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DIRECTION GENERALE I - DROITS DE L'HOMME ET ETAT DE DROIT

DIRECTORATE OF HUMAN RIGHTS / DIRECTION DES DROITS DE L'HOMME

*DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER  
SERVICE DE LA CHARTE SOCIALE EUROPEENNE*

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CONSEIL DE L'EUROPE

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## **EUROPEAN SOCIAL CHARTER**

### **GOVERNMENTAL COMMITTEE**

#### **REPORT CONCERNING CONCLUSIONS XXI - 4 (2019) OF THE 1961 EUROPEAN SOCIAL CHARTER**

**(Germany, Luxembourg, Poland, Spain, United Kingdom)**

*Detailed report of the Governmental Committee  
established by Article 27, paragraph 3, of the European Social Charter<sup>1</sup>*

*Written information submitted by States on Conclusions of non-conformity is the responsibility of the States concerned. This information remains either in English or French, as provided by the States.*

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/socialcharter](http://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). 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](http://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 Children, families and migrants submitted in application of the 1961 European Social Charter concerned Denmark, Germany, Iceland, Luxembourg, Poland, the Netherlands with respect to Curaçao, Spain and the United Kingdom. The reports covered the reference period 1st January 2014 – 31 December 2017 and were due by 31 December 2018. The Governmental Committee recalls that it attaches a great importance to the respect of the deadline by the States Parties.

6. Conclusions XXI - 4 (2019) of the European Committee of Social Rights were adopted in March 2020 with respect of Denmark, Germany, Iceland, Luxembourg, Poland, the Netherlands with respect to Curaçao, Spain and the United Kingdom.

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

8. Due to the COVID pandemic, the Governmental Committee had to cancel its meeting in May 2020. Concluding that it is essential that the Governmental Committee fulfilled its legal duties and carry out its work during 2020, it met in a distant manner from 5 to 9 October 2020 (141st Meeting) with Mr Joseph FABER (Luxembourg) in the Chair. In accordance with

its Rules of Procedure, the Governmental Committee was composed by a Bureau which is in term until 31st December 2021. Mr. Joseph FABER (Luxembourg) Chair, Mr. Aongus HORGAN (Ireland) 1st vice Chair, Ms Brigita VERNEROVA (Czech Republic) Member and Mr. Edward BUTTIGIEG (Malta) Member participated in all meetings. Ms Kristina VYSNIAUSKAITE-RADINSKIENE (Lithuania) left the Bureau in 2020 and did not participate in the meeting of October 2020.

9. The state of signatures and ratifications on 1 December 2020 appears in Appendix I to the present report.

## **II. Examination of Conclusions XXI-4 (2019) 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](http://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. At the beginning of 2020, with the objective to enhance a more targeted and efficient follow up to conclusions and in line with its discussions on the CDDH Report, the Governmental Committee had decided to selectively choose situations of non-conformity for its next examination. Out of all conclusions of the ECSR of 2019, 60 had been selected and circulated; initially for the GC's May session and, following its cancellation, for the GC meeting in October. Due to the pandemic's restrictions, and the reduced meeting, there was the necessity to further reduce and target the time for discussing orally situations of non-conformity. Accordingly, 2019 conclusions selected for the 2020 assessment were divided in 2 groups:

A) Group A: consisting of straight forward cases, which are typically presented for the Committee of Ministers for information only; they are cases which concern less serious situations and short-term problems.

B) Group B: consisting of cases which concern the most serious situations and /or long-standing non-conformities.

13. Cases under group A were considered under a written procedure. With the consensus of all representatives, they were not discussed orally at the meeting. Under group A, the following conclusions were included: Article 7§3 1961 ESC United Kingdom; 17 1961 ESC Denmark; 19§6 1961 ESC Luxembourg, Poland, United Kingdom; 19§8 1961 ESC Poland.

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

15. Under group B, the following conclusions were debated orally: Article 16 961 ESC Poland, Spain; Article 17 1961 ESC United Kingdom; Article 19§6 1961 ESC Germany, Spain. 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 2 warnings as set out in Appendix V to this report in respect of the following countries: Germany (1), United Kingdom (1).

16. The Governmental Committee decided, due to the exceptional circumstances linked to the cancellation of the May GC meeting, to prolong all INGO's registrations and postpone the examination of the new applications until the GC's meeting in October 2021.

17. The Governmental Committee decided further to create a working group to prepare a position paper and present proposals on the follow up to the CM decisions and the CDDH report. The group created was composed by the four members of the Bureau, as well as delegates from France, The Netherlands, the United Kingdom, as well as the ETUC representative. It would present its views and a possible statement paper to the GC before the end of 2020. Indeed, a first statement was adopted on 16 December 2020 (see annex VI), and further work is to be developed during 2021.

18. 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 2014-2017 (Conclusions XXI-4 (2019)), provisions related to the thematic group "Children, families, migrants"**

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

The Committee of Ministers,  
Referring to the European Social Charter, in particular to the provisions of Article C of Part IV thereof;

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

Considering the reports on the European Social Charter submitted by the Governments of Germany, Luxembourg, Poland, the Netherlands in respect of Curaçao, Spain and the United Kingdom;

Considering Conclusions XXI-4 (2019) 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 XXI-4 (2019) of the European Committee of Social Rights and in the report of the Governmental Committee.

19. The Governmental Committee examined also other situations not in conformity with provisions related to the thematic group "Children, families, migrants" of the European Social Charter, as listed in Appendix II to the present report. The detailed report which may be consulted at [www.coe.int/socialcharter](http://www.coe.int/socialcharter) contains more extensive information regarding the cases of non-conformity.

20. 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).

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

### III. EXAMINATION BY ARTICLE<sup>2</sup>

#### 1961 EUROPEAN SOCIAL CHARTER

##### Article 16 - The right of the family to social, legal and economic protection

##### ESC 16 POLAND (to be discussed only 1<sup>st</sup> and 2<sup>nd</sup> ground of non-conformity)

22. The Secretariat presented the main criteria used by the European Committee of Social Rights to assess compliance with Article 16 of the 1961 Charter. **The ECSR concluded that the situation in Poland is not in conformity with Article 16 of the 1961 Charter on the following grounds:**

- **the 10-year residence requirement to be eligible to family benefits for foreigners without a work permit, is excessive;**
- **family benefits are inadequate for children under the age of five;**
- (...).

23. The GC had not examined the situation in 2017 and 2015. It had examined it in 2011, and took note of the information provided and urged the Polish Government to continue its efforts with a view to bringing the situation into conformity with Article 16 of the Charter.

24. The representative of Poland took the floor:

*La conclusion du Comité d'experts indépendants qui porte sur les conditions d'attribution des allocations familiales se fonde sur la réponse contenue dans le rapport de la Pologne à la question concernant les conditions d'obtention d'un permis de séjour permanent. Cette question a elle-même résulté des informations contenues dans le rapport précédent sur les conditions d'attribution des prestations familiales aux étrangers.*

*Les informations fournies dans ces deux rapports ne sont pas suffisantes pour se prononcer sur le droit des étrangers aux prestations familiales.*

*Des informations qui suivront vont mettre la situation au clair.*

*La situation des personnes qui ont droit au séjour en Pologne pour des raisons humanitaires, au séjour toléré ainsi qu'en raison d'être la victime de la traite des hommes a attiré l'attention particulière du Comité d'experts indépendants.*

*En effet, l'obligation de séjourner en Pologne pendant une certaine période, pour avoir droit au séjour permanent ne concerne que:*

- *les victimes de la traite des hommes – 1 an de séjour,*
- *les personnes qui ont obtenu le statut de réfugié, la protection supplémentaire, ou encore ont été admises pour des raisons humanitaires – 5 ans de séjour,*
- *les personnes qui séjournent en Pologne sur la base du permis de séjour toléré – 10 ans de séjour.*

*Le Comité a été informé, en réponse à une autre question que les réfugiés et les personnes bénéficiant d'une protection subsidiaire ont l'accès au marché du travail et, par conséquent, le droit aux prestations familiales.*

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<sup>2</sup> State Parties in English alphabetic order.

*(information nouvelle) Les personnes qui ont droit au séjour en Pologne pour des raisons humanitaires, au séjour toléré ainsi qu'en raison d'être la victime de la traite des hommes, ont le droit de travailler et, par conséquent, elles ont automatiquement le droit aux prestations familiales. Leur droit aux prestations familiales ne dépend pas de la possession du droit au séjour permanent.*

*Cela constitue la réponse à la conclusion négative.*

*Pour mettre la situation au clair : Des étrangers séjournant en Pologne ont le droit aux prestations familiales sur la base de l'article 1 para 2 lettre d. de la loi sur les allocations familiales. Cet article dit que les prestations familiales sont accordées à tous ceux qui ont le permis de séjour (quel que soit la raison de son attribution) donnant l'accès au marché du travail polonais et, de façon automatique, le droit aux prestations familiales.*

*Il y a des exceptions : des étrangers venant de états tiers (en dehors de l'Union européenne) qui ont le droit de travailler en Pologne pendant 6 mois au maximum ou qui sont admis pour effectuer des études ou pour exercer le travail saisonnier ainsi que ceux qui ont droit au travail sur la base de visa n'ont pas de droit aux prestations familiales, vu que leur séjour en Pologne est de courte durée.*

*Ces informations seront contenues dans le prochain rapport pour permettre au Comité d'experts indépendants d'examiner le cas à la lumière de tous les éléments de la situation.*

*Article 16 - montant des allocations familiales pour des enfants de moins de 5 ans insuffisant*

*La structure du système de prestations familiales a profondément changé en 2016, au cours de la période couverte par le rapport.*

*Il est possible que le rapport n'a pas été suffisamment clair sur le changement majeur de la structure du système des prestations familiales et en résulte la conclusion négative.*

*Depuis 2016, le programme «Famille 500+» est le support de base aux familles élevant des enfants. Dans son cadre la prestation de garde est versée.*

*Initialement, cette prestation a été versée pour le deuxième et chaque enfant suivant de la famille. Le versement de la prestation pour le premier enfant a été soumis au critère de revenu.*

*À partir de juillet 2019, la prestation de garde est versée pour chaque enfant de la famille. La prestation est accordée quel que soit le revenu de la famille.*

*Le montant de la prestation est de 500 zł (~ 120 euro).*

*La prestation de garde est complétée par la prestation versée dans le cadre du programme «Bon départ». Les enfants âgés de 7 à 20 ans, scolarisés, reçoivent une prestation annuelle liée à la rentrée scolaire. Le montant de cette prestation est de 300 zł (~ 70 euro). Elle est accordé quel que soit le revenu de la famille.*

*En plus, elle est complétée par d'autres prestations prévues par la loi sur les prestations familiales.*

*L'allocation familiale dont le montant fait objet de la critique, n'est actuellement (depuis 2016) qu'un des éléments constituant le système des prestations familiales.*

*Avec l'introduction de la prestation de garde le rôle de l'allocation familiale a changé fondamentalement – l'allocation qui a été une allocation de base est devenue une prestation dont le but n'est que de compléter la prestation de base qui est la prestation de garde et cela en parallèle avec d'autres allocations et versements qui constituent le système de prestations familiales.*

*L'allocation familiale est destinée aux familles aux revenus les plus faibles. L'allocation familiale est versée en plus de la prestation de garde.*

*Par conséquent, lors de l'évaluation du soutien financier fourni aux familles – en particulier le niveau des prestations familiales - le montant de la prestation de garde doit être évalué en*

*premier lieu. Il n'est pas possible de prendre seul le montant de l'allocation familiale pour apprécier le montant des prestations destinées aux familles.*

*En même temps une remarque générale est à faire quant à l'évaluation du montant des prestations familiales.*

*Dans le contexte de l'article 16 de la Charte est applicable la position de la Pologne concernant l'évaluation des prestations de sécurité sociale (ainsi que d'autres états) et présenté de façon conséquente par la Pologne dans ses rapports sur l'application de l'article 12 para 1 de la Charte. Il s'agit, en particulier de l'interprétation de cette disposition telle que proposée par le Comité d'experts indépendants.*

*La Pologne souligne que l'appréciation des montants des prestations de sécurité sociale, y compris des prestations familiales, ne peut se faire que dans le cadre de l'article 12 para 2 de la Charte. Cette disposition de la Charte indique comme méthode d'évaluation celle prévue par la Convention no 102 de l'OIT. Il n'est pas acceptable d'adopter d'autres méthodes d'évaluation. Même si quelqu'un voudrait adopter une méthode différente, ni l'article 12 para 1 ni l'article 16 ne contiennent aucune indication quant à la méthode de calcul. Dans cette situation, toute tentative de préciser une telle méthode constitue un dépassement du texte de la Charte.*

25. It is a very old non conformity (4<sup>th</sup> examination, 6<sup>th</sup> non-conformity), but the reasons have evolved during time. The CG decided to urge the Polish government to bring back the situation into conformity with the Charter and await the next report and assessment by the ECSR.

## **ESC 16 SPAIN**

**The ECSR concluded that the situation in the United Kingdom is not in conformity with Article 7§3 of the 1961 Charter on the ground that the daily and weekly duration of light work permitted to children who are still subject to compulsory education during school holidays is excessive and therefore such work cannot be qualified as being light.**

26. The Secretariat explained that the GC had not examined the situation in 2015. It had examined it in 2011 and took note of the information provided and urged the Spanish Government to continue its efforts with a view to bringing the situation into conformity with Article 16 of the Charter.

27. The representative of Spain took the floor:  
*The view taken by Spain is that Article 16 of the Charter, which establishes the right of the family to social, legal and economic protection, although it includes measures of different issues, raises problems, since the Committee (ECSR) is making a specific, restrictive interpretation, according to which conformity is assessed as compliance with this precept exclusively in terms of the level of family benefit per child provided by the Social Security system.*

*This interpretation has resulted in many warnings being issued to Spain that it is in breach of Article 16, despite this country's repeated allegations that the entire set of measures that are provided for family protection, in addition to those of the Social Security system, and including fiscal, educational and housing benefits and other areas of family support, should be taken into account.*

*Regarding compliance with the content of Article 16, the Committee that reviews the documentation that must be supplied periodically has stated:*



*“Child benefit is a sufficient complement to family income when it represents a significant percentage of the average wage. Spending in this respect should also amount to a certain percentage of GDP.”*

*Therefore, it must be shown that this benefit provides a sufficient financial complement to a significant number of families.*

*Spain’s compliance with these criteria has changed radically since the creation of the **Minimum Living Income (MLI)** scheme, after the entry into force of **Royal Decree-Law 20/2020, of 29 May, which establishes the minimum living income**. Therefore, and applying the criteria of the European Committee of Social Rights, we consider that the minimum required level is indeed reached, since the MLI guarantees the provision of certain resources to all households with children, and thus a very significant proportion of the average wage in Spain is made available.*

*The understanding that “Child benefit constitutes a sufficient complement to family income when it represents a significant percentage of the average wage” is now a reality, following the implementation of the MLI scheme, under which all families with children are entitled to a benefit that supplements their income to the levels indicated below, regardless of whether or not the Autonomous Communities, in the future, create additional benefits (for this purpose, the reference taken is the average wage for 2018, namely 23,003.23 euros per year).*

*Families entitled to the MLI will receive the following amounts in each of the cases listed below:*

- *Single-parent families with **one child**, income is guaranteed up to **8,418.37** euros, or **36%** of the average wage.*
- *Single-parent families with **two children**, income is guaranteed up to **10,418.37** euros, or **43.82%** of the average wage.*
- *Single-parent families with **three or more children**, income is guaranteed up to **11,741.41** euros, or **51.04%** of the average wage.*
- *Families with **one child**, income up to **8,861.44** euros is guaranteed, or **38.52%** of the average wage.*
- *Families with **two children**, income is guaranteed up to **10,522.98** euros, or **45.75%** of the average wage.*
- *Families with **three or more children**, income is guaranteed up to **12,184.48** euros, or **52.97%** of the average wage.*

*The Committee does not state that a specific percentage of the average wage must be provided. However, the above figures, currently applicable, are significantly higher than the amount available prior to the creation of the MLI, which was equivalent to 2.6% of the average wage. Therefore, the aforementioned requirement that access to the MLI should be guaranteed to a significant proportion of families is indeed met. In fact, the MLI is available to all who need it. The resources provided in this respect represent an important percentage of the average wage, and therefore constitute significant additional income.*

*In addition, the level of spending is required to represent a significant percentage of GDP. In principle, this level is expected to be 1.5% of GDP, although this yardstick remains open to debate, since what is assumed to be included in family-benefit spending is not clearly defined. When the calculation is based on the restrictive criteria used by the Committee of Experts (ECSR), including the new MLI benefit, the percentage of spending is equivalent to 0.66% of GDP.*

28. The GC had an exchange of views and praised Spain for the adoption of the new law and the establishment of the minimum income. It takes information and will await for the next assessment of the RCSR in this respect.

## **Article 17 ESC - The right of mothers and children to social and economic protection**

### **ESC 17 UNITED KINGDOM**

**The ECSR concluded that the situation in the United Kingdom is not in conformity with Article 17 of the 1961 Charter on the ground that:**

- **not all forms of corporal punishment are prohibited in all settings;**
- **the ages of criminal responsibility across the different entities of the UK are too low;**
- **pain inducing restraint techniques are used in Young Offender Institutions.**

29. The Secretariat presents that in Conclusions XX-4 (2015) the Committee concluded that the situation in the United Kingdom was not in conformity with Article 17 of the 1961 Charter on the grounds that not all forms of corporal punishment are prohibited in the home.

30. The GC examined the situation. The GC decided to vote on a recommendation (7 in favor; 21 against, which was not carried). It then voted on a warning (19 in favor; 3 against, which was carried).

31. The United Kingdom representatives presented the following information:  
*The UK Government fully supports the principles for the protection of children set out in Article 17 of the 1961 Charter, concerning the right of mothers and children to social and economic protection and believes it applies appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.*

#### *Protection from ill treatment and abuse*

*The UK notes the Committee's conclusion that the UK is not in conformity with Article 17 on the grounds that not all forms of corporal punishment are prohibited in all settings.*

*All children in the UK have the right to be protected from abuse, and supporting the most vulnerable children is a key UK Government objective. To this end legislation is in place to protect children from abuse and neglect, and the Government continues to work towards making any improvements that it considers necessary.*

*The UK Government does not sanction violence that could be likely to affect the physical integrity, dignity, development or psychological wellbeing of children and there are clear laws to deal with any violence against children. Therefore, the UK Government believes that UK law and practice conforms with Article 17.*

#### *Age of criminal responsibility*

*With regards to the Committee's conclusions on the criminal age of responsibility, the Scottish Government has increased the age to twelve. The age of ten continues to apply in England, Wales and Northern Ireland. The UK Government believes that, at the age of ten, children can differentiate between bad behaviour and serious wrongdoing, and it is right that they should be held accountable for their actions. The UK Government also believes that setting the age of criminal responsibility at ten years provides flexibility in dealing with children and allows for early intervention in a child's life, with the aim of preventing subsequent offending. When considering the most appropriate response to offending by a young person, the age and maturity of the child is always taken into account. The Government is keen to ensure that, whenever possible and depending on the severity of the offence, children are not unduly prosecuted. This is why most children aged 10-14 are diverted from the youth justice system or receive an out of court disposal. This could mean working with the child, family and victim through more informal ways to address their needs and to prevent further offending. Examples include the resolution of a minor offence or anti-social behaviour incident through*

*informal agreement between the parties involved, Youth Cautions, which aim to prevent offending by children, and Youth Conditional Cautions, which are cautions with one or more conditions attached. If a child does not keep to the conditions, they could be prosecuted for the original offence.*

*Not all crimes committed by those aged 10 or over result in prosecution. A range of alternatives are available to the police to resolve offences satisfactorily and put in place interventions to prevent further offending. The needs of a child or young person are identified through assessment by the local multi-agency youth offending team, which includes representatives from the police, probation, health, housing, children services and education. It can refer the child on to other services for further investigation and support (this can include Children's Services departments or Child and Adolescent Mental Health services).*

*Serious crimes committed by children are rare and the UK does not want to see children prosecuted for offences unnecessarily, where a better alternative may be available. Indeed, evidence indicates that early entry to the criminal justice system is counter-productive. However, it is important to ensure that serious offences can be prosecuted and the public protected.*

*In all these respects, the UK Government believes it is in conformity with Article 17 of the 1961 Charter.*

#### *Restraint techniques in Young Offender Institutions*

*In respect of the Committee's conclusions on restraint techniques in Young Offender Institutions, the Government takes the safety and wellbeing of children in custody very seriously. There is a strong desire to seek to avoid physical restraint by using a range of de-escalation, diversion and behaviour management techniques to help them respond effectively and appropriately. With regard to the use of pain inducing techniques, given the importance of this issue, the Government commissioned an independent review of the current approach within youth secure settings. The report was published on 18 June this year.*

*The report made 15 recommendations – all of which were accepted in the Government response. Most notably, this includes removing the use of pain inducing techniques from the Minimising & Managing Physical Restraint syllabus for prison officers. Instead, the use of these techniques will be allowed only as a last resort for personal safety reasons to prevent death or serious physical injury to children or staff. It is important to note that this report references a number of incidents in which the author of the report believes that the use of a pain-inducing restraint potentially saved a child's life. On this basis, it is the UK Government's position that staff must retain the ability to intervene safely when there is a clear and imminent risk of serious harm to a child, themselves or another member of staff. A senior member of the Youth Custody Service, reporting directly to the Youth Custody Service National Head of Safeguarding, has been allocated to lead on implementing the report's recommendations, with work ongoing.*

32. The GC examined the situation in 2015 and in 2011. On both occasions, the GC voted on a Recommendation, which was rejected. The GC adopted in both occasions a warning, which was carried.

33. The situation that exists is particularly severe and it is a very old non-conformity. Different representatives raised that there is no real progress in this matter. It was proposed a vote on the 1st and 2nd grounds of non-conformity: the GC voted and carried a warning by 19 votes to 1 on the first ground of non-conformity, and another warning by 18 to 4 on the second ground. The recommendations were not carried.

**Article 19§6 - to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory**

#### **19§6 ESC GERMANY**

**The ECSR concluded that the situation in Germany is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:**

- **the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;**
- **the requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany with one parent without the consent of the other, present an obstacle to family reunion;**
- **spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.**

34. The Secretariat explained that the issue of family reunion and issues had been object of a very old non conformity, (since 1983). Although legislative changes intervened and there has been an evolution of the situation, no change has happened on the first 2 grounds since last assessment in 2015. As regards the length of residence, the Committee notes that the requirement of having held a residence permit for two years applies in restricted cases. However, it considers that the maximum period of one year (see Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. Thus it maintains its previous conclusion (Conclusions XIX-4 (2011)) that the situation in Germany is not in conformity with the Charter because the requirement to hold a temporary residence title for two years in certain circumstances is too restrictive.

35. Germany did not participate in the meeting. Therefore, the GC decided to adopt an automatic warning by consensus for lack of information and participation.

### **19§6 SPAIN (ONLY 1ST GROUND)**

**The ECSR concluded that the situation in Spain is not in conformity with Article 19§6 of the 1961 Charter on the grounds that:**

- **social welfare benefits are excluded from the calculation of the worker's income for the purposes of family reunion; (...)**

36. The Secretariat explained that it was a fourth non-conformity. The GC had examined the situation in 2015 and took note of the information provided, requested the Spanish Government to provide any useful information in the next report, and decided to wait for the next assessment by the ECSR.

37. The Spanish representative submitted the following information:  
*"Social assistance benefit and calculation of workers' income for the purposes of family reunion.*

*Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration (LOEX, Spanish initials), approved by Royal Decree 557/2011, of 20 April, in Article 54, regarding the financial resources a foreigner must accredit in order to obtain a residence permit for the reunion of his/her family members, states that the financial resources obtained from social assistance shall not be computable for this purpose.*

*Although this was stated previously, in the 31st Report, we must reiterate that Spain does not share the Committee's criteria on this matter. We believe it is reasonable to differentiate*

*between recognising the right to initial family reunion and the subsequent persistence of this right.*

*This position is quite proper, because if it does not seem logical that the right to family reunion should be granted to someone who needs social assistance to be reunited with his/her family members, then neither is it logical that, once this right has been acquired, the person in question should be able to maintain it when his/her financial means are derived, in whole or in part, from social assistance benefits.*

*Thus, according to Article 54 of the LOEX Regulations:*

*"1. A foreigner who requests residence authorisation for the purpose of family reunion must, when submitting the application for this authorisation, attach documentation proving that he/she has sufficient financial means to meet the needs of the family, including health care in the event of their not being eligible for Social Security cover. The amount of financial means required, as a minimum and referring to the moment at which the application for residence authorisation is presented, is as expressed below in euros, or its legal equivalent in foreign currency, according to the number of persons for whom family reunion authorisation is requested. The number of dependents already living with the applicant in Spain will also be taken into account:*

*...*

*4. Income from the social assistance system will not be computable for this purpose. However, the income contributed by the spouse or partner of the applicant will be computed, as will that of any other first-degree relative who has resident status in Spain and is cohabiting with the applicant."*

*In this regard, note that contributory unemployment benefit would be considered computable for the above purpose, as this benefit is not classed as social assistance.*

*Furthermore, point 3, paragraph b) of Article 61 of the aforementioned Regulation, concerning requirements for the renewal of residence permits by virtue of family reunion, states:*

*"2. The applicant must be in employment and/or have sufficient financial resources to meet the needs of his/her family, including health care if cover is not provided by the Social Security system. The amount required for this shall be equivalent to 100% of the Public Revenue Index (IPREM), per month. For this purpose, income received from the social assistance system shall be computable and the provisions of Article 54.3 of these Regulations shall apply."*

*Requirements for adequate housing, language proficiency and health status, breach of which would preclude family reunion*

*In this respect, the following considerations apply:*

*1. Regarding accreditation of possession of a home in cases of application for family reunion, Article 55 of the LOEX Regulations states:*

*"1. A foreigner who requests residence authorisation for the reunion of family members must attach, when this application is made, a report issued by the competent authorities of the Autonomous Community of the applicant's place of residence, accrediting that he/she has a home that meets the needs of the applicant and of his/her family.*

*2. The Autonomous Community must issue this report and provide it to the interested party within thirty days of the date of the application. At the same time, the report should be sent, via electronic means, to the competent Immigration Office.*

*For these purposes, consultations may be addressed to the municipal authorities where the applicant for family reunion habitually resides for information regarding the suitability of the applicant's home.*

*3. The aforementioned report may be issued by the Corporation of the municipality in which the applicant resides when this procedure is permitted by the competent Autonomous Community, provided that the circumstances have been communicated beforehand to the Secretary of State for Immigration and Emigration.*

*Where appropriate, such a report by the local Corporation must be issued and notified to the interested party within thirty days of the date of the application. At the same time, the report should be sent, via electronic means, to the competent Immigration Office.*

*4. Should the aforementioned report not be issued during the stipulated period, and providing this circumstance is duly accredited by the interested party, compliance with the requirement concerning suitable housing may be accredited by any other means legally admissible.*

*5. In any event, the report, or the documentation presented in lieu, must address the following points, at least: the applicant's entitlement to occupy the home in question, the number of rooms, the use to which each room will be put, the number of persons who will inhabit it, and the conditions of the home as regards habitability and facilities.*

*The aforementioned entitlement to occupy the home shall be understood to refer to the applicant or to any other person who forms part of the family unit, according to a relationship as set forth in Article 17 of Organic Law 4/2000, of 11 January."*

*2. Regarding the health status requirements established in procedures for family reunion, Article 57.2 of the LOEX Regulations, on certification in such circumstances, states:*

*"2. Although the interested party may attach any other documents that he/she deems appropriate, the application for health status certification must be accompanied by:*

*a) ...*

*d) A medical certificate stating that the applicant does not present any disease that might produce serious public health repercussions, as set out in the provisions of the International Health Regulations of 2005".*

*3. Regarding language proficiency, the Spanish regulations on family reunion procedures do not make any stipulations in this respect.*

*In addition, Section 2 of Article 2 ter. of the LOEX, concerning the integration of immigrants, states:*

*"2. All levels of public administration shall foster integration between immigrants and the host society, in all public policies and services, and promote the economic, social, cultural and political participation of immigrants, in the terms stipulated in the Constitution, in the Statutes of Autonomy and in other laws, under conditions of equal treatment.*

*In particular, training and education policies shall be implemented to foster knowledge of and respect for the constitutional and statutory values of Spain, the values of the European Union, and knowledge of and respect for human rights, public freedoms, democracy, tolerance and equality between women and men. Moreover, the public authorities shall apply specific measures to promote the incorporation of immigrants within the education system, guaranteeing schooling for young people during the period of obligatory schooling, enabling them to learn the relevant official languages, and enabling access to employment, in the view that all of these factors are essential to integration".*

## CONCLUSION

*In accordance with the above considerations, we cannot accept the view that the Spanish legal requirements for migrants, as concerns adequate accommodation, language proficiency and health status, are so restrictive as to prevent family reunion.”*

38. The GC took note of the information provided, requested the Spanish Government to provide any useful information in the next report, and decided to wait for the next assessment by the ECSR.

## APPENDIX I

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**Appendix II**  
**Table of signatures and ratifications**

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	03/05/96	29/03/2021	
Greece	03/05/96	18/03/16	18/06/98
Hungary	07/10/2004	20/04/2009	
Iceland	04/11/1998	15/01/1976	
Ireland	04/11/2000	04/11/2000	04/11/2000
Italy	03/05/1996	05/07/1999	03/11/1997
Latvia	29/05/2007	26/03/2013	
Liechtenstein	09/10/1991		
Lithuania	08/09/1997	29/06/2001	
Luxembourg	11/02/1998	10/10/1991	
Malta	27/07/2005	27/07/2005	
Republic of Moldova	03/11/1998		
Monaco	05/10/2004		
Montenegro	22/03/2005	03/03/2010	

Netherlands	23/01/2004	03/05/2006	03/05/2006
North Macedonia	27/05/2009	06/01/2012	
Norway	07/05/2001	07/05/2001	20/03/1997
Poland	25/10/2005	25/06/1997	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/2000	16/10/2009	
San Marino	18/10/2001		
Serbia	22/03/2005	14/09/2009	
Slovak Republic	18/11/1999	23/04/2009	
Slovenia	11/10/1997	07/05/1999	07/05/1999
Spain	23/10/2000	17/05/2021	17/05/2021
Sweden	03/05/1996	29/05/1998	
Switzerland	06/05/1976		
Turkey	06/10/2004	27/6/2007	
Ukraine	07/05/1999	21/12/2006	
United Kingdom	07/11/1997	11/07/62	

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 (RESC + ESC)**

#### **Group B: CONCLUSIONS DISCUSSED ORALLY AT THE 141TH MEETING**

##### Article 7§1

1. RESC 7§1 ALBANIA
2. RESC 7§1 ARMENIA
3. RESC 7§1 MOLDOVA
4. RESC 7§1 ROMANIA
5. RESC 7§1 TURKEY
6. RESC 7§1 UKRAINE

##### Article 7§3

5. RESC 7§3 ARMENIA
6. RESC 7§3 ESTONIA
7. RESC 7§3 MOLDOVA
8. RESC 7§3 ROUMANIA
9. ESC 7§3 UNITED KINGDOM

##### Article 16

10. RESC 16 BULGARIA
11. RESC 16 MOLDOVA
12. RESC 16 LATVIA
13. RESC 16 SLOVAK REPUBLIC
14. RESC 16 UKRAINE
15. 1961 ESC 16 POLAND
16. 1961 ESC 16 SPAIN

##### Article 17

17. 1961 ESC 17 UNITED KINGDOM

##### Article 17§1

18. RESC 17§1 ARMENIA
19. RESC 17§1 HUNGARY
20. RESC 17§1 IRELAND

##### Article 19§6

21. RESC 19§6 AUSTRIA
22. 1961 ESC 19§6 GERMANY
23. 1961 ESC 19§6 SPAIN
24. RESC 19§6 GREECE

##### Article 31§2

25. RESC 31§2 TURKEY

##### Article 31§3

26. RESC 31§2 FRANCE

**Appendix IV**  
**List of deferred Conclusions (RESC + ESC)**

COUNTRY	ARTICLES
ALBANIA	RESC Articles 19§1, 19§11
ANDORRA	RESC Article 8§2
ARMENIA	RESC Articles 7§2, 7§4, 7§6, 7§7, 7§8, 7§9, 8§1, 19§8, 19§11
AUSTRIA	RESC Articles 7§10, 19§1
AZERBAIJAN	RESC Articles 7§2, 7§4, 7§6, 27§1
BELGIUM	RESC Articles 7§10, 17§2, 19§4
BULGARIA	RESC Articles 7§1, 7§3, 7§10, 8§5
BOSNIA HERZEGOVINA	RESC Articles 7§8, 17§2
ESTONIA	RESC Article 7§10
FINNLAND	RESC Articles 7§10, 19§1
FRANCE	RESC Articles 7§10, 19§1
GEORGIA	RESC Articles 7§7, 19§2, 19§7, 19§9, 19§12
GREECE	RESC Articles 7§1, 7§2, 7§10, 17§2, 19§4, 19§11, 27§2, 27§3, 31§3
IRELAND	RESC Articles 17§2, 19§3, 27§1
ITALY	RESC Articles 7§10, 8§3, 17§1, 19§3, 19§6, 19§8, 19§12
LATVIA	RESC Articles 7§10, 8§2, 17§2, 19§8
LITHUANIA	RESC Articles 7§5, 7§10, 16, 17§2, 19§1, 19§10
MALTA	RESC Articles 7§2, 7§5, 7§9
MOLDOVA	RESC Articles 7§7, 7§8, 7§9, 7§10, 8§2, 17§1, 19§7, 27§2



MONTENEGRO	RESC Articles 17§1, 19§12, 27§1
REPUBLIC OF NORTH MACEDONIA	RESC Articles 7§10, 17§1, 19§1, 19§8
PORTUGAL	RESC Articles 7§6, 7§8, 7§9, 7§10, 17§2, 19§2, 19§8
ROMANIA	RESC Articles 7§2, 7§4, 7§10, 17§1
RUSSIAN FEDERATION	RESC Articles 7§4, 7§5, 7§6, 7§8, 19§9, 27§2
SERBIA	RESC Articles 7§10, 8§1, 8§2, 8§4, 16, 17§2, 19§1, 19§2, 19§5, 19§8, 19§9
SLOVAK REPUBLIC	RESC Articles 7§3, 7§5, 7§10, 19§1
TURKEY	RESC Articles 7§8, 17§2, 19§2, 19§9, 19§11, 19§12, 27§1, 31§3
UKRAINE	RESC Articles 7§4, 7§5, 7§6, 8§4, 17§2
COUNTRY	ARTICLES
GERMANY	ESC Articles 7§3, 7§4, 19§1, 19§4, 19§8
DENMARK	ESC Article 16
LUXEMBOURG	ESC Article 19§5
POLAND	ESC Articles 7§2, 7§10, 19§1, 19§2, 19§3
SPAIN	ESC Articles 7§3, 7§9, 7§10, 17, 19§2, 19§3, 19§9
UK	ESC Articles 16, 19§2, 19§3, 19§8, 19§9, 19§10

## Appendix V

### Conclusions 2019: examples of progress in the application of the European Social Charter with respect to children, migrants and families.

In its Conclusions 2019/XXI-4, the European Committee of Social Rights noted a number of positive developments in the application of the Charter, either through the adoption of new legislation or changes to practice in the States Parties or in some cases on the basis of new information clarifying the situation as regards issues raised in previous examinations (thereby reducing the number of conclusions deferred for lack of information). Below follows a selection of examples:

#### Article 7§1

- In **North Macedonia** the Law on Labour Relations was amended in 2018 (outside the reference period) published in the Official Gazette No. 120/2018 in respect of the duration of working hours of light work and holidays for children. Article 18 (2) of the Law on Labour Relations now reads as follows: *“This Law shall forbid the work of a child under the age of 15 or a child who has not completed compulsory schooling, except for participation in activities allowed by law, but no longer than two hours a day and or 12 hours a week, and during the school holidays no longer than six hours a day or 30 hours a week, and during this period, the child is entitled to a two-week holiday.”*

#### Article 8§1

- Article 45 of the **Brčko District (Bosnia and Herzegovina)** Labour Law had been amended on 23 August 2014 and a Decision on the Conditions and Manners of Payment of Compensation of Salary during Maternity Leave (No. 34-000890/13 of 15 January 2014) had come into force on 22 January 2014. During maternity leave, employees are entitled to salary compensation equal to the average net wage earned over the last six months prior to maternity leave (and not 12 months).
- In **Armenia**, Law No. HO-160-N of 27 October 2010 was amended by Law No. HO-206-N of 1 December 2014 in order to replace “temporary incapacity benefits” for pregnant women or those on maternity leave by “maternity benefits”.
- In **Luxembourg**, in accordance with the law of 15 December 2017, the duration of postnatal leave increased from 8 to 12 weeks.
- In **North Macedonia**, following amendments to the Law on Labour Relations during the reference period (Official Gazette No. 72/15), paid maternity leave for multiple births was extended from 12 to 15 months.
- In **the Slovak Republic**, the amount of maternity benefits increased from 65% (Conclusions 2015) to 75% of the employee’s salary (the situation is now in conformity with Article 8§1 of the Charter on this point).

#### Article 8§2

- In **France** Under Article 10 of Law No. 2016-1088 of 8 August 2016 relating to Work, Modernisation of Social Dialogue and Securing of Professional Processes, the statutory period of prohibition to terminate the employment contract at the employer’s

initiative following pregnancy or maternity leave has been extended from four to ten weeks after maternity leave and now includes the period of paid leave immediately following maternity leave. This protection covers pregnant women and also their employed spouses and adoptive parents.

- In **Lithuania**, according to the new Labour Code which came into force on 1st July 2017, pregnant women enjoy protection against dismissal from the day they notify their employer that they are pregnant until the child is four months old.

## Article 16

- In **Austria**, pursuant to legislative changes, the situation in seven out of nine *Länder* (Burgenland, Carinthia, Upper Austria, Styria, Salzburg, Tyrol and Vorarlberg) has been put in conformity with the Charter insofar as their Housing Subsidies Acts provide for equal treatment of foreign nationals. However, in Lower Austria and in Vienna *Länder* a distinction continued to apply, to a certain extent, in the specific context of housing allowances (five years residence requirement). The situation remains in breach of the Charter in respect of these two *Länder*.
- In **Hungary**, the national report refers to the results of several programmes for slums: by 2015-2016, 55 programmes for slums were implemented in 66 segregated areas. Renovation or building work was carried out in 8 settlements, in 112 dwellings (39 newly built; 73 renovated). The housing conditions of about 500 persons of 132 families were improved. The Committee takes note of the continuing efforts made by Hungary, in particular as regards the improvement of housing conditions of people living in slums and segregated areas. However, it puts additional questions on the availability of housing support for the next report and defers its conclusion on this aspect (in 2015 and 2017 it was non-conformity for non-establishment on this ground, adequate supply of housing for vulnerable families).
- As regards **Iceland**, the current report provides information on the different types of housing support during the reference period, including figures on the number of households that benefitted from them and the number of social housing units (municipal rental apartments) for each year. The Housing Benefit Act No. 75/2016 replaced the earlier Rent Benefit Act. Under this new legislation, the administration of financial support to tenants (previously termed “rent benefit”, now termed “housing benefit”) was transferred from the municipalities to the State. The main change is that the basic amount of housing benefit rises according to the number of persons in the household, irrespective of their age. Thus, housing support is not bound by the type of family and has been made more equal than it used to be. Housing benefit can, at its maximum level, amount to 75% of the rent, while maximum rent benefit in the old system could reach only 50% of the rent. On the other hand, municipalities are now obliged to offer additional special housing support to tenants if certain conditions which each municipality sets are met (tenants living under very difficult social and financial conditions). Prior to the new system, they were permitted, but not obliged, to offer these special rent benefits. The Committee takes note of all the legislative developments which have taken place during the reference period as well as of the figures provided in the report on the availability and the different modalities of housing support. It considers that the situation is in conformity with the Charter on this aspect.
- In **Estonia** the amount of child allowance has been significantly raised compared to the previous reference period from € 19 (2013) to € 55 (2017). The Committee notes

that the child allowances now represent 7% of the median equivalised income. The Committee considers that with the raise in the child allowance, the situation has been brought into conformity with the Charter.

- In **Hungary** following the amendments of 2014 to the Family Support Act, the personal scope of family benefits has been extended and now covers third-country nationals holding a single permit, provided that their employment was permitted for a period exceeding 6 months. The Committee considers that these amendments have brought the situation into conformity with the Charter as there is no longer a length of residence requirement for access to family benefits

#### Article 17

- **Estonia, France, Ireland, Lithuania, Malta, Montenegro, Scotland and Wales** all abolished all forms of corporal punishment in all settings (albeit France, Scotland and Wales outside the reference period).
- **Ireland** the practice of detaining children in adult prison facilities ended.
- In **the Republic of Moldova** and **Ukraine** efforts have been made to ensure that children cannot be taken into care on the grounds of the financial circumstances of their families.

#### Article 27

- In **France** under Law No. 2014-459 of 9 May 2014, companies may set up a system for donating rest days to a parent whose child is seriously ill. Law No. 2018-84 of 13 February 2018 has set up similar arrangements which make it possible to donate leave days which have not been taken to the caregivers of dependent persons or persons with disabilities.
- In **Turkey** under Act No. 6663 which entered into force on 10 February 2016, workers with family responsibilities (public and private sectors) may work part-time until their child reaches compulsory school age. Requests to work part-time may not be regarded as valid grounds for termination of employment contracts.

#### Article 31

- In **France**, the situation as regards the legal protection of the right to housing for non-nationals has been brought into conformity with the Charter. In 2011 the Committee found that the requirement of two years' prior residence in France to be entitled to submit an application to the committee in charge of the DALO procedure (enforceable right to housing) was excessive. This requirement was annulled by the Conseil d'Etat and the legislation was amended in 2012 following this decision: the 2 year residence requirement is no longer applied. The Committee has found in 2019 that the situation has been brought into **conformity** with Article 31§1 on this aspect.
- In respect of **Portugal**, the Committee noted that there is a new basic housing law (Law No. 83/2019, outside the reference period, not referred to in the national report). It asks the next report to describe what are the legal remedies provided for by this law for the protection of the right to adequate housing (31§1).

- In **Andorra**, although there is no formal prohibition against evicting persons staying in temporary shelters (hotels), in the event that the hotelier should no longer wish to continue accommodate the person concerned, the hotelier notifies social services so that they can make alternative arrangements. The Committee previously reserved its position (2017) and now concludes, in the light of this information, that the situation is in conformity with Article 31§2 of the Charter.
- With regard to **Finland**, the Committee noted that according to an international evaluation commissioned on the programme on reducing long-term homelessness (2005-2015), Finland was one of the best examples of implementing the “housing first” model. The national report indicated that long-term homelessness has continued to decrease (by 35% between 2008 and 2015) and that at the end of 2017 there were 7 112 homeless persons, less than 0.2 % of the population. There is a new action plan for preventing homelessness 2016-2019. The current goal is to reduce the number of homeless people to less than 4 000 before 2023. The Committee considers that Finland continues to be committed to tackling homelessness in compliance with Article 31§2 of the Charter.
- As regards **Lithuania**, the Committee had previously considered that the legal protection for persons threatened with eviction was not adequate (2011, 2015, 2017). While the Committee reiterates its conclusion of non-conformity on the specific point of prohibition of evictions during the winter period, it now considers that the situation is in conformity with respect to: the obligation to rehouse the persons evicted in case of eviction for reasons of public interest (notably when the dwellings are unfit for habitation and when they are being demolished, reconstructed); and access to legal remedies and compensation in the event of illegal eviction.
- In **Italy**, the Committee takes note of a positive development in the domestic case-law: the Constitutional Court has found in 2018 (20/07/2018) that the conditions of access applied to third-country nationals with regard to housing benefits granted for the payment of rent were unconstitutional. The CC held that it was manifestly unreasonable and arbitrary to set a 10-year national residence requirement or a 5-year regional residence requirement for third country nationals to be entitled to housing benefits of this type. However, since this judgment was given outside the reference period, the Committee reiterates its previous conclusion of non-conformity with Article 31§3.

## Appendix VI

### Warnings and Recommendations

#### Recommendations

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#### Renewed Recommendation(s)

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#### Warnings<sup>3</sup>

##### *Article 16*

##### **MOLDOVA**

- the there was no adequate protection for women victims of domestic violence, in law and in practice;
- (...)
- family benefits do not ensure economic protection of a significant number of families by appropriate means;

##### *Article 17*

##### **UNITED KINGDOM**

##### *Article 19.8*

##### **GERMANY**

- the law permits the expulsion of migrant workers in situations where they neither pose a threat to national security nor constitute a threat to public interest or morality.

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<sup>3</sup> 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.

## Appendix VII

### Statement addressed to the Committee of Ministers of the Council of Europe on the follow-up to the Steering Committee for Human Rights (CDDH) report

#### by the Governmental Committee of the European Social Charter and European Code of Social Security

16 December 2020

Today, we are facing challenges which remind us that it is essential to effectively protect social rights and that vigorous and resolute action is needed. All stakeholders who share responsibility for implementing social rights guaranteed by international and European human rights law and related case law must harness synergies to make these rights a reality for everyone, even more in the context of the Covid-19 pandemic.

The Governmental Committee, as a key monitoring body, has the task to contribute to the supervision of the respect of social rights in Europe as set out in the European Social Charter (of 1961 and revised Charter of 1996) and in the European Code of Social Security (1964 and revised Code of 1990) which guarantee fundamental social and economic rights of all individuals in their daily lives. **We, members of the Governmental Committee**, are and remain committed to ensuring the effective implementation of social rights in law and practice. To further this collective goal, we have decided to revisit our treaty-based monitoring activities and, in this regard, we will submit in due course concrete proposals to the Committee of Ministers.

At its 1363<sup>rd</sup> meeting on 11 December 2019, when discussing the follow-up to the CDDH report(s)<sup>4</sup>, the Committee of Ministers took note of the steps taken to simplify the reporting procedure under the European Social Charter. It further invited the Governmental Committee<sup>5</sup> to:

- consider further ways of streamlining the reporting procedure, including the advisability of reviewing the current systems of thematic reports;
- consider, in particular, the advisability of reforming its working methods, and the need for adjusting its own procedures to focus on priority issues in the context of the follow-up to conclusions;
- enhance dialogue with national authorities and other stakeholders in relation to conclusions under consideration, and
- reflect, in dialogue with the European Committee of Social Rights (ECSR), on the desirability and potential modalities for the ECSR to have the assistance of an ad hoc expert, who would satisfy the requisite criteria for ECSR membership, in proceedings concerning a specific collective complaint where no national of the respondent State is a member of the ECSR at the time.

Building on its **commitments to supervise and ensure the effective implementation of social rights and to further contribute to a move from words to action**, the Governmental Committee will **engage in a process to review, adapt and update its Rules of Procedures and Working Methods, focusing on ways to:**

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<sup>44</sup>Council of Europe CDDH (2018), Improving the protection of social rights in Europe. Volume I. Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, adopted by the CDDH at its 89th meeting (19–22 June 2018), p.160; Council of European CDDH (2019) Improving the protection of social rights in Europe. Volume II. Report identifying good practices and making proposals with a view to improving the implementation of social rights in Europe, adopted by the CDDH at its 91st meeting (18–21 June 2019), p. 131

<sup>5</sup> Decisions adopted by the Committee of Ministers during 1363rd meeting on 11 December 2019, CM/Del/Dec(2019)1363/4.1c

- **Simplify and rationalise the reporting mechanisms<sup>6</sup>** within the Charter for more flexibility, **while guaranteeing the effectiveness of the European Social Charter monitoring system**, as well as considering a **focus on priority issues and targeting specific questions and analysis** when processing conclusions;
- **Strengthen the follow-up to all conclusions of non-conformity, by proposing further and reasoned action**, including the proposal of recommendations in appropriate cases as stipulated in Article 27§3;<sup>7</sup>
- **Prompt a sustained dialogue with other stakeholders**, in particular the ECSR, national authorities and European and national social partners with a view to sharing and supporting best practices, **with due respect for their specific roles and mandates**.

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<sup>6</sup> 1) the regular (thematic) reporting, 2) the simplified reports and 3) the Article 22 (non-accepted provisions) reporting.

<sup>7</sup> Article 27§3 reads as follows: “The Governmental Committee shall prepare the decisions of the Committee of Ministers. In particular, in the light of the reports of the Committee of Independent Experts and of the Contracting Parties, it shall select, giving reasons for its choice, on the basis of social, economic and other policy considerations the situations which should, in its view, be the subject of recommendations to each Contracting Party concerned, in accordance with Article 28 of the Charter. It shall present to the Committee of Ministers a report which shall be made public.”