a concern about whether the parties can go to court, but it seemed to the ECSR that there was no obstacle that an employer can disregard a collective agreement. That was the real problem and not whether parties can go to court.

261. The Georgian representative pointed out that when one of the parties comes up with an initiative to conclude a collective agreement, the parties shall be obliged to bargain collectively in good faith.

262. The Secretariat responded that it seems more like a recognition that the employee has to discuss in good faith concerning an agreement. In this sense it is discussed when the agreement has been concluded and if there is no protection in Georgian law.

263. The Georgian representative responded that although the legislation may not refer directly to all agreements that are legally binding from the employer's side, all have the right to go to court and they can claim their rights. In addition, it might not be in the Labour Code, but if the agreement is violated, under any part of the agreement, there is a right to go to court.

264. The Secretariat mentioned that the issue is in non-conformity since 2010 and the Georgian authorities have not fully understood the case. If the Georgian representative confirms that collective agreements are legally binding, then the problem seems to be solved a party can reasonably go to court to enforce their right.

265. The Georgian representative said that will check the relevant legislation and reply. In addition, it was mentioned that all agreements are legally binding, and everyone has the right to claim under them.

266. The Chair thanked the Georgian representative for the encouraging information. It is requested that the next report specify the missing information. Concerning the 3rd ground of non-conformity, it seems that the legal framework allows for the participation of employees in the public sector in the determination of their working conditions. The Chair expressed his hope that the situation will improve

in the upcoming years and therefore the GC decided to await the next evaluation of the ECSR.

RESC 6§2 LATVIA

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

267. The representative of Latvia provided the following information:
Latvia considers that it has sufficiently promoted collective bargaining considering the national circumstances. Latvia has undertaken various activities to improve the situation. For example, on 28 March 2019, the Parliament (Saeima) adopted the amendments to Article 68 (Supplements for Overtime Work or Work on a Public Holiday) of the Labour Law. These amendments came into force on 1 May 2019. They allow the parties of a sectoral general agreement to agree on a lower rate of overtime pay (than that provided in Article 68, Paragraph 1) if a sectoral collective agreement provides for a substantial increase in the minimum wage (compared to the statutory minimum wage defined in the Regulation of the Cabinet of Ministers) in the sector concerned. Thus, the amendments aim to facilitate the conclusion of sectoral collective agreements providing better protection for workers and limiting "envelope wages" and the informal economy.

In close collaboration with the social partners, Latvia implements various projects to promote collective bargaining. They also contributed to the work on the above-mentioned amendments to the Labour Law.

In 2017, the social partners started the implementation of a European Social Fund (ESF) project aimed to encourage and improve collective bargaining on a sectoral level. The objective of the project is to sign five sectoral collective agreements in five economic sectors - telecommunications, wood processing and forestry, road transport, chemistry and construction. This pilot project is the central platform to develop sectoral collective bargaining in Latvia. Its outcomes serve the interests of all most representative social partners in Latvia - employers, workers and the Government.

Within the project, the social partners concluded that, in practice, labour standards and employment conditions, including minimum wages, are regulated through the tripartite cooperation mechanism, not collective bargaining. When there is a need to set new or amend an existing employment conditions, the social partners initiate a discussion in the labour and social subgroup of the National Tripartite Cooperation Council. Consequently, the current provisions of the Labour Law are detailed and do not provide much space for collective bargaining.

The social partners discussed a possibility to allow deviating from the provisions of the Labour Law by sectoral collective agreements. It was a pilot initiative to avoid "one standard" for all sectors and professions. Trade unions also researched ILO standards and interpretation, as well as the best practice of countries that are successful in collective bargaining.

As a result, social partners agreed with the Government to amend the Labour Law providing a possibility to deviate from one labour provision - Article 68 setting the minimum amount of supplementary payment for overtime work of not less than 100 per cent. Now, it is allowed to deviate from the statutory payment for overtime work by a sectoral collective agreement. It is possible if all the following conditions are met and the collective agreement is:

- *Universally binding (erga omnes) in the sector concerned;*

- *Signed by a trade union affiliated to the largest confederation of trade unions;*

- *Provides for a significant rise in the minimum wage in the sector, which is not less than 1.5 times higher than the statutory minimum wage and*

- *The supplementary payment for overtime work sets by this sectoral agreement is not less than 50 per cent.*

268. The UK representative asked if the GC could provide a comment to the ECSR in relation to how the conclusions of this article and paragraph are presented. The representative added that in the conclusion of Latvia there is a cause and effect statement, because coverage rate of collective bargaining is low therefore voluntary negotiations were not sufficiently promoted, although there is an intervening variable that was discussed in the case of Estonia, because bargaining agreements are perceived differently by society in general(also for historical reasons). A comment to the ECSR could be made concerning the situation in these countries.

269. The ETUC's representative following the UK's comment agreed that the basis of the conclusions could be collective agreements coverage. However, there are many ways and factors that it could or could not be reached. The factors that it could be reached are promotional actions, awareness raising etc., but here is a legal aspect to what extend the legal framework is promoting negotiation on different levels and it would not be limited to the coverage of collective bargaining. In relation to the intervention of the Latvian representative it can be confirmed that a lot of efforts have been made by the governments and the social partners to promote collective bargaining and agreements and they were successful in doing this. The representative notes that he will not intervene on whether the option to deviate towards lower standards as the best option, the option Latvia have chosen seemingly is effective in concluding collective agreements, but it can be seen why the ECSR is not completely satisfied with it.

270. The Chair noted that the Latvian representative has partially convinced the ETUC that they are in the right direction in the promotion of collective bargaining for this reason the GC decided to take note of the information provided and awaits the next evaluation of the ECSR.

RESC 6§2 LITHUANIA

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

271. The Secretariat recalled that it has in the past found that where collective agreement coverage is low, 15-20% (Eurofound source), it considers that the situation cannot be considered as being in conformity with the Charter on the ground that low coverage indicates that the machinery for voluntary negotiations has not been efficiently promoted (Conclusions 2010, Latvia). Accordingly, it finds that the current situation is not in conformity with the Charter.

272. The representative of Lithuania provided the following information:

The Government empowered the Ministry of Social Security and Labour of the Republic of Lithuania to register collective agreements signed at national, sectoral (production, services, professional) or territorial (municipal, county) levels, to which trade unions and employers organisations are parties. According to the Labour Code, collective agreements of enterprises were not registered and no data on the exact number of collective agreements signed at this level were available.
From 2013 to the end of 2016, 16 sectoral and 27 teritorial collective agreements were registered in the Ministry. At the end 2016 45 collective agreements (18 sectoral and 27 territorial) were effective in Lithuania. Issues of wages, social partnership support, additional employment support and occupational health and safety were regulated in the agreements.
Implementing the measure ***Social Dialogue Promotion*** *of the* ***Programme for Human Resources Development 2007–2013****, projects were carried out and financed by the European Social Fund and state budget of the Republic of Lithuania. As outcome of this project 21 territorial, 12 sectoral, 60 enterprise level collective agreement were signed. In order to promote social dialogue, the Action Plan for Enhancement of Social Dialogue in Lithuania 2016–2020 was approved. Implementation of the measures of this action plan are funded from the Operational Programme for EU Funds' Investments. Financial support is aimed at development of social dialogue between employers and employees' representatives, public, private and non-governmental sectors (at national and local levels), by including training, culture institutions and local communities.*

273. The ETUC representative noted that on the one hand it could be confirmed that efforts have been made by using European Funds to promote social dialogue and collective bargaining. In addition, it is hoped the Action Plan will work, as the figures presented illustrate deterioration, but these numbers could concern an earlier period. Lastly the representative added that there is no correlation between low trade union memberships and high coverage of collective agreements, but whether trade union agreements can be concluded and how they apply.

274. The GC took note of the information provided and positive developments and decided to await the next evaluation of the ECSR.

Article 6§3 - to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes

RESC 6§3 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 6§3 of the Charter on the grounds that:

- ***decisions of the court of inquiry are binding on the parties even without their prior consent;***
- ***compulsory arbitration is permitted in circumstances which go beyond the limits set by Article G of the Charter.***

275. The representative of Malta provided the following information:

With regards to the 2018 conclusions on Article 6.3 on the court of inquiry, proposals have been put forward so that articles 69 (4) (a) and 69 (5) of the Employment & Industrial Relations Act are deleted, and articles 2, 71 (b), 76 (2), and 85 of the same Act are amended. The mentioned deletions and amendments are intended to remove the powers of the Minister to set up a court of inquiry, and Malta is commited to start the process to affect these changes in consultation with the relevant stakeholders, by the end of this year.
Furthermore, with regards to article 74 (1) and (3) of the Employment & Industrial Relatiuons Act allowing compulsory recourse to arbitration at the request of one party without consent of the other one, Malta is of the opinion that the Industrial Tribunal was set up by the Employment & Industrial Relations Act to hear and decide all cases falling under its exclusive jurisdiction, among which are trade disputes. This mechanism is used in case of failure of an agreement reached between the two parties. In view of this Malta feels that the purpose of the Tribunal would be gravely undermined if we were to accept a scenario where a party cannot challenge another party unless the latter agrees

276. The Chair asked whether a party could still refer a dispute to arbitration, with binding effect, after the suppression of the court of inquiry.

277. The representative of Malta confirmed that, although the Industrial tribunal is not a court, its decision would be applicable to both parties.

278. The representative of Denmark asked what was the position of social partners about this situation.

279. The representative of Malta indicated that he was not aware of any complaints on this procedure from social partners.

280. The Chair, referring to its previous question, asked again whether, despite the proposed amendments, it would still be possible for a party to refer the dispute for arbitration, without the agreement of the other party, and yet obtain a binding decision for both parties.

281. The representative of Malta indicated that he had nothing to add.

282. The Secretariat pointed out that, as regards the second ground of non-conformity, the situation would in fact remain unchanged since 1992 and invited the authorities to provide in their next report further elements, if any, which would justify the restriction to the right to conciliation and arbitration in the light of Article G of the Charter.

283. The GC took note of the information provided and decided to await the next ECSR assessment.

RESC 6§3 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 6§3 of the Charter on the ground that compulsory arbitration is permitted in circumstances which go beyond the limits set by Article G of the Charter.

284. The representative of the Republic of Moldova provided the following information:

Labour Code of Republic of Moldova establishes the following conciliation procedure for the settlement of labour disputes, applied for all sectors, including central and local public administration:

According to the Article 359 of Labour Code, for settling of labour disputes a conciliation commission has to be created. The conciliation commission is created ad hoc and includes an equal number of representatives of the conflict parties.

The Commission shall conciliate the parties of the labor dispute within a maximum of 10 working days from the date of establishment of the commission.

If the members of the conciliation commission have reached an agreement on the claims made, the commission will adopt a binding decision for the parties of the conflict, submitted to them within 24 hours from the moment of adoption.

If the members of the conciliation commission have not reached an agreement, the parties of the conflict will be informed within 24 hours.

In case the parties have not reached an agreement or do not agree with the decision of the conciliation commission, each of them, within 10 working days from the expiry of the term of the conciliation of the labor dispute or from the date of the receipt of the decisions of conciliation commission, is entitled to file a request for conflict resolution in the court.

Settlement of the labour disputes within the mediation organizations – is another option for labour disputes settlement in Republic of Moldova.

According to Article 29 of the Law on mediation, the following labor disputes may be subject to mediation:

- Individual labor disputes related to the payment of damages, in case of non-fulfillment or improper fulfillment of obligations by one of the parties of the individual employment contract;

- The individual labor disputes regarding the conclusion, execution, modification, suspension, termination and nullity of the individual employment contract;

- Collective labor conflicts, in case the parties to the conflict have not reached an agreement or do not agree with the decision of the conciliation commission.

According to the Article 21 of the Law on mediation, parties of the conflict, by common agreement, appoint one or more mediators or may request a mediation organization to appoint a mediator and sign a mediation agreement.

285. The Chair asked if the new legislation in 2015 was contained in the report.

286. The representative of the Republic of Moldova responded that it was not included.

287. The Secretariat pointed out that the information provided does not change anything in respect of conciliation.

288. The Chair said that he is not familiar with the changes in 2015 but noted that it does not change much in relation to reconciliation and arbitration.

289. The GC decided to take note of the information provided and await the next evaluation of the ECSR.

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.
RESC 6§4 ARMENIA
The Committee concludes that the situation in Armenia is not in conformity with Article 6§4 of the Charter on the grounds that:

- **the percentage of workers required to call a strike is too high;**
- **strikes are prohibited in the energy supply services;**
- **All members of the police are prohibited from striking;**
- **Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.**

290. The representative of Armenia provided the following information:

In relation to the first ground of non-conformity,

- *<u>the percentage of workers required to call a strike is too high</u>**<u>;</u>***

Currently relevant works for amendements to the Labour Code are in the process and within this framework the Article 74 of the Labour Code which is related to the regulations on strikes will be amended as well. The new draft of this Article is already developed and it states the following:

1. *The Trade Union has the right to adopt a decision to call a strike according to legislation. The strike can be called if a corresponding decision is approved by secret ballot in the following case:*

    - *If at least two-thirds of the organization employees take part in the voting and the decision is approved by the majority of votes of the employees participating in the voting;*
    - *The subdivision of the organization calls strike if at least two-thirds of the employees of that subdivision take part in the voting and the decision is approved by the majority of votes of those employees participating in the voting. If the declared strike of structural subdivisions of the organization hampers ongoing activities of other subdivisions then the strike should be approved by the majority of votes of employees of voting that may not be less, than the one third of the total number of organization employees.*

To summarize: according to the new draft of this Article, the percentage of workers required to call a strike has been decreased by around half in comparison with the existing regulation.

In relation to the following grounds of non-conformity,

- *strikes are prohibited in the energy supply services;*
- *All members of the police are prohibited from striking;*
- *Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.*

According to the Article 75 of the Labour Code the strikes are prohibited in certain services, including energy supply services and the police from the point of view ensuring minimum conditions (services) necessary to meet the immediate (vital) needs of the society as well as to prevent hazardous consequences for life and health of the society or individuals.
However, it should be mentioned that the same Article of the Labour Code has a provision which states that the demands raised by the employees of the mentioned services are discussed at the republican level of social partnership with the participation of corresponding trade union and employer.
This means that despite the fact that the strikes are prohibited for the employees of the mentioned services for protection of the rights and freedoms of others or for protection of public interest, national security, public health or morals as prescribed by the Article G of the Charter, the mentioned employees have opportunity to raise their demands and discuss accordingly in a higher level, which is republican level of social partnership.
Meantime, related to the question of the Committee whether employee representatives are involved in the discussion on the minimum service to be provided on an equal footing with employers: currently relevant works for amendements to the Labour Code are in the process and within this framework the Article 77 of the Labour Code will be amended as well. According to the new draft

the minimum service requirements shall be set as a result of negotiations with the relevant representatives of employers and employees.

291. The representative of the ETUC noted that the information provided by the Armenian representative concerns only changes related to the 1st ground of non-conformity. Therefore, the representative suggested that the GC on the first ground of non-conformity take note of the information provided and the new developments and wait for the next assessment. In relation to the other three grounds proposed that the GC apply its working methods.

292. The GC agreed to vote on the 2nd, 3rd and 4th ground of non-conformity since there is the same conclusion from 2014.

293. The GC proceeded to vote the following:

- On the second ground of non-conformity:

Concerning the proposal for a recommendation, the result of the vote was: 0 votes in favour, 8 votes against, 32 abstentions. The recommendation was not carried.
Concerning the proposal of issuing a warning, the result of the vote was: 21 votes in favour, 2 votes against, 16 abstentions. The warning was adopted.

- On the third ground of non-conformity:

Concerning the proposal for a recommendation, the result of the vote was: 0 votes in favour, 6 votes against, 32 abstentions. The recommendation was not adopted.
Concerning the proposal of issuing a warning, the result of the vote was: in favour, 16 votes; against, 4 votes; 21 abstentions. The warning was adopted.

- On the fourth ground of non-conformity:

Concerning the proposal for a recommendation, the result of the vote was: 0 votes in favour, 6 votes against, 35 abstentions. The recommendation was not carried.
Concerning the proposal of issuing a warning, the result of the vote was: 13 votes in favour, 4 votes against, 25 abstentions. The warning was adopted.

RESC 6§4 AZERBAIJAN

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

- **restrictions on the right to strike for employees in essential services are too extensive and go beyond the limits permitted by Article G of the Charter;**
- **the prohibition on the right to strike for public servants does not comply with the conditions established by Article G of the Charter.**

294. The representative of Azerbaijan provided the following information:

Article 6.4 Collective activity

According to Article 271 of the Labour Code decision on striking is made by trade-union organization at the worker's conference or in the way stipulated by Article 262 of the Labour Code. Collective requests regarding non-fulfillment or partial fulfillment of a collective agreement or contract, as well as other labour and social issues are proposed at the general assembly (conference) of workers or trade-union organization. Decision is made with majority of votes and if by trade-union organization, in the way established in its statute for making of other decisions. Employees can appoint their representative to participate at the negotiations with employer and propose collective request on their behalf or they may commission trade-union organization with conducting bargaining. Requests not fitting the economic resources of employer are not allowed. In case requests do not fit the economic capacity of the enterprise, the employer shall prove it based on feedback from auditor.
According to Article 281 of the Labour Code strikes shall be prohibited in certain service sectors (hospitals, power generation, water supply, telephone communications, air traffic control and firefighting facilities) which are vital to human health and safety. Arbitration shall be mandatory in these sectors if the parties do not resolve an organizational Labour dispute by reconciliation.
There is a restriction in public service on strikes. But, according to changes to Article 60 of the Constitution of the Republic of Azerbaijan everyone is guaranteed protection of his/her rights and liberties through the administrative remedies and in court. Everyone has the right to an unbiased approach to their case and to consideration of the case within a reasonable time period in the administrative proceedings and court. Everyone has the right to be heard in administrative proceedings and courts. Everyone may appeal against the actions and inaction of state bodies, political parties, legal entities, municipalities and their officials in administrative manner or in courts.
According to Article 20 of the Law of the Republic of Azerbaijan on Administrative proceedings everyone has the right to appeal to the administrative authority, to solicit, or to obtain information from the administrative authority, on matters that directly affect his rights and legal interests.

295. The Chair, since the situation remained unchanged, suggested to apply the GC working methods.

296. The GC agreed with this proposal.

297. The GC proceeded to vote the following:

- On the first ground of non-conformity:

Concerning the proposal for a recommendation, the result of the vote was: 0 vote in favour, 7 votes against, 32 abstentions. The recommendation was not carried.
Concerning the proposal of issuing a warning, the result of the vote was: 23 votes in favour, 3 votes against, 15 abstentions. The warning was adopted.

- On the second ground of non-conformity:

Concerning the proposal for a recommendation, the result of the vote was: 0 vote in favour, 7 votes against, 34 abstentions. The recommendation was not carried.
Concerning the proposal of issuing a warning, the result of the vote was: 16 votes in favour, 2 votes against; 23 abstentions. The warning was adopted.

RESC 6§4 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 6§4 of the Charter on the ground that the legislation in force requires that a decision to call a strike must be endorsed by the executive committee of a trade union.

298. The representative of Cyprus provided the following information:

I would like to inform the Committee that we very recently took this matter of non-conformity to our Minister and received instructions to proceed with an immediate amendment of the legislation currently in force, specifically to amend the provision that a decision to call a strike must be endorsed by the executive committee of a trade union, which was the point of non-conformity, in order to bring it into conformity with the social charter. We expect this process to be concluded in the few coming months.

299. The representative of the ETUC pointed out that the adoption of the legislative changes was already announced ETUC has been asking changes in law since 2010. He expressed hope that the mission can be considered accomplished by the end of the year.

300. The representative of Cyprus pointed out that all provisions needed to go through the House of Representatives. The reason of the delay is that the amendments concerning the ground of non-conformity went with the package of all the other amendments. The amendments will be adopted in order to be in conformity with the Charter.

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

RESC 6§4 ESTONIA

The Committee concluded that the situation in Estonia was not in conformity with Article 6§4 of the Charter on the ground that all public servants exercising authority in the name of the state are denied the right to strike and this blanket prohibition goes beyond the limits permitted by Article G of the Charter.

302. The representative of Estonia provided the following information:

As regards the ban to strike, nothing has changed in the legislation compared to the previous report.
We will not repeat explanations on how the civil servants were divided into officials and employees after the Conclusions 2010.
Regarding data, in 2018 the governmental sector had approximately 116 000 employees from which approximately 27 000 were officials, who have the ban to strike. § 7 subsection 3 of the Civil Service Act stipulates the tasks considered to be as exercising of official authority. These include directing of an authority, the exercise of state and administrative supervision, and proceeding of offences among others.
During the drafting of the Civil Service Act currently in force, it was considered that all the tasks described in the § 7 subsection 3 of the Civil Service Act are so

important that persons performing these tasks, that is officials, should be covered by the strike ban.
The ban serves a legitimate purpose in Estonia and is justified with public interest. Guaranteeing State functions has a primary importance, since under Estonian Constitution it is the fundamental right of the population. § 14 of the Estonian Constitution states that it is the duty of the legislature, the executive, the judiciary, and of local authorities, to guarantee the rights and freedoms provided in the Constitution. However, officials have sufficient safeguards under § 21 subsection 2 of the Collective Labour Dispute Resolution Act to safeguard their rights through negotiations, by the medium of the Public Conciliator or in court.
As it was mentioned yesterday during our explanations under Art 6 § 2, Estonian Government has set a goal in its Action Plan for 2019-2023, to specify the organization of strikes and negotiations procedures. This also includes specifying areas and sectors with the ban to strike. The analysis and proposals for amendments should be made by April 2020.
We would also like to refer to our earlier discussions this week under Article 5 on the interpretation of blanket prohibition and Article G, as our colleague from Lithuania brought up there are already various questions regarding interpretation of the Charter. We would welcome more thorough and clear explanations on the interpretation as the discussions in Estonia on this issue are about to rise. With that we refer to the tripartite meeting with the Estonian Trade Union Confederation and the Estonian Employers' Confederation held in August, which we mentioned during our presentation about Article 6 § 2. During that meeting, this question was also discussed.

303. The Chair encouraged the representative of Estonia to organise a meeting with the ECSR, considering that it is the ECSR that interprets the provisions of the Charter. The Chair pointed out that the Estonian representative that could have answered the possible questions of the GC has left the meeting.

304. The representative of the ETUC underlined that the restriction concerning the right to strike is part of an action program 2019-2020. It also pointed out that in 2010 the situation was far more forward then now: there were already draft laws submitted. It therefore asked the representative of Estonia what went wrong in the process.

305. The representative of Lithuania recalled that in 2006 before all the amendments were planned the GC voted on a warning, which was not carried. Afterwards, there were changes to the situation and the GC decided to wait for the next assessment of the ECSR. Nevertheless, she pointed out that now there is still the situation that all public servants have problem with the strike.

306. The representative of Bulgaria pointed out that not all public servants are denied the right to strike, only the 25%-26%.

307. The representative of Greece asked whether such figure refers to public servants or employees working for the government.

308. Upon proposal of the Chair, the GC voted on a recommendation, which was rejected (0 votes in favour, 9 against, 29 abstentions). It then voted on a warning, which was carried (13 votes for, 5 against, 22 abstentions.

RESC 6§4 GEORGIA

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

- ***it has not been established that in general the right to collective action of workers and employers, including the right to strike, is adequately recognized;***
- ***Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.***

309. The representative of Georgia provided the following information:

The constitution of Georgia guarantees the right to strike and defines that The right to strike shall be recognized. The organic law shall determine the conditions and procedures for exercising this right. The organic law determining the procedures and conditions is Georgian Labour Code.
The Labour Code determines the following:
Article 49 – Strike and lockout
1. A strike shall be an employee's temporary and voluntary refusal, in the case of a dispute, to fulfil, wholly or partially, the obligations under a labour agreement. The persons identified by the legislation of Georgia may not participate in a strike.
2. A lockout shall be an employer's temporary and voluntary refusal, in the case of dispute, to fulfil, wholly or partially, the obligations under a labour agreement.
3. In the case of a collective dispute, the right to strike and lockout shall arise upon the expiration of 21 calendar days after notifying the Minister in writing under Article 48^1(3) of this Law or after appointing a dispute mediator by the Minister on his/her initiative under Article 48^1(4) of this Law.
4. In the case of an individual dispute, the parties must notify each other in writing about the time, place, and type of a strike or a lockout at least three calendar days before the strike or the lockout starts.
5. In the case of a collective dispute, the parties must notify each other and the Minister in writing about the time, place, and type of a strike or a lockout at least three calendar days before the strike or the lockout.
6. During a strike or a lockout, the parties shall be obliged to carry on with conciliation procedures.
7. No lockout may last for more than 90 calendar days.
8. During a strike or a lockout, an employer shall not be obliged to pay an employee.
9. A strike or a lockout shall not be a basis for terminating labour relations.
Article 50 – Postponement or suspension of strike or lockout
If human life and health, safety of the natural environment, or a third person's property, or the work of a vital importance is in danger, the court may postpone the start of a strike or a lockout for a maximum of 30 days, or suspend a started strike or lockout for the same period.
Article 51 – Illegal strike and lockout

1. During the martial law or state of emergency, the right to strike or the right to lockout may be limited by a decree of the President of Georgia, which requires a countersignature of the Prime Minister of Georgia.
2. The right to strike cannot be exercised during the working process by the employees whose work activity is connected with safety of human life and health, or if the activity cannot be suspended due to the type of a technological process.
3. If one of the parties has avoided participating in conciliation procedures or has staged a strike or a lockout, the strike or the lockout shall be deemed illegal.
6. The court shall make a decision to declare a strike or a lockout illegal that shall be promptly notified to the parties involved. A court decision on declaring a strike or a lockout illegal shall be executed without delay.

Article 52 – Guarantees of employees

1. Participation of an employee in a strike may not be deemed a violation of labour discipline and may not serve as a basis for terminating a labour agreement, except when a strike is illegal.
2. If the court has declared a lockout illegal, the employer shall be obliged to restore labour relations with employees and pay them for idle working hours.
3. Employees who did not participate in a strike but could not perform their work because of the strike may be transferred to other work by the employer or be paid for the period suspended, based on the hourly rate of work.

Georgia was asked to provide information on the practical grounds used by the courts when postponing the strike. The case that was discussed by the court was strike in Tbilisi Metro, where employers appeal to court was approved and strike was postponed. The court took into consideration several factors including right to life under Constitution of Georgia and freedom of movement. Tbilisi Metro is one of the most important transport of the capital provides service to around 327 000 citizens per day. Preserving normal course of work is of a vital importance as paralyzing would endanger life of citizens.

Labour Code defines that the right to strike is prohibited in services connected with the safety of human life and health or if the activity "cannot be suspended due to the type of technological process". The list of services connected with the life safety and health is determined by Order No. 01-43/N of 6 December 2013. Consultations with state institutions and social partners on the feasibility of amendments to the second part of Article 51 of Labour Code and Order of the Minister of Labour, Health and Social Affairs of Georgia No. 01-43/N of 6 December 2013 determining a list of services connected with the life safety and health has already been started and information on results of the consultations will be submitted to the Tripartite Social Partnership Commission for the decision.

310. The representative of the ETUC, together with the Chair, thanked the Georgian representative for all the information provided for which the GC was waiting for quite a long time. He recalled that the second ground of non-conformity is for the first time negative. He also pointed out that the list of sectors which was established in 2013 was in consideration with this labour code amendment. As for the first ground of non-conformity, he suggested the GC to vote on a warning.

311. The Chair, together with the representative of Ireland and the representative of Lithuania, proposed to vote on a warning following the practice of Article 17 of the GC rules of procedure.

312. The GC voted on a warning, which was carried (11 votes for, 4 against, 26 abstentions).

RESC 6§4 REPUBLIC OF MOLDOVA

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

- ***the restrictions on the right to strike for public officials and employees in sectors including the public administration, state security sectors and national defence go beyond those permitted by Article G of the Charter;***
- ***the right to strike is denied to all employees in electricity and water supply services, telecommunication and air traffic control;***
- ***the restrictions on the right to strike of the employees of the customs authorities go beyond those permitted by Article G of the Charter;***
- ***the obligation imposed on workers on strike to protect enterprise installations and equipment go beyond those permitted by Article G.***

313. The representative of the Republic of Moldova provided the following information:

The Labour Code of Republic of Moldova is establishing who may call a strike at unit (employer), territorial, branch and national level.

At territorial level strike can be called by the territorial Trade Unions. At branch level strike can be called by Trade Unions at branch level. At national level strike can be called by respective national intersectorial Trade Unions. In the case of several national Trade Unions, each of them can call strike at national level.

In 2018 have been revised and reduced the list of employers having restrictions to the right to strike, according to the Governmental decision no. 656, there are restrictions to the right to strike for the following sectors:

- *Public administration: top-level management and management positions;*
- *The secretariat of the Parliament: top-level management and management positions;*
- *State Chancellery: top-level management and management positions;*
- *The President's apparatus: top-level management and management positions;*
- *Medical-sanitary institutions: on-call staff from the medical-sanitary and pharmaceutical institutions, regardless of the type of property and their legal form of organization, and from the National Agency for Public Health;*
- *Telecommunications sector: employees involved in operational services for maintenance and management of electronic communications infrastructure and services;*
- *Electricity supply – all employees;*
- *Water supply – all employees;*
- *Air traffic control - Employees of air traffic management services;*

- *Ministry of Internal Affairs - Civil servants with special status within the sub-divisions of the ministry, administrative authorities and subordinate institutions;*
- *The courts – judges;*
- *Information and security service - Civil servants with special status;*
- *National defense - the military and all the employees;*
- *Customs authorities - Civil servants with special status;*
- *National Administration of Penitentiaries - Civil servants with special status;*
- *Prosecution – prosecutors;*
- *The State Protection and Guard Service - Protection officers (persons with public dignity functions and civil servants with special status).*

Conclusions:

- *The restriction on the right to strike have been cancelled partially for public employees in the public administration, telecommunication, air traffic control;*
- *Workers on strike still have the obligation to protect enterprise installations and equipment.*

314. The representative of the ETUC pointed out that there have been some developments in relations to the categories mentioned under the first ground of non-conformity. However, as for the second and the fourth grounds of non-conformity there have been no changes. These categories remain on a restriction or ban to strike.

315. The representative of the Republic of Moldova pointed out that also for the second ground of non-conformity there have been changes. Before a restriction for all employees was provided; now the restriction is only for telecommunication and for air traffic management services. There is a partial positive evolution also with regrds to the 2nd ground.

316. The representative of the UK asked whether the representative of the Republic of Moldova could provide more information on the circumstances of improvements.

317. The representative of Moldova stated that in 2018 the list has been revised. Before the revising, all the employees weren't allowed to strike. Today, from these sectors mentioned in the second ground, only employees in electricity and water supplies cannot strike. In telecommunication and air service sectors, only the employees ensuring minimal service cannot strike. The majority of employees are therefore allowed to strike.

318. The representative of Lithuania pointed out that after the explanation provided, the GC could take note of the positive developments concerning the first two grounds. As for the third and the fourth ground, she proposed that the GC apply its working methods.

319. As regards the third ground of non-conformity, the GC voted on a recommendation, which was rejected (0 votes in favour, 8 against, 31 abstentions). It then voted on a warning, which was carried (13 votes for, 6 against, 19 abstentions).

320. As regards the fourth ground of non-conformity, the GC voted on a recommendation, which was rejected (0 votes in favour, 9 against, 29 abstentions). It then voted on a warning, which was carried (13 votes for, 1 against, 27 abstentions).

RESC 6§4 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 6§4 of the Charter on the ground that a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members.

321. The representative of Romania provided the following information:

In Romania, the social dialogue law define and regulate distinctly the collective labour conflict related to the negotiation and conclusion of collective labour agreements (chapter II - Law 62/2011) and the exercise of the right to strike as a form of extreme manifestation of the collective labour conflict (chapter V - Law 62/2011).
Thus, the strike can be triggered by the representative trade union (with the agreement of at least half of the number of union trade members which means a quarter of the employees) or, if no representative trade unions are organized, by the employees' representatives (free elected by all employees), with the written agreement of at least a quarter of the employees.
Also, in the absence of a collective agreement (for example, in the units with under 21 employees where to initiate the collective bargaining is not mandatory), there are no conditions for initiating and triggering the collective action and strike.
The government has always been interested in improving the regulation and enforcement of rights and over the past's years initiated successive consultations with the social partners but without consensual agreement on the revision proposals.
Currently, there is a legislative initiative for amending the Law on Social Dialogue in the parliamentary debate, with the involvement of the social partners.

322. The ETUC representative recalled that in 2006 the GC voted on a warning. It pointed out that the GC is now getting the same information that the plans are on the way. This was told in 2006, it is a repeated violation and the GC already adopted a warning in 2006 on this point. He therefore invited the GC to consider how to proceed.

323. The Chair recalled that in 2006 there were 2 grounds of non-conformity. As for the second ground, the GC asked the Romanian government to provide all the relevant information and that ground of non-conformity was not repeated. It was not pointed out by the ECSR. It remains one ground of non-conformity regarding Article 6.4.

324. The representative of Poland asked what the content of the amendment that modifies the bill on collective action is.

325. The representative of Romania states that she should verify it with the colleagues.

326. The Chair pointed out that it is difficult to understand if there are really new information here because the GC is not familiar with the content of the amendments. The Chair proposed to vote on a recommendation or a warning.

327. The GC voted on a recommendation, which was rejected (0 votes in favour, 8 against, 30 abstentions). It then voted on a warning, which was carried (14 votes for, 6 against, 20 abstentions).

RESC 6§4 SERBIA

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

- ***Restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G;***
- ***when establishing a minimum service to be provided during a strike worker (nor their organisations) are not involved on an equal footing with employers when deciding on the nature or degree of the minimum service to be provided;***
- ***employers have the power to unilaterally determine the minimum service required during a strike.***

328. The representative of Serbia provided the following information:

The Constitution of the Republic of Serbia -Article 61- stipulates the right of employees to strike.
Strike may be organised in an enterprise or in other legal entity or in its part that performs economic or other activity or service or as general strike. Strike may be organised as a warning strike that cannot exceed one hour.
Employees are free to decide on their participation in a strike.
Law on Strike foresees the limitation of the right to strike in the activities defined by Article 9 of the Law on Strike - in the essential services or the service which disruption of work, due to its nature, may jeopardize life and health of people or cause a large-scale damage.
Among these services are: electric energy services, water management, transport, information (radio and TV}, postal services, utilities, production of essential food provisions, health and veterinary care, education, social child care and social welfare.
Essential services also include security and safety of the country, determined by the competent authority, in line with the law, as well as jobs necessary for the enforcement of international obligations.
Concerning the fact that Serbia has received a negative conclusion of the ECSR for implementation of this article, as a part of a comprehensive reform of labour legislation, the Ministry of Labour, Employment, Veteran and Social Affairs has prepared the new Law on Strike. The working group should finish the work on new law by the end of this year and the new Law on Strike should be adopted in the first half of the next year.
According to the information I received from the Labour Department, restriction on the right to strike in certain sectors will be revised and the list will be significantly shorter and the rules of establishment of a minimum service during

the strike will be changed. This new law has been prepared in cooperation with the ILO.
We will provide all necessary details in our next report.

329. In reply to a question from the ETUC, the representative of Serbia pointed out that they received an informal opinion and some remarks from the DG Employment of the European Commission in Brussels.

330. The GC took note of the information provided by the representative of Serbia and decided to wait for the next assessment of the ECSR.

RESC 6§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 6§4 of the Charter on the ground that the right to strike for a large number of state/public sector employees is prohibited and the restrictions go beyond the limits permitted by Article G of the Charter.

331. The representative of the Slovak Republic provided the following information:

The conclusions of the ECSR state that a large number of state and public sector employees are prohibited from exercising their right to strike. However, the Slovak Republic believes the situation is not as straightforward. There are certain categories of public servants the right to strike of which is limited. These persons are judges, prosecutors, armed forces members, fire brigade members, rescue service members and nuclear power plants operators. The majority of employees of the public sector are free to participate on a strike, as the majority of such employees work in public institutions such as ministries, state organizations, budgetary organizations, etc.

Article 37 paragraph 4 of the Constitution of the Slovak Republic states that the right to strike of certain categories of persons is limited. As I mentioned, these persons are judges, prosecutors, armed forces members, fire brigade members, rescue service members and nuclear power plants operators. The Slovak Republic believes this is why it was found to be in non-conformity with this provision of the charter.

However, it has to be stated that the Constitution then stipulates that this restriction is to be specified and made more concrete by a separate piece of legislation in accordance with Article 54 of the Constitution.

This legislation is represented by the Act No. 2/1991 Coll. on Collective Bargaining, more specifically its Article 20. This provision regulates that the above-mentioned categories of persons have limited power to exercise the right to strike but only in case their participation on a strike would directly endanger health and lives of citizens and national security. Therefore, the act introduces a supplementary provision stating that the prohibition only applies in case lives of persons or national security could be threatened. The act then continues and states that these persons are able to participate on a strike in case there is a certain level of a minimum service guaranteed to ensure proper level of harm prevention. The persons who are not part of the minimum service are free to participate on a strike.

The Slovak Republic believes this should clarify the situation, as this explanation was not present in the relevant report and this is why the ECSR was

unable to evaluate the situation. It will be sent to the ECSR with the next report on this provision of the charter.

332. The GC took note of the new information provided by the representative of the Slovak Republic and decided to wait for the next assessment of the ECSR.

RESC 6§4 UKRAINE

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

- ***civil servants are denied the right to strike,***
- ***the restrictions on the right to strike for employees working in the emergency and rescue facilities, nuclear facilities and in the transport sector go beyond the limits permitted by Article G of the Charter.***

333. The representative of Ukraine provided the following information:

In accordance with the Law of Ukraine "On Civil Service", civil servants shall not have the right to organize and participate in strikes and agitation.
Civil service is public, professional and politically neutral activity related to practical implementation of tasks and functions of the state.
Civil servant is a citizen of Ukraine who holds a civil service position in a government agency or state authority, their secretariat, receives salary from the state budget, and executes the authorities directly related to implementation of tasks and performance of functions of such government agency, and adheres to the civil service principles.
The main purpose of limitations the right to strike of civil servants is, first of all, to ensure national security, state interests, respect for the rights and legitimate interests of enterprises, institutions, organizations, rights and freedoms of the individual and the citizen. The above does not imply restrictions for the protection of civil servants, as working persons, their economic and social interests, by other means provided by domestic law.
It should be noted that in accordance with the Law "On Civil Service", civil servant shall be entitled to join a trade union for the purpose of protecting their rights and interests and to take part in civil associations, excluding political parties.
Article 11. Protection of the Right to Civil Service
1. In case of violation of rights provided by this Law or interference with the implementation thereof, the civil servant, within the one-month term from the day they learned or should have learned about the fact, may file a complaint to the head of civil service with statement of facts with regard to violation of his/her rights or interference with their implementation.
In his/her complaint, a civil servant may demand that the head of civil service set up a commission to check facts described in the complaint.
At the same time, it should be mentioned that Ukraine is currently undergoing a substantial process of public administration reform.
2. With regard to restrictions on the right for employees working in the emergency and rescue facilities, nuclear facilities and in the transport sector let me say the following:
Article 115 of the Code of the Civil Protection stipulates that persons of ordinary and commanding staff of the civil protection service, staff of professional rescue services shall not be allowed to organize or take part in strikes. Article 4 of the Code defines

that civil protection is a function of the state aimed at protecting the civilian persons, territories, the environment and property from emergency situations by preventing such situations, eliminating their consequences and providing assistance to victims in peacetime and in a special period.
For example, Article 29 of the Mining Law of Ukraine stipulates that state paramilitary emergency rescue services (formation) shall be established for emergency and urgent measures at the enterprises of coal and mining industries for saving people, putting out a fire, elimination of the consequences of explosions, the sudden emission of coal and gas, rock bursts and other work requiring using means of respiratory protection and special equipment, as well as control and supervision over the implementation by the owner (head) of the mining enterprise of preventive measures to prevent accidents on mining enterprises. This category of staff is forbidden to strike.
Article 22 of the Law of Ukraine "On Electricity Market" No. 2019-VI of 13 April 2017 stipulates that strikes at electric power plants are prohibited in cases where they can lead to a breach of the constancy of the united power system of Ukraine.
Situation prohibiting strike at nuclear installations remains the same. Personnel of nuclear installations and facilities designed to handle radioactive waste has no right to strike.
The restriction of the right to strike for the aforementioned categories of employees is caused by the fact that stopping them from work poses a threat to life, health, environment or the prevention of natural disasters, accidents, catastrophes, epidemics or the elimination of their consequences.
As regards the right to strike in transport sector, it should be noted that in accordance with Article 18 of the Law of Ukraine "On Transport", the termination of work (strike) at transport enterprises may be in the event of non-compliance by the administration of the conditions of tariff agreements, except in cases involving transportation passengers, servicing continuously as well as when a strike poses a threat to human life and health. That is, the Article does not stipulate a ban on strikes in general, on the contrary, there is a confirmation of the right of employees to strike in case of non-compliance by the administration of the company with the conditions of tariff agreements.

334. The representative of the ETUC pointed out that it seems that there have been no changes to the previous situation that the GC already examined and that any changing is envisaged.

335. The representative of Ukraine pointed out that Ukraine is under the process of a public administration reform. In that framework, the issue of the right of civil servants to strike will be discussed. As regards the ILO convention on civil service, the representative of Ukraine pointed out that there is a new government that is now studying again the draft law in order to be able to ratify the ILO convention. Concerning the right to strike in the transport sector, Ukraine has one restriction and therefore the employees in the transport sector have the right to strike in case of non-compliance by the administration of the company with the conditions of the tariff agreement. But the non-conformity conclusion also refers to the right to strike.

336. The Chair summed up what has been said by the representative of Ukraine. As far as civil servants are concerned, there is a general ban to strike. In some sectors, transport, workers may strike in case of non-compliance by the

administration of the company with the conditions of the previously negotiated tariff agreement. The Chair asked whether to obtain better working conditions strike is authorised or not.

337. The representative of Ukraine pointed out that Article 18 says only that strike in transport enterprises may be in the event of non-compliance by the administration with the conditions of the tariff agreements except in cases involving transportation passengers, servicing continuously as well as when a strike poses a threat to human life and health.

338. The Dutch representative pointed out that the situation remains the same in the two conclusions of non-conformity. Civil servants are still denied the right to strike. Although the delegate of Ukraine explains that workers in some sectors have the right to strike, they also have restrictions, that go beyond to what is authorisd by Article G of the Charter. She pointed out that any new development was introduced.

339. The UK representative pointed out that the GC previously discussed whether it is ok to restrict the right to strike with the minimum level of service granted. He asked for information about restriction of the right to strike in cases where there is threat to health safety.

340. The Chair, together with the representative of Lithuania, proposed to apply GCs' working methods on the first ground of non-conformity.

341. The representative of Ukraine stressed the fact that in Ukraine a substantial public administration reform is going on at the present time. The key idea of this reform is to search for possibility to improve certain conditions, including the right to strike. The national agency for civil service of Ukraine well knows about this non-conformity conclusions since 2010. She pointed out that it is not so easy to change a situation because they have to take into account the political situation in Ukraine.

342. The Chair pointed out that considering that there is a reform going on, the GC should even more vote on a recommendation or a warning.

343. As for the first ground of non-conformity, the GC voted on a recommendation, which was rejected (0 votes in favour, 21 against, 15 abstentions). It then voted on a warning, which was carried (20 votes for, 7 against, 11 abstentions).

344. Concerning the second ground of non-conformity, the GC decided to wait for the next assessment of the ECSR.

345. The Chair then started the examination of the cases of non-conformity on Article 22.

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

RESC 22 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 22 of the Charter on the grounds that:

- ***the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed;***
- ***legal remedies are not available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.***

346. The Secretariat pointed out that both grounds of non-conformity relate to the first and the fourth part of Article 22. The ESCR did not criticised part 2 and 3 of the Article (protection of health and safety and organisation of services and social cultural facilities).

347. The representative of Azerbaijan provided the following information:

According to part 3 of Article 222 "Ensuring health and safety at work" of the Labour Code mutual commitments regarding health and safety rules at work are mentioned in the collective agreement and labour contract between the employer and employee.

Also, all collective agreements at the enterprise level include the employees' rights to participate in the decision-making progress within the undertakings with regard to working conditions, working environment and so on. If the employee's right is violated by an employer, the employee may apply to the labour commission under the trade union in the enterprise. If the issue cannot be solved in this commission, the employee may apply to the state labour inspectorate. If the issue cannot be solved by the inspectorate service, the employee applies to Court.

Pursuant to Article 224 of the Labour Code, provisions regarding the right of employee to occupational safety shall be established while signing the labour contract. The terms of signing of labour contract shall comply with the work health and safety norms established by the Labour Code. Commitment of employer to provide health and safety at work shall be included in the labour contract. Employer shall inform the employee about the possible time frame of occupational illness in case an employee is hired for a job with a high risk of job-related illness. Therefore, only fixed-term labour contract covering the limited period shall be signed with that employee and following the expiry of that period the employee shall be transferred to another job while keeping his/her average monthly salary.

According to part 3 of Article 237 "Rights of trade-unions on overseeing the compliance with health and safety rules at work" of the Labour Code the representatives of trade-unions take part in the work of state commissions on trial and approval for use of production objects and equipment, investigation on work accidents and examinations on checking the status of implementation of measures for improving work health and safety mentioned in the collective agreement. If officials violate health and safety rules at work or conceal work-related accidents, trade-unions have right to take to the state bodies the issue of involvement of the accused person to liability under law.

According to part 1 of the same Article trade-unions take part in overseeing of compliance with health and safety rules and relevant regulatory-legal acts by the employer in accordance with their rights established in the Law on Trade-unions of the Republic of Azerbaijan.

According to Article 238 on "Responsibility of Employers on creation of conditions for protection of healthy and safe work" the employer who fails to create conditions in work places for protection of healthy and safe jobs, or fails to take the measures agreed upon in collective agreements will be prosecuted for civil and criminal wrongdoing in cases and in ways defined by law.

Draft Decision of the Cabinet of Ministers of the Republic of Azerbaijan "On Establishment of the State Labour Safety Fund" for the purpose of bringing the working conditions and safety of the employees to regulatory requirements and increasing the level of labour protection was prepared and submitted to the relevant central executive authorities for approval. Activities of the State Labour Safety Fund will result in a reduction in the number of accidents involving occupational accidents and occupational diseases.

The State Labour Safety Fund`s funds will be used for financing scientific research on labour safety in the Republic, preparation of labour safety specialists, development of labour safety norms, standards and rules, labour protection and outreach activities, improvement and development of material and technical basis of state bodies operating in the field of labour protection, establishment of a labour safety center.

348. The Chair pointed out that, as recalled by the Secretariat, the provisions concerning health and safety at work were not criticised by the ECSR. There were two grounds of non-conformity related to repeated lack of information.

349. The representative of the ETUC stated that the GC should note that it is again a problem of repeated lack of information. The representative of Azerbaijan referred to the fact that the working conditions can be settled by a collective agreement but then this ground of non-conformity should be read in conjunction with the ground of non-conformity on Article 6§2. The ETUC invited the GC to vote on a warning.

350. In reply to the question asked by the representative of Ireland, the representative of Azerbaijan noted that in the case of violations of the employees' rights, the employee can apply to the labour commission in the trade union. If the problem cannot be solved in the commission, they can apply to the Labour inspectorate. If it is not able, then the employee can apply to the court.

351. The representative of Poland asked for more details about legal remedies, concerning in particular the individual possibility of legal remedies. The Polish representative pointed out that having heard the explanation, the right to participate in the determination of working conditions is actually a right for the unions in Azerbaijan. She asked whether it is a possibility for a union to use the legal remedies and not for an individual. The representative of Azerbaijan expressed the need to consult with colleagues on this point.

352. The representative of Lithuania asked the reason why the information was not provided in the national report.

353. The representative of Azerbaijan pointed out that they have structural changes in the Ministry.

354. As regards the lack of information the GC decided to follow the practice of Article 17 of the GC rules of procedure and voted on a warning, which was carried (25 votes for, 2 against, 9 abstentions).

355. Concerning the second point of non-conformity, the GC invited Azerbaijan to include in the next report the information provided orally, with specific regard to the possibility for the trade union to use the remedies collectively.

356. The Chair then started the examination of the cases of non-conformity on Article 26.

Article 26 - The right to dignity at work

357. The Secretariat drew the attention of the GC members to the fact that the ECSR had decided, during its latest assessment, to better identify the specific grounds of non-conformity under Article 26 in order to make it clearer which were the outstanding issues. Indeed, the formula used in the previous conclusions of non-conformity usually covered several different grounds which were specified in the body of the conclusion, but not in its operational part. As the distinct grounds were now better specified also in the operational part, they might now appear as new grounds although, in reality, they were already covered by the previous, omni-comprehensive formula. As regards the cases to be examined by the GC, the Secretariat would specify whether the grounds were examined for the first time or corresponded to previous assessments, regardless of the wording of the operational part of the conclusion. The Secretariat recalled that the first and second paragraph of Article 26 dealt respectively with sexual harassment (Article 26§1) and moral/psychological harassment (Article 26§2), but the criteria applied to assess the conformity with the Charter were the same:

- First, conformity with Article 26 requires the effective implementation of adequate prevention measures at work or in relation to the workplace, in consultation with social partners – the mere indication that the law provides for the employer's responsibility to prevent harassment might not be sufficient to comply with Article 26 of the Charter, in the absence of concrete evidence of how this obligation is implemented in practice (information and/or awareness-raising campaigns, monitoring of implementation of the employer's obligations in respect of prevention…);
- Second, the legal framework applying to sexual/moral harassment is examined, including the legal definition of sexual/moral harassment and protection against retaliation (whether in the framework of general provisions, anti-discrimination laws or criminal law, and through specific harassment provisions), the (judicial and non-judicial) procedures and mechanisms available in case of harassment and, in particular, the liability of employers, also in respect of harassment involving third parties as victims or perpetrators;
- Third, under civil law, a shift in the burden of proof is required in harassment procedures;
- Fourth, Article 26 requires effective remedies, i.e. the possibility to get adequate compensation for pecuniary and non-pecuniary damages (no ceiling should apply to non-pecuniary damages) and the possibility to obtain reinstatement in case of unfair dismissal, including in cases where the victim has been pressured to resign in relation to harassment.

The Secretariat furthermore stressed that the conformity of the situation was assessed in the light of evidence of implementation in practice (statistical data, examples of case law etc.).

Article 26.1 - to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct

RESC 26§1 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§1 of the Charter on the grounds that:

- ***it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work;***
- ***no shift in the burden of proof applies in sexual harassment cases under the Labour Code.***

358. The Secretariat noted that the first ground was found for the first time and related specifically to the employer's liability when third persons are involved in the harassment, while the second ground had already been found as a ground of non-conformity in 2014.

359. The representative of Azerbaijan provided the following information:

First ground of non-conformity (employer's liability): Article 12 of the Labour Code defines the main duties and responsibilities of an employer: irrespective of sex, an employer is obliged to create equal work conditions for all employees engaged in the same type of activity, to take the same disciplinary measures for the same violation and to undertake all necessary measures for the prevention of discrimination on grounds of sex and sexual persecution.
According to paragraphs n) and o) of the second part of Article 31 on contents of collective agreements of the Labour Code, the following mutual commitments are included in the collective agreement:
- assistance in the explanatory work and provision of information, as well as prevention of cases of mockery, obvious hostile actions and offensive conduct against employees at the workplace and undertaking all necessary measures in order to protect employees from these acts;
- assistance in the explanatory work and provision of information on sexual harassment in the workplace or in connection with work, prevention of sexual harassment and undertaking all necessary measures regarding the protection of employees from this type of behaviour.

Article 4 of the Law on "Gender equality provisions", approved on 10 October 2006, prohibits sexual harassment; Article 11 of this Law provides that employees who made complaint about the employer or manager for sexual harassment shall not be subject to any kind of pressure or persecution by that employer or manager.

According to Article 4 of the Code of Civil Procedure, all physical and legal persons are entitled to use their right to court protection in a way established by law to protect

their legal rights and liberties, as well as their interests. Pursuant to Article 205 of the Code of Administrative Offences, employees faced with sexual harassment can apply to the court for the compensation of the damage suffered and the issuing of administrative fines on the official. The officials shall be fined from 1500 manats up to 2500 manats for putting pressure on employees or persecuting them, after complaining about their employer or manager because of sexual harassment.
Article 62 of the Labour Code lists the circumstances where an employee may be dismissed by an employer. Sexual harassment is not intended for dismissal. According to paragraph g) of Article 195 of the Labour Code, the employer bears full material liability for the damage caused to the employee in case of sexual harassment at work.
Second ground of non-conformity (burden of proof): the representative of Azerbaijan indicated that there was no development concerning this ground.

360. The Secretariat asked whether the employer would be held liable when an employee would commit harassment to a third person or when the employee would be victim of harassment from a third person, in relation to work. Furthermore, it noted that nothing had changed in relation to the burden of proof.

361. The representative of Azerbaijan confirmed that the employer could be held responsible when the employee is the victim of harassment perpetrated by a third party, but was not in a position to confirm that this would apply in cases where the employee would be the perpetrator of harassment on a third party.

362. In response to the representative of the ETUC, noting that the fines provided by the law appeared to be rather moderate, the representative of Azerbaijan indicated that 1500 to 2500 manats corresponded to € 800 up to € 1300.

363. The representative of the United Kingdom contested the relevance of the information provided by Azerbaijan in respect of the first ground.

364. In response to the representative of Lithuania, the representative of Azerbaijan confirmed that there had been no change in respect of the second ground.

365. As regards the first ground of non-conformity, concerning the employer's liability, the GC according to Article 17 of its rules of procedure proceeded to vote on a warning which was carried (24 votes in favour, 4 against, 11 abstained).

366. As regards the second ground of non-conformity, concerning the burden of proof, the GC proceeded to vote on a recommendation, which was not carried (6 in favour, 10 against, 22 abstained). It then voted on a warning, which was carried (27 votes in favour, 2 against, 8 abstained).

RESC 26§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 26§1 of the Charter on the grounds that:

- ***it has not been established that there is adequate prevention of sexual harassment in relation to the workplace;***

- ***it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against sexual harassment in relation to work;***
- ***it has not been established that a shift in the burden of proof applies in sexual harassment cases before civil courts;***
- ***it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.***

367. Referring to the introductory remarks, the Secretariat explained that, although the wording of the operational part of the conclusion had changed, the situation had already been found to be not in conformity with Article 26§1 of the Charter in 2014 on all the current grounds of non-conformity – except the third one, concerning the burden of proof. It pointed out that, as regards the prevention of sexual harassment (first ground), the information needed concerned not only the legal provisions establishing for example the employer's obligation to prevent harassment, but also and above all the effective implementation of such obligation, i.e. the measures effectively implemented to prevent harassment (information campaigns, data on labour inspection's findings on this issue etc.) and how the social partners are consulted. The Secretariat also noted that the second ground related in particular to the employer's liability in respect of harassment involving third parties and the protection of workers against retaliation. As regards the third ground, the Secretariat indicated that the outstanding question was whether a person who considers herself/himself to be a victim of harassment (as defined under Article 6.b of the Gender equality Law) could turn to a civil or administrative court or the newly established ombudsman and what rules would then apply in terms of burden of proof. The Secretariat furthermore noted that the fourth ground related to the existence of effective remedies, to be assessed in the light of information on what compensation is awarded in practice in this type of cases, whether there a ceiling applies, in particular as regards non-pecuniary damages and whether reinstatement can be granted in cases of harassment (also when the victim has been pressured to resign because of harassment).

368. The representative of Georgia stated that significant legislative changes had been made, not only in relation to sexual harassment but also in respect of moral harassment (covered by Article 26§2). She provided the following information:

Article 14 of the Law on Gender Equality establishes the powers of the Public Defender regarding the protection of gender equality and states that the Public Defender, within the scope of his/her authority, shall monitor the protection of gender equality and provide appropriate response in cases of violation.
The Public Defender shall exercise powers granted to him/her by the Organic Law on the Public Defender in order to ensure gender equality.
In 2019, legislative changes addressed issues of harassment and sexual harassment and their definitions. In particular, the Law on the Elimination of All Forms of Discrimination was amended as follows:
"Harassment is the persecution, coercion of a person on any basis and/or unwanted conduct towards a person with the purpose of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Sexual harassment is any unwanted verbal, non-verbal, or physical behavior of a sexual nature with the purpose of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person (Article 1 (3',3[2]))".

An amendment was also made to the Law on Gender Equality (Article 6(1)), which clarified the notions of harassment and sexual harassment in accordance with the Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services and the Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

In addition, on 3 May 2019, an amendment was made to Article 2, paragraph 4 of the Organic Law on the Labour Code, which is worded as follows: "Discrimination (including sexual harassment) shall be defined as the direct or indirect harassment of a person aimed at or resulting in impairing dignity of a person, and in creating an intimidating, hostile, humiliating, degrading, or abusive environment for him/her, and/or creating the circumstances for a person directly or indirectly causing their condition to deteriorate as compared to other persons in similar circumstances". In addition, the paragraph 4[1] is added to Article 2 which is worded as follows: "Sexual harassment shall be defined as a behaviour of a sexual nature towards a person, which is meant to humiliate him/her and/or causes his/her humiliation and which creates an intimidating, hostile, humiliating or offensive environment for him/her".

Amendments were also made to the Organic Law on the Public Defender, which increased the mandate of the Public Defender in cases of discrimination. In relation to the facts of discrimination, the Public Defender shall be empowered to request and receive written explanations from any official, as well as an officer or an equivalent person and, in the cases of discrimination, also from a natural person, legal person and/or other subjects of private law on the matters to be examined. The Public Defender shall be empowered as a plaintiff to file a lawsuit in accordance with the Code of Civil Procedure if a legal entity or other entity of private law has not responded to or has not accepted his/her recommendation and there is sufficient evidence to prove discrimination, etc.

The Public Defender shall be empowered as a plaintiff to file a lawsuit in accordance with the Code of Civil Procedure if a legal entity, other organizational body, association of persons without creating a legal entity or an entrepreneurial entity has not responded to or has not accepted his/her recommendation and there is sufficient evidence to prove discrimination (Article 14[1](2)(h[1]).

When conducting the inspection, the Public Defender shall have the right to request and receive, immediately or within 10 days, from state and local self-government authorities or from a public body or officials, and in the cases of discrimination - also from a natural person, legal entity, other organizational body, association of persons without creating a legal entity or an entrepreneurial entity all certificates, documents and other materials necessary for conducting an inspection; also, request and receive written explanations from any official, as well as an officer or an equivalent person and, in the cases of discrimination - also from a natural person, legal person, other organizational body, association of persons without creating a legal entity or an entrepreneurial entity on the matters to be examined (Article 18(b,c)).

If the examination of a statement/appeal confirms the fact of discrimination, the Public Defender shall issue a recommendation based on the circumstances of the

case, by which he/she offers the discriminating state, local self-government authorities, as well as the discriminating official, natural person, legal person, other organizational body, association of persons without creating a legal entity or entrepreneurial entity to take measures to eliminate discrimination and restore the equality violated by the discrimination without impairing the rights and legitimate interests of third parties (Article 20[1]).

In order to restore violated human rights and freedoms, based on the results of an inspection the Public Defender shall be authorized to send proposals and recommendations to state and local self-government authorities, public institutions and officials, and in the case of discrimination - also a natural person, legal person, other organizational body, association of persons without creating a legal entity or an entrepreneurial entity, whose actions caused a violation of human rights and freedoms guaranteed by the State (Article 21 (b)).

Changes were made to Article 23, according to which all state and local self-government authorities, officials or legal persons shall be obligated to assist the Public Defender in every way, immediately submit materials, documents and other information necessary for the Public Defender to exercise his/her powers (Article 23(1)). The same Article also specifies that during inspection, or if requested by the Public Defender, a state body, an official or a legal person whose action or decision is under examination or is appealed shall be obligated to submit an explanation on the issue in question to the Public Defender (Article 23(2)). According to the amended version, the requirements of the first and second paragraphs shall also apply to natural persons, other organizational bodies, association of persons without creating a legal person and an entrepreneurial entity only if the Public Defender exercises his/her authority in relation to the fact of discrimination.

In accordance with Article 24, state and local self-government authorities, public institutions, officials, natural persons and legal persons, as well as other organizational body, association of persons without creating a legal person or an entrepreneurial entity that receive recommendations or proposals of the Public Defender shall be obligated to examine them and report in writing on the results of the examination to the Public Defender within 20 days.

The Public Defender reviewed 15 cases of sexual harassment in 2014-2018. As a result, recommendations were issued in 4 cases, an amicus curiae brief was submitted to Tbilisi City Court in one case, the proceeding was terminated in 8 cases, and was not completed in 2 cases.

According to the information of the Supreme Court, 2 cases on sexual harassment were heard by the courts. In one case, the court adjudicated that the defendant had placed the plaintiff at a disadvantage situation, resulting in the termination of employment by an employee. The claim was partially satisfied - the plaintiff was obligated to pay non-pecuniary damage, while the claim in terms of pecuniary damage was not satisfied. The court then considered the case, but the various circumstances examined did not clearly establish that there had been any harassment or violence towards the plaintiff from the head of the defendant company. The lawsuit was partially upheld by the court, and the order for termination of labour relations and compensation for damages was annulled.

On 3 May 2019, the Parliament, with its third reading, adopted a package of legislative changes drafted by the Gender Equality Council to regulate sexual harassment. The bill regulates sexual harassment both in the workplace and in the public area. In accordance with the changes made, sexual harassment is deemed to be an unwanted behavior of a sexual nature towards a person with the purpose of

violating the dignity of the person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.
As part of the changes, the Public Defender's mandate for discrimination-related cases is increasing. In relation to the facts of discrimination, the Public Defender shall be empowered to request and receive written explanations from any official, as well as an officer or an equivalent person and, in the cases of discrimination, also from a natural person, legal person and/or other subjects of private law on the matters to be examined. The Public Defender shall be empowered as a plaintiff to file a lawsuit in accordance with the Code of Civil Procedure if a legal entity or other entity of private law has not responded to or has not accepted his/her recommendation and there is sufficient evidence to prove discrimination, etc.
The working process lasted more than a year, with the active involvement of the Parliament and the Gender Equality Council, on the one hand and the Ministry of Internal Affairs, the Public Defender's Office, international and local NGOs, on the other hand.
The draft law on sexual harassment was developed with the support of the PROLoG / USAID programme.
The Government Ordinance N° 200 of 20 April 2017 on Defining General Rules of Ethics and Conduct in Public Service prohibited sexual harassment and established the obligation of a public official to treat with respect employees irrespective of their gender identity or sexual orientation; to be well aware of the phenomenon of sexual harassment and the inadmissibility of such practices, both in the workplace and in the public sphere; not to commit sexual harassment, to be informed of the internal and general procedures for reporting such facts. It also stipulated the obligation of a civil servant, in particular a senior civil servant, to respond within his/her competence and deal with any consideration, communication or action with a view to eliminating sexual harassment with full sensitivity and confidentiality (Article 15(1-4)).
The Code of Civil Procedure defines that when filing a claim, a person shall present to the court those facts and evidence that provide grounds to assume that a discriminating action has been committed. After this, the burden of proof that that he/she has not committed the discriminative action shall be imposed on the defendant.

369. The Secretariat welcomed the legislative developments, but noted that some further clarifications would be needed, for example, as regards the employer's liability in respect of harassment involving third parties and the implementation in practice of preventive and remedial measures, in the light of updated information on the relevant case-law.

370. The GC took note of the positive developments reported by the representative of Georgia and decided to await the next ECSR's assessment.

RESC 26§1 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§1 of the Charter on the ground that it has not been established that there is appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment.

371. The Secretariat recalled that the ECSR had already found in 2014 and 2016 that the conformity on this ground was not established. The report indicated that compensation for pecuniary and non-pecuniary damages was possible but provided no indication concerning the relevant provisions and, most important, it did not provide evidence of the effectiveness of remedies, through examples of case-law and redress granted (compensation and reinstatement) in sexual harassment cases.

372. The representative of Ukraine provided the following information:

The representative of Ukraine stated that legislation concerning prevention and combating sexual harassment and gender-based violence was being developed, notably in the framework of the debate surrounding the possible accession to the Istanbul Convention.
She indicated that gender-based violence and sexual harassment are criminalized in the Criminal Code in accordance with amendments which entered into force on 11 January 2019.
The person who believes that there was a discrimination against him\her on the gender based violence or he\she became the object of sexual harassment has the right to submit a complaint to the state and local authorities, their officials, the Ukrainian Parliament Commissioner for Human Rights and/or to the court in accordance with the procedure provided by the law.
This person has the right to compensation for material loss and moral damage caused in the result of gender-based discrimination or sexual harassment. Moral damage is compensated regardless of the material losses, which shall be refundable and not related to their amount. The procedure of compensation for material loss and moral damage is defined by the Civil Code of Ukraine and other laws.
Compensation for material loss and moral damage includes in particular:
- incomes that a person could receive under ordinary circumstances if his/her/right would have not been violated (the lost profit);
- physical pain and sufferings in connection with the situation;
- psychological suffering in connection with the unlawful behavior;
- abasement of human honour and dignity, as well as the business reputation of a natural or legal person.
The amount of moral damage compensation shall be specified by the court depending on infringement nature, physical and moral suffering extent.
In determining the amount of compensation shall be taken into account the requirements of reasonableness and fairness.
The representative of Ukraine stated that no example of case-law was yet available.

373. The Secretariat noted that the lack of relevant case-law could have different reasons, but it made it difficult to assess the effectiveness of remedies and asked Ukrainian authorities to explain in their next report why there was no relevant case-law.

374. The representative of Ukraine acknowledged that more efforts were needed to raise awareness of this issue, which remained a sensitive topic in Ukraine, although there was an increasing debate about it.

375. In response to the representative of the Netherlands, the representative of Ukraine indicated that no ceiling applied to compensation.

376. Referring to the situation in Poland, where distinct procedures are available under Labour Law (available free of charge) and civil law, the representative of Poland asked whether this was the case in Ukraine, which might allow to rely on data from the labour inspectorate. In response to this comment, the representative of Ukraine indicated that, in Ukraine, compensation procedures were defined in the civil code, not the labour code.

377. The representative of Lithuania referred to the outstanding questions and in particular to the lack of evidence of concrete implementation of legislation concerning sexual harassment. She suggested that the GC take note of the information provided but urge the government of Ukraine to provide evidence of the effectiveness of remedies in sexual harassment cases.

378. The representative of the ETUC welcomed the recent legislative developments, agreed with the conclusion proposed by the representative of Lithuania but noted the arguments put forward by the representative of Ukraine, concerning the sensitiveness of the issue, the fact that new provisions had been very recently adopted (January 2019) and the need for promotional campaigns, informing about the new rights and the available procedures. The representative of France supported this position.

379. The GC thanked the representative of Ukraine for the information provided on the recent legislative developments (Law of 18/01/2019) and decided to await the next ECSR assessment.

Article 26.2 - to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

RESC 26§2 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 26§2 of the Charter on the grounds that:

- ***it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;***
- ***no shift in the burden of proof applies in moral (psychological) harassment cases under the Labour Code;***
- ***it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.***

380. The Secretariat noted that the first ground of non-conformity, which was new, related to the liability of employers in respect of harassment involving third parties, as well as to protection against reprisals, since the provisions invoked under Article 26§1 concerned gender equality but might not necessarily apply to moral harassment.
As regards the second ground of non-conformity, concerning the burden of proof, the Secretariat explained that although, from a formal point of view, it was the first time

that the situation was found not to be in conformity on this point under Article 26§2, in fact the provisions at issue were the same as the ones applying to sexual harassment (Article 26§1), where they had already been found not to comply with the Charter's requirements in 2014.
Lastly, the Secretariat recalled that the situation had already been found in 2014 and 2016 not to be in conformity with the Charter on account of the third ground, relating to the remedies; the specific reasons why the conformity was not established were the following: 1) it was unclear whether the provisions invoked (Article 290§3 of the Labour Code) would apply to moral harassment; 2) no information had been provided about actual cases where compensation had been awarded in cases of moral harassment (either through the Ombudsman or the courts) and about the amounts awarded; 3) no information had been provided about the possibility to obtain reinstatement for workers unfairly dismissed or pressured to resign in the context of moral harassment.

381. The representative of Azerbaijan referred to the employer's duties and responsibilities under Article 12 of the Labour Code, as previously described (see Article 26§1). In addition, she provided the following information:

Article 192 of the Labour Code defines the conditions of commencement of material liability and its substantiation. According to this Article parties shall bear the burden of proof in case they claim certain amount for material damage or claim the infliction of damage, as well as claim not being guilty for the damage to the other party.
There is no provision in the law concerning moral harassment of workers at work or in the workplace. There are no provisions in the legislation regarding the emotional persecution of employees at workplace during the work process. However, According to Article 4 of the Code of civil procedure, all physical and legal persons are entitled to use their court defence right in a way established by law to protect their legal rights and liberties, as well as their interests.
Article 292 of the Labour Code determines the right of employee to claim the restoration of his/her violated rights. According to this Article an employee can apply to bodies dealing with individual labour disputes for restoration of his/her violated rights or interests regarding the issues mentioned in Article 288 of the Code (The subject of individual labour disputes).
For the restoration of violated rights, an employee can apply to court or pre-court bodies dealing with labour disputes (Article 294 on "Bodies dealing with individual labour disputes") or can abstain from work in accordance with Article 295 of this Code (Right of employee to abstain from work). For the restoration of his/her rights, an employee can apply to the body dealing with labour disputes through his/her authorized agent. In this case, in accordance with the procedures established in the legislation an employee shall give power of attorney to his/her authorized agent for defending his/her rights. In order to regain his violated rights, an employee may appeal to the court or to the relevant agency handling Labour disputes before appealing to the court, as stipulated in Section 294 hereof, or he/she may abstain from work in the manner established in Section 295 hereof. In order to regain his/her violated rights, an employee may also appeal through his/her legal representative to the relevant body which handles Labour disputes. In order for the representative to defend his/her rights the employee should give a power of attorney to his/her representative, in accordance with established procedure.

In respond to the second ground I would like to mention that there is no legislation regarding the shift of the burden of proof. As regards the third ground, concerning compensation in case of moral harassment, there is now an article in our labour code.

382. The Secretariat recalled that, as regards the burden of proof, the representative of Azerbaijan had previously indicated that there was no difference with the situation noted in respect of Article 26§1, and no change had been indicated. The secretariat furthermore pointed out that, in the absence of a definition of moral harassment in the law, it was not clear how a victim might claim compensation in relation to it.

383. The Chair recalled that the first ground of non-conformity was new, that no change had intervened in respect of the second one and that the third one had already been found in non-conformity.

384. The representative of the ETUC considered that the information provided was self-explanatory and that it was clear that the situation had not changed and that there was no effective protection in respect of moral harassment.

385. In response to a request of clarification from the Chair, the representative of Azerbaijan stated that this was all the information currently available.

386. Upon proposal of the representative of Ireland, the GC decided, as regards the first ground, to await the next ECSR assessment.

387. As regards the second ground of non-conformity, the representative of Ireland requested confirmation that no shift in the burden of proof applied. In this respect, the representatives of Lithuania and the Netherlands considered that the situation was the same as under Article 26§1 and that, considering the crucial importance of burden of proof in this type of cases, the GC should maintain the same approach.

388. In response to a comment by the ETUC, the Secretariat recalled that in the conclusions 2010 and 2014, the ECSR had found that the situation was not in conformity with Article 26§1 of the Charter on this ground, but had deferred its conclusion on this point under Article 26§2 because it was not clear at that time that the same provisions applied in respect of this provision as well, and that's why the ECSR formally found for the first time in 2018 that the situation was not in conformity with Article 26§2 on this point.

389. In response to a question by the representative of Ireland as to whether any legislative change was planned, the representative of Azerbaijan indicated that she was not in a position to provide any further information and would need to consult her colleagues.

390. The GC on the first ground of non-conformity took note of the information provided and decided to await the next assessment of the ECSR.

391. The GC proceeded to vote, concerning the second ground of non-conformity, first on a recommendation, which was not carried (0 votes in favour, 17 against, 17

abstentions). The GC then voted on a warning, which was carried (16 votes in favour, 6 against, 13 abstentions).

392. As regards the third ground, the GC according to Article 17 of its rules of procedure proceeded to vote on a warning, which was carried (18 votes in favour, 5 against, 12 abstentions).

RESC 26§2 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 26§2 of the Charter on the grounds that:

- ***it has not been established that there is adequate prevention of moral (psychological) harassment in relation to the workplace;***
- ***it has not been established that the existing framework in respect of employers' liability provides sufficient and effective measures against moral (psychological) harassment in relation to work;***
- ***it has not been established that a shift in the burden of proof applies in moral (psychological) harassment cases before civil courts;***
- ***it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.***

393. The Secretariat recalled that the situation had already been found not to be in conformity in 2014 on all these grounds, although the formula used was then different (one comprehensive ground was indicated in the operational part, instead of the specific grounds mentioned in the body of the conclusion). These grounds corresponded to those already examined in respect of Article 26§1. In this connection, some clarification would be useful as to what extent the information provided in respect of Article 26§1 (sexual harassment) also applied to moral harassment, where no element of sexual or gender discrimination was involved.

394. The representative of Georgia referred to the information provided under Article 26§1 and indicated that the definition of harassment had been recently extended, and that mentioned changes apply to moral harassment issues too and that the Labour inspectorate would henceforth be competent to monitor these cases. In view of this, further information about the implementation of the new provisions would be provided in the next report.

395. The GC took note of the explanations provided and invited the Government of Georgia to include all the necessary information into the next report. The GC decided to await the ECSR's next assessment.

RESC 26§2 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 26§2 of the Charter on the grounds that:

- ***it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;***
- ***it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.***

396. The Secretariat noted that this was the first time that the situation had been found not to be in conformity on the first ground, while it had already been found in 2014 and 2016 not to be in conformity on the second ground, although the conclusions was formulated differently: in 2014, the ECSR had concluded that it had not been established that employees were given appropriate and effective protection against moral harassment in the workplace or in relation to work. The conclusions explained that "*The report does not contain the information requested concerning the amounts effectively awarded as compensation in cases of moral harassment. The Committee accordingly does not find it established that in Lithuania employees are given appropriate and effective protection against moral harassment in the workplace or in relation to work*".

397. In particular, as regards the first ground of non-conformity, the Secretariat recalled that the report indicated explicitly that under the Equal Opportunities Act (Article 11), employers or their representatives were only responsible for acts committed by them and that no liability applied in case of harassment between colleagues or involving third parties. It asked whether this was still the case, or whether the new Labour Code applied to these cases.

398. As regards both grounds of non-conformity, and notably the second one, the Secretariat noted that examples of concrete implementation were needed to assess how the legislation is implemented in practice, in particular as regards the types and amounts of compensation awarded and the possibility to obtain reinstatement for victims of harassment who have been dismissed or pushed to resign.

399. The representative of Lithuania provided the following information:

First ground of non-conformity (lack of sufficient and effective remedies against moral harassment in relation to the employer's responsibility):
According to the Article 7 of the Equal Treatment Act, the employer must take measures to prevent harassment or instructions to discriminate against any employee or civil servant at the workplace; take measures to prevent sexual harassment against any employee or civil servant; take measures to ensure that an employee or civil servant, who has filed a complaint relating to discrimination or is participating in discrimination proceedings, his representative or any person, who is testifying or making statements, are not subjected to persecution and are protected from any adverse treatment or adverse consequence. Article 10 of the Equal Treatment Act envisages that any non-compliance or improper compliance with the duties or non-compliance with the prohibitions set by this Law shall constitute a violation of equal treatment.
Similarly, Article 6 of the Law on Equal Opportunities for Women and Men envisages that at workplace the employer or his representative must take measures to prevent harassment and sexual harassment of the employees; take measures to ensure that

an employee, a representative of an employee or an employee, who testify or provide explanations, would be protected from hostile treatment, adverse consequences and any other type of persecution as a reaction to the complaint or another legal procedure concerning discrimination. According to the Article 10 of the Law on Equal Opportunities for Women and Men, any actions or other conduct by which a person is discriminated against on grounds of sex shall be considered as violation of equal rights for women and men <...>. According to the Article 11 of the same Law, the actions of an employer or his representative shall be recognised as violating equal rights for women and men if, because of a person's sex, he persecutes an employee, a representative of an employee or an employee, who testifies or provides explanations in relation to the complaint or another legal procedure concerning discrimination; also does not take measures to prevent harassment and sexual harassment of the employees.

Outside the reference period, on 1 July 2017, the new edition of the Labour Code entered into force introducing new Article 26 on employee gender equality and non-discrimination on other grounds. According to this article, in implementing the principles of gender equality and non-discrimination on other grounds, the employer must take measures to ensure that at the workplace the employee does not experience harassment or sexual harassment and no instructions are given to discriminate, and also that the employee is not subject to persecution and is protected from hostile treatment or adverse consequences if he or she files a complaint concerning discrimination or is involved in a case concerning discrimination.

Thus, employers (or their representatives) are not only responsible for acts of discrimination committed by them, but also carry liability in case of harassment between colleagues or involving third parties. In view of this, the authorities of Lithuania consider that it has been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work. Furthermore, since 1 January 2017, the Competence of the Equal Opportunities Ombudsperson was extended to carry out preventive and educational activity, to secure equal opportunities mainstreaming. It also included the prevention measures in order to combat moral (psychological) harassment at work. Therefore, according to the representative of Lithuania, in the next report, the authorities will be able to provide more information about remedies against moral (psychological) harassment in the workplace or in relation to work.

<u>Second ground of non-conformity</u> (appropriate and effective redress in cases of moral harassment):

Discrimination in the sense of the Law on Equal Treatment means any direct or indirect discrimination, harassment, instruction to discriminate on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion. Harassment is defined as any unwanted conduct which occurs with the purpose of, or effect, violating the dignity of a person, and creating an intimidating, hostile, humiliating or offensive environment on the grounds of gender, race, nationality, language, origin, social status, belief, convictions or views, age, sexual orientation, disability, ethnic origin or religion.

In 2016, seeking to ensure more efficient protection of individuals against discrimination, implementing the decisions of the Court of Justice of the EU, an

amendment to the Law on Equal Opportunities for Women and Men was approved by the Seimas of the Republic of Lithuania. This amendment specifies that harassment in the workplace is also prohibited.

According to the Law on Equal Opportunities for Women and Men and the Law on Equal Opportunities, a person who has suffered discrimination (including – on grounds of sexual harassment or harassment) shall have the right to demand the liable persons for compensation of the pecuniary and non-pecuniary damage in the manner prescribed by the laws.

The conditions for civil liability are provided for by the Civil Code (Articles 6.246-6.250 where are no limits for compensation) and they are applied together with the provisions of the aforementioned laws. Additionally, Article 2.24 of the Civil Code provides for the special rules related to protection of honour and dignity.

The new Code of Administrative Offenses, which replaced the previously effective Code of Administrative Law Offenses, was adopted and came into force from 1 January 2017. In order to further improve the legal protection against discrimination on the basis of gender, Article 81 of the new Code establishes administrative liability for breach of equal rights and equal opportunities for women and men and establishes fines for heads of legal persons, employers and other responsible persons from 40 till 560 EUR for the first time and from 560 till 1200 EUR for the repeated case.

In the previous report there was information about Article 30 of the New Labour Code, that also came into force outside the reference period. It establishes the principle of protection of honour and dignity of employees. The employer must create such a work environment where an employee or a group of employees would not suffer any hostile, unethical, demeaning, aggressive, insulting, or offensive actions, which violate the honour and dignity of an individual employee or group of employees, physical or psychological personal integrity or are aimed at intimidating, degrading an employee or a group of employees or to pushing him or them into an unarmed or powerless situation. The employer shall take all necessary measures to ensure the prevention of psychological violence in the work environment and to provide assistance to persons who suffered psychological violence in the work environment. According to Article 151 of the New Labour Code, each party to the employment contract shall indemnify the other party for material and non-material damage caused by a violation of its work-related duties due to its fault. The ECSR will examine these situations in the next cycle.

Unfortunately, the Lithuanian court system does not divide discrimination cases into a separate group, therefore it is very complicated to get the information required about examples of cases concerning dismissals occurred in the framework of moral (psychological) harassment complaints and the amounts effectively awarded as compensation in such cases.

In 2012, the Supreme Administrative Court in the administrative case (No. A492-1570/2012) recognised discrimination on the ground of age and awarded to pay to 63 years old applicant all lost income from the day of unlawful dismissal from civil service till the day the decision of the court was held and to pay 3000 Lt (870 EUR) as compensation for non-pecuniary damage.

In 2013, the District Court of Vilnius City in the civil case (No. A-557-640/2014) recognised discrimination on the ground of disability and awarded the applicant all lost income from the day of unlawful dismissal till the day of the court's decision and a compensation of 7000 Lt (€2027) for non-pecuniary damage. The Appeal Instance Court decreased the compensation for non-pecuniary damage to 2000 Lt (€579).

Article 218 of the New Labour Code stipulates that if an employee is suspended from work without any lawful basis, the body hearing labour disputes shall render a decision to reinstate the employee in work and award the average work pay for the employee for the period of involuntary idle time and award the pecuniary and non-pecuniary damage inflicted. If an employee is dismissed from work without a valid basis or in breach of the procedure established by laws, the body hearing labour disputes shall render a decision to recognise the dismissal from work as unlawful and reinstate the employee in former work as well as award the average wage for the period of involuntary idle time from the day of dismissal until the day of enforcement of the decision, not exceeding one year, and award the pecuniary and non-pecuniary damage suffered. The employee shall be reinstated in work not later than on the next working day after the decision of the body hearing labour disputes to regarding the reinstatement in work becomes enforceable. If the body hearing labour disputes ascertains that the employee may not be reinstated in his previous job due to economic, technological, organisational or similar reasons, or because he may be provided with conditions not favourable for work, or when the employer requests not to reinstate the employee, the body hearing the labour dispute shall render a decision to recognise the dismissal from work as unlawful, award him/her the average wage for the period of involuntary idle time from the day of dismissal from work until the effective date of the court decision, not exceeding one year, and award the pecuniary and non-pecuniary damage suffered. The employee shall also be awarded a severance pay, the amount whereof shall be equal to one average wage of the employee for every two years of employment, not exceeding six average wages of the employee. The remedies specified above for violated employee rights shall also apply when that is requested by the employer who normally employs up to ten employees, when the body hearing labour disputes decides to recognise the employee's dismissal from work as unlawful. In these cases, the employment contract shall be considered terminated by the decision of the body hearing labour disputes as of the day the decision becomes enforceable.

400. Summarising the situation, the representative of Lithuania indicated that as regards the remedies (first ground), the recent developments, including the extension of the competence of the ombudsman, should allow to provide more information in the next report; as regards the second ground, it would remain difficult to provide relevant examples, insofar as no distinct information was available on case law related to this issue, although there could be evidence of compensation (without a ceiling) awarded in case of discrimination and sanctioning of the employer (payment of compensation and a fine).

401. The Secretariat took note of the information provided, and indicated that some further information might be needed to confirm that the employer‘s responsibility also applies when an employee harasses a third party.

402. In response to a question by the Secretariat, the representative of Lithuania confirmed that, following the amendment of the Law in 2016, the provisions on harassment applied also when the discrimination was not related to the sex or gender of the victim, and that it also applied when there was no element of discrimination.

403. The Secretariat took note of the information provided on the case law and the remedies, which would be assessed by the ECSR and asked the next report to provide updated information on the case-law, including as regards cases submitted to the ombudsman.

404. The GC took note of the information and explanations provided in respect of the first ground of non-conformity, it invited the Government of Lithuania to include all the necessary information into the next report and decided to await the ECSR's next assessment.

405. As regards the second ground of non-conformity, the GC proceeded to vote first on a recommendation, which was not carried (0 votes in favour, 16 against, 20 abstentions). The GC then voted on a warning, which was carried (15 votes in favour, 6 against, 14 abstentions).

RESC 26§2 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 26§2 of the Charter on the grounds that:

- ***it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;***
- ***it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.***

406. The Secretariat recalled that the ECSR had already found in 2014 and 2016 that the conformity on these two grounds was not established.
As for the first ground, the Secretariat recalled that information was needed as regards the right to appeal to an independent body in the event of harassment, the right not to be retaliated against for upholding these rights, the employer's liability in respect of harassment involving third parties.
As regards the ground related to the remedies, the Secretariat pointed out that information was needed on the types of compensation (pecuniary and non-pecuniary) and the amounts granted (case-law examples, whether a ceiling applies etc.) as well as regards the possibility of reinstatement for workers dismissed or pushed to resign in the framework of harassment. Clarifications were furthermore needed as regards the legal basis providing for the different types of remedies (civil, administrative or labour law).

407. The representative of Ukraine provided the following information:

The Law "On the principles of prevention and combating discrimination" defines harassment as an undesired behaviour for an individual or a group of persons, the purpose or consequence of which behaviour is the humiliation of their human dignity because of specific features or creation for such person or groups of persons of tense, hostile, abusive or humiliating environment.
The Law applies in particular to:
-public and political activity;
-civil service;

-judiciary;
-labour relations, including the application of the principle of reasonable accommodation by the employer.
In accordance with the Law, harassment is a form of discrimination.
The person who believes that he/she has suffered from discrimination shall have a right to appeal to the state and bodies, their officials, the Parliament Commissioner for Human Rights and/or to the Court in the manner prescribed by law. The victim has a right to compensation for material and moral damages caused by discrimination. The procedure of compensation of material and moral damages shall be defined by Civil Code and other laws.
Persons liable for violation of the legislation on prevention and combating discrimination bear civil, administrative and criminal responsibility.
The procedure of compensation for material loss and moral damage is defined by the Civil Code and other laws. In accordance with the Civil Code, Compensation for material loss and moral damage includes in particular:
- income that a person could receive under ordinary circumstances if his/her right would have not been violated (the lost profit);
- physical pain and sufferings in connection with the situation;
- psychological suffering in connection with the unlawful behaviour;
- abasement of human honour and dignity, as well as the business reputation of a natural or legal person.
The amount of moral damage compensation shall be specified by the court depending on infringement nature, physical and moral suffering extent.
In determining the amount of compensation, the court takes into account the requirements of reasonableness and fairness.
Article 41 of the Code on Administrative Offenses provides for sanctions for violating labour legislation, it entails for instance the imposition of a fine on officials of enterprises, institutions and organizations irrespective of the form of ownership and natural persons - entrepreneurs from thirty to one hundred tax-free minimum incomes of citizens. However, there are yet no examples confirming the right to redress and employer‘s liability.

408. The Secretariat clarified that these grounds of non-conformity, although expressed differently, had already been found in 2014 and 2016.

409. The representative of Ireland considered that they were new grounds and asked whether there were effective remedies. In response, the representative of Ukraine repeated what type of compensation was provided and indicated that the amounts would be specified by the courts, according to the circumstances of the case. In response to the representative of Ireland, requesting further clarifications on the applicable procedure, the representative of Ukraine referred to the information already provided.

410. The Secretariat indicated that more detailed information was needed, specifying what type of compensation was available under which procedure, judicial or non-judicial.

411. The GC took note of the information provided, it invited the Government of Ukraine to include all the necessary information into the next report and decided to await the ECSR’s next assessment.

412. The Chair then started the examination of the cases of non-conformity on Article 28.

Article 28 - The right of workers' representatives to protection in the undertaking and facilities to be accorded to them.

RESC 28 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 28 of the Charter on the grounds that:

- ***the protection granted to workers' representatives is not extended for a reasonable period after the expiration of their mandate;***
- ***It has not been established that:***
  workers' representatives are effectively protected against prejudicial acts other than dismissal;
- ***facilities granted to workers' representatives are adequate.***

413. The representative of Armenia provided the following information:

With regard to the first ground of non-conformity, according to the existing regulation prescribed by Article 119 of the Labour Code the protection of worker's representatives against dismissal is limited for the period of performance of their functions, until the expiration of their mandate.
Within the framework of current amendments to the Labour Code the Article 119 is revised as well and according to the new draft of the Article the protection of worker's representatives against dismissal is extended for six months after the end of their mandate. We are looking forward for the approval of the amendments by the end of this year.

With regard to the second and third ground of non-conformity, Article 3 of the Labour Code states the main principles of the labour legislation which includes the following:

- *Legal equality of parties of labour relations irrespective of their gender, race, nation, language, origin, citizenship, social status, religion, marital and family status, age, political party, trade union or public organization membership, other factors unrelated to the employee's professional qualities;*
- *Ensuring the right to fair working conditions for each employee;*
- *Equality of the rights and opportunities of any worker.*

According to the Article 23 of the law "On Trade Unions" the state bodies, local government authorities, employers and other organizations are obliged to not infringe the trade unions' and their members' rights prescribed by legislation.
The violation of the rights of trade unions or their members or the impediment of statutory activities, as well as the persecution of trade union representatives or members evokes responsibility according to the legislation.
According to the Article 26 of the Labour Code, the employer shall:

1. *respect the rights of the representatives of the employees and do not create obstacles for their activities. The activities of the representatives of the employees may not be terminated at the employer's will;*
2. *provide necessary information to the representatives of employees;*

3. *ensure the rights of the representatives of the employees prescribed by the legislation.*

According to the RA Code on Administrative Infringements, Article 41.1, hindering the implementation of the rights of workers' representatives prescribed by legislation results in a penalty equal to the amount of fifty times the minimum salary for each case of violation. The infringement committed after the imposition of administrative penalties, once again, within one year, results in a penalty equal to the amount of one hundred times the minimum salary for each case of violation.

According to Article 24 of the law "On Trade Unions", the employer shall provide necessary conditions and facilities to the trade union for organization and implementation of its statutory functions.

According to Article 18 of the mentioned law, the trade union has right to conduct awareness activities.

Taking into account the above mentioned, we conducted internal discussions with the social partners, and we consider that the existent legislation provide sufficient protection to workers representatives against prejudicial acts, ensuring provisions in line with the ILO recommendation 143 to which there is a reference in the case law. The existing regulation covers the protection of workers representatives, it prohibits discrimination against them, and special penalties are provided for in legislation in cases their rights are not protected. However, within the framework of the amendments of the Labour law we have requested expertise from the ILO to analyse the existing legislation in line with ILO recommendation 143, in order to make relevant amendments in case there are gaps in our legislation.

414. Concerning the first ground of non-conformity, the representative of Lithuania suggested to take note of the positive amendments, even if they are not yet in force. Concerning the remaining grounds, she suggested the GC to give time to the country to remedy the situation.

415. The GC took note of the positive developments and decided to wait for the next assessment of the ECSR.

RESC 28 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 28 of the Charter on the ground that the period of three months beyond the mandate during which protection is afforded to workers' representatives is not reasonable.

416. The representative of Austria provided the following information:

The previous information provided by Austria has not satisfied the Committee. However, the legal situation in Austria fully complies with the requirements set out in the Revised European Social Charter and even goes beyond. In the following, I would like to further clarify the legal situation in Austria and answer the additional questions raised in the 2018 conclusions.

I. In response to the question raised by the Committee on whether it is possible for a worker's representative to be dismissed without the court's prior approval, the following information is provided:

As already stated in previous reporting, there are two scenarios, which need to be distinguished. Both scenarios, though, provide for protection against dismissal or termination in cases of current or previous participation in the works council.

a) ***During the mandate and within 3 months after its end:***

During the mandate and within three months after its end, the termination or dismissal must be approved by a civil court judgment beforehand. A dismissal without the court's approval is invalid. The consent to termination of employment is therefore given by way of a constitutive judgement by a civil court. The court will give its consent only in certain cases specified by law. In some severe cases (misleading about contract conditions, violent behaviour or severe libel that impedes reasonable co-operation with the employer) the person may be dismissed under subsequent approval of the court. The ruling of the court can be challenged by appeal.

b) ***After expiry of the 3 months period:***

Where a notice of termination or the dismissal is given after expiry of the three months period of the mandate, the termination/dismissal of a former works council member can be challenged in court according to the Labour Constitution Act.

Termination/dismissal based on previous participation in the works council is deemed unlawful. The option to challenge the termination/dismissal is open indefinitely after expiry of the employee's mandate.

The employer has to notify the works council of the intended termination/dismissal. The works council may approve, acquiesce or object within a period of five working days. The employer may only proceed after this period has expired or the works council has reacted; otherwise the termination/dismissal will be void. Upon objection, the works council is entitled to file a complaint with the labour court. In the case of approval of the termination/dismissal or acquiescence by the works council, the employee is entitled to contest the termination by filing an action based on unlawfulness herself/himself.

During the court proceedings, there is an easing of the burden of proof in favour of the plaintiff. The employee has to demonstrate the plausibility that the termination/dismissal is based on his/her former participation in the works council.

The challenge is only to be dismissed where, after weighing all circumstances, it appears more likely that another reason made credible by the employer was the major factor in the termination.

If the termination/dismissal is set aside due to unlawfulness of the termination/dismissal, the employment relationship will be reinstated. The employee is therefore entitled to full payment and also for back-payment for the duration of the legal procedure.

417. In reply to the question by the Chair, the representative of Austria noted that the deadline in which the person dismissed should file the complaint is 2 weeks.

418. The representative of Ireland noted that the non-conformity seems to be a lack of information or a misunderstanding.

419. The Chair asked to the Secretariat if the information provided is new or if the ECSR already had it in the previous report.

420. The Secretariat pointed out that it would be very useful if the next report provides all the information provided orally.

421. The GC took note of the information provided, invited the representative of Austria to insert information in the next report and decided to wait for the next assessment.

RESC 28 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 28 of the Charter on the grounds that:

- ***protection against dismissal granted to workers' representatives is not extended for a reasonable period after the end of their mandate,***
- ***it has not been established that protection afforded to workers' representatives against prejudicial acts short of dismissal is adequate.***

422. The representative of Azerbaijan provided the following information:

According to Article 21 of the Labour Code on "Activities of public self-governance bodies at enterprises" alongside trade-union organizations other representative public self-governance bodies of employees, as well as representative body of employer may be set up at enterprises in accordance with the rules established in the legislation and operate based on the statute.

For the functioning of trade-unions and other representative public self-governing bodies of employees an owner or employer of the enterprise shall create relevant conditions determined in the collective agreements or based on mutual consent of representative public self-governing bodies and employer, or agreement signed between them. "Public self-governance bodies" here shall mean labour collective council, board of chairs (directors), inventors, rationalizers, women and veterans' societies, creativity associations, and other public unions set up by employees in accordance with relevant regulatory-legal acts. According to Article 27 of the Labour Code the participants of the collective bargaining (representatives of the parties, councillor, expert, reconciler, mediator, arbiter and persons appointed by parties) are exempt from fulfilment of their work duties for up to 3 months each year during the time of negotiations. That period of time is included in their length of service.

Expenses related to collective bargaining shall be paid by an employer. Payment to persons invited to participate in the bargaining and who do not work by labour contract shall be made based on the agreement signed with the invited party.

It is not allowed to undertake disciplinary measures against the participants of collective bargaining, or their transfer to another job or their dismissal with initiative of an employer during the period of negotiations.

The provision of additional privileges to employees' representatives participating in collective bargaining cannot be considered as discrimination among employees. According to the first part of Article 79 the employer is prohibited from terminating the employment contracts of the individuals because they are members of trade unions or other political parties.

According to Article 80 of the Labour Code Should collective contracts provide, an employment contract may be terminated on the grounds indicated in Section 70 hereof by providing advice or consent by and between the employer and trade union. We will provide more information in the next report.

423. The Chair pointed out that the decision has been negative since 2014 and asked whether at the end of the mandate the protection period is finished, or it is extended by another three months. The representative of Azerbaijan noted that at the end of the mandate, the latter cannot be extended. She did not provide information on whether at the end of the mandate the protection period is extended or not.

424. The representative of Lithuania pointed out that the second ground is based on a repeated lack of information.

425. The Chair proposed to separate the two grounds of non-conformity and to deal with the second ground on the basis of Article 17 and with regard to the first ground of non-conformity to proceed voting on a recommendation or a warning.

426. Concerning the first ground of non-conformity, the GC voted on a recommendation which was rejected (0 votes in favour, 9 against, 18 abstentions). It then voted on a warning, which was carried (16 votes for, 2 against, 11 abstentions).

427. Concerning the second ground of non-conformity, the GC according to Article 17 of its rules of procedure voted on a warning, which was carried (18 votes for, 2 against, 11 abstentions).

RESC 28 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 28 of the Charter on the ground that the protection afforded to workers' representatives does not extend for a period after the mandate.

428. The representative of Lithuania provided the following information:

We confirm that during the reference period according to the provisions of the previous Labour Code the protection afforded to workers' representatives did not extend for a period after the mandate.
Therefore, we adopted in 2016 a new Labour Code, which came into force on 1st July 2017 – outside the reference period and ECSR did not examined it. Under Article 168 of this new Labour Code the protection granted to workers' representatives is extended for six months after the end of their mandate.

Therefore, we believe that Lithuania will be in conformity with the Charter and we will wait next assessment of ECSR.

429. Upon proposal of the Dutch representative, the GC took note of the positive developments and decided to wait for the next assessment of the ECSR.

RESC 28 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 28 of the Charter, on the ground that:

- ***it has not been established that workers' representatives other than Trade Unions representatives are not afforded protection against dismissal and other prejudicial acts when exercising their functions outside the scope of collective bargaining;***
- ***facilities identical to those afforded to trade union representatives are not made available to other workers' representatives.***

430. The representative of the Republic of Moldova stated that there are no changes in the subject, but amendments to the labour code are envisaged to bring the situation in the Republic of Moldova in conformity with the Charter. She provided in writing the following information:

According to the Article 21 of the Labour Code, employees who are not members of a Trade Union have the right to empower the Trade Union to represent their interests in employment relationships with the employer (work accidents, labour disputes and conflicts).

In case within the employer there are no Trade Unions, the employees' interests may be represented by workers' representatives. The workers' representatives are elected at the general meeting (conference) of the employees, with the vote of at least half of the total number of employees (delegates) in the unit (employer). The number of elected representatives of the employees is determined by the general meeting (the conference) of the employees, taking into account the number of the personnel from the unit (employer).

The powers of the elected workers' representatives, the mode of exercising them, as well as the duration and the limits of their mandate, are established by the general meeting (the conference) of the employees in a normative act at the unit level.

Employer is obliged to create conditions for the activity of the workers' representatives in accordance with the Labour Code, with the Law on trade unions, with other normative acts, with the collective agreements and with the collective labour contract.

431. Upon suggestion of the representative of Lithuania, the GC took note of the information provided and decided to wait for the next assessment of the ECSR.

RESC 28 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 28 of the Charter on the ground that there is no protection afforded to workers' representatives after the end of their mandate.

432. The representative of Norway provided the following information:

There is no new legislation in Norway. I am not going to use the term misunderstanding this time. But we think that the conclusion maybe can be

explained by the fact that we have not been able to explain our situation good enough in our reports.
According to the Working Environment Act, employees may not be dismissed unless this is objectively justified on the basis of circumstances relating to the enterprise, the employer or the employee.
In addition to the legal framework, the Basic Agreements between the social partners states that shop stewards may not be given notice to leave or be summarily dismissed without just cause. Due regard shall be given to the special position the shop stewards have in the enterprise.
The position of the employee as a shop steward will always be a part of the court's assessment of whether a dismissal has a just cause and is objectively justified.
In some situations, the employer may allege that actions of the employee performed in the period as a shop steward gives reason to dismiss him/her when no longer serving in this capacity. Also, in that case, the court must assess whether the dismissal is objectively justified in light of the special position he/she had as a shop steward. Hence, the protection does not end when the employee no longer serves as shop steward.
It is the opinion of the Government that this does provide a shop steward with sufficient and reasonable protection also after the period he/she has served in this capacity.
To sum up the legal argument: The courts decide if a dismissal is legal only if there is an objective, just cause, and the position as a worker's representative will be taken into account even after they are no longer active. The employer will have the burden of proof as to the objective, just reason for the dismissal.
There is recent court cases that makes it clear that workers representatives have a special protection, and that the protection of former representatives are no weaker than the current representatives.
In our opinion we cannot write every detail down in the law. We have to trust the courts and pay attention to case law on the matter.
We will in upcoming reports include more specific case law to clarify the situation that the workers representatives have the necessary protection according to article 28.

433. Upon proposal of the Irish representative, the GC took note of the information provided and decided to wait for the next assessment of the ECSR.

RESC 28 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 28 of the Charter on the ground that:

- ***the protection against dismissal granted to trade union representatives and other elected workers' representatives does not extend beyond the end of their mandate,***
- ***it has not been established that facilities afforded to workers' representatives are adequate.***

434. The representative of Romania provided the following information:

Regarding the 1st ground of nonconformity, the extension of post-mandate protection for workers' representatives (trade unions and elected representatives of

employees), can't exceed the limit of government/parliamentary intervention/regulation in relation to the decisions of the Constitutional Court of Romania, the autonomy of private capital and the freedom of collective bargaining in the establishment of additional protection and facilities in the exercise of trade union activity (during working hours), which are adapted to the financial situation of the enterprise, in order not to affect its activity. (compliance with ILO standards in this area)
The activity and the mandate of elected representatives of the employees are determined by the General Assembly of employees, but other facilities can be negotiated directly with the employer or in collective bargaining, and during the term of office they enjoy the same right of protection against dismissal as the trade unions leaders, in accordance with the Labour Code and the Law of Social Dialogue. As I already said, currently, there is a legislative initiative for amending the Law on Social Dialogue in the parliamentary debate, with the involvement of the social partners, which modifies this article, extending the protection beyond the end of their mandate, for a period of re-adjustment to the post of 1 year from the date of its termination.

Regarding the 2nd ground of nonconformity, the national law does not differentiate between trade union representatives and elected representatives of employees referring the facilities afforded to workers' representatives.
The manner and the means in which the mandate of elected representatives of the employees is fulfilled are established by the General Assembly of the employees.
The provisions of the Labor Code are correlated with the provisions of the social dialogue law which provides for the right to trade union facilities in defense of interests.

435. As regards the first ground of non-conformity, the representative of Lithuania pointed out that there is a draft law that, if adopted, will bring the situation in Romania in conformity with the Charter. She suggested the GC to take note of this positive initiative. Concerning the second ground, she suggested the GC to give more time to the country to express themselves properly and to remedy the situation.

436. The GC took note of the information provided and decided to wait for the next assessment of the ECSR.

RESC 28 UKRAINE

The Committee concludes that the situation in Ukraine is not in conformity with Article 28 of the Charter on the grounds that:

- ***workers' representatives other than trade union members are not granted sufficient protection against dismissal;***
- ***It has not been established that workers' representatives are effectively protected against prejudicial acts other than dismissal.***

437. The representative of Ukraine provided the following information:

In accordance with Article 12 of the Labour Code of Ukraine, a collective agreement shall be concluded between the owner on the one hand, and the primary trade union organization, and in the absence thereof, by representatives freely elected at general meetings of employees, on the other hand.

In accordance with Article 12 of the Law of Ukraine "On Collective Agreements and Treaties", employees' representatives are provided with guarantees and compensations for the period of collective bargaining. Namely, those who take part participate in the collective bargaining as representatives of the parties, as well as specialists involved in the work of commissions, shall be exempted from the main work with the preservation of average earnings and the inclusion of this time to work experience for the period of negotiations and preparation of the draft agreement. All costs associated with participation in negotiations and preparation of the draft agreement shall be compensated in the manner prescribed by labour legislation as well as collective agreement.
Taken into account that trade unions are recognized as representatives of employees, the law provides guarantees, including the right not to be dismissed, for workers elected to trade union bodies.
Concerning the acts which other than dismissal it should be noted that freely elected representatives for collective bargaining shall be covered by general rules laid down in the Labour Code.

438. The Chair asked whether in Ukraine there are delegations of stuff where elected representatives are not union representatives.

439. The representative of Ukraine pointed out that Ukrainian national practice demonstrates that trade unions shall protect rights of employees irrespective of membership in the trade union. Collective agreements cover all issues covering labour relations of employees.

440. The Dutch representative asked whether workers representatives who are not members of a union are protected against dismissal.

441. The representative of Ukraine stated that their legislation provide the provision for freely elected representatives and that the practice shows that trade unions protect all workers irrespective of membership and trade unions. It should be noted that there is no information available on the number of collective agreements concluded between employers and the elected representatives, and there were no complaints in this regard.

442. In response to a question by the representative of Lithuania, the Ukrainian representative stated that she had no examples in practice of workers representatives who are not trade union members.

443. The representative of Lithuania pointed out that if workers and employees are represented only by trade unions, practically there are not such understandings as workers representatives that are not trade union members.

444. The Chair pointed out that there are two grounds of non-conformity. As for the first one, the Ukranian representative stated that what is criticised does not exist. As regards the second ground, there is a lack of information. For the first ground, the Chair suggested to ask the representative of Ukraine to explain the situation in the next report.

445. The representative of Lithuania noted that since both grounds are interrelated, the GC could give time to Ukraine to explain if “workers representatives” exist in their countries and, if this is the case, what is their protection.

446. The Secretariat recalled that “workers representatives” is a larger name used by the committee (it may be trade unions or other workers representatives). The first ground concerns other workers’ representatives than trade unions and the second concerns all of them.

447. The representative of The Netherlands pointed out that on the first ground of non-conformity, the representative of Ukraine has stated in the national report that they have indeed workers representatives other than trade unions and they are not properly protected.

448. The Secretariat asked the representative of Ukraine to specify the types of worker representatives in law and practice in the next report (especially if workers representatives other than trade unions exist).

449. Concerning the first ground of non-conformity, the GC decided to wait for information to be provided in the next report by Ukraine.

450. Concerning second ground, the Chair proposed to vote on a warning, which was carried (18 votes in favour, 5 against, 6 abstentions).

451. The Chair then started the examination of the cases of non-conformity on Article 29.

Article 29 - The right to information and consultation in collective redundancy procedures.

RESC 29 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 29 of the Charter on the ground that it has not been established that there are measures that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

452. The representative of Azerbaijan provided the following information:

According to the 1 part of Article 78 of the Labour Code should there be a personnel reduction, employees with the highest skill ratings (professional qualifications) shall be retained. The employer determines a given employee's professional qualifications.
According to Article 80 (Agreements during the termination of labour contract by an employer) of the Labour Code at times of personnel cutbacks or redundancies or when an employee does not fulfill his/her job funtions or job commitments mentioned in the labour contract or he/she violates his/her job duties, the labour contract of that employee is terminated following receipt of concent of trade-union organization of which the employee was the member.

An employer seeking to terminate a trade union member's employment contract in any of the above-mentioned cases shall submit a written submission to the trade union organization of the enterprise. Appropriate supporting documents are attached to the presentation. The trade union organization must submit its motivated written decision to the employer within ten days from the date of submission of this presentation.

According to the 1 part of Article 77 of the Labour Code if an individual employment contract is terminated due to a reduction in employees or staff, the employee shall be officially notified by the employer two months in advance in cases provided by Section 70, para. b :

- *one year of work experience- at least two calendar weeks*
- *work experience from one to five years- at least four calendar weeks*
- *work experience from five to ten years- at least six calendar weeks*
- *work experience more than ten years- at least nine calendar weeks*

According to the 8 and 9 Parts of Article of the Labour Code employers involves children who have lost their parents and deprived of parental care, as well as employees who are among them defined by the Law of the Republic of Azerbaijan "On social protection of children who lost their parents and lost parental care" in the training of new professions necessary for their subsequent employment in the same institution or other enterprise.

Except for the liquidation of an enterprise in the manner prescribed by law during the period of active military service an employee keeps his place of work and position in the enterprise irrespective of the type of property and organizational-legal form. Persons who have served in the relevant institution before being drafted into conscript military service shall have the right to return to their previous or similar position (profession) at the same institution within 60 calendar days from the date of withdrawal.

According to the 7 part of Article 270 of the Labour Code in relation to strikes resulting from a collective Labour dispute, no employees may be fired, nor may the jobs at the enterprise (affiliate, representation) or workplace where the collective labour dispute arose be cut, abolished, or reorganized.

According to the 1 part of Article 11 to modify working conditions and reduce the number of employees or to terminate staff or structural divisions pursuant to the requirements of this Code and other Normative Legal Acts.

According to Part 2 of Article 2 of the Labor Code, this Code is based on the principle of ensuring equality of parties (employee, employer, state) in labor relations.

Part 1 of Article 77 of the Labor Code has been improved in accordance with international practice, which increases the flexibility of labor relations and enhances the social protection of those employers who have more work experience.

According to the 4th part of Article 77 of the Labour Code (2017), an employer can terminate the employment agreement properly by paying 0.5 times the average monthly wage instead of at least two calendar weeks' notice period, 0.9 times the average monthly wage instead of at least four calendar weeks' notice period, 1.4 times the average monthly wage instead of at least six calendar weeks' notice period, 2 times the average monthly wage instead of at least nine calendar weeks' notice period determined by the first part of this article with the consent of the employee.

453. The GC asked the representative of Azerbaijan to provide all the relevant information in the next report, including the information provided orally and decided to await the next assessment of the ECSR.

RESC 29 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 29 of the Charter, on the ground that the right of workers to be consulted in collective redundancy procedures is not effectively secured.

454. The representative of Georgia provided the following information:

The representative of Georgia referred to the labour legislation and informed the committee that no changes have been made to the Georgian Labour Code and it determines collective redundancy as follows:
If at least 100 employees' labour agreements are terminated within 15 calendar days on the grounds under (massive layoffs), employers shall be obliged to notify the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health, and Social Affairs of Georgia in writing and the employees whose labour agreements are terminated, at least 45 calendar days before the massive layoffs.
The representative of Georgia reiterated that already mentioned draft amendments to the labour legislation together with other various topics include issues related to the collective redundancy and consultations with employees.

455. The GC asked Georgia to insert the information provided orally in the next report and decided to wait for the next assessment of the ECSR.

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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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 RESC – *The right to just conditions of work*

Article 2§1 RESC – *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*

RESC 2§1 ARMENIA
RESC 2§1 ESTONIA
RESC 2§1 GEORGIA
RESC 2§1 LITHUANIA
RESC 2§1 MALTA
RESC 2§1 NETHERLANDS
RESC 2§1 NORWAY
RESC 2§1 SLOVAK REPUBLIC
RESC 2§1 SLOVENIA
RESC 2§1 TURKEY

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

RESC 2§2 GEORGIA
RESC 2§2 MALTA
RESC 2§2 NETHERLANDS
RESC 2§2 SLOVAK REPUBLIC

Article 2§3 RESC - *To provide for a minimum of four weeks' annual holiday with pay*

RESC 2§3 BOSNIA AND HERZEGOVINA
RESC 2§3 REPUBLIC OF MOLDOVA
RESC 2§3 NETHERLANDS

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, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations*

RESC 2§4 BOSNIA AND HERZEGOVINA
RESC 2§4 NETHERLANDS

Article 2§5 RESC - *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*

RESC 2§5 GEORGIA
RESC 2§5 NETHERLANDS

Article 2§7 RESC - *To ensure that workers performing night work benefit from measures which take account of the special nature of the work*

RESC 2§7 ANDORRA
RESC 2§7 BOSNIA AND HERZEGOVINA
RESC 2§7 GEORGIA
RESC 2§7 REPUBLIC OF MOLDOVA
RESC 2§7 UKRAINE

Article 4 RESC – *The right to a fair remuneration*

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

RESC 4§1 ANDORRA
RESC 4§1 AZERBAIJAN
RESC 4§1 LITHUANIA
RESC 4§1 NETHERLANDS
RESC 4§1 ROMANIA

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

RESC 4§2 ARMENIA
RESC 4§2 ESTONIA
RESC 4§2 LITHUANIA
RESC 4§2 NETHERLANDS
RESC 4§2 REPUBLIC OF NORTH MACEDONIA
RESC 4§2 SLOVAK REPUBLIC
RESC 4§2 TURKEY

Article 4§3 RESC - *To recognize the right of men and women workers to equal pay*

RESC 4§3 ESTONIA
RESC 4§3 GEORGIA

Article 5 RESC – *The right to organise*

RESC 5 ARMENIA
RESC 5 AZERBAIJAN
RESC 5 GEORGIA
RESC 5 LATVIA
RESC 5 REPUBLIC OF MOLDOVA
RESC 5 SERBIA
RESC 5 UKRAINE

Article 6 RESC - *The right to bargain collectively*

Article 6§1 RESC – *To promote joint consultation between workers and employers*

RESC 6§1 AZERBAIJAN
RESC 6§1 GEORGIA

Article 6§2 RESC – *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*

RESC 6§2 ARMENIA
RESC 6§2 AZERBAIJAN
RESC 6§2 ESTONIA
RESC 6§2 GEORGIA
RESC 6§2 LATVIA
RESC 6§2 LITHUANIA

Article 6§3 RESC - *To promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes*

RESC 6§3 MALTA
RESC 6§3 REPUBLIC OF MOLDOVA

Article 6.4 RESC - *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*

RESC 6§4 ARMENIA
RESC 6§4 AZERBAIJAN
RESC 6§4 CYPRUS
RESC 6§4 ESTONIA
RESC 6§4 GEORGIA
RESC 6§4 REPUBLIC OF MOLDOVA
RESC 6§4 ROMANIA
RESC 6§4 SERBIA
RESC 6§4 SLOVAK REPUBLIC
RESC 6§4 UKRAINE

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

RESC 22 AZERBAIJAN

Article 26 RESC - *The right to dignity at work*

Article 26.1 RESC - *To promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct*

RESC 26§1 AZERBAIJAN
RESC 26§1 GEORGIA
RESC 26§1 UKRAINE

Article 26.2 RESC - *To promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct*

RESC 26§2 AZERBAIJAN
RESC 26§2 GEORGIA
RESC 26§2 LITHUANIA
RESC 26§2 UKRAINE

Article 28 RESC - *The right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

RESC 28 ARMENIA
RESC 28 AUSTRIA
RESC 28 AZERBAIJAN
RESC 28 LITHUANIA
RESC 28 REPUBLIC OF MOLDOVA
RESC 28 NORWAY
RESC 28 ROMANIA
RESC 28 UKRAINE

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

RESC 29 AZERBAIJAN
RESC 29 GEORGIA

Appendix IV

List of deferred Conclusions

COUNTRY	ARTICLES
ANDORRA	RESC Articles 2§4, 4§2, 4§3
ARMENIA	RESC Article 6§1
BOSNIA HERZEGOVINA	RESC Articles 2§1, 2§5, 4§3, 5, 6§2, 6§3
CYPRUS	RESC Articles 6§2, 29
ESTONIA	RESC Article 26§2
GEORGIA	RESC Article 4§2
LATVIA	RESC Articles 4§3, 6§4, 22, 28, 29
LITHUANIA	RESC Articles 4§3, 6§4
MALTA	RESC Articles 4§2, 5, 6§1, 6§2, 26§1
REPUBLIC OF MOLDOVA	RESC Articles 2§4, 6§2
MONTENEGRO	RESC Articles 2§1, 2§6, 4§3, 4§5, 26§1, 28, 29
THE NETHERLANDS	RESC Articles 4§3, 26§1, 26§2
REPUBLIC OF NORTH MACEDONIA	RESC Articles 2§1, 4§3, 6§4, 21, 26§2, 29
NORWAY	RESC Articles 4§1, 4§3
ROMANIA	RESC Articles 2§2, 4§3, 6§2
RUSSIAN FEDERATION	RESC Articles 6§2, 6§3
SERBIA	RESC Articles 2§6, 4§3, 21, 26§1, 26§2, 29
SLOVAK REPUBLIC	RESC Articles 2§5, 4§1 4§3, 6§2, 26§2, 28, 29
SLOVENIA	RESC Articles 2§2, 2§5, 4§1, 4§3, 4§5
SWEDEN	RESC Articles 4§3, 26§2, 29
TURKEY	RESC Articles 4§3, 22, 26§1, 26§2
UKRAINE	RESC Articles 2§4, 2§6,

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*

Bosnia and Herzegovina

- **Federation of Bosnia and Herzegovina – The new Labour Code that came into force on 14 April 2016 provides for a minimum of twenty working days [of annual holiday with pay], which may be increased under the provisions of the collective agreement or the relevant internal company rules or employment contract. Employees may not waive their right to annual leave, or be denied that right, and they may not be granted financial compensation instead of taking unused days of annual leave (Articles 47-52 of the Labour Code).**
- **In the Republika Srpska, the new Labour Code has been enacted and came into force on 20 January 2016. Articles 78-80 entitle employees to annual leave of at least 20 working days after six months of uninterrupted work. Employed minors are entitled to a minimum of 24 working days of holiday and persons working in certain specific conditions to a minimum of 30 working days. (Article 2§3)**

The Russian Federation

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

Serbia

- **Under Article 68 of the amended Labour Code (came into force on 29 July 2014), employees are entitled to annual leave and cannot waive that right. Under Article 114, during annual leave employees are entitled to be paid at the rate of their average salary for the preceding twelve months. (Article 2§3)**

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.*

Republic of North Macedonia

- ***Preventive measures aimed at eliminating or reducing the risks related to work feature in the Occupational Safety and Health Act, which was amended in 2014. Article 11 requires employers to prepare a risk assessment statement for each workplace, with***

appropriate instructions and measures to be introduced. They are required, in particular, to conduct risk assessments for the entire workplace and eliminate all the risks and hazards identified, in accordance with an official rulebook on the preparation of safety statements, their contents, and the data on which risk assessments should be based. (Article 2§4)

The Russian Federation

- **Federal Law No. 421-FZ amends certain articles of the Labour Code in order to ensure the implementation of a differentiated approach when providing workers with guarantees for working in harmful and hazardous working conditions, depending on how the conditions are classified following the special assessment. Workers employed in harmful and hazardous working conditions are entitled to a wage premium equivalent to at least 4% of the base wage rates established for various jobs with standard labour conditions (Article 147 of the Labour Code). Extra paid leave of at least 7 calendar days is granted to workers employed in working conditions classified as harmful (in at least the 2nd degree) or hazardous, based on the results of the SOUT (Article 117). The specific duration of this leave is determined in accordance with the industry agreement, collective agreement and labour contract, and there is no upper limit on the amount of additional paid leave which may be granted. A reduced working week (36 hours maximum) is granted to workers employed in working conditions which have been classified as harmful (in at least the 3rd degree) or hazardous (Article 92). (Article 2§4)**

Article *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.*

Serbia

- **Under the amended Article 66 of the Labour Code, employees are entitled to a minimum of 12 hours of uninterrupted rest within each 24 hour period, unless otherwise specified in the Code. Employees who agree to flexible working time arrangements (Article 57) are entitled to a minimum of 11 hours' uninterrupted rest within each 24 hour period. Under Article 67, if employees are required to work on their weekly rest day their employer must grant them an uninterrupted rest period of at least 24 hours in the following week, before their next scheduled weekly rest period. (Article 2§5)**

Article *2§6 –* *To ensure that workers are informed in written form, as soon as possible, and in event not later than two months after the date of commencing their employments, of the essential aspects of the contact or employment relationship.*

Slovenia

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

Article 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*

Austria

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

receive a 50% overtime supplement in addition to basic hourly remuneration. (Article 4§2)

Montenegro

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

Article 5 – *The right to organise*

Latvia

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

Article 6 – *The right to bargain collectively*

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.*

The Netherlands

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

Article 21 – *The right to information and consultation*

The Netherlands

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

The Russian Federation

- **The report indicates that in 2013, under Federal Law No. 95-FZ of 7 May 2013 amending Article 22 of the Labour Code, a new system for the consultation of employees on**

productivity and efficiency was set up. The law establishes the right of employers to set up "production councils" – advisory bodies formed on a voluntary basis by their employees to draft proposals to improve production activities and processes, increase workforce productivity and improve employees' skills. The powers, membership and functioning of such councils and their interaction with employers are established by a local by-law.

Article 22 – *The right to take part in the determination and improvement of the working conditions and working environment*

Slovenia

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

Article 26 - *The right to dignity at work*

Article 26§1 - *To promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct*

Andorra

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

The Republic of Moldova

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

The Republic of North Macedonia

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

Turkey

- ***Pursuant to the Turkish Human Rights and Equality Authority Law (enacted in April 2016), harassment is considered as a type of discrimination and is defined as "Any painful, degrading, humiliating and disgraceful behaviour which intend to tarnish human dignity or lead to such consequence based on one of the grounds cited in this Law including psychological and sexual harassment". The Supreme Court has clarified that actions performed by workers outside their workplace and working hours may also be considered as harassment. (Article 26§1)***

Ukraine

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

Article 26§2 - *To promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate*

Lithuania

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

Turkey

- ***In 2014, the Ministry of Labour and Social Security, jointly with the Human Rights Association, the State Personnel Department and trade unions issued the "Guideline on Psychological Harassment in Workplaces", which contains the definition of moral (psychological) harassment, as well as information on the relevant legislation and how to deal with moral (psychological) harassment. (Article 26§2)***

Article 29 – *The right to information and consultation in collective redundancy procedures*

Ukraine

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

Appendix VI
Warning(s) and Recommendation(s)

GOVERNMENTAL COMMITTEE - TABLE OF WARNINGS ADOPTED IN 2019											
	A	R	T	I	C	L	E	S			
STATES	**2.7**	**4.2**	**5**	**6.1**	**6.2**	**6.4**	**22**	**26.1**	**26.2**	**28**	**WARNINGS**
1. ARMENIA			1			3					**4**
2. AZERBAIJAN			1	1	1	2	1	2	2	2	**12**
3. ESTONIA						1					**1**
4. GEORGIA				1		1					**2**
5. LITHUANIA									1		**1**
6. REP. MOLDOVA						2					**2**
7. NETHERLANDS		1									**1**
8. ROMANIA						1					**1**
9. UKRAINE	1		1			1				1	**4**
TOTAL	**1**	**1**	**3**	**2**	**1**	**11**	**1**	**2**	**3**	**3**	**28**

<u>Warnings</u>[11]

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

Article 2§7 RESC - *To ensure that workers performing night work benefit from measures which take account of the special nature of the work*

UKRAINE

- **possibilities of transfer to daytime work are not sufficiently provided for;**
- **laws and regulations do not provide for continuous consultation with workers' representatives on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work;**
- **there is no provision in the legislation for compulsory medical examinations prior to employment on night work and regularly thereafter.**

Article 4 RESC - *Right to a fair remuneration*

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

NETHERLANDS

- **workers may be asked to work extended hours without being remunerated an increased rate.**

Article 5 RESC – *The right to organise*

ARMENIA

- **the following categories of workers cannot form or join trade unions of their own choosing: employees of the Prosecutor's Office, civilians employed by the security service, all members of the police force (including civilians), self-employed workers, those working in liberal professions and informal sector workers.**

[11] 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.

AZERBAIJAN

- **all members of the police force are denied the right to organise.**

UKRAINE

- **right of nationals of other Contracting Parties to the Charter to form trade unions is restricted.**

Article 6 RESC - *The right to bargain collectively*

Article 6§1 RESC – *To promote joint consultation between workers and employers*

AZERBAIJAN

- **it has not been established that the promotion of joint consultation between workers and employers on most matters of mutual interest covered by Article 6§1 is ensured.**

GEORGIA

- **joint consultation does not take place in the public sector including the civil service.**

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*

AZERBAIJAN

- **there is not adequate promotion of voluntary negotiations between the social partners.**

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.*

ARMENIA

- **strikes are prohibited in the energy supply services;**
- **all members of the police are prohibited from striking;**
- **restrictions on the right to strike in certain sectors are too extensive and go beyond the limits permitted by Article G.**

AZERBAIJAN

- **restrictions on the right to strike for employees in essential services are too extensive and go beyond the limits permitted by Article G of the Charter;**
- **the prohibition on the right to strike for public servants does not comply with the conditions established by Article G of the Charter.**

ESTONIA

- **all public servants exercising authority in the name of the state are denied the right to strike and this blanket prohibition goes beyond the limits permitted by Article G of the Charter.**

GEORGIA

- **it has not been established that in general the right to collective action of workers and employers, including the right to strike, is adequately recognised.**

REPUBLIC OF MOLDOVA

- **the restrictions on the right to strike of the employees of the customs authorities go beyond those permitted by Article G of the Charter;**
- **the obligation imposed on workers on strike to protect enterprise installations and equipment go beyond those permitted by Article G.**

ROMANIA

- **a trade union can only take collective action if it meets representativeness criteria and if the strike is approved by at least half of the respective trade union's members.**

UKRAINE

- **civil servants are denied the right to strike.**

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

AZERBAIJAN

- **the right to participate in the decision-making process within undertakings with regard to working conditions, work organization and working environment, is not effectively guaranteed.**

Article 26 - *The right to dignity at work*

Article 26.1 - *To promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct*

AZERBAIJAN

- **it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work;**
- **no shift in the burden of proof applies in sexual harassment cases under the Labour Code.**

Article 26.2 - *To promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.*

AZERBAIJAN

- **no shift in the burden of proof applies in moral (psychological) harassment cases under the Labour Code;**
- **it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.**

LITHUANIA

- **it has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.**

Article 28 - *The right of workers' representatives to protection in the undertaking and facilities to be accorded to them.*

AZERBAIJAN

- **protection against dismissal granted to workers' representatives is not extended for a reasonable period after the end of their mandate,**
- **it has not been established that protection afforded to workers' representatives against prejudicial acts short of dismissal is adequate.**

UKRAINE

- **It has not been established that workers' representatives are effectively protected against prejudicial acts other than dismissal.**

Recommendation(s)

–

Renewed Recommendation(s)

–