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

Strasbourg, 6 July 2022

GC(2022)15rev

EUROPEAN SOCIAL CHARTER
GOVERNMENTAL COMMITTEE

REPORT CONCERNING CONCLUSIONS 2020 OF THE EUROPEAN SOCIAL CHARTER (revised)

(Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Cyprus, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands Maarten, the Republic of North Macedonia, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Türkiye, 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. 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). A representative of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity.

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 may "make to each Contracting Party any necessary recommendations" (Article 29 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 employment, training and equal opportunities submitted in application of the 1961 European Social Charter and the revised European Social Charter concerned Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands (including Curaçao and Sint Maarten), the Republic of North Macedonia, Norway, Poland, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Türkiye, United Kingdom and Ukraine. The reports covered the reference period 1 January 2015 – 31 December 2018 and were due by 31 December 2019. The Governmental Committee recalls that it attaches a great importance to the respect of the deadline by the States Parties.

6. Conclusions 2020 of the European Committee of Social Rights (hereafter, ECSR) were adopted in March 2021 with respect to Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Cyprus, Estonia, Georgia, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Malta, Montenegro, the Netherlands, Republic of North Macedonia, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Türkiye and Ukraine. Norway and Republic of Moldova did not submit its report.

7. The Governmental Committee held two meetings in 2021 (142nd Meeting on 10-12 May 2021, 143rd Meeting on 13-17 December 2021) 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 31 December 2023) its new members of the Bureau. Mr. Joseph FABER (Luxembourg) Chair, Mr. Aongus HORGAN (Ireland) 1st vice Chair, Ms. Julie GOMIS (France) Member, Mr. Edward BUTTIGIEG (Malta) Member, Ms. Yvette KALDEN (Netherlands), Member and Ms Velga LAZDINA-ZAKA (Latvia), Member.

8. The Governmental Committee took note that the revised Charter and the collective complaints procedure entered into force for Spain on 1 July 2021 and that the Revised Charter entered into force for Germany on 1 May 2021, one month after the instrument of ratification had been deposited.

9. The state of signatures and ratifications on 1 July 2021 appears in Appendix II to the present report.

II. EXAMINATION OF CONCLUSIONS 2020 OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

10. 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 ECSR.

11. The Governmental Committee examined the situations of non-conformity with the European Social Charter listed in Appendix III to the present report.

12. The Governmental Committee could not examine the follow-up to conclusions under Article 15§1, 18§2, 18§3 and 18§4 against Ukraine, as the representative was not present.

A. Proposed recommendations

13. In the 2021 supervisory cycle, the Governmental Committee proposed 19 recommendations concerning Article 20 of the Revised European Social Charter and Article 1.2 of the 1988 additional Protocol with respect to the following countries: Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Denmark,[2] Estonia, Georgia, Hungary, Latvia, Lithuania, Malta, Netherlands with respect to Curaçao and Sint Maarten,[3] North Macedonia, Russian Federation, Türkiye and Ukraine.

14. The proposed recommendations concern equal pay and equal opportunities for women and men in employment – a transversal topic which had recently been the object of a declaration of the Committee of Ministers (see Declaration on equal pay and equal opportunities for women and men in employment, adopted on 17 March 2021, CMDecl(17/03/2021)1), as well as of 14 individual Committee of Ministers (CM) recommendations on the right to equal pay adopted on 17 March 2021 following up on the decisions adopted by the ECSR, made public on 29 June 2020, in UWE v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Norway, Portugal, Slovenia and the Netherlands. These recommendations of the Committee of

[2] See Report GC(2022)4rev
[3] Ibid.

Ministers were particularly relevant for the discussions of the Governmental Committee on the national situations. They were presented during the 142nd meeting of the Governmental Committee in May 2021 by Ambassador Ivan Orlić, Permanent Representative of Bosnia and Herzegovina to the Council of Europe, in his capacity as Chairperson of the Rapporteur Group of the Committee of Ministers on Social Questions (GR-SOC).

15. All member states agreed on the importance of addressing persistent gender gaps in employment and pay. The Chair recalled that the Committee of Ministers clearly considered that the provisions of the European Social Charter and the criteria developed by the ECSR for monitoring their application could assist member states in their efforts to address inequality revealed by the pay gap and by equal opportunity shortfalls for women in employment.

16. In its Conclusions 2020 (Conclusions XXII-1), the ECSR concluded that the situation in 27 State Parties was not in conformity with Article 20 (c) of the Revised Charter or Article 1 of the 1998 additional Protocol, either on the ground related to the “Obligations to guarantee the right to equal pay for equal work or work of equal value”, which included 4 subsections: legal framework, effective remedies, pay transparency and job comparisons and enforcement, or on the second ground, concerning the “Obligations to promote the right to equal pay”. Of these 27 states, 5 have already received the aforementioned CM recommendations on the matter (Croatia, Cyprus, Czech Republic, Slovenia and the Netherlands). The Governmental Committee discussed the selected conclusions at its 142nd meeting, namely 17 cases as regards the negative conclusion on the first ground and 21 cases as regards the second ground of non-conformity. The respondent states had the opportunity to present comprehensively the national situations and the measures taken by each of them in this particular field. The details of the discussion and the relevant submissions are included in the report of the 142nd meeting (GC(2020)18).

17. The Chair proposed to take a common approach on the follow-up to these conclusions and, similarly to GR-SOC, to propose recommendations to the Committee of Ministers in line with Article 16 of the Rules of Procedure. In the light of the discussions and consensus within the Governmental Committee, the Secretariat was asked to prepare draft recommendations for all negative conclusions related to Article 20 (c) of the Revised Charter and Article 1 of the Additional Protocol on equal pay to facilitate discussions on their adoption at the 143rd meeting of the Governmental Committee in December 2021. The draft recommendations, prepared as instructed, were based on the aforementioned declaration of the Committee of Ministers, quoted the conclusions of the ECSR and included the description of the national situations as presented by the respondent states, together with the possibility of either a detailed or a general recommendation for subsequent follow-up. The state parties were invited to present their comments and amendments. The representative of the Russian Federation requested a vote on a procedural matter to challenge the adoption of the recommendations. However, in accordance with Article 13 of the Rules of Procedure, the Governmental Committee accepted to proceed with the adoption of the recommendations by 21 votes in favour, 13 against and 1 abstention out of 34 votes cast. The representative of the Russian Federation expressed his disagreement and made a statement to be appended to this report (Appendix VIII).

18. Subsequently, recommendations were adopted by consensus with respect to Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Denmark,

Estonia, Georgia, Latvia, Lithuania, Malta, the Netherlands with respect to Curaçao, the Netherlands with respect to Sint Maarten and Ukraine.

19. In the following cases recommendations were adopted following a vote, which was requested by at least one delegation: Hungary (22 votes in favour, 5 against and 3 abstentions), North Macedonia (23 votes in favour, 10 against, 5 abstentions), Russian Federation (24 votes in favour, 9 against and 1 abstention) and Türkiye (25 votes in favour, 7 against, 7 abstentions). The qualified majority of 22 votes of 43 state parties was reached each time and the recommendations were therefore carried.

20. Following a vote, recommendations were not carried with respect to Serbia (19 votes in favour, 13 against and 6 abstentions) and the Slovak Republic (21 votes in favour, 10 against), as they did not reach the required qualified majority. A warning was voted on and not carried with respect to Serbia, as the majority of two thirds of votes cast was not met (20 votes in favour, 11 against, 7 abstentions). With respect to the Slovak Republic, a warning was carried (22 votes in favour, 10 against and 7 abstentions).

21. No voting on a recommendation took place in respect of Montenegro in view of the information provided on developments regarding the national situation.

b. Examination of remaining conclusions of non-conformity and findings

22. The Governmental Committee also examined other situations not in conformity with provisions related to the thematic group “Labour rights” of the European Social Charter, as listed in Appendix II.

23. Furthermore, the Governmental Committee 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 their next report (see the list of conclusions in Appendix III).

24. During its examination, the Governmental Committee also took note of important positive developments in several state parties (see Appendix IV).

25. The total of the selected 60 national situations for oral discussion were to be discussed during the Governmental Committee’s 142nd and 143rd meetings. However, five of these national situations could not be examined during the 143rd meeting due to lack of time. Therefore, these five national situations were exceptionally examined at the 144th meeting (30 May to 3 June 2022). The discussion and the decisions taken in respect of these situations have nevertheless been reflected in this detailed report.

26. The Governmental Committee proposed to the Committee of Ministers to adopt the following Resolutions:

Resolution on the implementation of the European Social Charter during the period 2015-2018 (Conclusions 2020), provisions related to the thematic group “Employment, training and equal opportunities”

(Adopted by the Committee of Ministers … 2022
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 Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands (including in respect of Curaçao and Sint Maarten), North Macedonia, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine and United Kingdom;

Having regard to the failure to submit a report by Norway and Republic of Moldova;

Considering Conclusions 2020 and Conclusions XXII-1 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;

Noting that the Governmental Committee has decided to select, in the light of the conclusions of the European Committee of Social Rights and of the reports of the States Parties and on the basis of social, economic and other policy considerations, the situations which should, in its view, be the subject of recommendations to each State Party;

Draws the attention of the Governments concerned to the Recommendations adopted in respect of Conclusions 2020 and Conclusions XXII-1 of the European Committee of Social Rights, following proposals by the Governmental Committee.

III. EXAMINATION BY ARTICLE[4]

REVISED EUROPEAN SOCIAL CHARTER

Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

27. The Secretariat presented the main criteria used by the ECSR to assess compliance with Article 20 of the Charter.

28. With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on

[4] State Parties in English alphabetic order.

grounds of sex, the parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a. access to employment, protection against dismissal and occupational reintegration;
b. vocational guidance, training, retraining and rehabilitation;
c. terms of employment and working conditions, including remuneration;
d. career development, including promotion.

29. The Secretariat recalled that provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to amount to discrimination within the meaning of this article and that it shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.

30. The Secretariat recalled that under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful, this comparison must be made across companies/undertakings. Therefore, Article 20 requires that it be possible to make pay comparisons across companies. At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.

31. As regards the legal framework, the right of women and men to equality must be guaranteed by a law. The Charter requires “States not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.” It is not sufficient merely to state the principle in the Constitution. Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked. The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.

32. Further, the Secretariat recalled that domestic law must provide for appropriate and effective remedies in the event of alleged discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body, before which the burden of proof must be shifted. The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment. The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice, and the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.

33. Finally, anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers.

34. Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.

35. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

36. Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on. National legislation must provide for the same consequences where an employee is a victim of reprisal measures as those described above in the sections on appeal procedures and compensation.

37. Since "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" and conformity with the Charter cannot be ensured solely by the operation of legislation, States Parties must take practical steps to promote equal opportunities.

38. Appropriate measures include:

- adopting and implementing national equal opportunities action plans;
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.

39. The Secretariat also recalled that, in line with the ECSR's established case-law, action taken must be based on a comprehensive strategy for incorporating the gender perspective into all labour market policies. The Appendix to Article 20 (§3) makes it clear that specific measures designed to remove *de facto* inequalities are permitted.

40. With regard to the selection of situations for consideration by the Governmental Committee, the Secretariat pointed out that they only concerned findings of non-conformity (other than those for which conformity could not be established for lack of information) on the following grounds:

- first ground: obligations to guarantee the right to equal pay for equal work or work of equal value (including legal framework, effective remedies, pay transparency and job comparisons and enforcement)

- second ground: obligations to promote the right to equal pay.

Albania (Article 20 RESC)

41. The ECSR concluded that the situation in Albania was not in conformity with Article 20 (c) of the Charter on the ground that the legislation explicitly covered only certain elements of pay for the purposes of equal pay principle.

42. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation *RecChS(2022)…* on the application of the European Social Charter by Albania (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 January 2003 with respect to Albania;

Whereas the Government of Albania submitted in 2020 its 12th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Albania was not in conformity with Article 20 (c) of the Charter on the ground that the legislation explicitly covers only certain elements of pay for the purposes of the equal pay principle. The ECSR considered indeed that recognition of the right to equal pay in legislation was not ensured. National legislation establishes that remuneration covers basic salary and permanent allowances (Article 109(1) of the Labour Code). The ECSR pointed out in this respect that the concept of remuneration must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment.

In the light of the information submitted by Albania at the 142nd session of the Governmental Committee (10 to 12 May 2021), according to which the Labour Code, as amended by Law No. 136/2015, provides for the protection of employees from discrimination, including the principle of equality in remuneration for equal work or work of equal value. Salary or job remuneration is a fundamental condition of the employment contract referred to in Articles 12 and 21 of the Labour Code. It is determined by the will of the parties, in agreement between them, in the individual employment contract. Article 109 of the Labour Code defines that basic salary includes the basic salary and permanent

additions for that job position. Regarding the allowances/additions of permanent character, it should be taken into account that they include allowances for seniority at work, qualification, working conditions, function, hard work, distance from the place of domicile etc. These allowances are determined in the salary structure of the employer (defined in the collective labour agreement or in the internal regulations of the enterprise), Article 115 defines the general principle of equality in remuneration, the obligation of the employer to pay the employee equally for equal work or work of equal value, without directly discriminating or indirectly discriminating against him, not only on the basis of gender, but also due to considerations of race, age, religion, health status, social status, sexual orientation etc. Equal pay/remuneration, without discrimination, is the salary, which, for the same standard work, is calculated on the basis of the same unit of measure and same time. The Labour Code also refers to the protection against discrimination, as well as the special Law on protection against discrimination.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Albania:

- ensure explicit statutory protection of equal pay for women and men for equal work or work of equal value;
- consider amending its legislation to include all elements of pay for the purposes of the equal pay principle;
- consider adopting other measures including information and awareness raising to ensure compliance with the principle of equal pay;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Andorra (Article 20 RESC)

43. The ECSR concluded that the situation in Andorra was not in conformity with Article 20 (c) of the Charter on the ground that there was insufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that, according to the data in the report, the pay gap between men and women was 22.17% in 2018, compared with 22.57% in 2017, 23.24% in 2016 and 22.4% in 2015. The ESCR found that there was a significant pay gap between men and women in Andorra that had not been greatly reduced during the reference period. While new legislation had recently been enacted (in particular, the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019), the situation was not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress to reduce the gender pay gap has not been met.

44. The Andorran representative argued that section 13 of the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019 laid down the principle of equal pay without discrimination based on sex. This principle entailed an obligation to provide the same remuneration, whatever the nature of this remuneration, for the same work, without any form of discrimination based on sex regarding the elements or conditions of the work in question. Section 57 of the Act introduced an obligation to draw up gender

equality plans in companies as a form of assessment and application of measures designed to eliminate any discrimination based on sex in the workplace or the relevant occupation. The Act also required the government to draw up a public register on the recording of data and indicators on the gender pay gap. Lastly, according to the statistics available, the gender pay gap was 18.7% (approximately EUR 440) in 2020. He concluded that Andorra continued to make efforts and had undertaken to keep on working towards equal pay.

45. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)... on the application of the European Social Charter by Andorra (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)
The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 January 2005 with respect to Andorra;

Whereas the Government of Andorra submitted in 2020 its 14th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Andorra was not in conformity with Article 20 (c) of the Charter on the ground that there was insufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that according to the data in the report, the pay gap between men and women was 22.17% in 2018, compared with 22.57% in 2017, 23.24% in 2016 and 22.4% in 2015. The ESCR found that there was a significant pay gap between men and women in Andorra that had not been greatly reduced during the reference period. While new legislation has recently been enacted (in particular, the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019), the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress to reduce the gender pay gap has not been met.

In the light of the information submitted by Andorra at the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which Section 13 of the Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019, lays down the principle of equal pay without discrimination based on sex. This principle entails an obligation to provide the same remuneration, whatever the nature of this remuneration, for the same work, without any form of discrimination based on sex regarding the elements or conditions of the work in question. Section 57 of the bill introduces an obligation to draw

up gender equality plans in companies as a form of assessment and application of measures designed to eliminate any discrimination based on sex in the workplace or the relevant occupation. The bill also requires the government to draw up a public register on the recording of data and indicators on the gender pay gap. Lastly, according to the statistics available, the gender pay gap was 18.7% (approximately €440) during 2020. Andorra is continuing to make efforts and has undertaken to keep on working towards equal pay.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Andorra:

- reinforce the existing legislative framework;
- address particularly the gender pay gap in the private sector and adopt measures which may include inter alia:
  - o obligations for private enterprises to develop action plans and monitor closely the equal pay situation;
  - o developing further specific national action plans or strategic orientation documents to target adjusted and unadjusted gender pay gap;
  - o promoting a gender equality mainstreaming approach in the labour market to contribute actively to closing the gender pay gap.
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Armenia (Article 20 RESC)

46. The ECSR concluded that the situation in Armenia was not in conformity with Article 20 (c) of the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value, and that the limits imposed on compensatory awards in gender discrimination cases might prevent such violations from being adequately remedied and effectively prevented. In its conclusions concerning Article 4§3 (Conclusions 2018), the ECSR had also noted that the situation was not in conformity with the Charter on the ground that the upper limit on the amount of compensation that could be awarded in gender discrimination cases might preclude damages from making good the loss suffered and from being sufficiently dissuasive. There was no new information in the report on this issue. Therefore, the ECSR noted that the situation which it had previously found not to be in conformity with the Charter had not changed and reiterated its finding of non-conformity in this respect. The ECSR also concluded that it had not been established that legislation provided for a shift in the burden of proof in gender pay discrimination cases. Finally, the ECSR concluded that there had not been sufficient measurable progress in respect of the obligation to promote the right to equal pay.

47. The representative of Armenia explained recent developments, most importantly legislative changes under discussion with respect to the first ground of non-conformity and the inclusion of all aspects of equal pay in legislation.

48. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)... on the application of the European Social Charter by Armenia (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 March 2004 with respect to Armenia;

Whereas the Government of Armenia submitted in 2020 its 15th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Armenia was not in conformity with Article 20 (c) of the Charter on the grounds:

a. there is no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value. The ECSR pointed out that the right of women and men to equal pay for work of equal value must be expressly provided for in legislation, but the Armenian law provides for equal pay for men and women for “equal work” and for “equivalent work” but not for “work of equal or comparable value.” It took note that this wording is narrower than the principle set out in the Charter.
b. the upper limit on the amount of compensation that may be awarded in gender discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive. The ECSR considered that the limits imposed on compensatory awards in gender discrimination cases might prevent such violations from being adequately remedied and effectively prevented
c. it was not established that legislation provides for a shift in the burden of proof in gender pay discrimination cases. The ECSR noted that a law on legal equality containing rules on sharing the burden of proof was being drafted by the Ministry of Justice, but courts may still decide in a case by case basis.
d. there was not sufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that the gender pay gap in Armenia was 32.5% and remains manifestly high and as stated in the national report, between 2007 and 2017, the gender pay gap decreased by 8.3% (by 7.2% between 2006 and 2016). The ECSR considered indeed that the situation was not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap and achieving equal pay was not fulfilled.

In the light of the information submitted by Armenia in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which equal remuneration for equal work of women and men and exclusion of discrimination are enshrined in and guaranteed by the Constitution, the Labour Code, the Law “On Ensuring Equal Rights and Equal Opportunities for Women and Men”, the Law “On Remuneration of Persons Holding Public Positions and Public Service Positions” as well as separate laws for employees of special sectors. The latest legislative development in this area is the amendment made to the Labour Code (entered into force on 19 October 2019), which gives the definition of discrimination in labour relations and states that it is prohibited, including also on the grounds of sex. Armenia is considering in the framework of the forthcoming legislative reforms the issue of amending the provisions of the Labour Code on equal pay for equal or equivalent work. As regards the effective remedies and compensation issue, the Labour Code limits compensation paid for non-reinstatement of the employee tot more than twelve-fold of the average salary. With this particular restriction, the legislation aims to ensure also the interests of the employer to a certain extent. As regards the burden of proof, the Ministry of Justice has prepared a draft law "On Ensuring Legal Equality", which was submitted to the RA Prime Minister`s Office and is currently being revised. Finally, the adjusted gender pay gap is 28.4%, instead of the previous 32.5% and measures such as the 2019-2023 "Decent Work" National Program” was adopted. Based on the fact that gender pay gap is a

problem, enlargement of employment opportunities of women and men is specified as a priority of the Decent Work National Program.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Armenia:

- reinforce existing adopted legislative framework to guarantee, in an appropriate manner, the right to equal pay for work of equal or comparable value ;
- address the gender pay gap and adopts measures which may include inter alia:
o developing further specific national action plans to target adjusted and unadjusted gender pay gap;
o promoting a gender equality mainstreaming approach in the labour market.
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Austria (Article 20 RESC)

49. The ECSR concluded that the situation in Austria was not in conformity with Article 20 (c) of the Charter on the ground that there had not been sufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that the gender pay gap was 20.4% in 2018 (compared with 25.1% in 2008). It remained higher than the EU average, although it had decreased by 2.4% since 2010. In the light of the above, the ECSR considered that the situation was not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled.

50. The Austrian representative explained that the implementation of the principle of “equal pay for work of equal value” were important goals of the Austrian Federal Government. While improvements had been achieved in recent years and the gender pay gap had been reduced as a result, the Austrian Government was aware that the gender pay gap still remained well above the EU average. However, the unadjusted gender pay gap was based on a general consideration of all employees and did not take into account all the factors that influence the gender pay gap. The reasons for and factors influencing the high gender pay gap in Austria could be partially explained. According to a 2018 statistical working paper by Eurostat, the adjusted gender pay gap in Austria was 9.4%. In the public sector, wages were paid according to public sector salary schemes. Women and men still showed very different career choices and employment behaviour. Women worked more often in sectors and occupations with lower pay levels and on a part-time basis, had more frequent and longer family-related career breaks, and thus reached management positions less often than men. Austria continued to work towards a high employment rate for women and strived to reduce the gender pay gap. In order to achieve equal pay for equal work or work of equal value also in practice, a variety and a mix of measures to promote gender equality in the labour market have been taken. As part of its active labour market policy, the Federal Ministry of Labour continued its efforts to contribute to closing the gender pay gap. The planned funding budget for 2021 (excluding short-time work) was EUR 1,556 million. The goal was that almost 50% of these funds would be spent on women.

51. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)... on the application of the European Social Charter by Austria (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 July 2011 with respect to Austria;

Whereas the Government of Austria submitted in 2020 its 9th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Austria was not in conformity with Article 20 (c) of the Charter on the ground that there was not sufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that the gender pay gap was 20.4% in 2018 (compared with 25.1% in 2008).

It was higher in Austria than the average of the European Union countries, and it has decreased by 2.4% since 2010. In the light of the above, the ECSR considered that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

In the light of the information submitted by Austria in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which gender equality in the labour market and thus the implementation of the principle of “equal pay for work of equal value” are important goals of the Austrian Federal Government. While improvements have been implemented in recent years and the gender pay gap has been reduced as a result, the Austrian Government is well aware that the gender pay gap in Austria is still well above the EU average. However, the unadjusted gender pay gap is based on a general consideration of all employees and does not take into account all of the factors that influence the gender pay gap. The reasons for and factors influencing the high gender pay gap in Austria can be partially explained. According to a 2018 statistical working paper by Eurostat, the adjusted gender pay gap in Austria is 9.4%. In the public sector, wages are paid according to public sector salary schemes. Women and men still show very different career choices and employment behaviour. Women work more often in sectors and occupations with lower pay levels and on a part-time basis, have more frequent and longer family-related career breaks, and thus reach management positions less often than men. Austria continues to work towards a high employment rate for women and strives to reduce the gender pay gap. In order to achieve equal pay for equal work or work of equal value also in practice, a variety and a mix of measures to promote gender equality in the labour market have been taken. As part of its active labour market policy, the Federal Ministry of Labour continues its efforts to contribute to closing the gender pay gap. The planned funding budget for 2021 (excluding short-time work) is EUR 1,556 million. The goal is that almost 50% of these funds will be spent on women.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that the Government of Austria

- reinforce existing adopted legislative framework and take account, in an appropriate manner, of the negative conclusion of the ECSR in order to develop it further;
- address the gender pay gap in the private sector and adopts measures which may include inter alia:
  - o where appropriate, obligations for private enterprises to develop action plans and monitor closely equal pay situation;
  - o developing further specific national measures to target adjusted and unadjusted gender pay gap;
  - o promoting a gender equality mainstreaming approach in the labour market;
- provide information in its next report on the measures it has taken to this effect.

Azerbaijan (Article 20 RESC)

52. The ECSR concluded in respect of Azerbaijan that the situation was not in conformity with Article 20 (c) of the Charter on the ground that: a. there was a lack of explicit statutory guarantee of equal pay for women and men for equal work or work of equal value; b. women were not permitted to work in all professions which constitutes discrimination based on sex; c. the legislation did not provide for a shift in the burden of proof in gender pay discrimination cases; and d. the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled.

53. The Azerbaijan representative submitted that Article 25 of the Constitution established equality of rights and liberties of citizens regardless of sex and prohibited restriction of human and citizen rights and liberties on grounds of sex. According to Article 35 of the Constitution, everyone had the right to work in safe and healthy environment, to receive remuneration for his/her work without any discrimination, not less than a minimum salary established by the state. According to Article 16 of the Labour Code in labour relations, no discrimination among employees shall be permitted on the basis of citizenship, gender, race, religion, nationality, language, place of residence, economic standing, social origin, age, marital status, religion, political views, job performance or professional skills of the employees, nor shall it be permitted to establish privileges and benefits or directly or indirectly limit rights based on these factors. In order to expand women's employment opportunities in the country, to ensure gender equality and women's employment in higher paid fields, to protect women's rights in accordance with international labour standards, it was planned to abolish the list of about 700 occupations (positions) and jobs where female labour was prohibited, and instead to approve the lists of prohibited jobs and harmful substances and factors for pregnant women and women having children under the age of one and half. Apart from that, relevant amendments were being made in the Labour Code and normative legal acts arising from this Code in order to eliminate the substantial difference between the average monthly wage levels of women and men. Thus, in the existing legislation 674 occupations (positions) and jobs where female labour was prohibited was to be reduced to 204, while these prohibited occupations (positions) and jobs was not to apply to all women, but only to pregnant women or women having children under the age of one and half.

54. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Azerbaijan (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 November 2004 with respect to Azerbaijan;

Whereas the Government of Azerbaijan submitted in 2020 its 14th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Azerbaijan was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value. The ECSR noted previously that Article 16 of the Labour Code prohibited any discrimination in employment on grounds of gender. Under Article 154 of the Labour Code, discrimination in employment is unacceptable and employee wages may not be reduced in any way. Article 9 of the Law on Gender Equality (2006) provides for equal pay to men and women with the same qualifications, performing equal work of equal value, in equal working conditions, in the same company. The ECSR considered that this wording is narrower than the principle set out in the Charter.
b. not all professions were open to women. Indeed, the ECSR noted that women are not permitted to work in all professions.
c. the legislation does not provide for a shift in the burden of proof in gender pay discrimination cases.
d. sufficient measurable progress in respect of the obligation to promote the right to equal pay. The ECSR noted that the gender pay gap women's average monthly earnings amounted to 50.5% of men's in 2017 (compared with 47.5% in 2014). It noted that the gender pay gap remained considerable. In the light of the above, the ECSR considered that the situation is not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

In the light of the information submitted by Azerbaijan in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which Article 25 of the Constitution establishes equality of rights and liberties of citizens regardless of sex and prohibits restriction of human and citizen rights and liberties on grounds of sex. A draft law was prepared on 19 March 2021 for consideration and approval in order to expand women's employment opportunities in the country, to ensure gender equality and women's employment in higher paid fields and to protect women's rights in accordance with international labour standards. It is planned to abolish the list of about 700 occupations (positions) and jobs where the female labour is prohibited and instead to approve the lists of prohibited jobs and harmful substances and factors for pregnant women and women having children under the age of one year and a half. If the draft law is adopted, the existing legislation 674 occupations prohibited will be reduced to 204. Besides, relevant amendments are being made in the Labour Code to eliminate the difference between the average monthly wage levels of women and men. There is a need to bring Articles 211, 240 and 241 of the Labour Code, as well as related Articles 243 and 244 in line with the requirements of Article 20 of the Charter. Finally, in 2018, the average salary of women constituted 54% of the average salary of men, while in 2019 it was 63%.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b

Recommends that Azerbaijan:

- reinforce the existing adopted legislative framework and take account, in an appropriate manner, of the guarantee of equal pay for women and men for equal work or work of equal value and that all elements of pay for the purposes of equal pay principle are included in the definition of pay;
- eliminate the prohibition for women to work in certain professions;
- monitor that private enterprises closely observe equal pay;
- establish obligations in the General Collective Agreement aimed to eliminate the gender pay gap;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the provisions concerned.

Bosnia and Herzegovina (Article 20 RESC)

55. The ECSR concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 20(c) of the Charter on the ground that: a. women were not permitted to work in all professions which constitutes discrimination based on sex; b. the obligation to ensure pay transparency had not been satisfied; c. sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved.

56. The Bosnia and Herzegovina representative apologised for not having sent in advance their contribution. The ECSR had been informed that the general prohibition of discrimination in any aspect of work and employment was guaranteed by the Constitution of Bosnia and Herzegovina as well as the constitutions of both entities. The Constitution of Bosnia and Herzegovina explicitly incorporated certain conventions relating to gender equality, including the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women. The Law on Gender Equality of Bosnia and Herzegovina, as the most important instrument for raising awareness on gender equality and introducing gender equality principle in public policies and regulations, prohibited gender discrimination in work, employment and access to resources. The Law follows, in all respects, the provisions of the UN Convention on the Elimination of All Forms of Discrimination and provides a comprehensive list of practices that are considered discriminatory on the basis of gender in work and employment. Moreover, the Law provides equal wages and benefits for work of equal value, equal conditions for advancement at work, education, training and professional development, the same status regardless of gender or marital status when organising work, sharing tasks or otherwise determining working conditions and termination of employment. Trade unions and employers' associations had a special role in ensuring equal protection of the right to work and conditions of employment and ensuring that there was no gender discrimination. Entity labour laws were fully aligned with the principles of the Law on Gender Equality in Bosnia and Herzegovina (more details, page 23, Tenth Report of Bosnia and Herzegovina on implementation of the European Social Charter /revised/). In 2019, the Ministry of Civil Rights Affairs of Bosnia and Herzegovina initiated the procedure of denunciation of the

Convention of the International Labour Organization (ILO) on Night Work (Women), No.89, from 1948 (Revised), which regulated the prohibition of night work for women. The International Committee of Experts on the Applications of Conventions and Recommendations referred to paragraph 93 of its 2001 General Review of Women's Night Work in Industry, which strongly encouraged governments to take concrete measures in line with gender equality and non-discrimination in employment. Following the implementation of all procedures provided by law, the completion of the process of denunciation of the aforementioned Convention was planned for the second half of 2021.

57. It was also put forward that, so far, no strategies or measures had been adopted in Bosnia and Herzegovina to ensure wage transparency in the labour market. However, the first activities in this direction had begun in 2019 when Sarajevo Canton published the first Register of Employees in the Public Sector, which contained data on the net salaries of all employees and appointees in the Canton. The register enabled citizens to access financial data on 20 000 employees and appointees to all public administrations and institutions. Public gained insight into the salaries of employees, appointees and the origin of their assets. At the same time, the Anti-corruption and Quality Control Office had been established, which was in charge of the Register and its updates.

58. During discussions, the Chair asked about the general prohibition of discrimination and the fact that women were not allowed to work in certain professions. The representative of France pointed out to the need of a draft individual recommendation. The representative of ETUC brought to attention the fact that the Governmental Committee had voted both a recommendation and a warning the last time the issue was examined but that neither had been carried.

59. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)... on the application of the European Social Charter by Bosnia and Herzegovina (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 December 2008 with respect to Bosnia and Herzegovina;

Whereas the Government of Bosnia and Herzegovina submitted in 2020 its 11th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. women are not permitted to work in all professions, which constitutes discrimination based on sex. The ECSR noted that in the Federation of Bosnia and Herzegovina, it is prohibited for women to work in mines, except in administrative positions, as trainees or in posts not requiring physical work.
b. the obligation to ensure pay transparency has not been satisfied. The ECSR noted that no strategies or measures were adopted to ensure pay transparency on the job market and there is no way for workers to obtain information on the levels of remuneration of other workers. Individual salaries are confidential and not transparent or accessible to the public. The report indicated that in 2019, in the Federation of Bosnia and Herzegovina, the Sarajevo canton published the Register of Public Sector Employees in the canton.
c. sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that it is estimated that women earn 78% to 85% of a man's salary for the same position.

In the light of the information submitted by Bosnia and Herzegovina in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which Constitution, entity constitutions and current legislation guarantee women work in all occupations, but women are generally reluctant to take active steps in entrepreneurship due to traditionally divided roles in society, limited support services for women such as child care shortage etc. Gender Action Plans of both entities deal with the creation of public policies that will help overcome obstacles to raise awareness about gender equality and women's empowerment. It should also be noted that in 2019 the Ministry of Civil Rights Affairs of Bosnia and Herzegovina initiated the procedure of denunciation of the Convention of the International Labour Organization (ILO) on Night Work (Women), No.89, from 1948 (Revised), which regulated the prohibition of night work for women. So far, no strategies or measures have been adopted in Bosnia and Herzegovina to ensure wage transparency in the labour market. However, in 2019 the Sarajevo Canton published the first Register of Employees in the Public Sector, which contains data on the net salaries of all employees and appointees in the Canton. It is planned to establish similar registers in other cantons in Federation of Bosnia and Herzegovina, but activities have been slowed down due to the COVID-19 pandemic.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Bosnia and Herzegovina:

- eliminate the prohibition for women to work in certain professions;
- pursue and finalise the adoption of measures to improve pay transparency, mainly by allowing job comparisons;
- address the gender pay gap and adopt measures which could include inter alia:
o obligations for private enterprises to develop action plans and monitor closely equal pay situation;
o developing further specific national action plans to target adjusted and unadjusted gender pay gap;

o promoting a gender equality mainstreaming approach in the labour market;
o reducing vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Estonia (Article 20 RESC)

60. The ECSR concluded that the situation in Estonia was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 27.7% in 2010, at 26.7% in 2015, at 24.8% in 2016, 24.9% in 2017 and 21.8% in 2018. Gender segregation persists on the occupational level. While women are mostly professionals, service workers, shop and market sales assistants and technicians, and associate professionals, men are mostly craft and related trades workers, plant and machine operators and assemblers and legislators, senior officials and managers. Although the gender pay gap had decreased, it remained very high.

61. The Estonian representative submitted that progress could be seen in the decrease of the gender pay gap in Estonia (for example, compared to 2017, when the gender pay gap was 20,9%, it had decreased to 15,6% by 2020). The Estonian Government (in office from 26 January 2021) clearly recognised the need to decrease the gender pay gap in Estonia. It was confirmed both in the Coalition Agreement and in the Government`s Action Plan for 2021-2023. The Action Plan also included a task for the Minister of Social Protection to present to the Government amendments to the Gender Equality Act aimed at reducing the gender pay gap by February 2022. These amendments were expected to pay special attention to further increasing pay transparency.

62. In the framework of another research project “Reducing Gender Wage Gap” (REGE) (2019-2021) aimed at clarifying further reasons behind the unexplained part of the gender pay gap and providing proposals for further action. In addition, a prototype digital tool for employers to support them in analysing and tackling organisational gender pay gap was to be developed and tested. Its development was still in its early stages, but the key rationale of the tool was to raise awareness on the gender pay gap among and in organisations, by offering employers in a systematic way easily accessible information about pay levels and pay gap in their organisation without any substantial additional administrative burden for them.

63. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Estonia (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 November 2000 with respect to Estonia;

Whereas the Government of Estonia submitted in 2020 its 18th report on the application of the Charter of 1961, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Estonia was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 27.7% in 2010, at 26.7% in 2015, at 24.8% in 2016, 24.9% in 2017 and 21.8% in 2018. Gender segregation persists on occupational level. While women are mostly professionals, service workers and shop and market sales assistants and technicians and associate professionals, men are mostly craft and related trades workers, plant and machine operators and assemblers and legislators, senior officials and managers. Although the gender pay gap decreased, it still remained very high.

In the light of the information submitted by Estonia in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which a constant progress can be seen in the decrease of the gender pay gap in Estonia (for example, compared to 2017, when the gender pay gap was 20,9%, it had decreased to 15,6% by 2020). The Government (in office from 26th of January 2021) clearly recognises the need to decrease gender pay gap in Estonia. It is confirmed both in the Coalition Agreement and in the Government`s Action Plan for 2021-2023. The Action Plan includes also a task for the Minister of Social Protection to present to the Government by February 2022 amendments to the Gender Equality Act aimed at reducing the gender pay gap. The amendments are expected to pay a special attention on further increasing of pay transparency.

In the framework of another three-year (2019-2021) research project “Reducing Gender Wage Gap” (REGE) aimed at clearing up further reasons behind the unexplained part of the gender pay gap and providing proposals for further action, also a prototype of a digital tool for employers to support analysing and tackling organisational gender pay gap will be developed and tested. The development is still in the early stages, but the key rationale of the tool is to raise awareness on the gender pay gap among and in organisations, by offering employers in a systematic way easily accessible information about pay levels and pay gap in their organisation without a remarkable additional administrative burden for them.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Estonia:

- address the gender pay gap and adopt measures which could include inter alia:
o obligations for private enterprises to monitor closely equal pay situation and take measures to reduce gender pay gap;
o developing further gender mainstreaming and strategic approach to target adjusted and unadjusted gender pay gap;
o promoting a gender equality mainstreaming approach in the labour market;
o reducing horizontal and vertical segregation in the labour market;
o combatting stereotypes in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Georgia (Article 20 RESC)

64. The ECSR concluded that the situation in Georgia was not in conformity with Article 20 (c) of the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value and that sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. The ECSR noted that it was estimated that women earn 37.7% less than a man's salary for the same position.

65. The representative of Georgia explained the national situation and referred to the fact that some changes to the Labour Code had been introduced in 2019 to strengthen the legal framework and to include the obligation for the employer to monitor equal remuneration.

66. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Georgia (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 October 2005 with respect to Georgia.

Whereas the Government of Georgia submitted in 2020 its 14th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the

parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Georgia was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value. The ECSR noted that the new Law on Remuneration in the Public Service provides for equal pay for women and men for "equal work", not for "work of equal or comparable value". It noted that this wording is narrower than the principle in the Charter.
b. sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that it is estimated that women earn 37.7% less than a man's salary for the same position.

In the light of the information submitted by Georgia in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which a number of amendments were made to the Georgian Labour legislation. On 29 September 2020, the Parliament of Georgia voted for amendments to the Organic Law of Georgia "Georgian Labour Code" and adoption of the new Law of Georgia on "Labour Inspection". The amendments include prohibition of direct and indirect discrimination, the list of grounds for discrimination was extended and a provision on equal pay for equal work was introduced. Recent amendments to the Labour Code of Georgia determine the obligation of the employer to provide equal remuneration for men and women for equal work. In addition, the Code defines that discrimination is prohibited, including in relation to remuneration.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Georgia:

- take steps to finalise the adoption of legislation to ensure the explicit statutory guarantee of equal pay for women and men for equal work or work of equal value;
- reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting new measures which could include inter alia:
  - o encouraging private enterprises to develop action plans and promote equal pay;
  - o promoting a gender equality mainstreaming approach in the labour market;
  - o reducing vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Hungary (Article 20 RESC)

67. The ECSR concluded that the situation in Hungary was not in conformity with Article 20 of the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value.

68. The Hungarian representative referred to its own domestic legislation, which protects against discrimination and to the fact that the EU had regulations and directives on this issue that were directly applicable in Hungary. The Hungarian representative stated that Hungary complied with the Article 20 of the Charter and disagreed with the conclusion.

69. The Governmental Committee proceeded to vote and adopted the following draft recommendation (22 votes in favour, 5 against and 3 abstentions):

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Hungary (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 June 2009 with respect to Hungary;

Whereas the Government of Hungary submitted in 2020 its17th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Hungary was not in conformity with Article 20 (c) of the Charter on the ground that there was no explicit statutory guarantee of equal pay for women and men for equal work or work of equal value. The ECSR noted that the Constitution, which was adopted on 25 April 2011 and entered into force on 1 January 2012) provides for a general prohibition of discrimination and the promotion of equal opportunities. The Equal Treatment Act (Act CXXV on Equal Treatment and Promotion of Equal Opportunities of 2003) prohibits direct and indirect pay discrimination and refers to the Labour Code. The Labour Code stipulates that regarding employment relationships, particularly pay, the principle of equal treatment must be strictly observed. However, the legislation does not explicitly provide for equal pay for men and women for “equal work” or for “work of equal value”.

In the light of the information submitted by Hungary in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which Hungary has fully transposed EU law into its national law, mainly through the constitutional framework, the laws on equal treatment and the Labour Code. In addition to the rules mentioned there, Paragraph 1 of Article 5 of the Labour Code states that the provisions shall be interpreted in accordance with the legal order of Hungary and the European Union. This framework provision specifically ensures the practical implementation of EU principles in line with the Charter. The Labour Code lays down, as a general principle, the requirement of equal

treatment in relation to pay for work. In addition, the detailed conditions for the application of the requirement of equal treatment are laid down in the Act (125 of 2003) on Equal Treatment and Promotion of Equal Opportunities, which clearly sets out the obligation to respect this requirement between men and women. The legislation in force in Hungary, including the EU legal norms, provides for the requirement of the equal treatment regarding the labour remuneration for men and women.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Hungary:

- strengthen the statutory guarantee of equal pay for women and men for equal work or work of equal value and introduce amendments in relevant laws as necessary;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Montenegro (Article 20 RESC)

70. The ECSR concluded that the situation in Montenegro was not in conformity with Article 20 of the Charter on the ground that women were not permitted to work in all professions which constituted discrimination based on sex.

71. The representative of Montenegro explained that the new Labour Code that came into force on January 2020 eliminated this discrimination.

72. A discussion followed, establishing that the situation appeared to have been remedied and that no recommendation with respect to Montenegro was necessary.

Latvia (Article 20 RESC)

73. The ECSR concluded that the situation in Latvia was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 15.5% in 2010, at 18.4% in 2015, 19.7% in 2016, 19.8% in 2017 and 19.6% in 2018. The EU average in 2018 was 15% (data published on 29 October 2020). The overall earnings gap in 2014 was 22.8%. Although lower that the EU average, the gender pay gap had increased in recent years and remained very high.

74. The Latvian representative submitted that there were sectors where noticeable dominance of one gender existed, like in construction, transport, storage, information and communication services, and agriculture, forestry, fishery, industrial and energy sectors. According to the provisions of the Labour Law, an employer had the obligation to specify equal remuneration for men and women for the same kind of work or work of equal value. In case of violation of this obligation, the State Labour Inspectorate imposed an administrative penalty (a fine) on the employer and requested to stop such violations. In

addition, according to the Labour Law, the employee had the right to request a remuneration corresponding to what the employer normally paid for the same work or for work of equal value. Since 1 June 2019, three sectoral general agreements (construction; fiberglass; hospitality) had been concluded, which envisaged setting minimum monthly wages or hourly tariff rates within the said sectors. In this way, the establishment of equal pay was promoted in collective agreements, providing for a minimum wage threshold to be ensured for employees. At the national level there were proposals on reducing the gender pay gap, on ensuring work-life balance, on promoting women in decision-making positions, etc. Gender equality issues had been implemented in many of policy priorities since 2016. A plan to promote equal rights and opportunities for women and men for 2021-2023 had been developed. The aim of the plan was to promote an integrated, targeted and effective policy ensuring equal rights and opportunities for women and men. The plan set out four directions of action: tackling gender-based violence; promoting gender equality in the labour market; tackling gender stereotypes; and strengthening gender mainstreaming in sectoral policies. A training programme for managers and specialists at different levels was made available from year 2018 until 2022 to promote knowledge and understanding of diversity management and its importance for employers.

75. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Latvia (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 May 2013 with respect to Latvia;

Whereas the Government of Latvia submitted in 2020 its 7th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Latvia was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 15.5% in 2010, at 18.4% in 2015, 19.7% in 2016, 19.8% in 2017 and 19.6% in 2018. The EU 28 average in 2018 was 15% (data published on 29 October 2020). The overall earnings gap in 2014 was 22.8%. The gender pay gap increased and remained very high.

In the light of the information submitted by Latvia in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which there are sectors where noticeable dominance of one gender exists, like in construction, transport, storage, information and communication services, and agriculture, forestry, fishery, industrial and energy sectors. The issue of equal pay is important not only in Latvia. According to the provisions of the Labour Law, an employer has the obligation to specify equal remuneration for men and women for the same kind of work or work of equal value. In case of violation of this obligation, the State Labour Inspectorate imposes an administrative penalty (a fine) on employer and requests to prevent the violation. In addition, according to the Labour Law the employee has the right to request the remuneration that the employer normally pays for the same work or for work of equal value. Since 1 June 2019, three sectoral general agreements (construction; fiberglass; hospitality) have been concluded, which envisage setting minimum monthly wages or hourly tariff rates within the sectors. In this way, the establishment of equal pay in collective agreements is promoted, providing for a minimum wage threshold to be ensured for employees. At the national level there are proposals on reducing gender pay, work-life balance, on women in decision-making, etc. Gender equality issues have been implemented in many of policy priorities since 2016. A plan to promote equal rights and opportunities for women and men for 2021-2023 was developed. The aim of the plan is to promote an integrated, targeted and effective policy ensuring equal rights and opportunities for women and men. The plan sets out four directions of action: tackling gender-based violence; promoting gender equality in the labour market; tackling gender stereotypes; strengthening gender mainstreaming in sectoral policies. A training programme for managers and specialists at different levels was made available from year 2018-2022 to promote knowledge and understanding of diversity management and its importance to employers.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Latvia:

- address the gender pay gap and adopt measures which could include inter alia:
  - encouraging social partners and entreprises to monitor equal pay situation;
  - developing further national action plans to target gender pay gap;
  - promoting a gender equality mainstreaming approach in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Lithuania (Article 20 RESC)

76. The ECSR concluded that the situation in Lithuania was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. It was noted that the government had made efforts to reduce the gender pay gap and had taken measures to raise awareness through gender mainstreaming. Nevertheless, the ECSR observed that the gender pay gap, as an indicator of the effectiveness of these measures, had not changed in a significant manner in the years covered by the current cycle and had even

gone up. The gender pay gap persisted and, although slightly below the EU average, remained high.

77. The Lithuanian representative presented recent progress and indicated that they continued to work on the matter.

78. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Lithuania (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 August 2001 with respect to Lithuania;

Whereas the Government of Lithuania submitted in 2020 its 18th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Lithuania was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, according to Eurostat data, the unadjusted gender pay gap was 14.2% in 2015 and 14.4% in 2016. In 2018, the gender pay gap stood at 14% (data published on 29th October 2020). The gender overall earnings gap in Lithuania was 19.2% in 2014, which is the most recent available figure (the average overall earnings gap in the EU was 39.8%). The ECSR noted that the Government made efforts to reduce the gender pay gap but it has not changed in a significant manner and has even come up. The gender pay gap is persistent and, although slightly below the EU average, it remained high.

In the light of the information submitted by Lithuania in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which in 2019, the gender pay gap decreased in all age groups. The State Labour Inspectorate is taking certain measures to reduce the gender pay gap and conducts inspections in institutions to determine the causes of the pay gap between men and women. In February 2020, the State Labour Inspectorate inspected twenty financial and insurance institutions in order to determine the reasons for the large pay gap between men and women. During the unscheduled inspections, the thematic report “To determine the causes of the large pay gap between men and women in financial and insurance institutions” was completed.

Inspections showed that the remuneration systems approved by the institutions do not allow for direct discrimination on the grounds of sex. However, although no direct discrimination on grounds of sex has been identified, it should be noted that some pay systems have sufficiently high pay rates between the minimum and maximum pay (pay slots) for the same category of workers and the practice that all pay decisions determination adopted by the immediate supervisor may give rise to discrimination on the basis of sex and / or other grounds. In 2019, the gender pay gap stood at 12.4%. It is influenced by social and economic rather than legal factors – number of men and women in particular economic activity, their occupation, education, age, length of service and other reasons.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Lithuania:

- reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect;
- pursue and finalise the adoption of measures to combat stereotypes
- reduce vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Malta (Article 20 RESC)

79. The ECSR concluded that the situation in situation in Malta was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 10.7% in 2015, 11.6% in 2016, 13.2% in 2017 and 13% in 2018 (compared to 9.2% in 2008). It noted that this gap was less than the EU average, i.e., 15% in 2018 (data as of 29 October 2020), but that it showed an upward trend.

80. The representative of Malta was not present at the meetings of the Governmental Committee.

81. The Governmental Committee adopted by consensus the following draft recommendation:

Recommendation RecChS(2022)… on the application of the European Social Charter by Malta (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 September 2005 with respect to Malta;

Whereas the Government of Malta submitted in 2020 its 14th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Malta was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, according to Eurostat data, the gender pay gap stood at 10.7% in 2015, 11.6% in 2016, 13.2% in 2017 and 13% in 2018 (compared to 9.2% in 2008). It noted that this gap was less than the average for the European Union countries, i.e., 15% in 2018 (data as of 29 October 2020). However, it showed an upward trend.

No information was submitted by Malta in the 142nd session of the Governmental Committee.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Malta:

- collect updated information on statistical data on the remuneration of men and women in the public and private sectors, disaggregated by economic activity and profession;
- address the gender pay gap and adopt measures which could include inter alia:
  - obligations for private enterprises to develop action plans and monitor closely equal pay situation;
  - developing further specific national action plans to target adjusted and unadjusted gender pay gap
  - promoting a gender equality mainstreaming approach in the labour market;
  - reducing vertical segregation in the labour market;
  - combatting stereotypes in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

The Netherlands (Article 20 RESC)

82. The ECSR concluded that the situation in the Netherlands was not in conformity with Article 20(c) of the Charter on the ground that pay transparency was not guaranteed.

The report took into account the fact that a bill had been introduced in Parliament in March 2019.

83. The representative of the Netherlands explained that the bill had been modified and was not yet into force. Nevertheless, the Netherlands had received a specific CM recommendation on this particular point.

84. The Governmental Committee considered that it was not necessary to vote on a recommendation.

North Macedonia (Article 20 RESC)

85. The ECSR concluded that the situation in North Macedonia was not in conformity with Article 20 (c) of the Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled.

86. The ECSR noted the information published in the European Commission staff working document (SWD(2019) 218 final of 25 May 2019), according to which the private-sector gender pay gap in 2018 was 39.2%. However, according to the same source, there was no difference in salaries between women and men in the public sector. The ECSR also noted from the National Employment Strategy established by the Ministry of Labour and Social Policy for the period 2016-2020 that the gender pay gap (between women and men working in the same sector with the same education, professional experience, etc.) was 17.5% in 2013. Lastly, the ECSR noted that in its "Concluding Observations on the sixth periodic report of the former Yugoslav Republic of Macedonia" (CEDAW/C/MKD/CO/6, 2018, paragraph 35), the Committee on the Elimination of Discrimination against Women had expressed concern about the wide gender pay gap and its prevalence in sectors such as the garment industry.

87. The representative of North Macedonia referred to new developments and indicators, which showed, in the opinion of the Macedonian authorities, sufficient measurable progress.

88. A debate followed and the Governmental Committee proceeded to a vote on the following draft recommendation which was adopted (23 votes in favour, 10 against, 5 abstentions):

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by North Macedonia (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 March 2012 with respect to North Macedonia;

Whereas the Government of North Macedonia submitted in 2020 its 8th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in North Macedonia was not in conformity with Article 20 (c) of the Charter on the ground that sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The Committee took note that the report referred to the existing gender pay gap, which was the object of targeted strategies and was, according to the Ministry of Labour and Social Policy, of 17%.5 in 2013 and during the rest of the reference period.

In the light of the information submitted by North Macedonia in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which the existence of the wide gap between the employment rate of men and women is a very long-lasting issue and a challenge. It is related, for example to the traditional role of the woman in society and her responsibilities in the household, providing care for the family, children, the elderly etc. There are a lot of efforts aiming to tackle this specific challenge, through implementation of specific policies, programmes and measures. In this respect one of the several main objectives related to the labour market and included in the national ESRP (Employment and Social Reform Programme) 2022 is the "Promotion of integration of women in the labour market and reducing the gender gap", accompanied with specific measured and programmes. Although the issue of existing gender differences, represents still a significant and very important challenge for the country and its labour market, there are certain improvements in the situation. The Ministry of Labour and Social Policy is working intensively with social partners and other stakeholders on the preparation of the brand-new Law on Labour Relations. The new law will bring particular attention to improving the provisions which will continue to ensure equality between women and men in all segments, and particularly the principle of equal pay for work of equal value. And that will be different from the existing one, i.e. equal pay for equal work. Policy measures are also taken. The gender pay gap in the Republic of North Macedonia was about 18-19% with no significant shift detected between 2011 and 2014, but it has been drastically reduced, as the latest estimation for the gender pay gap is of 8.8% (as of 2019).

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that North Macedonia:

- reinforce existing effective measures to reduce further and eliminate the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect;
- collect updated information on statistical data on the remuneration of men and women in the public and private sectors, disaggregated by economic activity and profession;

- pursue and finalise the adoption of measures to reduce stereotypes in the labour market
- reduce vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the provisions concerned.

Russian Federation (Article 20 RESC)

89. The ECSR concluded that the situation in the Russian Federation was not in conformity with Article 20 (c) of the Charter on the grounds that: a. women were not permitted to work in all professions, which constitutes discrimination based on sex. The ECSR noted that a list of 456 jobs were restricted for women; b. the legislation did not provide for a shift in the burden of proof in gender pay discrimination cases; c. sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved. The ECSR noted that, according to data from Rosstat, the ratio of women's wages to men's wages was 71.7% in October 2017 (compared with 72.6% in October 2015 and 74.2% in October 2013). The pay gap between women and men was explained by the higher proportion of women in the sectors of the economy in which pay was lower. The report indicated that in 2017, depending on the occupational group, the gender pay gap varied: for executives (32.2%); for specialists with the highest level of qualification (29.4%); for specialists with a medium level of qualification (41.4%).

90. The Russian representative submitted that under the Ministry of Labour Order No. 512 of 18 July 2019, a list of production processes, jobs and occupations with harmful and/or hazardous working conditions in which the use of women's labour was restricted had been approved with a view to replacing the existing list of physically demanding jobs and jobs with harmful or hazardous working conditions in which the use of women's labour is prohibited, which had been approved pursuant to Government Decision No. 162 of 25 February 2000. The new list contained 100 approved prohibited jobs instead of 456 in the previous one. The said Order entered into force on 1 January 2021.

91. The representative of the Russian Federation opposed in general the adoption of recommendations as done here and questioned the procedure followed (see also para. 17). He requested postponing the examination of the proposals for recommendations, arguing that the relevant documents and draft recommendations had been submitted too late. This position was supported by the representatives of North Macedonia and Serbia.

92. The Chair recalled that it had been unanimously agreed at the 142nd meeting to prepare draft texts and that this was to be seen as a way to facilitate the Governmental Committee's work, given that it had decided on the adoption of recommendations without relying on a draft text. He suggested to follow Article 13§2 of the Rules of Procedure regarding procedural questions and to vote accordingly. As a result, 21 representatives voted in favour of considering the distributed draft texts and proceeding to voting on the proposals for recommendations, and 13 representatives voted against. Since procedural questions were decided by a simple majority of votes cast (only votes "for" or "against" are regarded as "cast", see Article 13§3 of the Rules of Procedure), the Governmental Committee therefore decided to proceed with the vote on the proposals for recommendations.

93. The ETUC representative regretted that discussions had not dealt with the substance. He added that the Governmental Committee had followed its rules in the sense that no document had been submitted in advance ever since the beginning of the Charter system. He stressed that it was significant that the Governmental Committee was discussing 27 cases on a crucial aspect of Article 20 (c) of the Charter. All representatives discussed and agreed by consensus that recommendations were to be prepared and instructed the Secretariat to draft them, which had never been done before. While he regretted that the drafts were not submitted sufficiently ahead of the meeting, he considered that the real question was how this development was going to be valued. Discussions could continue after this meeting at a bilateral level.

94. The Governmental Committee subsequently voted on the following draft recommendation with respect to the Russian Federation which was adopted with 24 votes in favour, 9 against and 1 abstention:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by the Russian Federation (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 December 2009 with respect to the Russian Federation;

Whereas the Government of the Russian Federation submitted in 2020 its 10th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in the Russian Federation was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. women are not permitted to work in all professions, which constitutes discrimination based on sex. The ECSR noted that a list of 456 jobs were restricted for women.
b. the legislation does not provide for a shift in the burden of proof in gender pay discrimination cases.
c. sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, according to data from Rosstat, the ratio of women's wages to men's wages was 71.7% in October 2017 (compared with 72.6% in October 2015 and 74.2% in October 2013). The wage gap between women and men is explained by the higher proportion of women in the sectors of the economy in which pay is lower. The report indicated that, depending on the occupational group, in

2017 the gender pay gap varied: for executives (32.2%); for specialists with the highest level of qualification (29.4%); for specialists with a medium level of qualification (41.4%).

In the light of the information submitted by Russian Federation in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to which under the Ministry of Labour Order No. 512 of 18 July 2019, a list of production processes, jobs and occupations with harmful and/or hazardous working conditions in which the use of women's labour is restricted was approved to replace the existing list of physically demanding jobs and jobs with harmful or hazardous working conditions in which the use of women's labour is prohibited, which was approved pursuant to Government Decision No. 162 of 25 February 2000. The new list contains 100 approved prohibited jobs instead of 456 in the previous one. The Order entered into force on 1 January 2021.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that the Russian Federation:

- pursue and finalise the adoption of measures to eliminate all prohibition for women to work in certain professions;
- provide for a shift in the burden of proof in gender pay discrimination cases;
- address the gender pay gap and adopt measures which could include inter alia:
o obligations for private enterprises to develop action plans and monitor closely equal pay situation;
o developing further specific national action plans to target adjusted and unadjusted gender pay gap
o promoting a gender equality mainstreaming approach in the labour market to contribute actively to closing the gender pay gap
o reducing vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Serbia (Article 20 RESC)

95. The ECSR concluded that the situation in Serbia was not in conformity with Article 20 (c) of the Charter on the ground that it had not been established that the right to compensation was provided for in gender pay discrimination cases.

96. The representative of Serbia argued that the right to adequate compensation was provided for and presented the following information:

"By the first instance verdict of the High Court in Belgrade P1 356/14 of 5/11/2015, under the first paragraph of the sentence, it is allowed to reverse the action. Under the second paragraph of the ruling it is established that the defendant acted in a discriminatory manner towards the plaintiffs, by not paying them a one-time financial assistance for socially endangered persons, former employees of HK "Vojin Popović" ad Novi Pazar. According to the third paragraph of the ruling, the defendant is obliged to pay the plaintiffs the amount of 464,000.00 dinars in the name of material damage, with the legal default interest from March 18, 2011 until payment. Under the fourth

paragraph of the ruling the costs of the litigation in the amount of 455,620.00 dinars are awarded to the plaintiffs.

Under the judgment of the Court of Appeals in Belgrade Gž1 678/16 of 12/5/2017in the first paragraph of the dictum, the appeal of the defendant was rejected as unfounded and the judgment of the High Court in Belgrade P1 356/14 of 5/11/2015 was confirmed. In the second paragraph of the ruling, the defendant's request for reimbursement of the costs of the second-instance procedure was rejected.

The defendant declared a timely and allowed revision against the final judgment rendered in the second instance, due to the wrong application of the substantive law.

The Supreme Court of Cassation examined the challenged judgment after the revision of the defendant in terms of Article 399 of the Law on Civil Procedure ("Official Gazette of RS", No. 125/04 and 111/09), so it found that it was not founded..

In the conducted procedure, no significant violation of the provision of civil procedure from Article 361, paragraph 2, item 9 of the Law on Civil Procedure was committed, which the Supreme Court of Cassation monitors ex officio.

According to the established facts, the plaintiffs were employed in HK "Vojin Popović" a.d. Novi Pazar until 30/11/2005, when bankruptcy was opened against the employer. By the conclusion of the Government of RS from 21/1/2011. The allocation of one-time financial assistance for socially endangered persons, former employees of the said company, was approved, and the realization of that conclusion was entrusted to the Ministry of Labor and Social Policy and the Ministry of Economy and Regional Development, which determined the circle of persons covered by that conclusion. The funds for the payment of financial aid were transferred to the City of Novi Pazar, which made the payment to the end users. The payment was made in favor of 257 former employees in the amount of 465,000.00 dinars each, on March 18, 2011. year, according to the list compiled by the union Nezavisnost Holding Vojin Popovic, which was submitted to the designated ministries. From the contents of the list from 13.01.2011. It follows that the plaintiffs are not included as beneficiaries of one-time assistance, but as persons who do not need to be paid compensation, because they are former managers who are responsible for the bankruptcy of HK "Vojin Popović" a.d. Novi Pazar and that in case of payment in their favor that would have caused dissatisfaction and further complications. According to the testimony of the heard witnesses, the union submitted a list without the names of the plaintiffs to the ministry at the initiative of the employees, because they allegedly brought the company into bankruptcy. From the contents of the minutes from the meeting held on February 28, 2011. in the Ministry of Economy and Regional Development, it follows that the Privatization Agency was asked to submit a list of employees at HK "Vojin Popović" a.d. Novi Pazar on the day of the opening of the bankruptcy, and that it was answered that the agency does not have that information, so at the same meeting of the representatives of the ministries it was agreed to accept the list submitted by the Strike Committee of the trade union Nezavisnost.

Based on the previously established factual situation, the lower courts conclude that the defendant discriminated against the plaintiffs, by denying the plaintiffs the payment of one-time financial social assistance due to his personal characteristics, according to the Conclusion of the RS Government of January 21, 2011. The defendant is obliged to compensate the plaintiffs for material damage.

According to the assessment of the Supreme Court of Cassation, the revision of the defendant was not founded.

The lower courts correctly applied the substantive law from Article 2 of the Law on Prohibition of Discrimination, when they determined that the conduct of the defendant had the character of discrimination against the plaintiffs. By denying the right to a one-time financial compensation

according to the Conclusion of the Government of the RS from 21/1/2011, the defendant, as a public authority, violated the principle of equal rights and obligations, which is one of the legally prescribed forms of discrimination under Article 8 of the Law on Prohibition of Discrimination.

Namely, with the mentioned conclusion, the Government of the RS undertook to give former employees in HK "Vojin Popović" a.d. Novi Pazar pays a one-time financial aid, which is paid to all other employees, except the plaintiffs. The stated exclusion of plaintiffs in exercising the right to financial assistance is based on their personal characteristics - the position of former managers of the designated company. The defendant accepted this status of plaintiffs, as a relevant criterion when denying the right to payment, by acting according to the list submitted to him by the Strike Committee of the trade union Nezavisnost, which lists all recipients of assistance. The plaintiffs were not included in this list due to their personal characteristics, which the heard witnesses confirmed in court, stating that there was animosity between the union representatives and the management staff. It follows that in the actions of the defendant (which accepts the principle of restrictions in obtaining financial assistance from the union) there are signs of discrimination, since personal characteristics were the reason for unjustified distinction between plaintiffs and other persons in the same position.

Contrary to the allegations of the revision, the position of the lower courts is correct that the disputed conclusion did not prescribe the payment of benefits exclusively to socially disadvantaged workers (and not all workers), since this provision does not contain such a provision, nor does it contain criteria for determining, according to their social status, are entitled to a one-time financial assistance. In that sense, there was no place for the application of Article 14 of the Law on Prohibition of Discrimination, which prescribes in which cases it is possible to apply unequal treatment with regard to personal characteristics through the determination of special measures (so-called positive discrimination).

The position of the lower courts that the plaintiff is entitled to compensation for the material damage he suffered in connection with the committed discrimination is also correct. The right to compensation is recognized by Article 43, paragraph 1, item 4 of the Law on Prohibition of Discrimination, and is exercised according to the general rules of causing damage from the Law on Obligations, in order to eliminate harmful consequences in the property of plaintiffs caused by discrimination, and to bring plaintiffs on an equal footing with the persons against whom they have been discriminated against.

For the stated reasons and by applying Article 405, paragraph 1 of the Law on Civil Procedure, it was decided as in the operative part of the judgment under paragraph one.

The decision in paragraph two of the operative part of this judgment was made by the Supreme Court of Cassation by applying Article 401, paragraph 1 of the Law on Civil Procedure. This is stated for the reason that Article 355, paragraph 1 and Article 385, paragraph 1 of the Law on Civil Procedure prescribe that an appeal may be filed against the decision made in the first instance. As the decision on the inadmissibility of the revision was made by the appellate court, as a court of second instance, it follows that an appeal against this decision, as a regular legal remedy, is not allowed."

97. Discussions followed the presentation made by the Serbian representative, and the Governmental Committee proceeded to vote on a recommendation. With 19 votes in favour, 13 against and 6 abstentions, it was not adopted as the required qualified majority of 22 of 43 State Parties had not been reached. A warning was subsequently voted upon and not carried, as the majority of two thirds of votes cast had not been reached (20 votes in favour, 11 against, 7 abstentions).

Slovak Republic (Article 20 RESC)

98. The ECSR concluded that the situation in the Slovak Republic was not in conformity with Article 20 (c) of the Charter on the ground that: a. the legislation explicitly included only certain elements of pay under the principle of equal pay; b. the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled.

99. The Slovak representative explained the national situation and considered that there had been sufficient progress. He presented the following information:

"As regards 1st ground (equal pay for work of equal value)

The Slovak Republic considers the right to equal pay for equal work or work of equal value to be one of the fundamental rights in labour-law relations. That is why this form of non-discrimination if anchored in several pieces of legislation. Most notably in the Labour Code, where Article 119a regulates that wage conditions have to be agreed upon without sex discrimination. Par. 2 states that women and men have the right to equal pay for the same work or work of equal value, in line with the requirements of the relevant EU legislation and the Antidiscrimination Act.

The ECSR has found the Slovak Republic to be in violation with this provision of the Charter by stating that the concept of equal pay for work of equal value excludes severance pay and packages, non-mandatory travel reimbursements, and contributions to social security schemes, supplementary health insurance schemes and supplementary pension funds.

Following the observation of the ECSR, it has to be stated that the level of payments such as severance pay, travel reimbursement, contributions to social security schemes, etc. are set up in direct relation to the wage of the person concerned, e. g. the amount of severance pay granted to a person depends entirely on the person´s previous wage. As the wage level has to be agreed upon without sex discrimination, in accordance with the Labour Code, this in turn directly means that the amount of severance pay is also based on this principle. Severance pay is not set up differently for women and men in the Slovak Republic. Its amount is set up on the basis of the person´s previous earnings. The same applies to the other concepts mentioned in the ECSR´s conclusions. Contributions to social security schemes, health insurance schemes and pension funds are directly influenced by the person´s wage – therefore they fully reflect the principle of equal pay for work of equal value.

Payments such as travel reimbursements or subsistence payments have their amount set up directly by the law. Their amount does not take into consideration the sex of the recipient, the amount is the same for all persons undertaking actions that grant them these payments.

Therefore, the Slovak Republic is of the opinion that the payments mentioned by the ECSR fully reflect the concept of equal pay for work of equal value because their amount is determined by the wage of the recipient, which has to be agreed upon by adhering to the principle of equal pay for work of equal value.

If a person is of the opinion that their wage conditions are discriminatory, they are free to take the case to the court. In cases where any form of discrimination is concerned, and I would like to stress ANY, the burden of proof is shifted to the employer. The employer has to prove that the person who brought the case to the court is not discriminated upon. If the court´s ruling states that the person was discriminated, they are entitled to compensation and damages up to 36 times their usual wage (depending on the court´s ruling).

With this said, the Slovak Republic is of the opinion that its legislation is in line with the Charter´s requirements, as the wage level has to reflect the concept of equal pay for work of equal value and the level of the benefits mentioned depends on the person´s wage.

As regards the 2nd ground (equal pay for work of equal value)

The Slovak Republic considers the right to equal pay for equal or work of equal value to be one of the fundamental rights in labour-law relations. That is why it would like to take this opportunity to inform the Committee about the latest development in this area.

Only several days ago, on April 28, 2021, the Government has adopted a new Strategy on Equality between Women and Men for 2021 – 2027 as well as a new Action Plan directly related to the strategy. These policy papers are the result of extensive discussions between the Government and the social partners.

Part No. 4 of the action plan named "Equal Opportunities and Access to the Labour Market, Economic Dependence and Poverty of Women" is devoted to the issue of reducing the wage gap between women and men. Specific tasks that should help reduce the pay gap are the following proposals for measures and solutions to the pay gap between men and women:

- *legal analysis of the institute of equal pay;*
- *ensuring regular supervision of equal treatment of employees in employment relations;*
- *regular monitoring of compliance with the principle of equality in employment, remuneration and promotion of legal awareness and application of labour law, especially the Labour Code in practice;*
- *addressing discrimination against women in the pension system;*
- *granting a so-called special personal wage point to mothers, which results in higher old-age pensions for women.*

In order to meet the said goals, since May 2021, a specialised working group made up of the representatives of the Ministry of Labour, Social Affairs and Family, the Ministry of Justice, the Ministry of the Interior, social partners and the representatives of several NGOs has been set up. Its task is to draft and submit to the Government specific measures aimed at reducing the pay gap between women and men by analysing the existing legislation and the proposals submitted by the social partners and NGOs.

In relation to the tasks of the working group, the Slovak National Centre for Human Rights, in close cooperation with the Ministry of Labour, Social Affairs and Family, has started to work on extensive legal analysis of the existing wage gap legislation and is tasked with drafting of legislative proposals to increase the effectivity of the current legislative framework.

Another important new measure is that the National Labour Inspectorate has been granted a new competence related to regular monitoring of the equal treatment between women and men in labour-law relations. So far labour inspectorates would perform inspections related to equal wage based on individual submissions and complaints. Since 2021, the National Labour Inspectorate shall perform nation-wide monitoring of adherence to the equal pay legislation and annually publish reports with proposals aimed at improving the situation.

Starting in summer 2021, a new nationwide information campaign related to the equal pay for work of equal value shall be launched. The aim of the campaign is to support the dissemination of legal information on proper implementation of labour law and equal pay law among the society. The campaign shall also include specific topics related to challenges women have to overcome in practice. The campaign is prepared by the Ministry of Labour, Social Affairs and Family, the National Labour Inspectorate, social partners and NGOs.

In cooperation with the Ministry of Finance, the Ministry of Labour, Social Affairs and Family is preparing a new legislative measure aimed at introducing the so-called special personal wage point. Its aim is to increase the level of old age pension of women who did not work for a certain period of time due to giving birth to a child and then staying home with the child during maternity leave and parental leave. Up to now, these years were not counted towards the level of their old age pension or their entitlement to it. This new legislation aims to remedy this.

These are the most substantive measures aimed at reducing the wage gap between women and men introduced by the Slovak Republic. More detailed information shall be presented in the national report once the measures and initiatives are adopted and launched".

100. The Governmental Committee then proceeded to vote on a recommendation, which was not carried (21 votes in favour, 10 against), as it had not reached the required qualified majority (22 of 43 State Parties). Subsequently, a warning was adopted with 22 votes in favour, 10 against and 7 abstentions.

Slovenia (Article 20 RESC)

101. The ECSR concluded that the situation in Slovenia was not in conformity with Article 20(c) of the Charter on the ground that pay transparency was not ensured.

102. The Slovenian representative explained that Slovenia was making progress in this field and that wide consultation was to follow on an EU directive on pay transparency. The issue at hand was part of the proposal for such an EU directive and there was also a CM recommendation of March 2021 dealing with this particular topic.

103. The Governmental Committee considered that it was not necessary to vote on a recommendation.

Türkiye (Article 20 RESC)

104. The ECSR concluded that the situation in Türkiye was not in conformity with Article 20 (c) of the Charter on the ground that: a. women were not permitted to work in all professions; and b. sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved.

105. The Turkish representative explained the national situation and provided the following information:

*"**First ground of non-conformity:***

- ***Women are not permitted to work in all professions, which constitutes discrimination based on sex***

According to Article 10 of the Turkish Constitution, men and women have equal rights. All kinds of discrimination in employment is prohibited in accordance with the Article 5 of the Labour Law No. 4857 titled "The Principle of Equal Treatment".

Türkiye has ratified several ILO Conventions such as Underground Work (Women) Convention, 1935 (No. 45), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and

Occupation) Convention, 1958 (No. 111), Employment Policy Convention, 1964 (No. 122), Human Resources Development Convention, 1975 (No. 142), Safety and Health in Construction Convention, 1988 (No. 167),Safety and Health in Mines Convention, 1995 (No. 176) also in line with its efforts to ensure gender equality in employment.

The issue of non-gender discrimination in remuneration is also regulated within the framework of Article 5 of the Labour Law No. 4857 within the scope of the principle of equal treatment, and audits related to this issue are carried out by the Directorate of Guidance and Inspection. According to Article 72 of the Labour Law, "Boys under the age of eighteen and women

irrespective of their age must not be employed on underground or underwater work like in mines, cable-laying and the construction of sewers and tunnels." The law aims to protect women from labour intensive mining, but they are employed in surface units, offices and laboratories, also in administrative positions. Thus, women can work in these sectors as long as they fulfil mentioned conditions. Women engineers and technicians can work underground in the scope of research, planning and project designing. University students in Mining Engineering Departments can also go underground during their training.

The scope of this article is coherence to Article 2 and 3 of ILO Convention 45 which indicates that "No female, whatever her age, shall be employed on underground work in any mine." Nevertheless, women holding management positions or performing non-manual work in these sectors are exempt from abovementioned prohibition.

With "the Regulation Amending the Regulation on Heavy and Dangerous Occupations" dated 8th February 2013, many occupations were excluded from the category of heavy and dangerous occupation and thus the limitations on the women and youth employment were abolished.

Law on Occupational Health and Safety, no. 6331 was enacted on 20.06.2012 after published in the Official Gazette dated 30.06.2012, no. 28 339. According to Article 10 of the Law with the headline "Risk assessment, control, measurement and research", employers are obliged to make risk assessment regarding OSH or make the assessment made and consider the situation of vulnerable groups such as young, old, disabled, pregnant and nursing women and also the situation of women employees. In Article 30 of the law, it is stated that regulations will be issued for employment of vulnerable groups, night shifts, works for which shorter working hours are necessary, working conditions of pregnant and nursing women, establishment of nursing rooms and childcare centers, service procurement and related issues.

The Prime Ministry Circular No. 2010/14 on "Increasing Women's Employment and Promotion of Equality in Opportunities" was published in the Official Gazette and entered into force on 25th May 2010 in order to increase women employment and to implement equal pay for equal work principle for strengthening the socio-economic positions of women, implementing the equality of women and men in social life, and achieving the sustainable economic growth and social progress. Pursuant to the Prime Ministry Circular No. 2010/14, the National Monitoring and Coordination Committee on Women's Employment was established in order to monitor and evaluate the activities carried out by all stakeholders for identification of existing problems in women's employment and elimination of these problems; and ensure coordination and cooperation.

"No discrimination based on language, race, sex, political opinion, philosophical belief, religion and sex or similar reasons is permissible in the employment relationship", according to Article 5 of the Labour Law. In addition, there is no provision regarding the prohibition of women to work in mines in the Safety and Health in Mines Convention No. 176, which entered into force in Türkiye on 23.03.2015, and a new approach based on risk assessment is introduced.

It is known that countries that have ratified Convention No. 45 are advised by ILO to cancel and revoke Convention No. 45 if they ratify Convention No. 176. Safety and Health in Mines Convention No. 176 has been ratified by Türkiye, but the underground contract No. 45 and related domestic law regulations regarding the prohibition of working in mines and underground works have not been abolished yet. However, in practice, evaluation is made in line with the case-law and the provisions of the ILO Convention No. 176, which is more up-to- date.

The Turkish Civil Code, which entered into force on 1st January 2002, is a law which upholds equality between women and men, puts an end to sexual discrimination, renders women equal to men in both family and the society; and values the women's work.

Second Ground of non-conformity:

- ***the obligation to make measurable progress in respect of the obligation to promote the right to equal pay has not been fulfilled***

Pursuant to Article 5 (Equal Pay Rule) of Regulation on Minimum Wage, published on Official Gazette dated 1.08.2004, no. 25540, discrimination based on language, race, color, gender, disability, political opinion, religion, sect etc. is prohibited in determination of minimum wage. The fact that a lower wage cannot be determined for a job of the same or equal value due to gender is stipulated in Article 5 of the Labor Law No. 4857.

On the base of data calculated by using yearly average gross wage, gender gap is -1,1 % in favor of women. Whereas, the data calculated on the base of educational level shows that wages of men are higher than those of women in all stages.

The situation gets clear when the distribution of educational level of wage earners is examined. The highest number of wage earner women exists in the category of graduates of higher education, as the highest number of wage earner men exist in the category of graduates of primary school and lower. When the pay gap is examined on the base of occupations, pay gap is in the favor of men, except for the group of "managers".

With the Law No. 6111, which came into force in 2011, it was decided to cover the employer's shares of the insurance premiums from the Unemployment Insurance Fund for 24 to 54 months if women over the age of 18 were employed. The law also introduced regulations to improve women's work life. The incentive has been extended with the Decision of the Council of Ministers until 31.12.2020. Active Labour Force Programs and Employment Incentives implemented by ISKUR are policies that have played an important role in increasing women's employment in Türkiye.

In line with the Prime Ministry Circular No. 2010/14, "Women's Employment National Monitoring and Coordination Board" was established in order to strengthen the socio-economic position of women, to increase the employment of women and to provide equal pay for equal work. The main purpose of the Board is to identify existing problems in the field of women's employment, to monitor and evaluate the works carried out by all relevant parties to resolve these problems, to ensure coordination and cooperation.

Article 5 of the Labour Code (Law No. 4857) prohibits all discrimination between the sexes. It also guarantees the right to equal pay for equal work or work of equal value. In the inspections carried out by the Labour Inspectors in order to prevent discrimination and to apply equal remuneration, it is aimed to prevent the matters contrary to the legislation and not to repeat the violations within the framework of the Law No. 4857 and related legislation. The payments are made through the bank within the framework of the provisions of Article 32 of the Labor Law and the "Regulation on the Payment of Wages, Premiums, Bonuses and All Kinds of Such Benefits Through Banks". During the inspections, the difference between the payments made to female workers who are subjected to different wages due to gender-based discrimination and the payments made to male workers can be revealed through bank records.

Law on Human Rights and Equality Institution, no. 6701 was enacted and published in the Official Gazette dated 20.04.2016, no. 29690. The law aims to protect and improve human rights, ensure the right to equal treatment of persons, preventing discrimination in enjoying rights and freedoms recognized legally. In Article 3 of the Law, discrimination based on gender, race, color, language, religion, sect, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability, and age is prohibited. In addition, natural and private law legal persons who have responsibility regarding prohibition of discrimination have the authority to take necessary measures to identify and eliminate discrimination and ensure equality, in their scope of

authority. The Human Rights and Equality Institution has been established by this law and the institution will carry out activities necessary for the fight against discrimination.

By the way, the Law No. 6111 allows positive discrimination for women in terms of providing new employment opportunities for women compared with men. It is intended to create employment by granting social security premium incentives for employing women and youth.

The "Law on Trade Unions and Collective Labour Agreements", No. 6356, dated 7.11.2012 establishes the principles of equal opportunities, equal treatment and nondiscrimination in the activities of workers' and employers' unions and Confederations. Art. 26-(3) of the mentioned

law states: "Organizations shall be obliged to observe the principle of equality and prohibitions of discrimination among its members in their enjoyment of its activities. They shall consider the gender equality in their activities."

Women's Employment in Statistics

According to TUIK 2017 data on Labour Force Statistics (15+ years of age),

- *While female employment rate rose to 28,9% from 20,7% in 2005 by 8,2 points, women's labour force participation rate rose to 33,6% by 10,3 points compared to 2005.*
- *Although many activities have been carried out to promote women's employment, informal employment continues to be a challenge to be addressed. While the rate of women working without being registered to social security institution for their actual jobs had been 64,9% in 2005; the same rate fell down to 44,6% at the end of 2017.*
- *In 2017, the rate of informal employment was 94,2% for women in agricultural activities in Türkiye whereas it was 24,9% for women in non-agricultural activities. It points to the facts that informal employment concentrates rather on those in agricultural activities, particularly on unpaid family workers. Men comprised 21,4% of the unpaid family workers engaged in agricultural activities informally while women made up 78,6% of the same group in 2017.*
- *Considering the distribution of women's employment by sectors, the biggest share belongs to the services sector with 56,1%. In addition, 28,3% are recruited in the agricultural sector and 15,6% in the industrial sector.*
- *An analysis of the figures of women's employment based on their conditions of work reveals that women are employed the most as paid or casual employees by a rate of 63,4%. Additionally, they are employed as unpaid family workers by 25,9%, self-employed by 9,4% and work as employers by 1.3%.*
- *Considering women's labour force participation rates by educational backgrounds, women graduates of higher education come to the forefront by 72,7%. They are followed by the graduates of vocational and technical high schools (by 42,6%) and the graduates of high school (34,3%).*
- *As the foremost of the reasons why women are excluded from the labour force, being engaged in household chores had had a share of 67% in 2005 and it shrank to the level of 55,4% by 2017. This rate could be interpreted as a substantial increase in women's labour force participation as of 2005. Moreover, the rate of women not participating in labour force as they are seasonal workers decreased by 1,3 points down to 0,3% by 2017, compared to 2005. It points to the fact that the number women recruited either as casual or seasonal workers diminished and the number of women recruited as permanent or full-time employees went up".*

106. Discussions followed this presentation. The ETUC representative, in particular, strongly regretted the withdrawal of Türkiye from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The Turkish representative provided some clarifications in this respect.

107. The Governmental Committee voted on the following draft recommendation, which was adopted by 25 votes in favour, 7 against, 7 abstentions:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Türkiye (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers' Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 August 2008 with respect to Türkiye;

Whereas the Government of Türkiye submitted in 2020 its 13th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Türkiye was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. women are not permitted to work in all professions, which constitutes discrimination based on sex. The ECSR noted that some jobs were excluded, for example in the mining sector.
b. sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that it is estimated that, on average, the pay gap was 7.7% in 2018. However, according to the report, the gender pay gap was 14.3% for persons with a secondary school leaving certificate and 28.8% for those who had successfully completed a vocational secondary school education. Moreover, the employment rate of women was particularly low.

In the light of the information submitted by Türkiye in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021, according to Article 10 of the Turkish Constitution, men and women have equal rights. All kinds of discrimination in employment is prohibited. According to Article 72 of the Labour Law, "Boys under the age of eighteen and women irrespective of their age must not be employed on underground or underwater work like in mines, cable-laying and the construction of sewers and tunnels." The law aims to protect women from labour intensive mining, but they are employed in

surface units, offices and laboratories, also in administrative positions. Thus, women can work in these sectors as long as they fulfil mentioned conditions. Women engineers and technicians can work underground in the scope of research, planning and project designing. University students in Mining Engineering Departments can also go underground during their training. In line with the Prime Ministry Circular No. 2010/14, “Women's Employment National Monitoring and Coordination Board” was established in order to strengthen the socio-economic position of women, to increase the employment of women and to provide equal pay for equal work. The main purpose of the Board is to identify existing problems in the field of women's employment, to monitor and evaluate the works carried out by all relevant parties to resolve these problems, to ensure coordination and co-operation. Labour Inspectors supervise equal remuneration. Female employment rate rose to 28,9% in 2017 from 20,7% in 2005, so by 8,1 points compared to 2005.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b)

Recommends that Türkiye:

- eliminate the prohibition for women to work in certain professions;
- collect data and statistics to measure gender pay gap in private and public sectors;
- reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect;
- reduce vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Ukraine (Article 20 RESC)

108. The ECSR concluded that the situation in Ukraine was not in conformity with Article 20(c) of the Charter on the ground that: a. there was no shift in the burden of proof in gender discrimination cases; b. the right to equal pay was not guaranteed in practice; and c. sufficient measurable progress in respect of the obligation to promote the right to equal pay had not been achieved.

109. While Ukraine provided no information, the Ukrainian representative accepted the text of the draft recommendation.

110. The Governmental Committee adopted by consensus the following draft recommendation:

Draft Recommendation RecChS(2022)… on the application of the European Social Charter by Ukraine (period 1 January 2015 to 31 December 2018) (Conclusions 2020)

(Adopted by the Committee of Ministers on … 2022 at the … meeting of the Ministers’ Deputies)

The Committee of Ministers,

Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the Revised European Social Charter came into force on 1 February 2007 with respect to Ukraine;

Whereas the Government of Ukraine submitted in 2020 its 13th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined the Conclusions 2020 of the European Committee of Social Rights (ECSR), adopted in January 2021 and made public in March 2021 and available to all the parties, and the report of the Governmental Committee appointed under Article 27 of the Charter;

In the light of the fact that the ECSR concluded that the situation in Ukraine was not in conformity with Article 20 (c) of the Charter on the grounds that:

a. there was no shift in the burden of proof in gender discrimination cases. The ECSR noted that Article 81 of the Code of Civil Procedure establishes special procedure for proof in discrimination cases. According to part two of this Article the plaintiff is required to provide factual evidence that the discrimination took place. If such evidence is brought, the burden of proof regarding the absence of discrimination lies with the defendant.
b. the right to equal pay was not guaranteed in practice. The ECSR noted that the absence of cases of gender discrimination in employment was likely to indicate a lack of awareness of rights, lack of confidence in or absence of practical access to procedures or fear of reprisals. No information was provided on existing national case law relating to breaches of the right to equal pay, as well as on sanctions imposed, so it was not established that the right to equal treatment in employment without discrimination on grounds of sex was guaranteed in practice.
c. sufficient measurable progress in respect of the obligation to promote the right to equal pay was not achieved. The ECSR noted that, in average, pay for the entire labour market in 2018, women had 77,7% of men's pay, i.e. a pay gap of 22,3%. In 2018, the pay gap decreased 0,6% compared to 2017. In the period 2005-2018, the pay gap decreased 2,8%.

No information was submitted by Ukraine in the 142nd session of the Governmental Committee, held from 10 to 12 May 2021.

Following a proposal by the Governmental Committee,

Referring to the Declaration on equal pay and opportunities for women and men addressed to all the Council of Europe member States by the Committee of Ministers adopted on 17 March 2021 (CM/Del/Dec(2021)1399/4.2b

Recommends that Ukraine:

- amend its legislation and provide for a shift in the burden of proof in equal pay discrimination cases;
- pursue and adopt measures to ensure that equal pay is guaranteed in practice and provide information about their implementation;

- reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect;
- reduce vertical segregation in the labour market;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

Article 1 – Right to work

Article 1§1 – to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.

111. The Secretariat recalled that under this provision, the ECSR first assesses the employment situation. For all states, it examines the GDP growth rate and whether it has an impact on employment and unemployment rates. While trends are important for the assessment, the overall level is what is usually decisive. The ECSR looks at all states in the same way. The average EU level is taken as an objective reference point and the ESCR has expressed concerns when the national figure was much below it (by several % points).

112. Further, the ECSR assesses employment policies and their effectiveness. It does so for all state parties on the basis of specific indicators, such as number of participants in the various active measures, the activation rate (i.e. the average number of participants in active measures as a percentage of the total number of unemployed persons) or public expenditure on active and passive labour market measures (as a percentage of GDP). The labour market measures should be targeted, effective and regularly monitored.

RESC 1§1 ALBANIA

113. The ECSR concluded that the situation in Albania was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation. It was the second non-conformity conclusion on this ground, the previous one dating back to 2012.

114. The representative of Albania presented the following information:

"Labor market data suggest that Albania's economic growth over the last four years (2014 -2018) has translated into significant improvements in the labor market. Job creation recovered from a sharp decline in 2013 and economic growth and employment began to move in parallel. Although the employment rate for people aged 15-64 in Albania increased from about 50 per cent at the end of 2013 to 59.5 per cent in 2018, marking one of the highest ratios among the Western Balkan countries. The employment rate has improved significantly, especially for women (from 40 percent in 2013 to 52.4 percent in 2018). However, gender inequality remains problematic, with men's employment rate being about 14 percent higher than that of women, potentially a reflection of cultural norms regarding family structure and limited alternatives to child and elderly care.

Growth in employment, in parallel, has been accompanied by an increase in labor force participation, which reached 68.3 percent in 2018. Women's participation increased by nearly 10 percent over four years, from 50 percent in 2013 to 59.7 percent in 2018.

The youth participation rate (15-29) is lower than for the rest of the population (50.1 percent, with gender gap above 16 percent). The youth unemployment rate in 2018 has fallen to 23.1 percent, the lowest level since 2012. Registered unemployment has also experienced a very significant decline, from 149,148 in 2015 to 74,686 in 2018.

Labor market performance reflects in part the structure of the Albanian economy - where agriculture continues to dominate with 37.4 percent of total employment, while production and services remain below potential. Albania's agricultural sector serves to absorb the labor force, especially in low-productivity and low-wage jobs. It is precisely this element that explains the relatively high employment rate in Albania (especially in low-skilled jobs), coupled with low wages and the prevalence of informal, part-time and self-employment agreements. The development of higher productivity economic activity along the value chain (be it in the agro-processing sector, or even wider, in the manufacturing and services sectors) would create opportunities to provide better quality employment.

Recent labor market dynamics are closely linked to continued economic recovery - yet the growth of higher and better paid value-added subsectors is still limited. Employment growth has been driven mainly by the growth of sectors such as textiles, tourism and commerce, health and administrative services.

While unemployment has fallen sharply, reaching 12.3 percent in 2018 (and further down to 11.5 percent in the first half of 2019), it remains high, especially compared to EU countries.

Albania has made significant progress, with 22% of adults aged 30-34 having completed a tertiary education (ie university) in 2015, an increase of over 10 pp since 2010. However, for due to specific economic and employment structures in the country and low job demand, many higher education graduates cannot find jobs that match their qualifications. This results in relatively higher levels of unemployment among higher education graduates, especially women. This suggests serious skill disparities (ie underutilization). Some people with better skills try to find work abroad.

Enrollments in VET programs in secondary positions increased from 17% in 2014 to 20.6% in 2018. The number of VET students is small compared to other countries. VET has been the least attractive option at upper secondary level compared to academic education, but this image has changed in recent years. Reforms are ongoing, but further system-wide efforts are needed to supplement improvements in donor-supported pilot institutions. The number of young people aged 15-24 who are not even in employment, education and training (NEET) remains high (28.6% in 2018, compared to the EU average of 10.6%).

Labour market situation, referring to the Labour Force Survey, in percent (INSTAT)

	2015	**2016**	**2017**	**2018**	**Q.2/2019**
Labour force participation	*64,2*	*66.2*	*66.8*	*68,3*	*69,8*
Women	*55,1*	*58,3*	*57,7*	*59,7*	*61,9*
Men	*73,4*	*74,1*	*75,8*	*76,9*	*77,8*
Total working age population (aged 15-64)	*52,9*	*55,9*	*57,4*	*59,3*	*61,4*
The employment rate for women	*45,5*	*49,7*	*50,3*	*52,4*	*54,6*
The employment rate of men	*60,5*	*61,9*	*64,3*	*66,7*	*68,4*
The youth employment rate (age 15-29)	*29,8*	*32.4*	*33,8*	*38,5*	*41,9*
Total Unemployment rate	*17,5*	*15.6*	*14,1*	*12,8*	*11,5*
Unemployment rate form women	*17,4*	*14,6*	*12,8*	*12,3*	*11,4*
Unemployment rate form men	*17,5*	*16,4*	*15.1*	*13,2*	*11,6*
Youth unemployment rate (age 15-29) *Women* *Men*	*33,2* *34,7* *32,3*	*28.9* *27,8* *29,7*	*25.9* *24,0* *27,0*	*23.1* *23,1* *23,1*	*20,9* *20,8* *21,0*

Administrative data from the National Employment Service until July 2019

	2015	***2016***	***2017***	***2018***	***August/2019***
The total of unemployed job seekers	*145,147*	*93,889*	*83,497*	*64,781*	*69,573*
Women Unemployed job seekers		*49,735*	*44,220*	*34,172*	*36,548*
Unemployed job seekers, beneficiaries of economic aid and unemployment benefits	*65,458*	*45,738*	*41,251*	*22345*	*24,401*
Unemployed job seekers from economic aid	*60,078*	*42,029*	*41,751*	*19,944*	*21,818*
Unemployed job seekers from Unemployment benefit scheme	*5,380*	*3,709*	*1,959*	*2.401*	*2,583*
Long term unemployed job seekers *Female* *Male*	*68,885 (47,5%)* *33,721 (49%)* *35,164 (51%)*	*54,323 (58%)* *28,007 (52%)* *26,316 (48%)*	*42,594 (51%)* *21,622 (51%)* *20,972(49%)*	*32.473(50%)* *17,850 (55%)* *14,623(45%)*	*33,210 (48%)* *17,920 (54%)* *15,290 (46%)*
Unemployed job seekers from special groups	*13470*	*7,600*	*7,162*	*6.557*	*7,108*
Youth unemployment job seekers, age 15-29	*41,515*	*19,174*	*15,767*	*12.258 (19%)*	*14,784*
No. of job seekers employed through intermediation services	*1,222*	*25,170*	*23,136*	*32,846*	*21,080*
Unemployed job seekers involved in employment promotion programs	*5,805*	*5,211*	*5,264*	*4,808*	-
Job vacancies advertised in employment offices	*2,373*	*38,511*	*40,013*	*61,391*	*36,450*
Unemployed job seekers, who attend free professional courses at public centers	*13,887*	*12,710*	*9,461*	*8,470*	*14,846*

The National Strategy on Employment and Skills 2019-2022 is inspired by the overall objective of 'Europe 2020' to achieve rapid, sustainable and inclusive growth. The vision of the National Strategy for Employment and Skills was to have a competitive economy and an inclusive society by 2022: "Higher skills and better jobs for all women and men"

The overall goal of the Strategy is to promote quality jobs and skills opportunities for all Albanian women and men throughout the life cycle. This goal will be achieved through coherent and co-ordinated political activities that respond simultaneously to the demand and supply of work, as well as to the elimination of gaps in social inclusion. The National Employment and Skills Strategy focuses on the following four strategic priorities:

A. Promoting decent job opportunities through productive labor market policies;
B. Providing quality vocational education and training for young people and adults;
C. Promoting social inclusion and territorial cohesion;
D. Strengthening labor market governance and qualification systems.

Increasing participation of women in the labor market and reducing the gender gap is one of the objectives[5] of the National Strategy on Gender Equality 2016-2020, the successful fulfillment of which requires mainstreaming of gender perspective in the implementation of measures envisaged as part of the National Employment and Skills Strategy 2019-2022. The National Employment and Skills Strategy 2019-2022[6], has as its general goal, to encourage quality jobs and opportunities for acquiring skills to all Albanian women and men throughout their life cycle. Attention is paid to taking concrete measures for the inclusion of certain groups such as persons with disabilities, Roma women, youth, etc. National Employment Service (NES), Regional / Local Employment Offices, Public Vocational Training Centers and the Inspectorate of Labour and Social Services, comprise the chain of executive institutions[7] of active labor market policies, which include employment services, programs for new jobs openings, mediation for employment, orientation and counseling for work and occupation, as well as vocational training programs.

Legal framework aproved

2015- revised labour Code law no.136/2015
2017-new VET Law no. 15/2017
2018-Revised Albanian Qualification Framework Law no .23/2018
2019- New employment promotion law no.15/2019

Active Labour Market programs in place

In Albania, the creation of various programs as part of active labor market policies has begun with the aim of reducing unemployment, mentioning in particular the unemployment of young people and groups in need. Moreover, various programs have consistently aimed at reducing informality as well as reducing social and economic costs, including individuals benefiting from other current social support schemes. Active labour market policies constitute a set of interventions aiming at the well-functioning of labour market, increasing the employability of the labour force and the social and professional inclusion of the most disadvantaged groups. Active labour market policies include job placement services, employment promotion programmes, and vocational education and training programmes.

Vocational education and training

Professional training serves both jobseekers and employers, and is realized through theoretical-practical teaching courses. Courses are offered by 10 Vocational training Centers and provides:
a) free courses for unemployed jobseekers;
b) paid for the persons who so request;
c) facilities and logistical means, versus leases, for subjects that provide vocational training.

Unemployed jobseekers from special groups who participate in vocational training programs offered by the KPA may benefit from a fee for participation in the course, except for those who benefit during this period from the economic aid or payment scheme unemployment.

Principles, modes of action and methods of vocational training, generally applied to vocational training programs for persons with disabilities, apply in the case of persons with disabilities. For this group apply the elements of reasonable adaptation, with regard to special training programs, curricula adapted to the degree and type of disability, trainers / teachers prepared to provide special training for persons with disabilities.

[5] Objective 1.1, National Strategy on Gender Equality 2016-2020
[6] Approved by DCM No. 818, dated 26.11.2014
[7] Under the subordination of the former Ministry of Social Welfare and Youth, passed in September 2017, under the subordination of the Ministry of Finance and Economy.

Unemployment benefit program

Unemployment benefit programs are part of state employment policies that provide income support to the unemployed at the time of their exit, aiming at creating conditions for their return to the labor market. Unemployment Allowance Programs aim to financially support all unemployed jobseekers in case of unemployment due to job cuts, termination of employment contracts, bankruptcy of the enterprise, etc., by slightly easing their efforts towards employment.

Inclusion of specific groups in active labor market programs

The government program has focused on the employment and quality development of the workforce, in line with the vision of the European Employment Strategy 2020, as well as the requirements for Albania's European integration. Vulnerable groups are among the priorities of the Ministry of Finance and Economy to be included in active employment programs, such as employment promotion programs and vocational training programs that are implemented and have different forms of support for target groups: such as youth entering for the first time in the labour market and the newly graduated youth, women and girls head of households, persons with disabilities, unemployed jobseekers from the Roma and Egyptian community, long-term unemployed, and those from income support schemes.

This is also demonstrated by the level of funding available for employment and education and vocational training multiplied in the last five years. With the help of donors and state budget funds raised over 350% in just the last four years, many VET schools have been refurbished and completed with modern equipment, where practicing theoretical knowledge becomes concrete and attractive.

Under the employment promotion law "vulnerable groups" are considered jobseekers, such as: mothers with children, persons over 50, youth under 18, long-term unemployed, persons below the poverty line, victims of trafficking, persons benefiting from the income support programs, unemployed mothers, divorced women with social problems, persons returning from emigration with economic problems, newly graduated, disoriented persons in the labor market, persons serving prison sentences, persons with disabilities; from Roma and Egyptian community, orphans, etc.

From 32,846, which is the total number of employments made by the Employment Offices for 2018, nationwide, broken down by categories, the results are as follows:

- 41% of total employed youth employment aged 15-29;

- 138 are employments of persons with disabilities;

- 1,236 are employed by the Roma and Egyptian communities;

- 3,958 are employments from the economic aid scheme and those who have left the scheme.

The young people entering the labor market for the first time and the newly graduated youth are among the priorities of the Ministry. Specifically, 3 out of the 8 employment promotion programs implemented since now have different forms of support specifically for young people. Youth employment promotion programs are such that combine job training with employment, vocational practices, etc. The young people under these programs are those under the age of 30 and the programs support both those with higher education and those without a profession.

One of the priorities of the National Strategy on Employment and Skills is, "Promoting social inclusion and territorial cohesion", as well as the objective of this priority: "Training and employment of marginalized and disadvantaged women and men, including among others, persons from the Roma and Egyptian communities.

From the analysis of the labor market situation, the situation of Roma and Egyptian minorities at risk of social exclusion is as follows:
The data show that only 1.3% of Roma and 4.8% of Egyptians aged up to 20 have secondary education, while 0.3% and 0.2% from the same group receive higher education. Roma live in very difficult conditions and are not sufficiently present in the labor market.

In employment promotion policies, Roma constitute the target group that receives free vocational training and has priority in employment promotion programs. Reducing the unemployment rate of Roma and especially Roma women remains a priority, as well as increasing the educational attainment of Roma children, which affects the prevention of social exclusion. From the administrative data the situation of participation of this category in the state employment policies shows that:

- *Roma and Egyptians occupy 8% of the unemployed jobseekers nationwide for 2018 or 5505 persons, from the Roma and Egyptian community.*
- *This category is characterized by low qualification level, with 95% of them having up to 9 years of education.*
- *Women occupy about 50% of the unemployed jobseekers of Roma and Egyptians registered as unemployed jobseekers in employment offices.*

Active employment policies, prioritizing the Roma and Egyptian groups, have significantly increased the employability of this category. Employment offices, through job mediation, managed to employ from this category 470 people in 2016, 880 people in 2017 and 1,105 in 2018.

Employment of people with disabilities is one of the priorities of the Ministry of Finance and Economy (PWD). The increase in the number of unemployed jobseekers in employment office registries brought about the need to design a special program that directly employs people with disabilities. This program (DCM 248/2014), which was originally implemented in 2014 in Tirana and Elbasan, as a pilot program and involved 17 PwDs and from 2015 the program was implemented nationwide. During 2017 the number of PwD involved was 94, and in 2018 108 PWD were included in employment promotion programs. The purpose of the PWD program is to make it easier for employers with disabilities to employ people with disabilities by applying various forms of support.

This will help employers, who:
(i) first receive these persons free of charge in the premises of the undertakings / institutions for a fixed period and thereafter, after being adapted, to maintain such employment;
(ii) subsidies for equipment or adaptation of the workplace. This support is provided where the enterprise / institution is able to employ people with disabilities but needs to adapt or properly equip the workplace;
(iii) the payment of job placement fees will help PWDs to learn a suitable profession and then be employed in that profession.
This program facilitates the integration of this category into the labour market, social and economic life of the country. It is worth pointing out that the persons with disabilities included in the program do not lose their allowances that they receive due to their disability.

PwD receive free training in the public training centers. In 2016, 60 PwD, in 2017, 55 PwD and in 2018, 99 PwD were trained in various courses such as tailoring, secretarial, plumbing, cooking etc."

Administrative data from the National Employment Service

	2015	***2016***	***2017***	***2018***
The total of unemployed job seekers	*145,147*	*93,889*	*83,497*	*64,781*
Women Unemployed job seekers		*49,735*	*44,220*	*34,172*
Unemployed job seekers, beneficiaries of economic aid and unemployment benefits	*65,458*	*45,738*	*41,251*	*22345*

Unemployed job seekers from economic aid	*60,078*	*42,029*	*41,751*	*19,944*
Unemployed job seekers from Unemployment benefit scheme	*5,380*	*3,709*	*1,959*	*2.401*
Long term unemployed job seekers		*54,323*	*42,594*	*32.473*
Unemployed job seekers from special groups		*7,600*	*7,162*	*6.557*
Youth unemployment job seekers, age 15-29		*19,174*	*15,767*	*12.258 (19%)*
No. of job seekers employed through intermediation services	*1,222*	*25,170*	*23,136*	*32,846*
Unemployed job seekers involved in employment promotion programs	*5,805*	*5,211*	*5,264*	*4,808*
Unemployed job seekers, who attend free professional courses at public centers	*13,887*	*12,710*	*9,461*	*8,470*

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

RESC 1§1 ARMENIA

116. The ECSR concluded that the situation in Armenia was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation.

117. The representative of Armenia presented the following information:

"According to Eurostat, GDP growth rates fluctuated during the reporting period, from 3.2% in 2015 to 0.2% in 2016. increasing by 7.5%, and in 2018, falling again by 5.2%, in 2019 increasing by 7.6%. Economic growth rate in 2020 was -7.4% due to the coronavirus pandemic on the one hand and the war situation on the other. In 2018 total employment rate (persons aged 15 to 64) decreased from 52.7% in 2015 to 49.7%. In 2018 employment rate of men decreased from 61.2% in 2015 to 60.8%, and that of women decreased from 45.7% in 2015 to 39.8%. In 2018 the total unemployment rate (among 15 to 74 years old) increased from 18.5% in 2015 to 19.0%. In 2018 unemployment among men increased from 17.6% in 2015 to 17.9%, and among women from 19.5% to 20.4%. Unemployment among young people (15 to 24 years old) increased from 32.5% in 2015 to 33.5%. Long-term unemployment (12 months or more) decreased from 60.7% in 2015 to 51.9% in 2018. According to the data of the International Labour Organization (ILOSTAT), the proportion of 15 to 24 year old persons "out of the system" (those who are not in education, employment or training (NEET)) in 2018 was 25.7% instead of 27.5% in 2015.

According to the RA Law on Employment, young people, as uncompetitive in the labour market, are given the opportunity to be involved in all state employment programs, in particular, the program "Support to the unemployed to gain professional work experience in the acquired profession" can be singled out. The aim of the program is to provide stable employment in the acquired profession through support provided to the unemployed person entering the labour market for the first time, in order to gain professional work experience in accordance with his/her professional qualification, to become more competitive in the labour market, and is implemented especially for young persons. Within the framework of the program, the beneficiary is paid the minimum wage, the employer is reimbursed for the beneficiary's income tax, stamp duty, targeted

social payment, as well as for final settlement with the employee in case of termination of the employment contract.

According to the data of the end of 2020, 18.96% or 11,627 people registered as unemployed in the territorial centers of the Unified Social Service were young people aged 16-29, which is a decrease of 7.4% compared to the previous year. There are no specific programs implemented to support young or the long-term unemployed persons belonging to NEET group (not in education, employment or training). However, according to the legislative regulations, 16-30 year old persons who have been unemployed for more than three months are considered uncompetitive in the labour market and have the priority right to be included in the above mentioned program, as well as in all other employment programs.

A vocational training program is implemented for the unemployed, those at risk of dismissal, as well as those who have up to six months left to serve their sentences. The aim of the program is to support the beneficiaries in acquiring new skills and abilities in accordance with the requirements of the labor market, finding a suitable job, reducing the risk of dismissal, as well as in doing business.

As of the end of 2020, the number of job seekers registered at the territorial centres of the Unified Social Service was 87,999, which, compared with the indicator of the same period of 2019, increased by 3.6%, compared with 2018 - by 7.7%. Since the beginning of the reporting year 10,109 people have been provided with job, which compared with 2019 decreased by 25.2%, compared with 2018 - by 15.5%. Number of unemployed in 2020 As of the end of the year, it was 61,320 people, which in 2019 compared with the index of the same period, decreased by 0.7% in 2018. compared to 5.1%. 2020 As of the end of December, 64.7% of the unemployed were women, in 2019 - 66.3%, in 2018 - 66.7%. According to the data of 2019, 8.4% of the unemployed have been seeking a job for up to 3 months, 6.9% for 4-11 months, 25% for 1-3 years, 48.7% for up to 3 years.

The state employment policy of the Republic of Armenia is implemented through the annual state program on employment regulation, within the framework of which 12 programs are implemented. In order to increase the targeting and effectiveness of employment programs, the Ministry of Labour and Social Affairs of the Republic of Armenia, in accordance with the procedure established by the Government of the Republic of Armenia, implements monitoring and evaluation of these programs. As a result of monitoring and evaluation, in accordance with the law, the processes of return of non-targeted used funds for state employment programs are ensured".

118. Since the information provided contained no reference to the activation rate and investment to promote job creation, the Chair asked for details in this respect. The representative of Armenia replied that there had been difficulties in allocating adequate financial resources in the last two years as a result of the Covid 19 pandemic. The Chair noted that the reference period predated the pandemic, and that the situation could only have worsened during the health crisis, which the Armenian representative confirmed.

119. The Armenian representative was also asked about financial resources to be invested in the future. One example was that at the end of 2020, almost 19% of the unemployed were people under 29 years old. In 2020, up to 65% of the unemployed were women. The Armenian representative reiterated that the situation had worsened.

120. Some delegations considered that Armenia was in difficult situation and that the economic, political circumstances were to be taken into consideration when examining the case.

121. The Governmental Committee concluded that it was deeply concerned about the employment situation in Armenia, in particular about the drastic drop in funding to improve

the situation. It called upon the Government of Armenia to pursue all possible efforts to remedy the situation as soon as possible.

RESC 1§1 BOSNIA AND HERZEGOVINA

122. The ECSR concluded that the situation in Bosnia and Herzegovina was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation.

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

"In our previous National Report we informed the Committee on the Reform Agenda 2015-2018 with its broad range of measures regarding improvement of employment policies. Given that the Covid-19 pandemic is still ongoing, we have not yet been able to gather the full information on the positive impact of the Agenda on active employment policies. Hopefully we will have those information by the time of the next National Report on this matter.

When it comes to changes in existing legislation, we inform you of the following:

In Federation of Bosnia and Herzegovina there were no amendments to the Law on Mediation in Employment and Social Security of Unemployed Persons, but the amendments to the Rulebook on Employment Records were adopted in 2020. The aim of the amendments to this Rulebook was to adjust the direct work of public employment services with the unemployed persons due to the epidemiological situation caused by the COVID-19 pandemic.

In Republika Srpska, the amendments to the Law on Mediation in Employment and Rights during Unemployment were brought after the previous reporting period, with the aim to strengthen mediating role of the Employment Service of the Republika Srpska and to increase the rights based on monetary compensation, its amount and the duration.
Currently, the Strategy of Employment of the Republika Srpska for the period of 2021-2027 is in the process of adoption, and is expected to be adopted by the end of this year.

In the Brčko District of Bosnia and Herzegovina there were no amendments to the Law on Employment and Rights during Unemployment after the previous reporting period, but the Developing Strategy of the Brčko District for the period of 2021-2027 was adopted in May 2021. It is the key strategic-planning document that encourages the development of the District according to its economic priorities and with detailed planned financial resources. Its main strategic goal is to strengthen the economy and improve the public sector and its services in compliance with the EU standards, as well as to improve the employment policies.

Considering the situation caused by the ongoing pandemic by the COVID-19 virus, the Employment Services of both entities (Federation of Bosnia and Herzegovina and Republika Srpska), as well as the Employment Service of the District recorded a significant decrease in the number of employees. All three Services continued to support the most vulnerable groups of unemployed persons, as follows: national minorities, persons bellow 30 and over 45 years of age, persons with disabilities including war veterans, children of fallen soldiers and other targeted groups through numerous employment programs.

The information on the monitoring of the employment policies and the evaluation on their effectiveness will be submitted in the next National Report regarding this matter".

124. The Governmental Committee concluded that it was deeply concerned about the employment situation and called upon the Government of Bosnia and Herzegovina to pursue all possible efforts to improve it as soon as possible.

RESC 1§1 MONTENEGRO

125. The ECSR concluded that the situation in Montenegro was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation.

126. The representative of Montenegro presented the following information:

"The National Strategy for Employment and Human Resources Development for the period 2016-2020 was a strategic framework for the implementation of labour market reforms in the previous five-year period. The strategy was based on a new approach of the employment policy, which implies a broader context of considering and implementing structural reforms, sectoral policies, individual measures, with the aim of removing obstacles and creating conditions for accelerated economic growth, as the main generator of employment growth. Therefore, the general goal of the Strategy is "Creating optimal conditions for employment growth and improvement of human resources in Montenegro" through four priorities.

First priority: Increasing employment. Reducing the unemployment rate included three goals aimed at improving the business environment, increasing competitiveness and strengthening macroeconomic stability, in order to accelerate economic growth as the main generator of employment growth. Also, it referred to the improvement of active employment policy aimed at greater efficiency of the labor market, including strengthening the capacity of the Employment Agency, as follows:
Goal 1: Stimulating job creation and encouraging competitiveness by improving the business environment;
Goal 2: Increasing the efficiency of active employment policy measures with special emphasis on the inclusion of young people, women and the long-term unemployed in the labour market;
Goal 3: Providing higher employment in underdeveloped areas of Montenegro.

Second priority: Efficient functioning of the labour market, included three goals aimed at promoting flexicurity and reducing the rigidity of employment protection legislation, harmonization with European regulations of employment and social policy, as well as encouraging the formalization of informal employment through a well measured balance of incentives, prevention and sanctions, as follows:
Goal1: Alignment with European regulations on employment and social policy;
Goal 2: Promoting flexicurity and reducing the rigidity of employment protection legislation;
Goal 3: Encouraging the formalization of informal employment.

Third priority: Improving qualifications and competencies in line with the needs of the labour market, included two goals aimed at increasing productivity and human resources development through improving knowledge, skills and competencies in order to increase employment opportunities and increase competitiveness through formal education, non-formal learning and training, which ultimately should contribute to reducing the qualification gap between current labour market demand and knowledge and skills on the side of the labour supply.
Goal 1: Promoting adult access and participation in lifelong learning;
Goal 2: Improving the quality of education at all levels and harmonizing with the needs of the labor market.

Fourth priority: Promoting social inclusion and reducing poverty included four goals aimed at improving social benefits and social and child protection services for the purpose of better covering and activation of vulnerable groups, integration in education and employment of persons with disabilities, and encouraging the inclusion of members of vulnerable groups to the labour market, namely:
Goal 1: Improving social inclusion and the system of social and child protection;
Goal 2: Integration in education and employment of persons with disabilities;
Goal 3: Inclusion of socially vulnerable groups in the labour market;

Goal 4: Creating conditions for the development of social entrepreneurship.

The implementation of the National Strategy for Employment and Human Resources Development 2016-2020 took place through annual employment action plans. The Employment Action Plan is the basic instrument for the implementation of employment policy which defines measures and activities to achieve goals, financial framework for the implementation of measures and activities, bearers of the implementation of measures and activities, indicators to success in the realization of measures and activities in order to achieve goals within the priorities defined by the National Strategy for Employment and Human Resources Development 2016–2020. Thus, in the previous period, the Action Plans for Employment and Human Resources Development for 2016, 2017, 2018, 2019 and 2020 were prepared and adopted.

During the period of validity of the Strategy, monitoring and evaluation was performed in such a way that annual Reports on the implementation of measures and activities from the annual Action Plan were prepared. The annual reports included an analysis of the situation from the previous year of implementation of the annual action plan, based on which activities were planned in the next annual action plan, within each goal, to ensure that employment policy defined through four priorities responds, timely and to the extent possible, to the labour market challenges. Thus, the Reports on the implementation of the annual Action Plans for Employment and Human Resources Development for 2016, 2017, 2018, 2019 were prepared and adopted in the previous period. At the end of the implementation period of the Strategy, the Final Report on the implementation of the National Strategy for Employment and Human Resources Development 2016-2020 was prepared.
The implementation of the Strategy has achieved mixed quantitative achievements, as the key indicators of the labour market and human resources have improved and approached the target values, while the indicators related to social inclusion and poverty reduction have not been reached. However, it can be stated that during the period of implementation of the Strategy, there were positive developments in the labour market, which were stopped by the outbreak of the COVID-19 pandemic.

High real GDP growth rates of 4.7% in 2017, 5.1% in 2018 and 3.6% in 2019, generated a high employment rate, which according to the data from the Labour Force Survey for 2019 was at the level of of 56% for the age group 15+ and the unemployment rate at the historical minimum of 15.4%.

The table shows that with exception of the last year of implementation of the Strategy, in relation to the initial values, there were positive trends in most parameters.

Podaci o kretanjima na tržištu rada [Data on trends in the labour market]

Indicator	***Initial value (2014)***	***Target value (2020)***	***2015***	***2016***	***2017***	***2018***	***2019***	***2020***	***Data source***
Employment rate (15-64)	*50.4%*	***56%***	*51.4%*	*52.0%*	*53.1%*	*54.7%*	*56%*	***50.3%***	*Monstat*
Female employment rate (15-64)	*45.3%*	***51%***	*46.9%*	*46.8%*	*46.8%*	*48.4%*	*49.7%*	***44.4%***	*Monstat*
Unemployment rate (15-64)	*18.2%*	***14%***	*17.8%*	*18%*	*16.4%*	*15.5%*	*15.4%*	***18.3%***	*Monstat*

Youth unemployment rate (15-24)	*35.8%*	***29%***	*37.6%*	*35.9%*	*31.7%*	*29.4%*	*25.2%*	***36%***	*Monstat*
Share of long-term unemployed persons in total unemployment	*77.5%*	***60.0%***	*77.2%*	*75.6%*	*77.5%*	*76.5%*	*79%*	***74.7%***	*Monstat*
Participation of university students in the age group 25-34	*32.7%*	***40%***	*32.0%*	*34.2%*	*35.5%*	***-***	***-***	***-***	*Monstat*
Poverty rate	*8.6% (2013)*	***7%***	***-***	***-***	***-***	***-***	***-***	***-***	*Monstat*
At-risk-of-poverty rate	*26.2%*	***20%***	*24.4%*	*24%*	*23.6%*	*23.8%*	*24.5%*	***-***	*Monstat*
Registered unemployment rate	*14.95%*	***13.5%***	*17.24 %*	*21.33%*	*22.09%*	*17.8%*	*16.2%*	***20.4%***	*ZZZCG*

The work on preparation of the new National Employment Strategy for the period 2021-2025 is currently underway, and it should identify priorities and individual goals that should properly address the multiple challenges that the labour market and the citizens of Montenegro are facing in the context of the Covid 19 pandemic and with which they will deal in the coming years and turn these challenges into new opportunities for the socio-economic development of the country and for the individual progress of each individual. This is especially true given the positive trends in the labour market have been stopped by the outbreak of the Covid 19 pandemic.

Active employment policy measures

The Law on Mediation for Employment and Rights during Unemployment, which was adopted in 2019, in relation to the previously valid law, specifically defines labour market services in relation to active employment policy measures.

Labour market services provided by the Employment Agency (ZZCG) and employment agencies are: preparation for employment and employment mediation.
Active employment policy measures are defined in accordance with the Eurostat methodology and include: adult education and training, employment incentives, direct job creation and incentives for entrepreneurship. Measures are implemented through programs, but in addition to the above measures, the Employment Agency (ZZCG) can also implement other measures of active employment policy depending on the needs of the labour market and the identification of target groups;

Active employment policy measures implemented in 2016

In 2016, active employment policy measures were implemented for 2,020 unemployed persons from the records of the Agency. Adult education and training programs were conducted for 454 participants, public work and the "Keep it Clean" Project for 1,096 people, independent work training for 71, and employer-based work training for 250 people. Through the Pilot Programs "Stop the Gray Economy" and "Youth is our potential", 149 participants were included.
The share of persons included in AEP measures in the total number of unemployed persons in 2016 was 5.05%.

Active employment policy measures implemented in 2017

In 2017, active employment policy measures were implemented for 2,062 unemployed persons from the records of the Agency. Adult education and training programs were conducted for

553 participants, public work and the "Keep it Clean" Project for 1,214 persons, independent work training for 50, and employer-based work training for 100 people. Through the Program "Stop the Gray Economy" for 145 participants. The share of persons included in AEP measures in the total number of unemployed persons in 2017 was 4.54%.

Active employment policy measures implemented in 2018
In 2018, active employment policy measures were implemented for 3,745 unemployed persons from the records of the Agency. Adult education and training programs were implemented for 1,295 participants, public work and the "Keep it Clean Project" for 1,345 persons. Through the Program "Stop the Gray Economy" 180 participants were included and the Pilot Program "Empower Me and I Will Succeed" included 925 persons. The share of persons included in AEP measures in the total number of unemployed persons in was 7.31%.

Active employment policy measures implemented in 2019
In 2019, active employment policy measures were implemented for 2,248 unemployed persons from the records of the Agency. Adult education and training programs were conducted for 896 participants. Public work programs were implemented through the projects "Keep it clean", "Personal Assistant" and "Care for the Elderly" for 629 participants. Training programs for independent work were conducted for 238 and employer-based work training for 239 users. The program "Stop the Gray Economy" with the aim of supporting young people in solving the problem of unemployment by raising their work capacity and at the same time work on combating the gray economy, was organized for 190 participants. 42 self-employment loans were awarded, creating 56 new jobs. The implemented measures enabled through the programs the employment of 1,306 unemployed persons with identified barriers to employment, for a period of three to seven months.

In the total number of participants in the program of active employment policy, women participated with 53.6%, young people under the age of 30 with 40.4%, while the participation of long-term unemployed persons was 28.2%. Members of the RE population participated with 3.6%, persons with disabilities with 8.9%, while the participation of persons from the municipalities of the Northern region was 52.9%. The structure of the participants in the implemented programs indicates that the programs were prepared for unemployed persons who belong to the strategic priorities. Also, the programs were implemented with respect to balanced regional development. The share of persons involved in AEP measures in the total number of unemployed persons was 5.30%.

Active employment policy measures implemented in 2020
In 2020, active employment policy measures were implemented for 1,402 unemployed persons from the records of the Agency. Public work programs were implemented for 606 people, the "Keep it clean" project for 95 people, trainings for independent work for 228 people, employer-based work trainings for 250 people. Through the Program "Stop the Gray Economy" for 210 participants and 11 self-employment loans, which will create 13 new jobs.

In the total number of participants in the program of active employment policy, women participated with 57.06%, young people under the age of 30 with 49.14%, while the participation of long-term unemployed persons was 1.21%. Members of the RE population participated with 2%, persons with disabilities with 7%, while the participation of persons from the municipalities of the Northern region was 58.06%. The structure of participants in the implemented programs indicates that the programs were prepared for unemployed persons who belong to the strategic priorities. Also, the programs were implemented with respect to balanced regional development. The share of persons involved in AEP measures in the total number of unemployed persons was 3.73%.

- ✓ ***Public work programs***

Starting from the program tasks determined on the basis of the needs and possibilities of persons with difficult employment and the needs of the users of programs of public interest, public work programs for 606 persons were realized.

The public work "Personal Assistant" was conducted through programs for the creation of temporary non-market activities of public interest in the field of protection of persons with

disabilities, and the Public Work "Care for the Elderly" in the field of protection of the elderly. In addition to these public work programs, other socially useful programs have been implemented in the field of environment, education, culture, sports, maintenance and renovation of public infrastructure as well as in other areas of public interest. In the Public Work "Personal Assistant", 208 persons were employed by 46 program providers, for the period lasting up to four months, in jobs providing assistance and support to 961 persons with disabilities. In order to provide support to the elderly in a state of social need, the Public Work "Care for the Elderly" was conducted. In this public work, 75 people were employed by 12 program contractors, as geronto-housewives/geronto-hosts. Employees provided support and assistance to 530 older persons, program beneficiaries, for the duration of up to four months. 323 persons from the records of the Agency were employed in environmental, educational, cultural and other socially useful programs, with 81 contractors, for the duration of up to three months. Females participated in these programs with 64.5% (391).

7 long-term unemployed persons participated in public work programs, ie persons who have been in the unemployment register for more than 12 months, which is 1.2% in relation to the total number of program participants. The participation of persons older than 50 years was 27.2% in relation to the total number of participants, ie 165 persons participated, of which 95 were women. The participation of young people under 30 was 31.7%, ie 192 persons, of which 110 were women. There is 3% of beneficiaries of the family material support. Members of the RE population in the total number of program participants participated with 2.3% or 14 persons, of whom 2 were women. The share of persons with disabilities was 13.2%, ie 80 persons, of which 47 were women.

Observed according to the levels of education, the participation of persons without completed school or with primary school was 23.3%, ie 141 persons participated, of which 70 were women. 57.7% with acquired secondary education, ie 350 persons, of which 234 are women. The participation of persons with higher education was 19%, ie 115 persons participated, of which 87 were women.

Observed by regions, the largest number of included persons was from the municipalities of the Northern region 360 (59.4%), followed by the municipalities of the Central region 204 (33.6%), while the least number of persons were from the municipalities of the Coastal region 42 (7%).

The program was successfully completed by 599 participants, or 99.2% of the total number of participants.

- ✓ ***Project "Keep it Clean"***

Participants of the Project "Keep it clean" performed the tasks of cleaning the main roads along the entire territory of Montenegro. The implementation of the Project "Keep it Clean" enabled employment, on temporary non-market jobs of public interest, for 95 unemployed persons, for a period of three months. Females participated in the project with 13.68% (13). 5 long-term unemployed persons participated in the Project, i.e. persons who have been registered as unemployed for more than 12 months, which is 5.26% in relation to the total number of project participants. The share of persons older than 50 years was 32.63% in relation to the total number of participants, i.e. 31 persons, of which five were women. The participation of young people under 30 was 29.47%, i.e. 28 persons, five of whom were women. The project employs six people with disabilities, or 6.21%, while the participation of beneficiaries of family material support is 6.21%, or six people. Members of the RE population participated in the total number of project participants with 14.73%, or 14 persons, of which two were female. Observed from the territorial aspect, most of the project participants were from the municipalities of the Northern region - 37 people (38.95%) of which 6 were women, then from the municipalities of the Central region - 33 people (34.73%) of which 4 were women and the least number from municipalities of the Coastal region - 25 persons (26.32%) of which three were women.

- ✓ ***Program of training for independent work***

The program of training for independent work was realized for unemployed persons with acquired secondary education (III and IV level of education), without work experience at the level of

education. The program employed 228 participants with 76 employers – program contractors, for a period of six months. Employers conducted program activities adapted to the professional and personal characteristics of the participants and trained them, with provided mentoring, for independent work at the level of education. Females participate, in the total number of participants, in this program with 58.77% (134). Two long-term unemployed persons (two women) participated in the program, ie persons who have been on the unemployment register for more than 12 months, which is 0.9% in relation to the total number of program participants. The share of persons older than 50 years was 2.63% in relation to the total number of participants, ie six persons, of which four were women. The participation of young people up to 30 years of age was 66.22%, ie 151 persons, of which 85 were women. The program employed one female person with a disability, while the share of beneficiaries of family material support is 2.63%, ie six persons. Observed from the territorial aspect, most of the project participants were from the municipalities of the Northern region - 150 people (65.78%) of which 86 were women, then from the municipalities of the Central region - 70 people (30.70%) of which 44 are women and the least number from municipalities of the Coastal region - 8 persons (3.52%) of which four were women. Upon completion of this program, employers issued certificates of acquired work experience at the level of education to successful participants, by means of which they fulfilled the condition to take the professional exam.

- ✓ ***Program for employer-based work training***

The program is implemented for unemployed persons for whom the lack of practical knowledge and skills has been identified as an obstacle to employment. The goal of the program is to enable participants to acquire the knowledge, skills and competencies needed to perform the jobs and work tasks of certain job positions. The program employed 250 participants at 64 employers – program contractors for a period of three months. Employers conducted program activities and, with the support of mentors, trained participants to perform certain jobs independently. Females participated in these programs with 50.4% (126). Two long-term unemployed persons (two women) participated in the program, ie persons who have been in the unemployment register for more than 12 months, which is 0.8% in relation to the total number of program participants. The participation of persons older than 50 years was 10% in relation to the total number of participants, ie 25, of which 18 were women. The participation of young people up to 30 years of age was 43.2%, ie 108 persons, of which 44 were women. The share of beneficiaries of family material support was 3%. The share of persons with disabilities was 4%, ie 10 persons, of which 5 were women.

Observed according to the levels of education, the participation of persons without completed school or with primary school was 16%, ie 40 persons, of which 24 are women, with acquired secondary education 74%, ie 184 persons, of which 85 are women. The participation of persons with higher education was 10%, ie 25 persons, of which 16 were women. Observed by regions, the most of the included persons are in the municipalities of the Northern region 150 (60%), then in the municipalities of the Central region 88 (35.2%), while the least number of persons are included in the municipalities of the Coastal region 12 (4.8%). 247 participants or 98.8% has successfully completed the program. Upon completion of this program, employers issued certificates of competency to successful participants to perform specific jobs.

- ✓ ***Project "Stop the Gray Economy"***

The Employment Agency, in cooperation with the Tax Administration, Police Administration, Administration for Inspection Affairs, Customs Administration and the Ministry of Transport and Maritime Affairs, implemented the Program "Stop the Gray Economy". The goals of this program are to support young people in solving the problem of unemployment by raising their work capacity, as well as to support the suppression of the gray economy in the labour market.

The program covers 210 unemployed persons with higher education, up to 30 years of age and with work experience of a minimum of nine months. Program participants were employed and trained in a real working environment to provide technical support and assistance to officials of the Administration for Inspection Affairs - 64 participants, the Police Directorate - 44, the Tax Administration - 84 and the Customs Administration - 14 participants and the Ministry of Transport and Maritime Affairs - 4 in suppression of informal business. The work tasks of the program

participants were determined by the operational plan of in-service training and were carried out with continuous mentoring, in the period from 15 June 2020 to 15 January 2021. During the implementation of the program, participants practically applied the acquired knowledge, but also adopted new knowledge through the detection of activities related to the gray economy, and immediately after the implementation of the program they will receive a certificate of competence to perform related tasks. Females participated with 62.38% (131) in the total number of participants in this program. Observed by regions, the most of the included persons were in the municipalities of the Northern region - 110 persons (52.4%), then in the municipalities of the Central region - 77 persons (36.6%), while the least persons were included in the municipalities of the Coastal region 12 persons (11 %). One person with a disability (0.48%) participated in the mentioned program.

- ✓ ***Innovated program for continuous stimulation of employment and entrepreneurship in Montenegro***

21 loan applications were submitted in 2021, the realization of which would create 23 new jobs. Out of this number, 8 applications (or 38.1%) were submitted by unemployed women. Three legal entities applied for loans, the realization of which would create 5 new jobs. In 2020, 11 loans were financed, which are intended for the creation of 13 new jobs. Out of this number, 8 financed loans (72.3%) are for unemployed persons and 3 loans (27.7%) for legal entities.

Professional/vocational rehabilitation and employment of persons with disabilities

The Law on Professional Rehabilitation and Employment of Persons with Disabilities stipulates that the Employment Agency of Montenegro organizes the Fund for Professional Rehabilitation and Employment of Persons with Disabilities and that the Fund's funds are primarily provided from special contributions paid by employers who have not met the prescribed quota when employing persons with disabilities. These funds are paid into the Budget of Montenegro. According to the Law, the Fund's funds can be used for: measures and activities of professional rehabilitation for unemployed and employed persons with disabilities, co-financing of special employment organizations, active employment policy programs in which persons with disabilities participate, subsidies, financing of grant schemes and financial aid for participants in vocational rehabilitation measures.

In 2016, a total of 210 persons were included in vocational rehabilitation measures, from the records of all regional units. Employers who employed persons with disabilities were granted the right to a wage subsidy for 245 persons with disabilities. Financing of employment projects for persons with disabilities - grant schemes - during 2016, 53 projects of professional rehabilitation, active employment policy and employment of persons with disabilities were implemented.

In 2017, 183 persons were included in professional rehabilitation measures. The right to a wage subsidy was exercised by 218 employers for 336 employed persons with disabilities. Financing of employment projects for persons with disabilities - grant schemes - Article 39 of the Law on Professional Rehabilitation and Employment of Persons with Disabilities prescribes that the Fund's funds can be used, among other things, to finance grant schemes. In accordance with that, the Rulebook on the Procedure and Methodology for Financing Grant Schemes (Official Gazette of Montenegro, No. 28/14 and 16/16) was adopted, which stipulates that the Agency publishes, at least once a year, a public call for financing employment projects for persons with disabilities - grant scheme.

During 2017, two public calls were announced for the financing of projects for employment of persons with disabilities - grant schemes and the financing of 56 projects was approved. Through these projects, it was planned to include 422 persons with disabilities, of which 265 persons will be employed during the project, and 74 persons will be employed after the completion of the project for a minimum of six months. During 2017, 30 projects were implemented according to the public call that was announced in 2016, which included 223 persons with disabilities, and for the period of the duration of the projects, 183 persons were employed.

In 2018, 313 persons with disabilities were included in the measures and activities of professional rehabilitation. Wage subsidies for employed persons with disabilities - In 2018, 789 requests for recognition of the right to a wage subsidy for the employment of persons with disabilities were submitted to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities. Grants for adjustment of workplace and working conditions - The right to grants for adjustment of workplace and working conditions was exercised by 22 employers for 24 employees with disabilities. Participation in the financing of personal expenses of assistants (work assistants) - The right to this subsidy was exercised by 17 employers for 19 employees with disabilities (men - 11; women - 8). Financing of employment projects for persons with disabilities - grant schemes - during 2018, two public calls were announced for financing employment projects for persons with disabilities - grant schemes. During 2018, 54 projects were implemented according to public calls, which included 428 persons with disabilities, during the projects 268 persons were employed, and after the completion of the project, 71 persons were employed.

During 2019, 504 persons with disabilities were included in the measures and activities of professional rehabilitation. Wage subsidies for employed persons with disabilities - In 2019, 1,404 applications for recognition of the right to a wage subsidy for the employment of persons with disabilities were submitted to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities. Out of the total number of submitted applications, 649 referred to employed men with disabilities, while 755 referred to employed women with disabilities. Out of the 1,404 applications, 882 related to persons with disabilities who were employed on a temporary basis, and 522 applications related to persons with disabilities who were employed for an indefinite period of time. Most applications for the right to a wage subsidy came from the northern region (814), followed by the central region (398) and the coastal region (192).

Grants for adjustment of workplace and working conditions -** During 2019, the right to grants for adjustment of workplace and working conditions was exercised by 29 employers for 36 employed persons with disabilities**.

***Participation in the financing of personal expenses of assistants (work assistants) -** The right to this subsidy in 2019 was exercised by 43 employers for 60 employed persons with disabilities (men - 32; women - 28).*

***Financing of employment projects for persons with disabilities - grant schemes** - The Employment Agency issued a public call for financing projects for employment of persons with disabilities, after which, in accordance with the prescribed procedure, the financing of 57 projects was approved. Through these projects, 383 persons with disabilities are included, of which 287 persons will be employed during the project, and 134 people will be employed after the completion of the project for a minimum of nine months.*

During 2020, 443 persons with disabilities were included in vocational rehabilitation measures and activities, with three contractors: ZOPT - 242 persons, Pamark - 173 persons, and the Center for Vocational Rehabilitation - 28 persons. Out of the total number of included persons, 65.46% are females (290 women).

***Wage subsidies for employed persons with disabilities -** In 2020, 1,718 requests for recognition of the right to a wage subsidy for the employment of persons with disabilities were submitted to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities, of which 575 requests referred to the extension of this right. Out of the total number of applications submitted, 806 referred to employed men with disabilities, while 912 referred to employed women with disabilities. Out of 1,718 requests, 1,099 referred to persons with disabilities who were employed for a definite period of time, and 619 requests referred to persons with disabilities who were employed for an indefinite period of time.*

As of 31 December 2020, 1,141 employers are entitled to a wage subsidy for 2,040 persons with disabilities (men - 918; women - 1,122). 920 persons with disabilities are employed for a definite period of time, while 1,120 persons are employed for an indefinite period of time.

***Grants for adjustment of workplace and working conditions** - During 2020, 32 employers submitted to the Fund for Professional Rehabilitation and Employment of Persons with Disabilities 40 applications for the right to grants for the adjustment of the workplace and working conditions. Two applications for the right to a grant for the adjustment of the workplace and working conditions were rejected on the grounds that the reports of the professional rehabilitation provider/contractor stated that no adjustment of the workplace was necessary.*

Participation in the financing of personal expenses of an assistant (work assistant) *- In 2020, 27 employers submitted 52 applications for a subsidy - participation in the financing of personal expenses of an assistant (work assistant) to an employed person with a disability. To exercise this right, employers submitted a request for 25 persons with disabilities who established employment for a definite period of time, while 27 persons established employment for an indefinite period of time. One request to exercise this right was rejected. As of 31 December 2020, 67 employers are entitled to a subsidy - participation in financing the personal expenses of an assistant (work assistant) for 97 employed persons with disabilities (men - 57; women - 40).*

Financing of projects for employment of persons with disabilities - grant schemes *- In accordance with the Rulebook on the procedure and methodology for financing grant schemes (Official Gazette of Montenegro, No. 28/14, 16/16 and 21/19) which stipulates that the Agency publishes at least once a year a public call for financing projects for employment of persons with disability - grant scheme, a public call has been announced for financing projects for employment of persons with disabilities. Based on the mentioned public call, the financing of 52 projects was approved. Through these projects, 420 people with disabilities are included, of which 293 people are employed during the project, and 140 people will be employed after the completion of the project for a minimum of nine months. The implementation of these projects continued in 2021.*

Financial compensation

Unemployment financial compensation is one of the rights that an unemployed person can exercise, in accordance with the Law on Mediation for Employment and Rights during Unemployment, which entered into force on 30 April 2019.

The right to financial compensation, in accordance with this law, is acquired by an insured person whose employment has been terminated without his consent or guilt, and who at the time of termination of employment has an insurance period of at least nine months continuously or intermittently in the last 18 months.

Financial compensation belongs to an unemployed person from the first day after termination of employment, i.e. cessation of entrepreneurial, professional or other activity as the main occupation, if he/she registers with the Agency within 30 days from the day of termination of insurance and submits a request for financial compensation within this deadline.

The right to financial compensation cannot be exercised by an insured person whose employment has been terminated due to:

1) consensual termination of employment;
2) dismissal by an employee;
3) dismissal by the employer, in cases determined by a special law, except in case of termination of employment after the expiration of the fixed-term employment contract, i.e. termination of employment due to termination of the employee's need for work, due to economic, technological and restructuring changes at the employer , when the employee is paid severance pay;
4) fulfilling the conditions for termination of employment by force of law, except in the case of termination of employment due to bankruptcy or liquidation, or in all other cases of termination of work of the employer, in accordance with a special law.

The financial compensation belongs to an unemployed person for a period that depends on the previous length of service insurance, as follows:

1) three months if he/she has a service insurance period from nine months to five years;
2) six months if he/she has service insurance from five to 15 years;
3) nine months if he/she has service insurance from 15 to 25 years;
4) 12 months if he/she has service insurance from 25 to 35 years;
5) if he/she has more than 35 years of service insurance - until re-employment, i.e. until the fulfilment of conditions regarding the age limit or length of service insurance for exercising the right to an old-age pension, in accordance with a special law.

The financial compensation amounts to 120% of the calculated value of the coefficient determined by law and other regulations. Contributions for pension and disability insurance and health insurance are calculated on the amount of financial compensation, in accordance with a special

law. In accordance with this, the financial compensation is EUR 108.00 (with contributions for pension and disability insurance and health insurance EUR 134.78).
The number of beneficiaries of financial compensation at the end of 2020 was 12,337. On average, 12,627 unemployed persons exercised this right on a monthly basis.

Financial aspect

Share of funds for active employment policy measures implemented by the Employment Agency of Montenegro (ZZCG) in GDP by years:
- *2016 – 0.06%;*
- *2017 – 0.05%*
- *2018 – 0.08%*
- *2019 – 0.06%*
- *2020 – 0.08%*

If we take into account also the funds allocated for professional rehabilitation and employment of persons with disabilities (funds paid on the basis of a special contribution for employment of persons with disabilities in accordance with the Law on Professional Rehabilitation and Employment of Persons with Disabilities), the total share of funds in GDP, for measures of active employment policy and measures of professional rehabilitation and employment of persons with disabilities by years is as follows:
- *2016 – 0.14%;*
- *2017 – 0.18%*
- *2018 – 0.20%*
- *2019 – 0.24%*
- *2020 – 0.38%*

Share of funds for financial compensation in GDP by years:
- *2016 – 0.23%;*
- *2017 – 0.25%*
- *2018 – 0.26%*
- *2019 – 0.33%*
- *2020 – 0.42%"*

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

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128. The ECSR concluded that the situation in North Macedonia was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation.

129. The Secretariat recalled that non-conformity on the same ground had persisted since 2008.

130. The representative of North Macedonia presented the following information:

"The last Report by the Republic of North Macedonia covering this specific provision from the revised European Social Charter (Article 1 – Paragraph 1), that was submitted in the beginning of April 2020 (our VIIth Report on the implementation of the rESC), provides detailed information on the labour market trends, employment policies, implementation of active labour market measures, strategic and operational documents and initiatives and all important developments in this respect for the period between 2015 and the end of 2018.
And this is, we believe well noted and understood by the committee of experts and clearly mentioned in the Conclusions of 2020.

However, despite the clear evidence of continuous positive trends and continuous improvements in the labour market situation, the same conclusion still remains in respect to this particular provision from the Charter, stating that "the employment policy efforts have not been adequate in combatting unemployment and promoting job creation".

With this intervention, I would like to complement the previously submitted and provided data and information, by concentrating on the most recent period not covered by our last report, i.e. the period of 2019, 2020 and 2021.

As already pointed out, over the past decade and longer than that, the trends in the labour market in the Republic of North Macedonia have generally been positive, mainly as a result of various implemented policies, strategies, interventions and activities aimed at improving the situation in the labour market, at advancing the business and investment climate in the country, strengthening the human capital, developing labour force skills and competencies, better matching the labour market supply and demand, improving the legislative framework, strengthening the social dialogue practices etc.

Only in 2019, the number of employments in the economy increased by 40,000 new jobs, bringing the total employment rate for the working population (aged 20 to 64 years) to 59.2%. This was also quite significant change compared to the previous decade (2009 –2018), when the number of jobs increased by an average of 14,500 new jobs per year.

Nevertheless, the employment rate and the activity rate are still quite low and unsatisfactory, especially compared to these indicators in countries of the European Union. The low labour force participation rates can be attributed mainly to the lower activity rates of women, young people aged 15-24, as well as people over the age of 50.

Few words about the impact of the Covid-19 crisis…
According to the official data published by the State Statistical Office, in the second quarter of 2020, for the first time, we noted the stagnation of the previously very positive trends in relation to the basic statistical labour market indicators in the country. There was a slight worsening in all indicators, primarily as a result of the global (health and economic) crisis caused by the COVID-19 pandemic. In the activity rate, there was a decrease of almost one percentage point compared to the value from the first quarter of 2020. The employment rate decreased (after a lengthy period of growth) also by one percentage point. And the situation with the unemployment rate also worsened (increased) by 0.5 percentage points. Then, in the third quarter of 2020, we have again a slight improvement in the situation in terms of statistical indicators of activity, employment and unemployment rates, while in the last (fourth) quarter these indicators generally retain the levels of the previous quarter. As a result of these turbulent conditions (caused by the global pandemic), the basic labour market indicators for the whole of 2020, in terms of activity and employment rates, were lower compared to 2019.

Although it was obvious that the pandemic interrupted the positive trends in the labour market in the Republic of North Macedonia, it can also be concluded, that the effects of the pandemic were not significantly affecting the unemployment rate. This is also due to the fact that a significant number of jobs were preserved through the several anti-crisis packages of measures, designed and implemented by the Government during the crisis, with some estimations pointing out that the measures adopted to retain employment prevented the loss of about 60-80,000 jobs.

In addition to the several specific anti-crisis packages specifically designed to provide much needed assistance and support to various sectors of the economy, businesses, workers and other vulnerable and at-risk categories of the population included in the labour market and affected by the current economic and health crisis, the Government also continued its work on preparing the new annual Operational Plan for Active Employment Programmes and Measures and Labour Market Services for the year - 2021. This OP (adopted also by the national tri-partite Economic and Social Council) was designed and budgeted to cover around 10,300 individuals, with the allocated budget of approx. 25 million €. This represents further increase of the funds allocated to

active labour market measures compared to the previous year (2020), by more than 15%. The Youth Guarantee Scheme also continued to be implemented throughout the country, targeting and covering young persons (NEETs) aged 15 to 29.

The beginning of this year (2021) is again characterized with mainly positive developments and outcomes in relation to the basic labour market statistical indicators. There is again a modest increase in the activity and employment rates and further decrease of the unemployment rate.

In this respect, I believe it is very important to emphasise that the latest available data, published by the State Statistical Office (3.12.2021) and based on the Labour Force Survey – for the third quarter (Q3) of 2021 have revealed that the unemployment rate has reached the historically lowest level of 15.7%."

Labour Market trends in the Republic of North Macedonia (LFS):

		2014	2017	2018	2019	2020	Q2 2021	Q3 2021
Activity rate	**Total**	**57.3**	**56.8**	**56.9**	**57.2**	**56.4**	**56.2**	**56.2**
	Men	69.3	69.3	69.2	67.8	67.1	67.2	67.3
	Women	45.3	44.3	44.6	46.6	45.7	45.2	45.1
Employment rate (15+)	**Total**	**41.2**	**44.1**	**45.1**	**47.3**	**47.2**	**47.3**	**47.4**
	Men	50.1	53.6	54.4	56.6	55.9	55.8	56.3
	Women	32.4	34.6	35.8	38.1	38.4	38.7	38.5
Employment rate (20-64)	**Total**	**51.3**	**54.8**	**56.1**	**59.2**	**59.1**	**59.4**	**59.8**
	Men	61.6	65.6	66.6	69.7	68.9	68.9	69.9
	Women	40.8	43.7	45.2	48.4	49.0	49.7	49.4
Unemployment rate	**Total**	**28.0**	**22.4**	**20.7**	**17.3**	**16.4**	**15.9**	**15.7**
	Men	27.6	22.7	21.3	16.5	16.7	17.0	16.4
	Women	28.6	21.8	19.9	18.4	15.9	14.3	14.6
Youth Employment rate (15-29)		**27.1**	**30.2**	**30.9**	**34.4**	**33.5**	**32.6**	**33.7**
Youth Unemployment rate (15-29)		**45.1**	**39.2**	**37.0**	**30.5**	**29.6**	**28.3**	**25.0**

131. The Governmental Committee took note of the information provided, requested that the next report include in particular information on minority groups and other groups with a higher prevalence of unemployment, and decided to await the next assessment by the ECSR.

RESC 1§1 Ukraine

132. The ECSR concluded that the situation in Ukraine was not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts had not been adequate in combatting unemployment and promoting job creation.

133. No information was provided ahead of the meeting by the representative of Ukraine.

134. The Governmental Committee invited the authorities to provide the relevant information in the next report and decided to await the next assessment by the ECSR.

Article 1§2 RESC – to protect effectively the right of the worker to earn his living in an occupation freely entered upon.

135. The Secretariat presented the main criteria used by the ECSR to assess compliance with Article 1§2 of the Charter. It recalled that Article 1§2 covers three different issues:

1) the prohibition of all forms of discrimination in employment,
2) the prohibition of forced or compulsory labour,
3) the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.

136. As regards the prohibition of discrimination in employment, the prohibited grounds of discrimination are sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion, including on grounds of conscientious objection or non-objection.

137. There must be adequate legal safeguards against discrimination in respect of part-time work. In particular, there must be rules to prevent non-declared work through overtime, and equal pay, in all its aspects, between part-time and full-time employee.

138. Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued. Indirect discrimination arises when a measure or practice applied in an identical manner for everyone, persons having a particular religion or belief, disability, age, sexual orientation, political opinion, ethnic origin, etc. Discrimination may also result from failing to take positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

139. Legislation should prohibit both direct and indirect discrimination. In order to make the prohibition of discrimination effective, domestic law must at least provide for the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations.

140. Domestic law must provide appropriate and effective remedies in the event of an allegation of discrimination. Firstly, there must be a right to appeal to a court in case of alleged discrimination. Recognising the right of trade unions to take action in cases of employment discrimination, including action on behalf of individuals and granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action, also contribute to combating discrimination in accordance with Article 1§2 of the Charter. Secondly, there must be a protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action. Thirdly, domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases. Fourthly, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore, compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. A ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

141. States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned are therefore those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

142. Forced or compulsory labour in all its forms must be prohibited. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on Article 2§1 of the ILO Forced Labour Convention (No. 29) which reads: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The non-application in practice of legislation which is contrary to the Charter is not sufficient to bring a situation into conformity with the Charter.

143. Prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination, this regulation, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions).

144. Domestic work and work in family enterprises may give rise to forced labour and exploitation, State Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them.

145. Several other practices may be in breach of Article 1§2:

iii) Length of service to replace military service (conscientious objection): the length of such replacement must be proportionate to the length of military service and not excessive overall.

ii) Minimum periods of service in the Armed Forces (it must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate).

iii) Workers' right to privacy (under Article 1§2 individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation, in particular through modern electronic communication and data collection techniques).

RESC 1§2 Armenia

146. The ECSR concluded that the situation in Armenia was not in conformity with Article 1§2 of the Charter on the ground that:

- indirect discrimination was not defined and prohibited by the legislation;
- discrimination was not prohibited in connection with recruitment in employment;
- there was no protection against discrimination in employment on grounds of sexual orientation;
- the upper limit on the amount of compensation awarded in discrimination cases could preclude damages from fully compensating the loss suffered and from being a sufficient deterrent;
- it had not been established that legislation provides for a shift in the burden of proof in discrimination cases;
- all posts in the civil service were reserved to Armenian citizens;
- the duration of alternative civil service amounted to an excessive restriction of the right to earn one's living in an occupation freely entered upon.

147. The representative of Armenia informed the Committee as regards the first three grounds of non-conformity that according to the new amendments to the Labour Code adopted in September last year, a new article had been incorporated in the code, which defined the notion of discrimination in labour relations and clearly stipulated that discrimination in labour relations was prohibited. The above-mentioned amendment came into force on 19 October 2019. This new article specified in particular that discrimination was a direct or indirect differentiation, exclusion or restriction on the ground of sex, race, skin colour, ethnic or social origin, genetic characteristics, language, religion, worldview, political or other views, ethnicity, property status, birth, disability, age or other personal or social circumstances, the purpose or effect of which is the manifestation of a less favourable treatment in cases of origination and/or revision and/or termination of a collective and/or individual employment relationship; prohibition or denial of the recognition and/or exercise of any right under labour law on an equal basis with others, unless such differentiation, exclusion or restriction is objectively justified for the legitimate aim pursued, and the means used to achieve that objective were proportionate and necessary. In employment announcements and in the process of exercising employment relationships, except practical features, professional experience and qualification, setting of any conditions that could be a ground for discrimination is prohibited, unless it stems from the inherent requirements of the job. In addition to a number of conditions directly mentioned in the said provision, discrimination was considered to be also any direct or indirect differentiation, exclusion or restriction on the grounds of other personal or social circumstances (which may also include sexual orientation).

148. The representative of ETUC stated that the information provided did not cover all cases pertaining to direct and indirect discrimination and it did not cover all aspects of employment. Accordingly, it did not appear that this remedied the situation. In particular, there had been no progress with respect to the prohibition of discrimination on the ground of sexual orientation, as there was no explicit guarantee under the amended law.

149. The representative of the Russian Federation however contested this assessment.

150. In this respect, the Chair concluded that it was preferable to wait for the ECSR's assessment of the new provision. However, the fourth, fifth and seventh grounds on non-conformity remained, and a vote had therefore to be conducted.

151. Accordingly, the Governmental Committee proceeded to vote on a recommendation, which was not carried (4 in favour, 8 against and 18 abstentions). Subsequently, a vote on a warning was successfully carried (18 in favour, 2 against and 13 abstentions).

RESC 1§2 Azerbaijan

152. The ECSR concluded that the situation in Azerbaijan was not in conformity with Article 1§2 of the Charter on six grounds, two of which had already been examined by the Governmental Committee:

- it had not been established that protection against discrimination in employment on grounds of sexual orientation was ensured;
- legislation did not provide for a shift in the burden of proof in discrimination cases;

153. Azerbaijan presented the following information:

"2nd ground:

According to Article 16 of the Labor Code in labor relations no discrimination among employees is permitted based on citizenship, gender, race, religion, nationality, language, place of residence, economic standing, social origin, age, family circumstances, religion, political views, affiliation with trade unions or other public associations, professional standing or other factors unrelated to the professional qualifications, job performance, or professional skills of the employees, nor shall it be permitted to establish privileges and benefits or directly or indirectly limit rights based on these factors. We should note that the "gender" factor specified in Article 16 of the Labor Code also covers the "sexual orientation" factor. Thus, the person's sexual orientation is not asked when filling out the application form during recruitment or hiring, therefore, the person is not subjected to discrimination in employment. As there have been no cases of discrimination on the basis of "sexual orientation" in practice there has not been need to make amendments to the legislation.

Azerbaijan follows the principle that reforms should not be implemented just for the sake of reform. The goal of reforms is to ensure progressive improvement in people's lives. Every nation has its own outlook, values, traditions and peculiarities, which also need to be taken into account.

3rd ground:

According to Article 35 of the Constitution of the Republic of Azerbaijan everyone has the right to work in safe and healthy conditions, to receive remuneration for his/her work without any discrimination not less than the minimum salary established by the state. According to paragraph VI of Article 25 of the Constitution, titled "Right to Equality", persons with disabilities are entitled to all rights and carry all duties enshrined in this Constitution, except in cases when enjoyment of rights and performance of duties is impeded by their limited capabilities.

On May 31, 2018, a new Law of the Republic of Azerbaijan "On the Rights of Persons with Disabilities" was adopted. As specified in Article 5 sub-clause 5.0.5 of this Law non-discrimination on the basis of disability, identifying and upholding the rights of persons with disabilities to equal protection under the law and providing equal enjoyment of legal rights, eliminating any segregation, exclusion or restriction are among the main principles of the state policy with regard to persons with disabilities. As mentioned above, Article 16 of the Labor Code prohibits all forms of discrimination. At the same time, according to the second part of this Article concessions, privileges and additional protection for women, persons with disabilities, persons under the age of eighteen (18), and others in need of social protection shall not be considered discrimination. Otherwise in accordance with Part 3 of this Article employers or other individuals that permit

discrimination among employees in the labor relations process shall assume the corresponding responsibility in the manner established in the legislation. A person subject to discrimination during his/her employment may seek recourse in a court of law.

According to the second part of Article 50 of the Labor Code, there shall be no announcement of the competition only for members of the same gender, except as provided by law. According to Article 154 of the Labour Code employee wages may not be reduced in any way, nor may employees be paid less than the minimum wage set by the State in violation of Article 16 of this law banning discrimination.

According to Article 77 of the Civil Procedural Code of the Republic of Azerbaijan each party shall prove circumstances used as grounds for its claims and objections.

Therefore, no changes have been made to the legislation regarding the burden of proof".

154. The representative of France asked whether discrimination on the ground of sexual orientation was explicitly prohibited. The representative of Azerbaijan replied that there was a prohibition on discrimination which included sexual orientation and that no cases or complaints had been lodged with the courts in this respect.

155. The representative of ETUC stated that the lack of cases did not prove that there was no problem but rather a lack of clarity that the general criteria of gender discrimination covered sexual orientation.

156. The representative of the Russian Federation contested this assessment and stated that the Charter did not mention explicitly sexual orientation as a ground of discrimination but that it only transpired from the ECSR's case-law. According to him, the ECSR was not a judicial body and had no conventional prerogative to interpret the Charter.

157. Several representatives expressed their disagreement with this position. The Chair recalled that the ECSR was the only body with the competence to interpret to Charter and that the State Parties were bound by it. He added that the role of the Governmental Committee was to prepare the decisions of the Committee of Ministers and not to interpret the decisions of the ECSR. It could only take decisions on the basis of political and economic aspects but not on legal grounds.

158. The Governmental Committee proceeded to vote on a recommendation, which was not carried (0 votes in favour, 11 against and 23 abstentions). Subsequently, it adopted a warning with 22 votes in favour, 6 against and 7 abstentions.

RESC 1§2 Cyprus

159. The ECSR concluded that the situation in Cyprus was not in conformity with Article 1§2 of the Charter on the ground that the duration of alternative military service amounting to almost three years was excessive and constituted a disproportionate restriction on the right to earn a living freely entered upon.

160. The Secretariat explained that the ECSR had repeatedly concluded since 2002 (Conclusions 2002, Conclusions 2004, Conclusions 2006, Conclusions 2008, Conclusions 2012, Conclusions 2016) that the situation was not in conformity on this ground. The Governmental Committee had examined the situation in 2009 and noted that the legislation governing alternative service for conscientious objectors had been amended in

2007 and that the duration of alternative service had been reduced. Military service currently lasted 24 months, while alternative service had been reduced from 42 to 34 months and special military service from 34 to 30 months. The Governmental Committee had taken note of the information provided and decided to await the next assessment of the ECSR, which was then negative. It also examined the situation in 2004, when it had taken note of the information provided and had similarly decided to await the next assessment of the ECSR.

161. Owing to insufficient information, the ECSR reserved its position on the prohibition of discrimination in employment, in particular on the ground of sexual orientation, race and ethnic origin, and nationality, as well as in relation to the employment of refugees. It also requested information to establish that there was appropriate and effective remedies in the event of an allegation of discrimination, a shift of the burden of proof from the complainant to the respondent in judicial/extra-judicial proceedings and the existence and functioning of remedies in cases of alleged discrimination in employment. The representative of Cyprus presented the following information:

"Regarding the Committee's request for information on legislation targeted at combating discrimination on grounds of race and ethnic origin, the Equal Treatment in Employment and Occupation Law of 2004 (L58(I)/2004), fully harmonized with the Equality Framework Directive 2000/78/EC and the Race Equality Directive2000/43/EC providing for a solid framework for combating discrimination on the grounds of disability, sexual orientation, religion or belief and age in access to work, conditions of employment and/or dismissals and pay and access to vocational training, as well as implementing the principle of equal treatment between persons irrespective of racial or ethnic group, as regards employment and occupation. As per the provisions of the mentioned legislations, discrimination on grounds of race and ethnic origin is specifically addressed (Section 3), the burden of proof is on the employer if a prima facie case exists (Section 11), positive action is endorsed (Section 9) and any form of direct or indirect discrimination or other form of harassment is a penal offense (article 15). Again, the legislation is fully harmonized with the Equality Framework Directive 2000/78/EC and the Race Equality Directive2000/43/EC providing for a solid framework for combating discrimination on grounds of race and ethnic origin. The legislation is implemented through the appointment of inspectors (Section 19). Concrete actions and additional measures for the improvement of the implementation of the legislation are being taken continually, such as the creation of the new Inspectorate Service in June 2017, the new legislation that provides for enhanced powers for the inspectors and additional administrative fines, passed into law on 22/07/2020 (Law 88(I)/2020) and the new IT system "ERGANI" that facilitates and enhances labour inspection, which was developed from 2018 until 2021 and is fully operational and being launched on 13/09/2021.

Regarding the Committee's comment on discrimination on the grounds of sexual orientation, in addition to Section 6 as mentioned in the conclusions, Section 9 of the Law provides for positive actions, stating that a favorable treatment on the grounds of, inter alia, sexual orientation, is not considered as discrimination when the aim is to prevent or compensate for disadvantages linked to, inter alia, sexual orientation. As for specific actions taken, see par. 1.1. above for the creation of the new Inspectorate Service in June 2017, the new legislation that provides for enhanced powers for the inspectors and additional administrative fines, passed into law on 22/07/2020 (Law 88(I)/2020) and the new IT system "ERGANI" that facilitates and enhances labour inspection, which was developed from 2018 until 2021 and is fully operational and being launched on 13/09/2021, as these actions are also towards combating all forms of discrimination.

More favorable provisions to the minimum requirements of Directive 2000/78 are offered as regards equal treatment (Section 13). The Commissioner for Administration and Protection of Human Rights (Ombudsman) is the competent Authority dealing with issues of equal treatment in employment and occupation and combating racism with powers both in the public and private sectors and tasked to enforce the above legislation as well as Law No. 42(I) of 2004 implementing

Directive 2000/43/EC of 2000-06-29 to combat racial and other kinds of discrimination (Commissioner for Administration).

In addition to the general comments in par. 1.1. above, it is important to stress that citizens of the Republic of Cyprus who are members of the Turkish Cypriot community have equal access to employment, utterly regardless of which community they belong to constitutionally. The Public Employment Services (PES) offer placement (in the Government controlled areas) and vocational guidance services to Turkish-Cypriot and Roma jobseekers, irrespective of whether they live in the Government controlled areas or in the Turkish occupied areas. They are offered support in finding an appropriate job position and information about the subsidized employment programmes implemented by the Department of Labour and the training programmes organized by the Human Resource Development Authority. Not only can they apply and participate in these programmes, but they are also encouraged and supported in every possible way in doing so. The employees of the regional (PES) Offices, include Turkish, as well as English speaking Employment Counsellors. The website of the Department of Labour has information in Greek, English and Turkish. Online information in the Turkish language explains the procedure and the required documents for registering as unemployed including contact information of all Labour Offices. To ensure the best possible guidance of Turkish Cypriots on employment issues, the Department of Labour operates a telephone line service in the Turkish language. Information material, in the Turkish language, is also available at all Labour Offices.

For the Roma specifically, the overall government policy approach is to promote integration through horizontal policy measures targeting vulnerable groups within existing broader social inclusion policies and structures (e.g., general social inclusion policies and the National Reform Programme). The targets for increasing employment and reducing poverty and social exclusion are particularly relevant. The Roma can benefit from inclusion measures for vulnerable groups and non-discrimination actions, co-financed by the European Social Fund as well as from Urban Development actions, co-financed by the European Regional Development Fund. Dialogues with local authorities take place in Cyprus, in order to better understand and address the problems each local authority faces. Roma issues are an integral part of those dialogues where such populations exist. In 2016, the Social Welfare Services undertook an EU-funded project, the Cyprus National Roma Platform with the objective to create a forum for disseminating information and enhancing knowledge to facilitate consultation on Roma issues, promote dialogue, mutual respect and exchange of information and good practices, building on a climate of cooperation and transparency. Discrimination and equality issues were also addressed and the provisions of the European framework for the integration of Roma and of the European Council recommendations were discussed. The greatest advantage of the meetings was the participation of the Roma population and their contribution. The number of Roma participants was not consistent but fluctuated based on the theme of the meetings. When they did participate, the exchange and the dialogue that took place was very productive. This was the first forum to be created where all stakeholders, including the Roma themselves, could meet and actively seek solutions to challenges facing the Roma population.

Regarding the burden of proof in cases of alleged discrimination in employment, according to Section 11(1) of the Equal Treatment in Employment and Occupation Law, the burden of proof in cases of alleged discrimination in employment, the above legislation requires according to section 11(1) a shift of the burden of proof is indeed shifted from the complainant to the respondent in civil judicial proceedings and particularly at the Industrial Disputes Tribunals because the conflict which arises under this law is considered as a labour dispute. The same evidence rule is followed according to section 11(2) by the Ombudsman.

Regarding sanctions, in Section 15, the above-mentioned Law provides for criminal sanctions for persons (natural and legal), in the event of conviction, with penalties such as imprisonment, fine or both. Additionally, the new Inspectorate Service Law (L.88(I)/2020) provides for additional immediate administrative fines (Section 10) of up to €5.000 or €10.000 for repeat offenders as well as additional sanctions as detailed in the legislation.

Remedies available to victims of discrimination, include administrative procedures whereby a complaint can be placed with the Department of Labour Relations and in this case a formal procedure is launched, calling for the employer to submit all relevant material, as the burden of prove is on the employer to prove compliance. In case of a successful administrative or judicial procedure regarding discrimination in employment, including for discriminatory termination of employment, remedies include fair and reasonable compensation covering at least all the positive damage incurred according to section 12(3) of Law 58(I)/2004 as well as additional compensation for unlawful termination of employment as per section 3 of Termination of Employment Law (L. 24/1967), with the burden of proof again on the employer who has to prove that the termination of employment had been lawful. There is currently a pending case at the Industrial Disputes Tribunals regarding discrimination on the grounds of age under Law 58(I)/2004. All citizens of the Republic of Cyprus, including Roma and Turkish Cypriots, residing in Cyprus have free access to the labour market. The Public Employment Services (PES) offer all jobseekers, without any discrimination, assistance in finding employment, through registration, job search and placement services, which include vocational guidance, personalized counseling and referrals to training programmes and job vacancies. Furthermore, all citizens of the Republic of Cyprus, regardless of the community or religious group they belong to, can participate in the Employment Subsidization Schemes operated by the Department of Labour.

EU citizens have equal and unrestricted access to employment. Recognized refugees and persons with the status of Subsidiary Protection, as well as all victims of trafficking and/or sexual exploitation, also have equal and unrestricted access to employment and all services provided by the PES. Asylum seekers have access to specific sectors of employment, regulated by a ministerial decree. The range of these sectors was significantly expanded in 2019. Other non-EU citizens legally residing in Cyprus and holding a valid work permit have access to employment on the same footing as Cypriot citizens.

Regarding the procedure for the employment of non-EU nationals, in order to safeguard the smooth operation of the labour market, based on the developing conditions in the economy and in an effort to better utilize the local labour force, the Department of Labour examines applications and grants permits to employers for the employment of non-EU nationals, for pressing, short term needs in the labour market, in certain economic fields and occupations which cannot be filled by any a Cypriot or EU national or other person legally residing in the country with unrestricted access to the labour market. A Ministerial Committee examines at regular intervals possible issues that may arise with regards to the employment of non-EU nationals and to ensure that migrant workers are treated on equal terms with nationals as regards terms and conditions of employment. The Committee examines suggestions, takes into account the developments in the labour market and the needs of the economy and institutes administrative adjustments in relevant procedures. Furthermore, the creation of the new Inspectorate Service in June 2017, the new legislation that provides for enhanced powers for the inspectors and additional administrative fines, passed into law on 22/07/2020 (Law 88(I)/2020) and the new IT system "ERGANI" that facilitates and enhances labour inspection, which was developed from 2018 until 2021 and is fully operational and being launched on 13/09/2021, are all policies towards safeguarding workers' rights, including those of a migrant background.

Forced Labour and labour exploitation
Criminalization and effective prosecution

In relation to the ILO Convention No. 189 concerning decent work for domestic workers, Cyprus is in the final stages of introducing new legislation ratifying Convention No. 189, for the effective protection, inspection, and prosecution of domestic work infringements. We expect it to be in effect by the end of 2021 or early 2022, depending on the House of Parliament proceedings. Both the ratifying law and the enforcement law, have received approval by the Council of Ministers, underwent public consultation, and are currently being legally vetted before being submitted to the House of Representatives to be enacted into law.

Prevention

When there is reasonable ground to suspect violation of human rights and fundamental freedoms during an investigation, the complaint is forwarded to the Commissioner for Administration and the Protection of Human Rights (Ombudsman) for further investigation.

In May 2017, an Inspectorate Service was set up at the Ministry of Labour, Welfare and Social Insurance with the purpose of combatting illegal and undeclared work, as well as monitoring the implementation of all legislation protecting the rights of workers. In July 2020 a Law providing for enhanced powers of the Inspectorate Service was enacted, strengthening the legislative framework of tackling undeclared work and contributing to the enhancement of inspections for all forms of labour exploitation. The inspectorate is given extended powers and works under the ministry of labour to carry out targeted inspections based on a risk analysis. The Ministry of Labour, Welfare and Social Insurance is constantly working on increasing the capacity of the Inspectorate Service and is currently planning various actions which will be co-funded through ESF+ with a budget of 8.5 million, which include the development of district inspection units of the Inspectorate Service. Modern software currently being developed, such as the comprehensive "ERGANI" system for labour inspections that is being launched on 13/09/2021, will make the monitoring of the workplace more efficient and effective.

Protection of victims and access to remedies, including compensation

In 2019-2020 the Department of Labour Relations (DLR) examined three cases regarding human trafficking. In one case, the complaint was forwarded to the Office of Combating Trafficking in Human Beings (Police) and the Social Welfare Services for further investigation. In another case, upon the request of the Office of Combating Trafficking in Human Beings (Police), the DLR investigated the complaint of a recognized trafficking victim regarding owed salary, and the investigation led to the full payment of the owed amount. The third case was the result of a joint inspection with the Police, where two migrant workers and possible trafficking victims were found. The DLR, ensured for the payment of appropriate fines by the employer, amounting to the salary and annual leave owed to the workers.

"Gig economy" or "Platform economy" workers

Employment law applies to all employees and does not exclude platform workers. There is no specific legislation for this particular category of employees who are entitled to all rights and benefits in terms of employment and working conditions. The new Inspectorate Service and relevant legislation / IT systems mentioned in par. 2.3. above has a broad mandate, as well as all the relevant means, to protect the rights of platform and gig economy workers. Especially with the utilization of the "ERGANI" system from 13/09/2021, which provides for risk analysis, these kinds of employees and employers are to be prioritized further.

In case an employee feels that their rights are being violated they have the right to file a complaint with the Department of Labour Relations in order to be investigated. Specifically regarding cases of "false self-employed workers" in the gig economy or platform economy, the affected persons have the right to file a complaint with the Director of the Social Insurance Services, who has enhanced capacities and powers to investigate whether they were employees or self-employed and apply the relevant remedies. However, the Government, having recognized the need to be able to adapt to an ever-changing socioeconomic environment where new forms of employment are gaining traction, such as gig or platform work, intends to overhaul the Social insurance legislation in order to enhance social protection for all regardless of the type and duration of employment by extending and improving coverage in particular for the self-employed or new forms of employment. These reforms of the Social Insurance legislation are part of the overall "Reform of the Social Insurance System and Restructuring of the Social Insurance Services" which is included in the Recovery and Resilience Plan of Cyprus and its implementation has already begun according to a specific timeline.

Work of prisoners and other aspects of the right to earn one's living in an occupation freely entered upon

According to a 2016 Decision of the Council of Ministers, the duration of full military service was reduced from 24 to 14 months. Consequently, the duration of the alternative social service for those recognized as conscientious objectors was reduced accordingly from 33 to 19 months. The alternative social service is equal to a full or reduced service, plus:

a. Five (5) months, if they were due to fulfil a full military service of fourteen (14) months.

b. Four (4) months, if they were due to fulfil a military service between six (6) months and less than a full service.

c. Three (3) months, if they were due to fulfil a military service shorter than six (6) months.

Legislation regarding the National Guard, has been harmonized according to the EU Legal framework. Any reforms required i.e duration of full military service or alternative social service are undertaken by the Ministry of Defense. One should not ignore though the special conditions due to the continued illegal occupation of 36.2% of the territory of the Republic of Cyprus by Türkiye since 1974 especially when promoting implementation of the indicated guidelines set occasionally by the European Community".

162. The Governmental Committee noted the information provided and decided to await the next assessment by the ECSR.

RESC 1§2 Russian Federation

163. The ECSR concluded that the situation in the Russian Federation was not in conformity with Article 1§2 of the Charter on four grounds, three of which had been previously examined by the Governmental Committee:

- indirect discrimination was not expressly prohibited by law;
- discrimination on grounds of sexual orientation in employment was not expressly prohibited by law;
- foreign nationals could not be employed in the municipal and state service, which constitutes a discrimination on grounds of nationality;
- the legislation did not provide for a shift in the burden of proof in discrimination cases.

164. The Secretariat explained that the situation of non-conformity persisted since 2016 owing to serious shortcomings in law and practice. In 2020 the ECSR concluded to non-conformity on four grounds, three of them to be discussed by the Governmental Committee: (i) legislation did not provide for a shift in the burden of proof; (ii) indirect discrimination did not defined and prohibited, (iii) discrimination on grounds of sexual orientation in employment was not expressly prohibited by law. The Governmental Committee examined the situation and decided to address a strong message to the Russian Federation regarding the grounds of non-conformity relating to non-discrimination. It emphasised that discrimination on the ground of sexual orientation should be enshrined in domestic legislation. It urged the Russian Federation to take measures to bring the situation into conformity with the Charter. As to the fourth ground, the Governmental Committee took note of the information provided and invited the Russian authorities to provide detailed information regarding the international agreements and statistics on the employment of foreign nationals to civil service posts. Meanwhile, it decided to await the next assessment of the ECSR.

165. The representative of ETUC asked why all grounds of non-conformity were not included, and the Secretariat explained that only the most urgent cases and severe cases were selected for discussion.

166. The representative of the Russian Federation stated that there was a long list of grounds under which discrimination was prohibited already in the legislation, namely Article 3 of the Labour Code (ender race, family, social status, age, religion, beliefs, belonging to social groups and other circumstances). The Russian representative indicated that his authorities were of the view that such wording specifically covered sexual orientation. He added that there were also court decisions which showed that there had been protection against discrimination. As regards the shift of burden of proof, the Supreme Court's decision of March 2004 on application by courts of labour law showed that it had been provided in some cases.

167. The representatives of ETUC and Ireland asked whether there had been a legislative change since the ECSR conclusion. The Russian Representative responded that Article 3 of Labour Code complied with Article 1 of the ILO Convention on Discrimination (Employment and Occupation) (No. 111).

168. The UK representative asked how the burden of proof can be applied consistently if the ground of sexual orientation is not enshrined in legislation. The representative of the Russian Federation repeated that sexual orientation was included under "other circumstances" and that no explicit recognition was necessary.

169. The Governmental Committee reiterated its message to the Russian Federation to remedy the situation and to explain in its next report how it had been changed, in particular, as regards the jurisprudence of courts. It decided to await the next assessment by the ECSR.

RESC 1§2 Serbia

170. The ECSR concluded that the situation in Serbia was not in conformity with Article 1§2 of the Charter on three grounds, one of which had been examined previously by the Governmental Committee: it had not been established that legislation provided for a shift in the burden of proof in discrimination cases.

171. The representative of Serbia presented the following information:

"The new Law on Prohibition of Discrimination, adopted in May 2021 (Official Gazette, No. 21/09 and 52/21), prescribes the following: Anyone who has been harmed by discriminatory treatment has the right to file a lawsuit. The lawsuit may request:

1. prohibition of the act that poses a threat of discrimination, prohibition of further committing the act of discrimination, and prohibition of repeating the act of discrimination;
2. determination that the defendant acted in a discriminatory manner towards the plaintiff or another person;
3. execution of an action for the purpose of eliminating the consequences of discriminatory conduct;
4. compensation for material and non-material damage;
5. publication of the judgment rendered in connection with some of the lawsuits in the cases mentioned above.

The plaintiff may, with the lawsuit, during the procedure, as well as after the end of the procedure, until the execution is carried out, request that the court temporarily prevent discriminatory treatment in order to eliminate the danger of violence or greater irreparable damage. The court is obliged to make a decision on the proposal for the issuance of an interim measure without delay, and no later than within three days from the day of receipt of the proposal.

Rules on the burden of proof
If the court finds that an act of direct discrimination has been committed or if it is undisputed between the parties, the defendant cannot be released from liability by proving that he is not guilty. If the plaintiff shows that it is probable that the defendant committed an act of discrimination, the burden of proving that the act did not violate the principle of equality, i.e. the principle of equal rights and obligations, shall be borne by the defendant.

It is clear from the above that the legislation in Serbia stipulates that the burden of proof in cases of discrimination is on the defendant and not on the plaintiff".

172. The Governmental Committee noted the information provided and decided to await the next assessment by the ECSR.

RESC 1§2 Türkiye

173. The ECSR concluded that the situation in Türkiye was not in conformity with Article 1§2 of the Charter on five grounds, three of which had been examined previously by the Governmental Committee:

- there was no specific legislation on the prohibition of discrimination on grounds of sexual orientation;
- the upper limits on the amount of compensation that may be awarded in discrimination cases could preclude damages from fully compensating the loss suffered and from being sufficiently dissuasive;
- it had not been established that civil servants were sufficiently protected against arbitrary suspensions or transfers.

174. The representative of Türkiye presented the following information:

*"**First ground of non-conformity:***
there is no specific legislation on the prohibition of discrimination on grounds of sexual orientation;

The legislations regarding the work life in the Turkish Legal System are based on the core principle of equality. Legal arrangements that can prevent all kinds of discrimination are available in our legislation at every stage, beginning from the Constitution.

All forms of discrimination are prohibited in Türkiye according to the ratified ILO Convention No: 111, the Article 10 of the Turkish Constitution, Article 122 of the Turkish Penal code, Article 417 of the Turkish Code of Obligations, Article 5 of the Labour Code and several articles of the Law on Human Rights and Equality Institution. All these mentioned legal arrangements contribute to ensure protection against all kinds of discrimination. According to Article 10 of the Constitution, everyone is equal before the law regardless of language, race, color, sex, political thought, philosophical belief, religion and similar reasons. The phrase of "similar reasons" in the first paragraph of Article 10 provides that this Article can be widely interpreted and serve as a shield against discrimination of all kinds. In the same Article, the responsibility of the administration is stated as "state organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings."

Article 5 of the Labour Code provides that "it is forbidden in the work environment to discriminate on grounds of language, race, sex, political opinion, philosophical belief, the religion, confession and other ground". Although discrimination based on age and on sexual orientation does not appear among the expressly mentioned grounds, the Turkish Authorities and courts consider that the expression of other similar ground includes these kinds of discriminations and then it could be possible to say that discrimination based on sexual orientation in the employment are prohibited by the national legislation. Indeed, the court decisions confirm that the above-mentioned Article of the Labour Code prohibits discrimination based on age and/or on sexual orientation. In addition, a "Department for disadvantaged groups" has been established in the Ministry of Labour and Social Security. This department has the role of ensuring social inclusion and of increasing the participation of disadvantaged groups in the labour market and preventing discrimination against them in employment.

According to the article 417 of the Turkish Code of Obligations, "the employer has to protect and respect the personality of worker during service relation, maintains order in line with principles of honesty, and is responsible for taking necessary measures to prevent psychological and sexual abuse against workers and to minimize the effects of such abuse if any."

According to Penal Code Article 122; any person who makes discrimination between individuals because of their racial, language, religious, sexual, political, philosophical belief or opinion is sentenced to imprisonment from six months to one year or imposed punitive fine. By the way, pursuant to Penal Code Article 105; if a person is subject to sexual harassment by another person, the person performing such behavior is sentenced to punishment from three years to two years upon complaint of the victim. In case of commission of these offenses by undue influence based on hierarchy or public office or by using the advantage of working in the same place with the victim, the punishment to be imposed is increased. If the victim is obliged to leave the business place for this reason, the punishment to be imposed may not be less than one year.

On the other hand, as it is known that the Ombudsman Institution has been established in 2012 by Law No 6328. The purpose of the Institution is to establish an independent and efficient complaint mechanism. The Ombudsman Institution shall comply with the principles of good administration and monitor whether the acts and actions of the administration are fulfilled with an understanding of human rights based justice and in conformity with the principles of good administration such as compliance with laws, prevention of discrimination, and so on. A person subject to a discrimination based on sexual orientation can also apply to the Ombudsman Institution in order to search his/her rights.
Furthermore, the Law on Human Rights and Equality Institution, No. 6701 was enacted on the date of 20 of April, 2016. Türkiye had its Human Rights Institution established by Law no. 6332 in June 2012. The Human Rights Institution has now been restructured and replaced by the Human Rights and Equality Institution. The Human Rights and Equality Board is the decision-making body of the Institution.

Article 3 of the Law on Human Rights and Equality prohibits discrimination based on gender, race, colour, language, religion, belief, denomination, philosophical and political opinion, ethnic origin, wealth, birth, marital status, health, disability and age. The list of prohibited grounds is exhaustive. In the news report of European Network of Legal Experts in Gender Equality and Non-discrimination, it is evaluated that "this is an exhaustive list that cannot be extended by the judiciary but only through legislation. This does not mean that courts have no role. Sex is protected but not sexual orientation, gender reassignment or transsexuality under this Law. These groups are only marginally outside the delineated boundaries and the courts can easily re-characterize sex in order to bring these groups within the scope of protection like the leading decisions of the Court of Justice applying prohibition of sex discrimination arising from the gender reassignment of a person or transsexuality." In the light of this assessment, it could be said that this Equality Law No: 6701 has grand protection against discrimination in employment, also on the grounds of sexual orientation.

The field of employment and self-employment is regulated in a separate Article. Pursuant to Article 6, discrimination is prohibited in all stages of employment, including getting information, application, section criteria, hiring criteria and working and termination of the employment. This Article 6 also covers all kinds of contracts of work and performance not falling into the scope of the Labour Law.

The law adopts the principle of leaving the burden of proof to the opposite party. It means that the law provides for a shift in the burden of proof in favour of the plaintiff in discrimination cases in accordance with the Charter, EU acquis and other related international legislations. Accordingly, in the individual applications to be made regarding the prohibition of discrimination, in case the applicant establishes the existence of strong indications and presumptive facts about the reality of his/her claim, the opposite party must prove that he/she has not violated the principle of discrimination and the principle of equal treatment. According to Article 25 of the Law on the Human Rights and Equality, if any discrimination has been done by the administrations, organizations and / or private legal entities and individuals, the Human Rights and Equality Institution may impose administrative sanctions and fine on institutions, organizations and / or private legal entities and individuals. Under the light of all these explanations, we believe that there is sufficient protection against discrimination, including the grounds of sexual orientation and Türkiye is in conformity with the Charter in this manner.

Fourth ground of non-conformity:
the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from fully compensating the loss suffered and from being sufficiently dissuasive;

Legal framework in discrimination is summarized in the first ground of non-conformity. In addition to the above explanation, in cases of discrimination, the employee may request the compensation not only on the basis of Article 5, 17 and 21 of the Labour Code but also on the basis of the Code of Obligations and Civil Code and also the Law on Human Rights and Equality Institution.

The provisions in Civil Code and Code of Obligations should be taken into account also in the employment relations. It is considered possible for the employee to demand financial and moral compensation due to the attacks arising from the employment relationship to his/her personal rights within the framework of general provisions of the Civil Code and Code of Obligations. If it is the case, the ceiling calculations for compensation between four and eight months' wages stipulated in Articles 17 and 21 of the Labour Law are not valid for the compensation of financial and moral damages. It means that there is no upper limit for the compensation for financial and moral damages under the framework of the Civil Code and Code of Obligations.

The Human Rights and Equality Institution will investigate discrimination upon complaint and ex-officio and to fine people and public/private legal entities in cases of discrimination. It will also offer guidance to victims about administrative and legal procedures. In order to provide for effective, proportionate and dissuasive penalties in cases of the breaches of the discrimination prohibition, administrative fines can be imposed by the Board. In determining a fine, the gravity of the violation, the perpetrator's economic status, and multiple discrimination, if any, shall be considered as an aggravating factor.

In the light of all these explanations, we believe that the upper limits on the amount of compensation that may be awarded in discrimination cases may compensate the loss suffered and Türkiye is in conformity with the Charter in this manner.

Fifth ground of non-conformity:
It has not been established that civil servants are sufficiently protected against arbitrary suspensions or transfers.

A constitutional referendum was held throughout Türkiye on 16 of April 2017. As a result of this referendum, some amendments of the Turkish constitution accepted. By these amendments, some

articles under the Part III - Extraordinary administration procedures of the Constitution were deleted in 2019. One of the deleted Articles was the Article 122 which was related with the Martial law, mobilization and state of war. Then the government focused on structural changes that complement this constitutional reform. In accordance with this development, Martial Law Number 1402 could not have a base coming from the Constitution and as a result of this amendment, martial law 1402 was removed by the Law Amending Some Laws and Decree Laws Number 7145, dated 25 July, 2018.

Firstly, we would like to give brief information about the legal framework for the matters necessitated by the state of emergency.

Following the failed coup attempt by the Fetullah Gülen Terrorist Organization (FETÖ) on 15 July 2016 to overthrow the legitimate government and the president of the Republic of Türkiye, which claimed the lives of 246 people and wounded more than 2000, the Council of Ministers took a decision on 20 July 2016 to declare a state of emergency for 90 days as of 21 July 2016 in accordance with Article 120 (Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order) of the Turkish Constitution and Paragraph 1(b) of Article 3 of the State of Emergency Act No.2935. This decision of the Council of Ministers was approved by the Turkish Grand National Assembly (TGNA) in its plenary session on 21 July 2016. State of emergency has been extended for a period of 90 days by a decision of the Council of Ministers on 5 October 2016, which was approved by the TGNA on 11 October 2016.

Article 120 of the Constitution with its title reads as follows:
"2. Declaration of state of emergency because of widespread acts of violence and serious deterioration of public order
ARTICLE 120- In the event of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months."

On the other hand, Article 121 of the Constitution stipulates that during the state of emergency, the Council of Ministers, meeting under the chairpersonship of the President of the Republic, may issue decrees having the force of law on matters necessitated by the state of emergency. In accordance with this Article, rules regarding the states of emergency are to be stipulated by an Act on State of Emergency and any restriction or suspension of fundamental rights and freedoms must be in line with the principles laid down by Article 15 of the Constitution.

Article 15 of the Constitution with its title is as follows:
"IV. Suspension of the exercise of fundamental rights and freedoms
ARTICLE 15- In times of war, mobilization, martial law, or a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.
(As amended on May 7, 2004; Act No. 5170) Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling."

Turkish Constitution stipulates in its Article 14 that the rights and freedoms enshrined in the Constitution cannot be exercised as activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights. In accordance with the second paragraph of this Article no provision of this Constitution shall be interpreted in a manner that enables the State or individuals

to destroy the fundamental rights and freedoms or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

In accordance with the provisions of Article 129 of the Constitution the civil servants are obliged to carry out their duties with loyalty to the Constitution and the laws. The status of the civil servants and their rights, duties and responsibilities are regulated by the Civil Servants Act No.657 of 14.07.1965. The loyalty of the civil servants to the Constitution and the laws and implementation of their provisions in objectivity and equity is an obligation that is also stipulated by Article 6 of this Act, and they are required, under Article 7, not to become members of political parties, and not to act for the benefit of political parties or groups or individuals or with a view to harm them, and not to discriminate on the grounds of language, race, gender, political thought, philosophical believe, religion or sect, and not to act or give statements with political or ideological purposes in any way.

Article 7 further stipulates that civil servants must protect the interests of the State and are obliged not to carry out any activity that is contrary to the provisions of the Constitution and the laws or harm the independence and the integrity of the country or endanger the security of the Republic, and they cannot join or assist any movement, group, organization or association that carry out the same kind of activities.
Article 125 of the Act No.657 prescribes the actions and situations that call for the disciplinary punishment. Subparagraph E(l) of Article 125 stipulates that acting in cohort with the terrorist organizations or helping them or using or making available public means and resources to assist these organizations or making propaganda for these organizations is an act that shall be punished with the dismissal from the public service. Article 137 of the Act No.657 regulates the suspension from work whereby a civil servant is suspended during an investigation as an administrative precaution. Those civil servants who are suspended or arrested or detained for any criminal offence continue to receive 2/3 of their salaries.

Within the framework outlined above, on the matters necessitated by the state of emergency and with the aim of establishing public order and assuring fundamental rights and freedoms, several decrees with the force of law have been issued. Dismissal or suspension procedures of the civil servants who are deemed to be member or affiliate of or in liaison or cohort with the terrorist organizations or the structures, entities or groups that are considered by the National Security Council as operating against the national security of the State are conducted in pursuance of the provisions of the State of Emergency Act No.2935 and the Civil Servants Act No.657 and the Decrees with the Force of Law issued in the aftermath of the above-mentioned coup attempt. There have been also many cases that dismissal decisions were revoked or suspension orders were lifted as a result of ongoing investigations. Furthermore, under Article 125 of the Constitution, recourse to judicial review is available against all actions and acts of administration. It should be underlined that the fight against the perpetrators of the coup attempt which aimed to abolish fundamental rights and freedoms and free democratic order established by the Constitution is carried out in conformity with the international and national law and the measures taken with respect to the civil servants who are deemed to be member or affiliate of or in liaison or cohort with the terrorist organizations or the structures, entities or groups that are considered by the National Security Council as operating against the national security of the State are also in conformity with the international and national law.

Türkiye is in a reforming process in recent years in every field of life. But on the other hand, Türkiye is also fighting with terrorism. All amendments in our legislation have to take into attention our countries specific conditions and on the other hand the related International documents. As being a democratic country, Türkiye tries to tackle all terrorist attacks in accordance with our Government's commitment to respect human rights under the several international instruments that Türkiye ratified. It is very well known that almost every country has emergency legislation. Most of the emergency legislation may include similar provisions. Türkiye maintains a transparent approach with regard to the measures taken after the terrorist coup attempt, as well as the measures taken within the context of fight against terrorism which per se constitutes a grave human rights violation.

As Türkiye has faced serious and multi-dimensional security threats since 15th of July, 2016, the state of emergency was declared on the date of 20th of July 2016 and removed on the date of 18th of July, 2018. The state of emergency had been declared with an aim to be able to take swift and effective steps required eliminating this threat against our democracy, rule of law and the rights and freedoms of our citizens. The state of emergency was not affecting daily lives of citizens or visitors travelling to Türkiye and it did not include restrictions to fundamental rights and freedoms. Unfortunately, more than 10 thousand public employees participated in the coup attempt. This is the greatest reason for the need of dismissals of some public employees. Objections to dismissal from public service are examined by public bodies. Individuals who believe they have been wrongfully dismissed can apply to crises centers which exist in every province. Among those people, who had applied to crises centers and claimed that they had been wrongfully dismissed, some were reappointed to their original posts after investigations exonerated them.

The State of Emergency Procedures Investigation Commission was established with a decree law number 685 on Jan. 23, 2017 in order to receive applications regarding state of emergency rulings. The tenure of the Commission is extended by the end on January 2022. The applications are expected to focus especially on removals or dismissals from public service and educational institutions, as well as the closure of organizations. Objections will no longer be appealed to only one institution, but to this center which will act as a court. With this new regulation, those whose appeal was considered justified will receive their rights back. Those whose appeal was not considered justified will also have the right to appeal to domestic legal institutions and then also international legal institutions.

The Inquiry Commission on the State of Emergency measures reviews and concludes the applications concerning the measures adopted under the state of emergency decree-laws, such as the dismissal of public officials, cancellation of scholarship, annulment of the ranks of retired personnel and the closure of some institutions. The Commission employs a total of 240 personnel, 75 of whom are rapporteurs (judges, experts, inspectors). The Commission started its decision-making process on 22 December 2017 and as of 28 May 2021, the Commission has delivered 115,130 (14,072 accepted, 101,058 rejected) decisions. 61 of the acceptance decisions are related to the opening of organizations that were shut down (associations, foundations, television channels). The number of applications submitted to the Commission is 126,674 as of 28 May 2021. Regarding the number of the decisions delivered by the Commission (115,130), the number of pending applications is 11,544. Accordingly, 91 percent of the total applications have been decided since the date of the beginning of the Commission's decision-making process.

The decisions of the Commission are circulated to the institutions where the persons lastly took office for the purpose of being notified. The procedure of appointment of those whose applications were accepted is carried out by the institution where they lastly took office and the Council of Higher Education where relevant. An annulment action may be brought before the Ankara Administrative Courts determined by the Council of Judges and Prosecutors against the decisions of the Commission and the institution or organization where the relevant person lastly took office, within a period of sixty days as from the date of notification of the decision.

The applicants are able to acquire information on the stage of the applications filed with the Commission and the outcome of the decision ("acceptance" or "rejection") through the app of "The Inquiry Commission on State of Emergency Measures- Application Follow-up System" on the Commission's website. The activity report of the Commission was published on the Commission's website and can be accessed at https://soe.tccb.gov.tr/

As an effective remedy, the Commission delivers individualized and reasoned decisions as a result of speedy and extensive examination. The Commission conducts the examination in terms of membership, affiliation, connection or contact with terrorist organizations or structures/entities or groups established by the National Security Council as engaging in activities against the national security of the State. In addition, decisions taken by the judicial authorities are monitored through the UYAP system.

According to paragraph 1 of Article 11 titled "Judicial Review" of "the Act No7075 on the adoption as amended of the Decree with the Force of Law on the establishment of the Inquiry Commission on the State of Emergency Measures " in effect as from its publication in the Official Gazette of March 8, 2018, an annulment action may be brought before the Ankara Administrative Courts determined by the Council of Judges and Prosecutors against the decisions of the Commission and the institution or organization where the relevant person lastly took office, within a period of sixty days as from the date of notification of the decision.

In accordance with the relevant Act, the 19th and 20th Administrative Courts were designated by the High Council of Judges and Prosecutors in the Ankara Administrative Court for the annulment cases to be filed against the decisions of the Inquiry Commission. However, later 21st, 22nd, 24th and 25th Administrative Courts were also established due to increase in the number of decisions taken by the Inquiry Commission and the work overload in the first two courts. So decisions by the Inquiry Commission continue to be examined in six courts in total. Various statistics including transactions have been rendered on the Inquiry Commission decisions have been published by the Ankara Regional Administrative Court in its 2019 annual report.

Accordingly, the transactions have been rendered on the Inquiry Commission decisions and the average completion times of six administrative courts to complete the Inquiry Commission proceedings are presented in the table below:

Court	*Number of Files Received During the Year (2019)*	*Number of Files Transferred from the Previous Year*	*Number of Decisions*	*Clearing Rate* (%)*	*Average Completion Time (Day)*
Ankara 19th Adm. Court	*6361*	*6287*	*4276*	*67*	*347*
Ankara 20th Adm. Court	*6313*	*6589*	*5763*	*91*	*304*
Ankara 21st Adm. Court	*6718*	*5927*	*3350*	*50*	*251*
Ankara 22nd Adm. Court	*6393*	*5947*	*4731*	*74*	*272*
*Ankara 24th Adm. Court**	*11358*	*0*	*3134*	*28*	*191*
*Ankara 25th Adm. Court***	*9163*	*0*	*589*	*6*	*-****
Total	*25 785*	*24 750*	*18 120*	*70 %*	

In Türkiye, fundamental rights and freedoms are under the protection of the Constitution. Apart from the right for everyone to seek judicial review against all actions and acts of the administration, every person may apply to the Constitutional Court alleging that the public power has violated any of his fundamental rights and freedoms secured under the Constitution, which falls into to scope of the European Convention on Human Rights.

The Constitutional Court's website can be accessed at https://www.anayasa.gov.tr/en/individual-application/.

We would like to indicate one more time, Türkiye as a democratic state of law will follow its commitment to respect human rights under the several international instruments that Türkiye ratified".

175. The representative of the Russian Federation pointed to the fact that sexual orientation was not part of legislation, but that legislation may cover it. He stressed that Russia opposed to the requirement of the explicit recognition of sexual orientation.

176. Discussions followed after which the Chair proposed that the Bureau of the Governmental Committee examine the issue of the sexual orientation requirement. He stressed that the situation under the second and third grounds remained serious, and working methods had to be applied.

177. The Governmental Committee proceeded to vote on a recommendation with respect to the second ground of non-conformity, which was not carried (7 votes in favour, 10 against and 15 abstentions). Subsequently, it carried a warning with 21 votes in favour, 4 against and 11 abstentions. As regards the third ground of non-conformity, following a vote on a recommendation which was not carried (10 votes in favour, 5 against and 20 abstentions), the Governmental Committee adopted a warning with 20 votes in favour, 4 against and 9 abstentions.

RESC 1§2 Ukraine

178. The ECSR concluded that the situation in Ukraine was not in conformity with Article 1§2 of the Charter on three grounds, one of which had already been examined by the Governmental Committee: it had not been established that legislation provided for a shift in the burden of proof in discrimination cases.

179. The representative of the UK asked whether the Ukrainian authorities intended to amend the law concerning the shift in the burden of proof in discrimination cases and whether the defendant has to disprove the evidence. The representative of Ukraine stated that it was a topic for discussion in Ukraine. Discrimination in the labour context fell within the remit of the Ministry of Economy, and the representative had no new information to share regarding this issue.

180. The Governmental Committee requested that the relevant information be provided in the next report and decided to await the assessment by the ECSR.

Article 15§1 RESC – to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private.

181. The Secretariat presented the main criteria used by the ECSR to assess compliance with Article 15§2 of the Charter. It recalled that under Article 15 all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private.

182. The questions raised in this cycle of supervision focused exclusively on the education of children with disabilities.

183. In order to assess the effective equal access of children with disabilities to education, the ECSR needed states parties to provide information, covering the reference period, on:

- the number of children with disabilities, including as compared to the total number of children of school age;
- the number and proportion of children with disabilities educated respectively in:
    - mainstream classes.
    - special units within mainstream schools (or with complementary activities in mainstream settings)
    - in special schools
- the number and proportion of children with disabilities out of education;
- the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;
- the number and proportion of children with disabilities under other types of educational settings, including:
    - home-schooled children
    - attending school on a part time basis
    - in residential care institutions, whether on a temporary or long-term basis
- the drop-out rates of children with disabilities compared to the entire school population.

RESC 15§1 Romania

184. The ECSR concluded that the situation in Romania was not in conformity with Article 15§1 of the Charter on the ground that the right of children with disabilities to mainstream education and training was not effectively guaranteed.

185. The Secretariat recalled that it was a longstanding ground of non-conformity, predating 2003, except a deferral in 2012 (Conclusions 2003, Conclusions 2007, Conclusions 2008, Conclusions 2016), resulting from a complex and multi-facetted problem connected with the lack of or insufficient access for children with disabilities to mainstream education. The Governmental Committee examined the situation in 2009, 2010 and 2017. In 2009 (with respect to Conclusions 2007) the Governmental Committee urged the Government of Romania to bring the situation into conformity with Article 15§1 in respect of the children left out of education as soon as possible. In 2010 (with respect to Conclusions 2008) it issued a warning, and in 2017, it took note of the information and explanations provided and decided to await the ECSR's next assessment.

186. The representative of Romania presented the following information:

"In Romania, the education of persons with disabilities is part of the national education system, coordinated by the Ministry of National Education and is achieved, depending on the type and degree of disability, through:

a) mainstream education;
b) special integrated education, organized in mainstream education;
c) special education;
d) education at home or at the health care units;
e) other alternative educational variants, adapted to the individual educational requirements.

Children and young persons with disabilities and / or special educational needs, integrated in mainstream education, benefit from educational mentoring by support and itinerant teachers and they also have the right to study and be instructed in their native language. Within the educational process, regardless of its level, persons with disabilities have the right to educational support services, technical equipment adapted to the educational requirements of the disabled person, including computer applications or devices for transformation written or spoken text in alternative forms of visual, auditory, augmentative communication, as the case may be.

In accordance with the provisions of the Methodology for evaluation and integrated intervention for the inclusion of children with disabilities in a degree of disability, for the school and professional guidance of children with special educational needs, as well as for the empowerment and rehabilitation of children with disabilities and / or special educational needs, the complex assessment of the child with disabilities and / or special educational needs (SEN) is carried out by the Complex Child Assessment Service (CAS). This involves establishing the level of knowledge and the degree of assimilation and their correlation with the child's possibilities and intellectual level, the level of adaptation to the school and social environment, as well as the identification of barriers and special educational needs.

It is also stipulated that the school and professional orientation should be achieved with priority towards inclusive education, respectively in mainstream education units, in accordance with the international treaties to which Romania is a party. The support measures aim at both preventing and combating attitude barriers, as well as environmental barriers by reasonably adapting the educational unit in which the child learns and are included in the individualized services plan. The National Education Law, no. 1/2011 provides that for special education there must be curricula, school programmes, psycho-pedagogical assistance programmes, textbooks and alternative teaching methodologies, adapted to the type and degree of disability, approved by the Ministry of Education.

In order to promote inclusive education, a strategic collaboration has been initiated between the Ministry of Labour and Social Solidarity / National Authority for the Rights of Persons with Disabilities, Children and Adoptions and the Ministry of Education, from the perspective of the education of children with disabilities and special educational needs. The objective is the collaboration between the parties in order to ensure respect for the right of the child/young person to receive a quality education, enabling their intellectual and psycho-emotional development in an inclusive school environment.

In the school year 2019 - 2020, at national level, a number of 1429 support teachers, 2196 school counsellors and 601 speech teachers were employed, for a total of 4410 students with special needs and/or disabilities integrated in mainstream education. Also, in 221 special education units, in the school year 2019 - 2020, 24922 preschoolers and pupils with various types of disabilities were included. Starting with the 2018-2019 school year, students with visual impairment / hearing impairment / autistic spectrum disorder / specific learning disability have access to assistive technology for the national exams, based on an Equal Opportunities Procedure developed by the Ministry of Education.

Also, starting from the 2020-2021 school year, separate places have been allocated for pupils with special educational needs (SEN) in mainstream and special education in mainstream secondary and vocational education units, over and above the number of places allocated to the respective education units, within the limit of 1-2 additional places per class, in compliance with the legal provisions on the constitution of pupil groups. Information on the separate places allocated in mainstream education units for candidates with special educational needs: enrolment conditions, enrolment deadline, secondary schools to which the places are allocated, etc. is published by each school inspectorate in the admission brochure.

According to the data provided by the school inspectorates, for the school year 2020-2021, a number of 1934 places have been allocated in mainstream secondary education, separately for

candidates with special educational needs, of which 506 places have been filled, and for the school year 2021-2022, a number of 4525 places have been allocated in mainstream secondary and vocational education".

187. In the light of the lack of substantial change to the situation, the Governmental Committee proceeded to vote on a recommendation, which was not carried (4 votes in favour, 4 against and 20 abstentions). Subsequently, it carried a warning with 25 votes in favour, 5 against and 3 abstentions.

Article 15§2 RESC - to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environmentand to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

188. The Secretariat recalled that Article 15§2 of the revised Charter requires the state parties to promote the access of persons with disabilities to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of persons with disabilities or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services.

RESC 15§2 Romania

189. The ECSR concluded that the situation in Romania was not in conformity with Article 15§2 of the Charter on the ground that persons with disabilities were not guaranteed effective access to employment.

190. The representative of Romania presented the following information:

"According to law no. 448/2006 regarding the Protection and Promotion of the Rights of Disabled Persons, any disabled person wanting to integrate or reintegrate in labor has a free access to professional evaluation and orientation, irrespective of his/her age, disability type and degree. The disabled person who is educated and has the appropriate age in view of professional integration, the person without a job, the person without professional experience, or the person who, although employed, wants a professional reconversion will benefit from professional orientation.

The disabled persons are entitled to the creation of all the conditions for choosing and exercising their profession, trade or occupation, to acquire and maintain a job and to be promoted from a professional point of view, public authorities having the obligation to initiate and develop forms of stimulating employers, in view of employing and maintaining disabled persons, including by encouraging them to adapt working hours and norms. For the integration of people with disabilities into employment, employers shall ensure their access to suitable employment, where appropriate, in accordance with their functional potential and adaptability.

A person with a disability shall be guaranteed equal opportunities in the workplace and shall be provided with accessibility of the workplace and adaptation of tasks in accordance with his/her functional potential. In order to stimulate the employment of people with disabilities, public

authorities and institutions, public legal entities, are obliged to organize employment competitions exclusively for people with disabilities, in compliance with the legal provisions in force. This measure does not exclude the possibility for persons with disabilities to participate in all other employment competitions organised by the public institution. 7607 people with disabilities were employed in public institutions at the end of March 2021.

People with disabilities can be employed on the free labor market, at home and in protected forms such as protected workplace or authorized protected units. The total number of authorized protected units in Romania is 262 in which 1052 persons with disabilities are employed.

The disabled persons looking for a job or employed have the following rights:
- vocational training courses;
- reasonable adaptation at the workplace;
- counseling during the pre-employment period, during the employment, and during the trial period, by a counselor specialized in labor mediation;
- a paid trial period upon employment, of at least 45 working days;
- paid prior notice, of minimum 30 working days, granted upon the termination of the individual labor contract from the initiative of the employer for reasons not imputable to him/her;
- the possibility to work less than 8 hours per day, as provided by law, in case he/she benefits from the recommendation of the evaluation commission in this regard;

To support people with disabilities, non-reimbursable external funds have been accessed to provide assistive and access technologies and devices. Thus, the project "Facilitating the labour market integration of people with disabilities" is being implemented, within the framework of projects co-financed by the Human Capital Operational Programme (POCU) - Priority Axis 3 - Jobs for all. The implementation period of the project is between 2019 and 2023. The project provides activities to increase the employability of people with disabilities in the labour market, thus continuing the sustained approach to ensure social inclusion. Within the project, the beneficiaries, persons with disabilities looking for a job, receive vouchers that can be used exclusively for the purchase of technologies and assistive devices and access technologies, other than those financed by the Single National Health Insurance Fund under social health insurance system. Vouchers have a maximum value of 23,000 lei (4650 euro).

The general objective of the project is to ensure the access of persons with disabilities, on an equal footing with others, to the physical, informational and communication environment in order to increase the employment opportunities and the share of people with disabilities employed in the free labor market. By default, in order to be eligible for this project, the person with a disability must be able to work and not have completely lost their ability to work (the right to work). The target group of the project includes 7000 persons with disabilities unemployed, inactive people, people looking for a job that will be informed, advised and mediated. The project also grants subsidies to employers for the employment of 200 persons with disabilities, as well as providing financial support to employers for the accessibility of 200 jobs.

Project results recorded between May 2019 - September 2021:
- 1111 persons included in the target group who received support (information and professional counseling services, employment mediation or vocational training);
- 436 employed persons;
- 419 vouchers issued.

Regarding resonable accommodation, during 2015 - 2021, the National Agency for Benefits and Social Inspection carried out yearly inspection campaigns to ensure that disabled persons enjoy proper access to buildings used for different purposes. Out of 9409 public and private entities checked, 23.489 measures to remedy the deficiencies were ordered and 244 fines in a total amount of 1.321.000 lei (267.000 euro) have been granted".

191. The Governmental Committee noted the information provided, requested that Romania submit a full report with figures so that the ECSR can take an informed position, and decided to await the next assessment by the ECSR.

Article 15§3 RESC - to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

The Secretariat recalled that Article 15§3 of the Charter requires the state parties to promote the full social integration and participation of persons with disabilities in the life of the community in particular through technical aids, measures aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure. The ECSR considers that Article 15 reflects and advances the change in disability policy that has occurred over the last two decades, away from welfare and segregation and towards inclusion, participation and agency. In light of this, the ECSR emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15§3. The ECSR also refers in this respect to Article E on non-discrimination.

RESC 15§3 Hungary

192. The ECSR concluded that the situation in Hungary was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that persons with disabilities had effective access to housing.

193. The representative of Hungary presented the following information:

"Over the last decade, there has been a paradigm shift in the Hungarian disability policy, which meant a focal transition from medical issues to human rights as an approach. In general, the medical approach focused on the physical injuries and missing abilities of the persons concerned, and emphasised finding a cure for them as the main task. In contrary, the human rights approach focuses on the active and autonomous and sovereign social participation of persons with disabilities.

There are currently 12,000 people with disabilities and 8,000 people with psychosocial disabilities in Hungary living in homes providing nursing and care. Even with the best professional management, large institutions are not able to provide personalized services due to their location and infrastructure.

In 2011, the Hungarian Government adopted a strategy on rearranging the capacities of residential social institutions providing nursing and care, and supporting the independent lifestyle of people in these institutions. The process is still ongoing. With the replacement of more than 10,000 people, many of whom have spent their lives in institutional environment, we consider it essential that the transition is realized as part of a process, with appropriate training for those currently living in the institution and the personnel.

The deinstitutionalisation process is not only a housing and infrastructure development, i. e., the emphasis is not on moving from a larger institution to a smaller housing unit, but on genuine and effective social integration.

The result of the process, which began nine years ago, is the introduction of supported housing in the Social Act in 2013, the revision of deinstitutionalisation strategy to harmonize it with the Convention on the Rights of Persons with Disabilities (CRPD), and the fact that almost 1,700 people now live independently in supported housing in Hungary.

Supported housing in Hungary is a flexible combination of various forms of housing and supportive services, where housing and supportive services are separated from each other. Supported housing services provide appropriate conditions for housing and social services for people with disabilities, people with psychosocial disabilities, and persons with addictions in accordance with their age, health condition and self-care skills. The provided service is based on a complex needs assessment (taking into account the necessary intensity of support, the existing abilities and the users' will) and it is modified in parallel with possibly changing circumstances when necessary.

The service element system for supported housing was introduced on 1 January 2017, and is provided in addition to housing services, case management and other social inclusion services. The service elements provided to service users are selected on the basis of a complex needs assessment. Nine service elements (supervision, nutrition, care, skills development, counselling, pedagogical assistance, special education assistance, transportation and household or household support) are listed, which cover a broad range of possible activities.

The Government's commitment to fight the issue is reflected in the level of state support for housing, and by the fact that it differentiates financing from other social services in a unique way, on the basis of actual support intensity.

As of 1 January 2020, in case of supported housing for people with disabilities, additional support is provided for maintainers who care for persons with increased or high caring needs, based on actual care intensity and on a complex needs assessment. As a result of this positive change, financing meets the actual amount of care needed, and it motivates service providers to support persons with higher needs.

It is important to emphasize that support for independent living is increasing in the field of services in Hungary, and not only in the context of deinstitutionalisation. Apart from the aforementioned process, more and more service providers are developing supported housing, and promote the effective participation of persons with disabilities and psychosocial disabilities in community life. Approximately half of the places were created through the renovation of a couple of apartments scattered throughout the country. The territorial distribution of supported housing illustrates it well, since despite the limited EU funding available in the Central Hungarian region, only 7% of the total capacity is operated in Budapest.

Strengthening basic social services, community-based services and capacity building are essential for successful deinstitutionalization. Our goal is clear: to continue the deinstitutionalization process and develop supported housing as well as related services as necessary.

In the planning for EU funds 2021-27, our priority is to strengthen access to basic services, not only by increasing the number of services, but also by improving access to services, for example by extending opening hours, and taking into account the needs of people with disabilities.

On the last day of December 2020, 11,323 people with disabilities and 7,404 psychiatric patients were in long-term care. On the same day, 34,994 people with disabilities or psychiatric patients received support under a basic social service, while 1,624 people were in supported housing.

„Call for proposals for the „Development of an info communication-based teleservice to support the everyday life of people with disabilities"

In order to improve the access of people with disabilities to public services and to strengthen the process of social inclusion, the EFOP 1.1.5-17, a call for proposals has been launched for the "Development of an infocommunication-based teleservice to support the everyday life of people

with disabilities" in April 2017. The aim of the project is to support people with disabilities to achieve as much independence and autonomy as possible, through the provision of infocommunication services implemented within the framework of the project.

The Hungarian Government considers the results achieved in the project important, and therefore, by its Government Decision 1287/2021 (20. V.), it supports civil organizations (NGOs) implementing the project with additional resources on top of their annual grant.

- *ECSR declared that the situation in Hungary has not been in conformity with Article 15(3) of the Revised European Social Charter, as the Government did not provide sufficient information on whether Hungary's anti-discrimination procedures provide adequate protection for persons with disabilities. In this context, information is requested on cases on discrimination against people with disabilities since the beginning of the reference period of the 16th Report (1 January 2015), including, in addition to court proceedings, the Equal Treatment Authority (hereinafter: ETA) and the Commissioner for Fundamental Rights.*

The Fundamental Law, the CRPD and the domestic legislation create the legal basis and framework for equal access, the enforcement of which requires further effective measures and the formation of social attitudes and legal awareness activities. This is confirmed by the numerous complaints received by the Ombudsman on the subject, according to inquiry reports drawn up in recent years.

To summarize public interest notifications received in the protected electronic system operated by the Commissioner for Fundamental Rights (hereinafter: Ombudsman), pursuant to Section 4 (1) of the Act CLXV of 2013 on complaints and public interest notifications, since 2015, 18 cases were handled during the reference period, of which 6 were about discrimination issues, mainly with regard to protection certificates.

The integration of the ETA and the Office of the Ombudsman for Fundamental Rights (hereinafter: the Office) was merged. Employees of the predecessor organization were fully transferred to the successor organization from 1 January 2021.

Case reports of Ombudsman for Fundamental Rights

Case No. AJB-343/2015:
Due to lack of experts and other material means, children with special educational needs who could be educated in an integrated system were not getting the development recommended by the educational consultant or the board of experts. Recommendations made by the Ombudsman were accepted by the addressees, who adopted the measures encouraged by the Ombudsman.

Case No. AJB-2709/2016:
The excessively high workload of professional guardians, their low, sometimes uneven remuneration, and as a consequence, the low number of professional guardians, the high turnover rate in the profession, as well as the extraordinarily high number of dependents per one professional guardian did not guarantee that the fundamental rights of the wards would be fully represented.

As regards to the training and further training of professional guardians, the Ombudsman highlighted that the fees of such training programs showed considerable differences between counties. Furthermore, the then relevant practice and structure, as well as the outdated syllabus of the training of professional guardians, and the lack of further training materials resulted in such detrimental consequences for the wards that the system of guardians in its respective state did not guarantee that the fundamental rights of the dependents were fully enforced and supported.

The Ombudsman raised attention to the fact that the legal technical solution, as part of which professional guardians had been retrained to become professional supporters in merely six

months, and the legal institution of supported decision-making had been incorporated into the system of public guardianship offices, carried the risk of the occurrence of fundamental rights improprieties.

Case No. AJB - 257/2017:
At a certain institution, typical problems of residential care homes with a high number of patients were observed: for example, an extraordinarily high number of patients (218), deficient objective conditions (bathrooms, toilets, beds and mattresses), as well as deficient personal conditions (lack of care provider staff), or the lack of barrier-free accessibility (equal access). All these problems compelled the staff to regularly apply contingency arrangements (group bathing of the patients, use of cage beds, barred doors) and they also brought about a strong decline in the professional standards of care. These circumstances caused improprieties related to the rights of disabled persons living in the Institution. The Ombudsman turned to the Minister of Human Capacities, the head of the institution, as well as the supervising authority thereof, with his measures.

Case No. AJB-3751/2021:
The Ombudsman repeatedly visited the Institution; a change of ownership took place, an institutional replacement program has started.

Case No. AJB-258/2017:
Legislative and enforcement practices were not uniform regarding either the definition of the concept of a common household or the requirements for proof during the administration process of supporting people with disabilities to have access to cars. The relevant Government Decree did not prescribe which documents would be accepted as proof of cohabitation in a common household for more than one year, nor did it provide a definition for the concept of a common household.

Case No. AJB-336/2017:
During a call for applications regarding a certain program, the call for proposals excluded persons who were partially or completely restricted in their capacity to act from the list of applicants. The Ombudsman asked the competent minister to arrange for legal guardians to apply for any subsequent tenders,, and for persons with limited legal capacity who are not restricted in this regard to apply for themselves. The report was adopted with the consent of the Minister of National Development.

Case No. AJB-494/2017:
The Ombudsman drew attention to the need for integrative and tailor-made kindergarten education of special needs children.

Case No. AJB-1672/2017:
The Ombudsman reviewed the enforcement of the right to education of students with grave and multiple disabilities, finding a number of violations of fundamental rights (e.g. lack of personal and material conditions).

Case No. AJB-1837/2017:
The Ombudsman disclosed instances of negligence and practices that violated the law in the access to education of children with special needs, i. e., a lack of experts and the impossibility for such children to get to school.

Case No. AJB-172/2017:
Taxation, as a contribution to common needs, is an obligation of everyone under the Fundamental Law of Hungary. In the Ombudsman's view, it was essential that one of its tools, the use of a cash register, be made accessible to blind and partially-sighted workers on an equal basis.

Case No. AJB-437/2017:
It infringed a number of fundamental rights that according to the relevant legislation, only a lightweight, folding wheelchair could be transported with the patient in an ambulance, while an

electric wheelchair could not. The addressees of the Ombudsman's recommendations agreed on the need to review the legislation.

Case No. AJB-470/2017:
Retaliation was caused by the administrative practice and decision challenged in a complaint, when it did not allow the complainant, who was severely impaired in his communication, to have access to the only advanced assistive technology device which could be used effectively (a semi-mouse).

Case No. AJB-1881/2017:
The regulation which, when delivering registered items, required in general the presence of an adult witness for blind and visually impaired persons, and ignored the writing skills and personal circumstances of individuals, infringed fundamental rights.

Case No. AJB-767/2016:
The measures of Wizz Air Hungary Ltd. (hereinafter: Company) which – due to the complainant's assistance dog having been recorded at an inappropriate register before his/her travel, caused an interruption in the complainant's journey – were against the law. As the Company took actions in its own competence to avoid possible consequences of the case, the Ombudsman did not initiate any measures.

Case No. AJB-5442/2016:
The Ombudsman's investigation stated that it was a harmful practice of a certain Company not to allow the online purchase of discounted tickets for people with disabilities. The information on ticket prices and discounts was incomplete; and their definition of guide dogs did not include the concept of assistance dogs, only guide dogs for people with impaired vision. The Ombudsman addressed the CEO of the Company with his recommendations.

Case No. AJB-135/2017:
The lack of free and direct access to an authentic register which would allow to determine whether a person is under guardianship, who his/her guardian is and how the guardian can be reached, was liable to create systemic unpredictability and thus an abuse of the requirement of legal certainty. The Ombudsman asked the Minister of Justice to consider the creation of such a public register, taking into account data protection considerations.
Case No. AJB-1359/2016:
According to Hungarian regulations, the withdrawal of a certain amount of money in Hungary is free of charge from an ATM two times a month, whereas a fee is charged when the process is done in person at a bank. However, persons under guardianship are not entitled to have a debit card and to withdraw money from an ATM, therefore, they cannot benefit from cost-free withdrawal. The Ombudsman asked the legislator to ensure the gratuity of cash withdrawal for persons who do not have a debit card. The legislation has been amended accordingly.

Case No. AJB-1414/2019:
During an enforcement proceeding, the car of a debtor of impaired physical mobility had been seized, in spite legislation explicitly forbidding the seizure of vehicles in such cases. This could have happened as the bailiff was unaware of the plaintiff's disability. In order to prevent such cases, the Ombudsman initiated the amendment of legislation which would introduce an obligation during enforcement proceedings to cross-check whether a parking card for persons with disabilities had been issued. The legislation has not yet been amended.

Case No. AJB-1499/2019:
At the complaint of an NGO, the Ombudsman raised his concerns about relevant legal regulations not allowing therapy dogs in healthcare facilities. The relevant legislation has been consequentially modified.

Case No. AJB-1096/2018:
Legislation concerning the registration of real-estate prescribed that legally relevant statements be made exclusively in the form of written documentation with no exceptions. The Ombudsman stated that this requirement would constitute an infringement of the equal dignity of persons with visual and other forms of impairment rendering them unable to read and/or write and asked for the amendment of the legislation. The legislation has been amended accordingly.

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Case law of the ETA regarding the discrimination of persons with disabilities in 2015 - 2018

The ETA conducted inquiries (official proceedings) into discrimination against persons or groups with disabilities in 75 cases in 2015, in 85 cases in 2016, in 74 cases in 2017, and in 78 cases in 2018. These cases typically concerned the distribution and provision of goods (public services), education and employment. The cases related to barrier-free accessibility constituted a special type of cases in all these areas.

According to the ETA's online archive, formal decisions have been declared in 71 cases. From these cases, 34 were settled by an agreement, while 30 cases were closed by decisions finding full or partial infringement (24 full, 6 partial). There were only 5 cases which were rejected by the ETA.

The majority of these cases (25) were initiated because a person could not use a service due to his/her sensorial impairment. From these cases, 14 were settled by agreement, 10 cases were closed by ETA declaring the infringement of the rights of persons with disability, and one of the cases was dismissed as no evidence was found to suggest discrimination.

From the aforementioned 25 cases, 6 were initiated because a person with vision loss could not use an electronic service (e .g. banking service, newspaper), either because the screen reading software could not read the webpage, or the CAPTCHA was not accessible for the visually impaired. 3 of these cases were settled by an agreement and 3 were closed with the declaration of infringement of rights. There were 6 cases where the complainants were banned to enter a premise with a guide dog. 2 of them were settled by an agreement and 4 were closed with the declaration of infringement of rights. None of these cases were dismissed. Furthermore, 3 of the cases concerned discrimination at a workplace based on the complainants' sensorial disabilities. These cases were settled by an agreement. In the remaining 9 cases, concerned persons could not use a service due to their disabilities or the conditions necessary for the equal use of the services not being provided (e. g. the lack of audio guides in public transport or disproportionately long waiting time for necessary health care). From this last group of cases, in 7 of them the ETA declared the infringement of rights, one of them was settled, and one was dismissed.

23 of the cases concerned persons with reduced mobility who could not use a commercial or public service, as they could not get into a building or properly use an equipment (e. g. lack of chairs in test booth). None of these cases were dismissed. 11 of them were settled with an agreement, and 12 cases were closed with the declaration of an infringement of rights.

23 other cases were initiated because a child with disability − in most cases, a learning disorder or sensory disturbance; speech disorder or reduced mobility in a few cases − could not receive adequate education. The most common problem was that the school or kindergarten was unfit to provide developmental education for children with special educational needs. In most cases, institutions referred to the lack of special education teachers in the labor market. Nevertheless, in most cases (13), an agreement was reached between the complainant and the institution, where the institutions undertook the responsibility of providing developmental education. There were 6 cases where the ETA declared the infringement of rights of persons with disabilities.4 cases were dismissed by the ETA as no evidence was found to suggest discrimination.

The most commonly applied sanction was a ban on the infringing practice. In several occasions, the ETA ordered the publication of the convicting decision. In addition, the ETA imposed fines in 6

occasions as follows: HUF 500.000 in three cases, as well as 200.000 HUF, 100.000 HUF and 50.000 HUF in three individual cases.

Parties requested judicial review of the ETA decision in only 5 cases. In 4 cases, the courts rejected the request and upheld the decision. No information is available on the outcome of the fifth case.

The brief summary of some specific cases:

Case No. EBH/50/2015: A visually impaired petitioner complained that certain services available on the internet page of a telecommunications carrier were not accessible to them, as the page was fully graphic, i.e., it could not be read with a screen reading software. In its decision, the authority established that the service provider had violated the requirement of equal treatment with regard to the disability of the petitioner and it obliged the provider to make the platforms in question equally accessible to visually impaired persons by the specified deadline.

Case No. EBH/233/2015: Based on a notification, the authority launched ex officio proceedings against an organization that exercised official authority, since the customer service unit of the latter in one of the cities was not barrier-free, so the persons with reduced mobility could not access the customer area with their wheelchairs. In its decision, the authority established that the organization had violated the requirement of equal treatment with regard to persons with reduced mobility, and it obliged them to make the area barrier-free by a specified deadline.

Case No. EBH/362/2015: The visually impaired petitioner who used a guide dog was not allowed to enter a catering unit with his dog, despite the fact that the dog was wearing the necessary identification sign. The case was concluded with an agreement between the parties, in which the operator of the catering unit promised to train his employees on the laws related to guide dogs and to provide financial support of a predefined amount to a guide dog training school.

Case No. EBH/129/2016: The petitioner complained that his/her two children with autistic spectrum disorder who attended the nursery school funded by the municipality could not use the services and the development classes provided by the nursery school because their daily transportation to the kindergarten was not resolved. The case was concluded with an agreement between the parties, in which the municipality undertook to ensure the transportation of the children to the nursery school through its own support service.

Case No. EBH/25/2017: An advocacy organization of visually impaired persons filed a complaint to the authority because, as a result of the implementation of the so-called selective door opening mechanism, the doors did not open automatically at the stations on two underground lines as had been the case earlier; instead, they could only be opened by using a push button, which involved extraordinary difficulties, or was impossible for visually impaired persons. In its decision, the authority established that the transportation company had violated the requirement of equal treatment with regard to visually impaired persons by applying the door opening solution that the applicant had complained of. However, as the transportation company had already remedied the problem before the decision was made (the system of automatic door opening was reinstalled), the decision imposed no obligations or other sanctions.

Case No. EBH/176/2017: The hearing-impaired petitioner, who was using a hearing aid, served his/her sentence on 21 March 2016 in the penitentiary institution he/she complained against. The complainant stated that his/her hearing aid became defective during his sentence and was replaced more than three months later. During this time, the complainant had not heard the statements of either the guards or his/her fellow prisoners and was often the target of ridicule by his/her fellow prisoners. The penitentiary institution argued that the change of the petitioner's hearing aid was only possible in a commercial facility (hearing center), and the long waiting time resulted from the lack of funding necessary to escort the convicted person to the premise. The ETA declared that the time until the petitioner's hearing aid had been changed was unreasonably long,

thus the penitentiary institute infringed the complainant's right to equal treatment. The ETA imposed a 500.000 HUF fine against the penitentiary institute.

Case No. EBH/439/2017: The petitioner with reduced mobility using a wheelchair complained, with regard to the transport development project of a tram network, that the structural designs of the tram stops that he/she specifically indicated were not appropriate, as the petitioner was only able to get off the vehicle with the help of other persons from the otherwise low-floor and barrier-free tram. In its decision, the authority established that the transport company had violated the requirement of equal treatment by the delayed provision of the barrier-free use of vehicles, and it obliged the company to remedy this problem by a specified deadline.

Case No. EBH/75/2018: The petitioner with severely impaired mobility complained that despite him/her having indicated his travel intentions at the e-mail address designated for this purpose in due time, he/she was not able to independently board a train at a train station in the countryside, as the special lift did not work and the train did not arrive at the barrier-free platform. The authority established that the law had been violated because the applicant was unable to use the travel service with equal opportunities for a reason that was under the responsibility of the service provider, and thus, the provider discriminated against him/her. The railway company was obliged by the authority to terminate the violation of the law, to repair the special lifts by a specified deadline, and to pay a 100.000 HUF fine.

Case No. EBH/115/2018: An infringement of rights was also established by the authority because a visually impaired applicant had not been allowed to enter a museum with his assistance dog. The museum was obliged by the authority to terminate the violation of the law, and to modify the content of the information sign prohibiting museum visits with a dog, in a way compliant with the rules on assistance dogs.

Case No. EBH/151/2018: The legal guardian of a child with autistic spectrum disorder (formerly known as Asperger's Syndrome) filed a complaint against an insurance company which denied the conclusion of a contract for accident insurance. The company admitted that its decision was based on the child's disability. They argued that the company denied the offer to conclude a contract in all cases of mental illness because there was a high risk that the insured would have an accident or need hospital care. The ETA acknowledged that the insurance company is entitled to assess the acceptable risk and consider providing the service based on it, but it has no right to disqualify all persons with mental illness without an individual assessment of their condition. The ETA declared that the company's practice discriminated a social group, and imposed a fine of 500.000 HUF on the company.

Case No. EBH/168/2018: A petitioner filed a complaint against health care institutions because they denied the radioiodine treatment which was necessary after the patient's thyroid tumor surgery. The institutions argued that, due to the patient's lack of mobility, the provision of the treatment was practically impossible. The treatment involved exposure to radiation, so assisting staff could not be with the patient for long periods of time. In this case, the ETA declared that the difficulties derived from the patient's disability (inability to get up from the bed or use the toilet independently) could be handled by automatic devices available in the market. The authority obliged the health care provider to procure and install the appropriate equipment.

Case No. EBH/286/2018: The applicant using a wheelchair purchased a voucher to a hotel but at the time of the booking, the hotel informed him that only one of the higher standards (and thus, more expensive) suites of theirs was barrier-free. It was established by the authority that the applicant had suffered a disadvantage due to his disability, since, as compared to others, he did not have a chance to choose from the cheaper options, as only the more expensive service was available to him because of his condition.

Case No. EBH/355/2018: The authority also established a case of infringement when a hotel, saying that no pets can stay in its building according to its house rules, did not allow the petitioner with severe visual impairment to use the services together with his guide dog. The authority

obliged the hotel to terminate the violation of the law, to modify its policy, and to inform its employees about the rules on assistance dogs".

194. The Governmental Committee noted the information provided, encouraged the authorities to continue taking necessary measures and decided to await the next assessment by the ECSR.

RESC 15§3 Serbia

195. The ECSR concluded that the situation in Serbia was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that:
- anti-discrimination legislation covered telecommunications;
- persons with disabilities had effective access to transport;
- persons with disabilities had effective access to housing.

196. The representative of Serbia presented the following information:

"ANSWER FOR THE SECOND GROUND ON NON – CONFORMITY

The new Law on Prohibition of Discrimination, adopted in May 2021 (Official Gazette, No. 21/09 and 52/21), prescribes the following:

Anyone who has been harmed by discriminatory treatment has the right to file a lawsuit.
The lawsuit may request:
1. prohibition of the act that poses a threat of discrimination, prohibition of further committing the act of discrimination, and prohibition of repeating the act of discrimination;
2. determination that the defendant acted in a discriminatory manner towards the plaintiff or another person;
3. execution of an action for the purpose of eliminating the consequences of discriminatory conduct;
4. compensation for material and non-material damage;
5. publication of the judgment rendered in connection with some of the lawsuits in the cases mentioned above.

The plaintiff may, with the lawsuit, during the procedure, as well as after the end of the procedure, until the execution is carried out, request that the court temporarily prevent discriminatory treatment in order to eliminate the danger of violence or greater irreparable damage. The court is obliged to make a decision on the proposal for the issuance of an interim measure without delay, and no later than within three days from the day of receipt of the proposal.

<u>Rules on the burden of proof</u>
If the court finds that an act of direct discrimination has been committed or if it is undisputed between the parties, the defendant cannot be released from liability by proving that he is not guilty. If the plaintiff shows that it is probable that the defendant committed an act of discrimination, the burden of proving that the act did not violate the principle of equality, i.e. the principle of equal rights and obligations, shall be borne by the defendant.

It is clear from the above that the legislation in Serbia stipulates that the burden of proof in cases of discrimination is on the defendant and not on the plaintiff".

197. The Governmental Committee noted the information provided and decided to await the next assessment by the ECSR.

RESC 15§3 Türkiye

198. The ECSR concluded that the situation in Türkiye was not in conformity with Article 15§3 of the Charter on the ground that it had not been established that anti-discrimination legislation covered the fields of housing, transport, communications and culture and leisure activities.

199. The representative of Türkiye presented the following information:

"Türkiye adopted a rights-based approach to disabilities and regarded the measures taken for persons with disabilities not as a privilege or blessing, but as a human rights requirement. Since 2013, the paradigm shift to the rights-based approach to disability has been total; the internal legislation has been revised and amended to avoid any references to a medicalized approach to disability and the rights-based approach is now a must in all the laws. Equal rights of persons with disabilities are guaranteed in the law and discriminatory language has been taken out of the legislation.

A range of education, information and awareness-raising activities on the rights of persons with disabilities has been implemented, targeting public institutions and civil servants, and all stakeholders are involved in the efforts to overcome prejudices and stigma. Türkiye has invested significant efforts into amending its legal framework to protect persons with disabilities from all forms of discrimination.
The objective of Turkish legislation related with the persons with disabilities is to prevent disability, to enable the disabled people to join the society by taking measures which will provide the solution of their problems regarding health, education, rehabilitation, employment, care and social security and the removal of the obstacles they face and to make the necessary arrangements for the coordination of these services.
According to the Article 61 of the Constitution, the State shall take measures to protect the disabled and secure their integration into social life. State doesn't discriminate against the disabled people; fighting against discrimination is the basic principle of the policies towards the disabled people.
Turkish Disability Act (TDA) No. 5378 (01/07/2005) provides legal base with regard to ensuring independent living, preventing discrimination and inclusion of disabled to society. The objectives of TDA includes enabling PwDs join the society by taking measures which will provide the solution of their problems and the removal of the obstacles they face and taking measures necessary for the coordination of services. The Act covers the principles of fighting against disability based discrimination, ensuring participation of PwDs, their families and volunteer organizations to disability related decision making processes and protecting the unity of family in provision of all services. The Act also brought along the principle that it is essential to have PwDs maintain their lives in health, peace and safety particularly in the environment they live in.(Art.2) For this purpose, care services can be rendered as home care or institution care. It is essential that the service is provided without separating the person from his/her social and physical environment (Art. 9). While rendering care services; biological, physical and social needs of the person are taken into consideration (Art. 8). Additionally, the law also provides that all services to persons in need of social protection, care or support shall be provided in compliance with human dignity.

The general principle of Law No. 2828 on Social Services were also defined as: ensuring that PwDs, persons in need of support and the elderly lead a healthy, peaceful and safe life; providing care and rehabilitation services to PwDs in a way that can enable them live independently and productively and taking necessary measures for rendering constant care to PwDs who cannot be treated. In accordance with the By-Law on Invalidity Assessment (Official Gazette No. 28727 of 3 August 2013), the scope of invalidity was extended, the conditions for determining invalidity that include different groups of illnesses were made clear, and a number of arrangements were made by taking into account human body as a whole system.

Regulation on the Rights of Passengers traveling by Railway, prepared by taking into account the European Parliament and Council Regulation on the Rights and Obligations of Railway Passengers, dated 23/10/2017 and numbered 1371/2007 was published in the Official Gazette numbered 30708 on 8 March 2019 and entered into force. In the Seventh Chapter of this regulation titled "Passengers with Disabilities", mobility restricted and/or special conditions, the right to travel for disabled people, information, accessibility, assistance services to be provided at the stations, compensation for special equipment for persons with disabilities and/or mobility impairments are regulated.

The Accessibility Monitoring and Supervision Regulation prepared under the Law on Disabled Act No. 5378 was revised on September 21, 2016. In this revision, Accessibility Monitoring and Supervision Forms are also determined by a Circular to be published by the Ministry. Within this framework, the "Accessibility Monitoring and Supervision Forms Circular" numbered 2018/2 published. The Accessibility Monitoring and Supervision Plan and the Application of Administrative Fines Circulars also published.

Another significant regulation which determines and influences the use of physical space of the disabled is the Zoning and Development Law No. 3194. In this Law, in the context of the provisions related to the Law No. 2960 on the Bosphorus, in the annex section (amendment: 30/05/1997, Decree Law No. 572), it is stated that "in order to make the physical environment accessible and liveable for disabled, it is obligatory to comply with the relevant standards of the Turkish Standards Institute in the development plans, urban, social and technical infrastructure areas and structures". The By-Law on Private Care Centres for Persons with Disabilities in Need of Care published in the Official Gazette No. 28737 of 16 August 2013 introduced radical arrangements regarding especially the application and opening permission process of the private care centres as well as the characteristics of personnel, physical structures of the centres, inspection and penalties. With Articles 35/A and 35/B which are added to the Social Services Law No. 2828 through Law No. 6495 of 12 July 2013, arrangements regarding the opening of private care centers for persons with disabilities in need of care as well as working conditions and management of these centres and effective service delivery were made.
The Circular on Initial Admission and Intervention in case of Emergency No. 62664- 2013/11 (Official Gazette No. 28680 of 17 June 2013) specified the procedures and principles regarding the opening and working conditions of the initial admission and intervention centres where care services for disabled persons in need of care will be given for a specific period before these persons are transferred to care centres, with the aim of determining care requirements and appropriate service model. The Circular on the Provision of Other Services for Disabled Persons Who Benefit From Home-Based Care Services No. 44615-2013/8 (Official Gazette No. 28635 of 2 May 2013) provided for that disabled persons receiving home-based care services would also benefit from care and rehabilitation services of the day care family consultation and rehabilitation centres within the body of the Ministry of Family and Social Policies in such manner that does not exceed 16 hours in a week.

The principles of the services for PwDs are defined by the Law on Social Services as follows; raising awareness of individuals, family members and society on their rights and responsibilities regarding participation of person with disabilities to society as equal individuals; ensuring medical treatment and rehabilitation of these individuals; increasing their independent living capacity; taking measures for ensuring accessibility of information services, physical environments and technological devices and instruments; and including PwDs to all decision making processes that would affect their economic and social status.

Steps have been taken to improve the accessibility to transports, services, and public building, including the polling stations; and the policy of open, inclusive and accessible labour market has been adopted. General Directorate for Disabled and Elderly Services under the Ministry of Family, and Social Policies approaches the concept of barrier-free space that is classified under three functions: urban spaces (e.g. streets, squares, parks, open and green areas etc.), buildings and transitional areas which connect these spaces.

Türkiye had become a party to the Convention on the Rights of Persons with Disabilities in 2009 and to the Optional Protocol in 2015 and had made significant progress in promoting the rights of persons with disabilities in recent years.

The focal point is the Ministry of Family and Social Policies, which works in cooperation with national and international stakeholders, and especially the organizations of persons with disabilities. Türkiye firmly believes that persons with disabilities must have a seat at the table whenever a decision is taken that concerned them, thus with the enactment of the Law on Persons with Disabilities in 2005, they became actors in policy making, implementation, and monitoring. Türkiye has furthermore invested significant efforts to strengthen the dialogue with non-governmental organizations and to increase the rights-based advocacy capacity of representative organizations of persons with disabilities. Türkiye has taken steps to improve the accessibility of voting stations, persons with disabilities had a priority during the voting, and the practice of mobile ballot for house-bound voters has been introduced. Persons with disabilities are represented in the Accessible Transportation Services Board, while the 2023 Education Vision provided for inclusive education and for the setting up of inter-agency monitoring and implementation mechanism to ensure effective coordination of special education throughout the country.

Türkiye also attaches great importance to the employment of persons with disabilities; the main policy is an open, inclusive and accessible labour market. Over the past 15 years, the number of employed persons with disabilities has increased tenfold in the public sector and about threefold in the private one, while the pensions for persons with disabilities who were unable to work has been increased up to 300%. In addition, care allowances are provided to persons with severe disabilities to enable them to live at home with their families. A guide for the personnel working on the guardianship issue and a guide on legislative regulations on the issue has been developed. Türkiye hosts over 4,6 million refugees and asylum seekers, and all those with disabilities enjoyed the services and benefits for persons with disabilities on an equal basis with citizens and without any discrimination.

Article 122 of the Penal Code has been amended to increase prison sentences for disability-based discrimination from six months to three years; the amendment has also added the qualifiers of intent and hate in order to strengthen the prohibition of discrimination against persons with disabilities. Committing a crime against a person with disabilities is an aggravating factor.

It is known that a national human rights institution, the Human Rights and Equality Institution of Türkiye (TIHEK), has been set up in 2016. The Office of the Ombudsman is a constitutional institution in charge of monitoring public institutions; all its decisions are public and can be accessed through the Ombudsman's website https://www.ombudsman.gov.tr/English/index.html. It has the competence to receive complaints of discrimination, including on the grounds of disability, and to issue recommendations to the parties concerned. Every citizen has a constitutional right to address the Office, in person or in writing and in languages other than Turkish, and it works with representative organizations of persons with disabilities to enable children with disabilities to directly address the Ombudsman.

In terms of access to justice for persons with disabilities, both victims and perpetrators are entitled to interpreters and free legal aid. If they are victims, that added more aggravation to the crime committed. Sign language interpretation is the key priority, therefore, different departments in the Ministry of Justice are provided with related training to enable them to assess the quality of sign interpretation and pre-empt defense on the ground of inadequate sign interpretation. Türkiye is making a significant investment in improving technical infrastructure to allow people to provide testimonies via video conferences. Accessibility is one of the most important conditions in tenders for the construction of new court buildings.

According to the priorities set out in the national e-Government strategy, Türkiye would revise its e-government services and make them accessible to all the citizens. Additionally, there are communication centres that employed officials with sign language skills who assisted deaf and hard of hearing individuals. Sign language interpretation is provided in the civil service.

Accessibility to all public spaces and mass transportation is obligatory and a commission has been set up in 2012 to monitor accessibility of the Government offices. Accessibility standards have been adopted and non-compliance is sanctioned, while international standards are being applied in all modes of transportation. There are measures to enable prisoners with disabilities to access legal aid and medical services. About half of the schools in the country, have entrance ramps, while all special needs educational institutions have ramps, elevators and special needs toilets.

All new constructions, including schools, have to comply with all accessibility standards. Children's policies are based on the best interest of the child, in this context; Children's Rights Committees are active in all provinces. The membership is open to all children, including children with disabilities. Child right monitoring mechanisms are in place as well and were supervised by the Office of the Ombudsman and the Human Rights and Equality Institution of Türkiye (TIHEK). "The Information Guide for Disabled" is prepared by the General Directorate of the Disabled and Elderly under the Ministry of Family and Social Policies and accessible via website (https://ailevecalisma.gov.tr/media/35694/engelli-bilgilendirme.pdf).

The 2016 Autism Plan is put in place. Institutions are responsible for the care of persons with mental disabilities and inclusion activities are being organized. Special schools are provided for children with disabilities who could not attend public schools and special classes for those who had to stay in the hospital.

A commission composed of a range of stakeholders was mandated with the monitoring of the implementation of accessibility standards. It assessed the accessibility of public institutions and gave periods of adjustment to those who failed to meet standards, and issued fines for noncompliance. The commission also organized training and awareness-raising activities for the existing institutions and provided accessibility advice.
Measures are being taken to increase accessibility to university buildings and to ensure that public transportation is fully accessible. Numerous awareness raising activities advertised the improvements to the accessibility of the courts.

There are programmes to support airports to obtain accessibility certificates, and the majority of airports in the country have been certified. There are accessible telephone lines, ramps, counselling desks for persons with disabilities, signs adapted to Braille alphabet, as well as vision and auditory signs, among others.

The statistics department in the Ministry of Family and Social Policies (MoFSP) has been set up to collect disaggregated data and statistics on which disability-related policies would be based.
Institutional care services coordinated by provincial directorates are rendered by Residential Care and Rehabilitation Centres for PwDs; Rehabilitation and Family Consulting Day Centres that provide only day service and Private Care Centres that provide services on a residential and/or daily basis. Services for PwDs are carried out by the General Directorate of Disabled and Elderly (EYHGM) of MoFSP.
Children in rural areas, including children with disabilities, are provided with free transportation to the nearest school. Teachers of refugee students with disabilities receive continuous education on the matter. Braille books are distributed free of charge to all students that needed them. Schooling rates of children with disabilities are improving annually.

The 11th National Development Plan 2019-2023 espoused a more inclusive approach to persons with disabilities, in light of an overreaching aim of attaining the Sustainable Development Goals. Social services offered to the disabled have been diversified and expanded, and policies regarding the participation of the disabled in education, social life and the labour market have been maintained.
Participation of disabled citizens in sports activities is encouraged. Coach - teacher qualifications are developed for the participation of disabled in sports. For this purpose, enriched educational materials, visual and written documents are prepared and put into practice. Protection of open and green spaces and public spaces in cities are provided and also accessibility and security of these spaces are increased.

It is legally mandatory to organize urban life in accordance with the accessibility of the disabled people. In the environment that is structured in accordance with the provisions of the Turkish Disability Act (TDA) No. 5378, accessibility standards should be pursued in planning, design, construction, manufacturing, licensing and inspection processes to ensure the accessibility of the disabled people.
Within the scope of this Law; the existing official buildings belonging to public institutions and organizations, all existing roads, sidewalks, pedestrian crossings, open-green areas, sports fields and similar social & cultural infrastructure areas, and all kinds of buildings that are built by real and legal persons open to public services, and private & public transportation systems as well as private and public transportation vehicles with nine or more seats, excluding the driver's seat, and the existing information services and information & communication technology must be suitable for the accessibility of individuals with disabilities. An Accessibility Certificate is issued by the governorship to those determined by Commissions for Monitoring and Auditing Accessibility for compliance with the accessibility legislation. Complaints can be filed through the Provincial Directorate of Family and Social Policies for auditing all types of buildings and open areas as well as public transport vehicles that serve to public use. There are arrangements in the Domiciles for the Persons with Disabilities.
Disabled can request modifications in their apartments and building estates in accordance with their disabilities which is subject to the Property Ownership Law. For the accessibility in Newly Constructed Buildings, pursuant to the Construction Legislation and the Law on Disability, it is necessary to act in accordance with the accessibility provisions when preparing the project of the newly built houses and during the construction phase and all kinds of inspection and approval stages.

For the accessibility in Service Vehicles and Intercity Buses, real and legal persons who carry out tourism transportation by road or provide intercity public transportation services, are obliged to meet the demand of individuals with disabilities for providing accessible public transportation services and the real and legal persons who provide service transportation are obliged to meet the demand of students or personnel who have disabilities. Persons with disabilities have advantages in the electronic communication industry costs. In addition, PwDs who were entitled through a medical report to use an adapted motor vehicle are exempt from special consumption tax provided that they buy motor vehicles from domestic market. This exemption is also valid for the relatives of persons who have a disability at a degree of 90% and over that hinders him/her drive a motor vehicle. These motor vehicles are also exempt from motor vehicles tax. All kind of equipment and software designed with the purpose of facilitating daily lives (including education and employment) of PwDs are exempted from VAT in accordance with Value Added Tax Law No. 3065.

On the other hand, adapted motor vehicles to be imported by PwDs are exempt from customs. Furthermore, as per Customs Law No. 4458, all items produced abroad and imported with the purpose of enhancing education, employment or personal development of PwDs are exempted from customs. Adapted motor vehicles to be imported by PwDs are also exempted from customs. In accordance with Private Consumption Tax Law No. 4760, sale of private cars with an engine capacity less than 1.600 cubic centimetre; vehicles used for carrying goods with an engine capacity less than 2.800 cubic centimetre and all motorcycles, in case they are bought by a person with a disability degree equal to or above 90%, are exempted from special consumption tax once in 5 years. This exemption is also valid for persons who have a disability degree below 90%, in case they buy one of the vehicles mentioned hereinabove only for personal use and adapt it in line with their disability and personal needs. The motor vehicles to be exempted from private consumption tax are also exempted from motor vehicles tax as per the relevant provisions of Motor Vehicles Tax Law No. 197. Persons with disabilities have the right 20% discount on all domestic and international flights. Persons with disabilities have also housing tax exemption.

The recruitments of all kinds of equipment and special computer programs specially designed for the education, profession, and daily life of the persons with disabilities is exempt from VAT. Local governments and private entities make certain rates of reductions in fees of services provided to PwDs. Within this scope, especially Turkish State Railways, Turkish Maritime Organization, Turkish Airlines and intercity transportation companies make various rates of reductions for

passengers with disabilities. On the other hand, as per the amendment made in Law No. 4736 on Rates of Services and Goods of Public Institutions in 2013, persons who have a degree of disability over 40%, persons with severe disabilities and a person accompanying them can benefit from intercity and inner city rail and sea travel, and all mass transportation facilities provided by municipalities, transportation companies set up by the municipalities or private companies authorized by the municipalities to carry passengers in provinces.

Besides, PwDs can benefit free of charge from national parks, state theatres, opera and ballet performances, historical ruins and museums of Ministry of Culture and Tourism. Some municipalities make certain rates of reductions in water bills of PwDs in line with municipal council resolutions. GSM operators also provide reductions in service fees. Parking Zones are allocated for persons with disabilities. In the Parking Regulation; it is compulsory to allocate parking area for persons with disabilities with a rate of 1/20 in the parking areas provided that Turkish Standards Institute (TSE) standards are complied with, and in the nearest places to the entrance-exit and elevators in public buildings, regional car parks and public car parks. According to Article 61 of the Highway Traffic Law No. 2918, vehicles parked against the prohibitions will be double fined.

Furthermore, with an amendment envisaged in Article 30 of the Law No. 4857, the whole employer-share-insurance premium for PwDs is met from the Unemployment Insurance Fund.By this, it is aimed to encourage employers who employ disabled persons despite having exceeded the quota or not being obliged to, and with the amendment envisaged in the Civil Servants Law No. 657, it is aimed at making privileged arrangements regarding relocation requests of the civil servants, who are disabled or have disabled family members to take care of, including disabled spouse or any relatives with first degree relationship by blood, due to their condition of disability.
In addition, for the individuals with disabilities,
» Entrance to the Museum and Ruins is free of charge,
» Access to national parks, nature reserves and nature parks is free of charge,
» Entrance to State Theatres are free of charge,
» GSM operators avails them of special tariffs,
» Housing Development Administration of Türkiye (TOKI) allocates 5% of the planned number of residences to our disabled citizens within the scope of its projects.
Applications are made with ID copy and disability health report, and the right owners are determined by drawing lots.
Within the scope of the Law No. 2022, people with disabilities older than 18 or the relatives of persons with disabilities under the age of 18, who are not subject to any of the social security schemes (SSI, SSI for Artisans and Self-employed or Retirement Fund) are put on a salary provided that they got an indigence document from the relevant Social Assistance and Solidarity Foundation. The cost of materials such as equipment, medical supplies, consumables, and orthopaedicprosthesis required for the disabled people are paid by the SSI in accordance with the provisions of the Law No. 5510 and the General Health Insurance Procedures Regulation. Persons with disabilities or family members who want to receive home medical services can apply by calling the number 444 38 33 of the national call centre within the Ministry of Health. The home healthcare team carries out the procedures to be performed in the home environment and directs disabled people to the hospital for the operations that cannot be undertaken in the home environment. In order to connect hearing-impaired citizens to life in emergency cases, the Disability-Free Health Communication Centre (ESIM) established by the Ministry of Health.

International Day of PwDs (3 December) and nationally celebrated Week of PwDs (10-16 May) contribute a lot to awareness raising activities in Türkiye. In these dates of the year, various activities are carried out by the Directorate General of the Services for the Disabled and the Elderly (EYHGM), disability organizations, professional organizations, universities and some media organizations broadcasts programmes on disability and the rights of PwDs. EYHGM organizes several events and supports or contributes to other events organized by other relevant parties. The Government is studying the development of community-based services for persons with mental and psychosocial disabilities; steps have been taken to improve the accessibility to transports, services, and public building, including the polling stations; and the policy of open, inclusive and accessible labour market had been adopted.

Rehabilitation services are provided in order to meet the individual and social needs of the disabled people on the basis of participation in the social life and equality. The active and effective participation of the disabled person and his/her family is essential in all stages of the rehabilitation including the decision making, planning, executing and terminating.

Training programmes are developed in order to the train the personnel needed in all areas of the rehabilitation and necessary measures are taken for the employment of these personnel.

Within the Context of Law No. 6112 on the Establishment of Radio and Television Enterprises and their media Services, it was provided that Media service providers shall render their media services in accordance with the principles with an understanding of the responsibility towards public and they shall not broadcast in a way to encourage the abuse of or violation against PwDs (Art. 8). The law also provides that the violators of these principles shall be imposed to a penalty. In addition, Directive on Public Service Announcements that was put into effect on 08 August 2012 by The Radio and Television Supreme Council (RTUK) provides for giving priority to disability focused spot films. National media frequently give place to various broadcasts that aim for raising awareness and consciousness on disability. Besides, public broadcasting Turkish Radio and Television Association (TRT) broadcast programmes targeted for various groups of audience (children, youth, and adults) on its different channels.

Alo 183 (Hotline) Social Support Line from the Call Centres of the Ministry of Family, Labour and Social Services has evaluated calls from the disabled and gives guidance and counselling services. It provides service on a 7/24 basis.

Turkish sign language is created by the Turkish Language Institution in order to provide the education and communication of the hearing impaired people. The methods and principles of the works for creating and implementing this system are determined by the regulation to be issued jointly by the Ministry of National Education, and the Ministry of Family and Social Policies under the coordination of the Turkish Language Institution. The required procedures in order to provide the production of relief, audio and electronic books, subtitled film and similar material to meet all kinds of educational and cultural needs of the disabled people are carried out jointly by the Ministry of National Education and the Ministry of Culture and Tourism.

According to the sub-paragraph (ç) of the first paragraph of Article 189 of the Presidential Decree (Abolished Decree Law No. 638) on the Presidential Organization No. 1, published in the Official Gazette No. 30474 dated 10/07/2018, which regulates the duties and powers of the Ministry of Youth and Sports, the Ministry has duties:
- to enable individuals with disabilities to do sports
- to ensure that sports facilities are suitable for the use of disabled people,
- to develop sports training programs, provide the necessary material and support related Technologies
- to make publications with information and awareness raising activities for disabled people,
- to train disabled sportspeople,
- to cooperate with other relevant organizations in order to enable individuals with disabilities to play sports.

In order to enable the disabled individuals to exercise sports and to make it widespread, to enable the sport facilities to be suitable for the usage of the disabled people and to develop sports training programmes and supporting technologies, to provide the necessary material, to carry out information and awareness increasing works and issue publications, to train sportsmen, to cooperate with the other concerned institutions on enabling the disabled individual to exercise sports. "Disabled City Sports Centres" were opened. Wheeled sports chairs were distributed to the disabled through the Provincial Directorates of the Ministry of Youth and Sport. With the "We Remove Barriers in Sports" project, sports education services are provided to individuals with disabilities throughout the country. In line with the Regulation on Awarding Persons Who Achieve Outstanding Success in Sports Activities or Events issued in 2010; sporters, sports clubs, coaches

and trainers who achieve successes in the relevant branches of Olympic, Paralympics or Deaflympics games under the categories of adults, U21, youth or stars, and the sporters who contribute to country promotion in international sports activities or organizations are awarded.

Through "Disabled Sportspeople Buses", disabled sportspeople in Türkiye are provided with access to sports activities. In cooperation with the Ministry of Education, Ministry of Youth and Sports and the Ministry of Family and Social Policies, youth camps are organized for disabled youth.

Disabled people service units are established in the Metropolitan Municipalities of major cities in order to provide information, awareness, steering, consultancy, social and vocational rehabilitation services to the disabled people. These units maintain their activities in cooperation with the foundation, association established to serve the disabled people and their subordinate organizations.

Pursuant to article 35 of the Library Service Principles numbered 2012/7 titled "Services for the Disabled", our libraries are made suitable for disabled access within the scope of new building construction and configuration. Within the scope of the Talking Library service offered at the National Library, books voiced by volunteer readers for the visually impaired users are offered to the service via the web site and there are more than 5 thousand books in the web-collection. Besides, another regulation was put into effect in 2011 to ensure the necessary measures taken for facilitating the ship to shore and shore to ship passage of PwDs. "Barrier Free Airports Project" was initiated by Directorate General of Civil Aviation for ensuring accessibility of all airports in Türkiye.

Economically deprived PwDs can apply to Social Assistance and Solidarity Foundations in provinces or districts and demand assistive devices/equipment or aid in cash or in kind. These foundations also pay the cost of orthopedically or other assistive equipment that is not covered by social security institutions.
The elections are organized and audited by Supreme Committee of Elections (YSK). Pursuant to legal arrangements and practices of YSK, PwDs can cast their votes in equal terms with others. Law on Basic Provisions on Elections and Voter Registers includes some provisions about accessibility of voting centers and the procedures of vote casting.

Turkish employees and employers have the right to form unions and higher organizations, without prior permission, and they also possess the right to become a member of a union and to freely withdraw from membership (Constitution, Art. 51). Furthermore, everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission (Art. 33). Within this scope, there are currently no practical barriers to hinder PwDs from establishing and operating CSOs. There are approximately 1.000 associations carrying out activities in the field of disability. Besides, there are 10 disability federations and 2 confederations functioning as umbrella organizations. Disability organizations take an active role especially in policy making and legislation preparation processes.

Building projects of Housing Development Administration (TOKI) are planned in line with related accessibility legislation, especially with Turkish Standards Institution Standard TS-9111 – Minimum Requirements in Buildings to Ensure Accessibility for Persons with Mobility Restrictions and/or Disabilities. Special projects are also planned on demand of PwDs. The Constitution guarantees the right of PwDs to participate in political and public life based on equality principle. Housing Development Administration of Republic of Türkiye (TOKI) develops its projects in line with the Government Programs in accordance with the legislation in question, and makes implementations in 81 provinces throughout Türkiye. With the Article 1 of the Decree Having Force of Law dated 6 June 1997 and numbered 572, an article was added to the Zoning and Development Law No. 3194, bringing the provision "For making physical environment accessible and habitable for the handicapped, relevant standards of the Turkish Standards Institute has to be followed in zoning plans, urban, social, technical infrastructure areas and in buildings" to effect. TOKI acts in accordance with that article in construction of all buildings in its mass housing projects. In this

context, the Zoning and Development Law No. 3194 and all of its regulations, 'Requirements of Accessibility in Buildings for the Handicapped and People with Limitations on Movement Ability' as well as "Rules of Structural Measures on Avenues, Streets, Squares and Roads and Design Markings for the Handicapped and the Aged" are followed. Disabled persons are TOKI's priority in social housing production. In this context, a quota of 5% of the number of houses in the projects put to sale by the Administration for the disabled has been allocated. Not only a quota is allocated for disabled, but also special sales are made in some project sales for disabled only.
Matters such as building entry ramps, necessary arrangements within the building (easy accessibility to the ground level elevation, all doors being 90 cm, all corridors being 115 cm, elevators being suitable for wheelchair use, rails and balustrades on both sides of the stairs) are taken into consideration for easy access of disabled to the houses in all of housing implementations.

Besides, measures are taken to meet the needs of the disabled in landscaping of the project sites. In addition to standard practices (handicapped ramp, etc.) in accordance with the concerned regulation, TOKI also realizes necessary arrangements (arrangement of flat door dimensions, etc.) in ground floor houses allocated as quota of 5% of the house number for disabled in case of demand. TOKI furthermore, realizes barrier-free life centres and rehabilitation centres accessible with wheelchairs to meet the special needs of physically disable children in line with needs and demands through cooperation with government agencies. In its implementations, ramps are absolutely built for the disabled in the project site with an inclination of 6-8%.

The most up-to-date work on the subject is improvements in the zoning legislation. The work is coordinated by the Ministry of Environment and Urbanization in cooperation with the concerned Ministries, NGOs and the municipalities. In order to make the physical environment accessible and liveable for disabled, it is obligatory to comply with the relevant standards of the Turkish Standards Institute in the development plans, urban, social and technical infrastructure areas and structures according to the new Zoning Regulation for Planned Areas ("Regulation"), published in the Official Gazette of 3 July 2017.

This regulation has been made to comply with TSI standards in order to ensure accessibility of disabled people. Another legislation is the Regulation for the Unplanned Areas (02/11/1985). In this regulation there are seven articles indicating the rights of disabled. Articles 5 and 8 emphasize the obligation to comply with the TSI standards, article 25 deals with the issues regarding the functions and corridors that must be within the houses. Article 29 explains the measures and standards of the stairs for the disabled. Article 31 deals with the issues for the disabled in the covered markets and arcades, article 32 highlights the measures and standards of the toilets and sanitary facilities for the disabled in public buildings. The Regulation for Preparation of Spatial Plans (14/06/2014) is another legal document dealing with determining the principles of making and preparation of spatial plans. In this regulation, under the section of "Implementation Zoning Plan", in Article 24, it is said that "Not to reduce the number of lanes allocated to vehicle traffic and to comply with the relevant TSI standards; the widths of the segments of the roads that are reserved for pedestrian, disabled and bicycle use can be increased in the implementation zoning plan without any change in the master plan".

"The Istanbul Development Regulation (20/05/2018)issued in metropolitan city İstanbul" generally deals with gardening issues and arrangements in basements. Article 23 arranges courtyard and backyard distances for activities and accessibilities and Article 26 deals with providing safe and secure living spaces for disabled. While Article 31 deals with the functional areas and their measures to be included in the buildings, Articles 32, 33 and 34 deal with entry and ramps, stairs, doors and windows in the buildings, and Article 52 arranges the regulations regarding the capacities and uses of the toilets in public buildings. Article 70 emphasizes that the decisions of the architectural aesthetic commissions cannot be contradictory to the accessibility standards of the disabled. In the Implementing Provisions of the Slum Law (17/10/1966), it is highlighted that the standards developed by the TSI standards must be considered in the buildings for the disabled.

In the light of the above mentioned national legislation; from the Constitution to International Instruments signed by Türkiye, and from TDA and TIHEK Law and to related regulations; anti-discrimination legislation in Türkiye covers the fields of housing, transport, communications and culture and leisure activities".

200. The Governmental Committee noted the information provided and decided to await the next assessment by the ECSR.

Article 18§4 RESC – to recognise the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties

The Secretariat recalled that under Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter. The only permitted restrictions are those which are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

RESC 18§4 Russian Federation

201. The ECSR concluded that the situation in the Russian Federation was not in conformity with Article 18§4 of the Charter on the ground that there were still restrictions on the right of Russian citizens to leave the country.

202. The representative of the Russian Federation stated that the restrictions to leave the country concerned persons who had clearance granting them access to state secrets. He added that his authorities considered that such restrictions were valid, permitted by law and by the Charter, and necessary for the protection of public interest and national security.

203. The representative of Luxembourg and the representative of ETUC asked how many persons were affected by these restrictions. The Russian representative replied that this information could not be provided as it was a state secret.

204. The representative of ETUC pointed to the fact that there had been no new information and that the conclusion of the ECSR only confirmed previously known elements. The representative of the Russian Federation reiterated that no further data could be provided and that such restrictions came within what was permissible under the Charter.

205. The representative of ETUC recalled that Article 17 of the rules of procedure refers to possibility of requesting how many persons are affected by restrictions in order to evaluate the situation.

206. The Governmental Committee invited the Russian Federation to contact the ECSR as regards the specific provision of figures and decided to await its next assessment.

Article 24 RESC – Right to protection in case of dismissal

207. The Secretariat recalled that, under this provision, with a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

208. To this end the parties undertake to ensure that a worker who considers that his/her employment has been terminated without a valid reason shall have the right to appeal to an impartial body. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions. National legislation or case-law must contain express safeguards against retaliatory dismissal. Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, states parties must be able to show how national legislation conforms to the requirement of the Charter.

209. Under Article 24, the following are regarded as valid reasons for termination of an employment contract: reasons connected with the capacity or conduct of the employee and certain economic reasons.

210. The appendix to Article 24 lists reasons for which it is prohibited to terminate employment. Two reasons are examined only under Article 24, namely:

i. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

ii. temporary absence from work due to illness or injury.

211. A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.

212. As regards dismissal without notice in the event of permanent invalidity, the following factors are taken into consideration for the assessment:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
- are employers required to pay compensation for termination in such cases?
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?

213. The dismissal of an employee at the initiative of the employer on the ground that the former has reached the normal pensionable age will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter. The legislation which enables dismissal directly on grounds of age and does not, therefore, effectively guarantee the right to protection in cases of termination of employment, is contrary to the Charter.

214. As regards the right of appeal, any employee who considers him- or herself to have been dismissed without valid reason must have the right to appeal to an impartial body. The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. Employees dismissed without a valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate if they include the following provisions:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement; and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee

214.b. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

RESC 24 CYPRUS

215. The ECSR concluded that the situation in Cyprus was not in conformity with Article 24 of the Charter on the ground that employees who had not been employed with their employer for a continuous period of 26 weeks (probationary period) were not entitled to protection against dismissal and that the categories of persons excluded from protection against unlawful dismissal went beyond what was allowed under the Appendix to the Charter.

216. The Secretariat presented historic elements, stating that in Conclusions 2005, 2007, 2008 and 2012, the ESCR had held that the situation was not in conformity with the Charter on the same ground: the law excluded from protection against dismissal employees who had not completed a continuous period of 26 weeks with their employer regardless of their qualifications. The Governmental Committee had examined the situation three times. In 2013, it had taken note of the information that the Cyprus Government had not been in a position to propose to social partners specific amendments of the legislation as to this date no partner had raised any issue regarding the duration of probationary period. The Governmental Committee had then held a vote on a recommendation which had not been carried (0 votes in favour, 33 against). It had then held a vote on a warning which had also not been carried (8 votes in favour 24 against). It had requested the Cypriot authorities to bring the situation into conformity with the Charter and decided to await the next assessment of the ECSR. In 2009, the same information and reasoning had been provided by the authorities. The representative of Cyprus had then said that the ECSR had never specified what a “reasonable” probation period was

within the meaning of the Appendix to Article 24, which made it more difficult to identify any possible changes to bring the situation into conformity. The Governmental Committee had then taken note of the information provided, had urged the government to take all necessary steps to bring the situation into conformity and had decided to await the ECSR´s next assessment. At the examination of the situation in 2008, the representative of Cyprus had informed the Governmental Committee that a technical committee had been working on the modernisation of the termination of employment legislation, bearing in mind the comments of the ECSR. The Secretariat had explained that the ECSR had determined in its case-law that the exclusion from protection against termination of employment of workers on a probationary period of up to six months was not acceptable. The Committee had then taken note of the information provided and had decided to await the ECSR's next assessment.

217. The representative of Cyprus presented the following information:

"The Cyprus Government acknowledges that the current status regarding the exclusion of employees who had not completed a continuous period of 26 weeks with their employer regardless of their qualifications, from protection against dismissal has not changed since the previous report.

The Cyprus Government has already indicated its willingness to discuss with the Social Partners the possibility of amending the legislation in order to bring the national legislation in line with the ECSR conclusions. However, since a definition of what constitutes a reasonable duration of a probation period in relation to item 2 of Appendix to Article 24 has not been specified yet by neither the European Social Charter nor the ECSR, we would need more concrete suggestions for specific amendments to the legislation regarding a reasonable duration of a probation period, to propose to the social partners.

In view of the above, as already proposed, we would seek guidance from the ECSR in establishing what the ECSR would accept as reasonable probation period in respect of item 2 of Appendix to Article 24 for the Revised Social Charter. In this respect, a mapping exercise by the secretariat of the respective legislations of all contracting parties of the European Social Charter would be very useful.

As regards the categories of persons excluded from protection against unlawful dismissal goes beyond what is allowed under the Appendix to the Charter, under the Termination of Employment Law (Law 24 of 1967-2016), termination of an employee who has reached statutory pensionable age does not constitute an invalid reason of dismissal and therefore an employee may not seek compensation for unlawful dismissal.

As already mentioned, the Social Insurance legislation allows for a person who receives a pension to continue working beyond the pensionable age of 65 without a reduction to their pension and also the termination of employment does not constitute any loss of career prospects at this age.

Moreover, most collective agreements which include a retirement age set it at 65, while in cases where the collective agreement does not include such a clause or when there is no collective agreement, the practice is to retire when the worker reaches the pensionable age. To this extent, most employees over the age of 65 in practice are employed on a casual basis".

218. Some representatives pointed to the fact that the problem was longstanding and that a vote on a recommendation should be conducted.

219. Accordingly, the Governmental Committee proceeded to vote on a recommendation in this regard, which was not carried (4 votes in favour, 7 against and 22 abstentions). Subsequently, a vote on a warning was successfully carried.

ADDENDUM – Remaining situations under Articles 24 and 25 of the Charter

220. The Governmental Committee postponed to its 144th meeting in May 2022 the examination of the remaining cases under Article 24 and Article 25 due to time constraints (Malta, the Netherlands and Türkiye concerning Article 24, and Albania and Türkiye concerning Article 25).

221. At its 144th meeting in May 2022, the Governmental Committee examined the remaining cases under Articles 24 and 25 and decided as follows:

RESC 24 MALTA

222. The ECSR concluded that the situation in Malta was not in conformity with Article 24 of the Charter on the grounds that:

- employees undergoing a probation period of six months were not protected against dismissal;
- termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which was permitted by law, was not reasonably justified.

223. The ECSR noted that during the probationary period, the employment could be terminated at will by either party without assigning any reason. It had been previously found not to be in conformity with the Charter and had not changed. Although the employee had a right to contest dismissal claiming that it had been discriminatory, the employer was not obliged to provide a valid reason for dismissal. Therefore, the ECSR concluded that situation remained not in conformity with the Charter.

224. The ECSR further noted that during the probationary period, the employment could be terminated at will by either party without assigning any reason. It had been previously found not to be in conformity with the Charter and had not changed. Although the employee had a right to contest dismissal claiming that it had been discriminatory, the employer was not obliged to provide a valid reason for dismissal. Therefore, the ECSR concluded that situation remained not in conformity with the Charter.

225. As regards the termination of employment on the sole ground that the person has reached the pensionable age, which was permitted by law, the ECSR noted from the report of the Governmental Committee that this issue was on the agenda of the Pensions Strategy Group that included various stakeholders, and that met regularly to discuss reforms to the Maltese pension system and other related issues such as termination of employment due to pension age. Although there was agreement that changes should be carried out to Maltese Labour Law, the ECSR pointed to the fact that the discussions were still being carried out in order to find an outcome that was acceptable to all stakeholders. According to the Governmental Committee report, statistical data gathered indicated that more persons of pension age were opting to remain in employment, with the number of such persons increasing on a yearly basis. However, the ECSR noted from the report that according to the Government, Maltese law was in conformity with EU law and the case law of the CJEU in that this did not constitute discrimination on the basis of age, since this was an objective and justified reason related to the dynamics of the labour market and

considered “on the basis of legitimate aims”. The report underlined that persons recruited after reaching the pensionable age still enjoyed the full protection of the law, including in so far as dismissal is concerned.

226. The ECSR considered that there had been no changes to the situation which it had previously considered not to be in conformity with the Charter. Even if the Employment and Industrial Relations Act (EIRA) did not in any way preclude recruitment of a person of a pensionable age, it gave an employer the right to terminate an employment relationship upon the employee’s reaching of the national retirement age. Therefore, the ECSR reiterated its previous finding of non-conformity on this ground.

227. The Secretariat recalled that the Governmental Committee had examined the situation twice with respect to conclusions 2016 and 2012 on this matter. At the assessment of the situation in 2017, the Governmental Committee had taken note of the information provided and invited the Maltese authorities to take all necessary measures to be in conformity with Article 24 of the Charter. In 2013, the Governmental Committee had noted the information that no legal amendments had been carried out or envisaged with regard to the issue of dismissal during probation. In accordance with its Rules of Procedure, it had held a vote on a recommendation, which had not been carried and had then voted on a warning, which had not been carried either. It had then taken note of the information provided and requested the authorities to bring the situation into conformity.

228. The representative of Malta stated that the situation had not changed and that the Maltese authorities considered the situation to be in compliance with the Charter. The dismissal during probationary periods remained at the will of the employer, with a one-week notice. Discussions were ongoing in this respect within the government.

229. As regards dismissals on the ground of reaching the pensionable age, giving the dynamics of the Maltese labour market, this topic had never been raised for discussion by trade unions and it had allegedly never been a problem. There were employees who were allowed to be employed above the pensionable age.

230. The Secretariat explained that the issue at stake was not dismissals as such, but the fact that dismissals in both situations – probationary pension and reaching pensionable age – did not need to be justified.

231. In response to a question raised by the Chair, the Maltese representative further explained that there was a pensionable age (65 years as of 2020) but that the retirement age was not set (a person may retirement earlier, between 60 and 65). He admitted that after the pensionable age, the employer did not need to justify dismissal.

232. The Secretariat pointed out that it could possibly be an example of repeated cases of non-conformity which resulted from a misunderstanding concerning grounds of non-conformity. A key point raised in the reform process discussed by the Committee of Ministers’ Working Group (GT-CHARTE) was the enhanced dialogue between Charter organs and parties involved, in particular based on the recommendations proposed by the Governmental Committee. The case at hand could be a good opportunity to follow this new working method.

233. The representative of ETUC noted that the information presented by the Maltese representative was not new. He considered that for both grounds of non-conformity the employer could at will dismiss an employee without providing a reason, simply in the light

of the fact that the person is too young or too old. He further noted that the vote of a recommendation would be taking place without knowing its detailed content. The Secretariat admitted that the best scenario would be to have the analysis and the proposed text ready at the time of the discussion and the adoption of the decision on cases. While this should be the ultimate goal, it had not been practicable until then also due to the fact that submissions from state parties has been either missing or submitted shortly before the meeting.

234. The Governmental Committee accepted that a compromise solution would be adopted for the five cases remaining from 2021 and that it would vote on a recommendation, the text being then finalised in cooperation with the Maltese authorities, accepted by the Bureau and presented to the Governmental Committee for information at its plenary session in November.

235. It voted on a recommendation, which was not carried with respect to either the first ground of non-conformity with 6 votes in favour, 15 votes against and 11 abstentions (the quorum being 22) or the second ground (3 favour, 15 votes against and 13 abstentions). It then proceeded to vote on a warning on two grounds, respectively, which was carried with 19 votes in favour, 4 votes against and 11 abstentions (first ground) and with 12 votes in favour, 3 votes against and 17 abstentions (second ground).

RESC 24 THE NETHERLANDS

236. The ECSR concluded that the situation in the Netherlands was not in conformity with Article 24 of the Charter on the ground that the termination of employment on the sole ground that the person had reached the pensionable age, which was permitted by law, was not reasonably justified.

237. The ECSR noted the following explanations from the report:

"The age at which an individual is entitled to receive statutory old age pension is specified in the General Old Age Pension Act (AOW). Many collective labour agreements and individual employment contracts contain provisions stipulating that the contract ends automatically when the employee reaches the pensionable age. If no employment termination at retirement age clause is included in the employee's employment contract and the employee reaches the statutory retirement age or continues to work thereafter, the employer may terminate the employment contract without preventive dismissal assessment, with due observance of the prevailing statutory period of notice. This is possible if the employment contract was entered into prior to reaching the statutory retirement age and no other agreement has been reached in writing. The objective justification for this age distinction, is that employees who have reached the statutory retirement age are not comparable in all respects with employees who have not reached that age. For employees who have reached the statutory retirement age, the need to provide for their own subsistence by means of employment no longer applies. They are entitled to claim a General Old Age Pension as a basic income, often supplemented by a pension benefit. This justifies that a less strict regime relating to labour law is maintained for pensioners. This facilitates working after the statutory retirement age and is a legitimate purpose. Eliminating obstacles for the employer for that purpose, is dignified and necessary."

238. The ECSR considered the termination of employment on the sole ground that the person had reached the pensionable age could not be justified by these explanations. It concluded that there had been no changes to the situation which it had previously considered not to be in conformity with the Charter and reiterated its previous conclusion of non-conformity. The Secretariat drew attention to the previous conclusion where the

ECSR had clarified that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former had reached the normal pensionable age (age when an individual becomes entitled to a pension) would be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by Article 24: (i) those connected with the capacity or conduct of the employee and (ii) those based on the operational requirements of the enterprise (economic reasons).

239. The Representative of the Netherlands provided the following information:

"In the Netherlands the termination of an employment contract (automatically, by operation of law at retirement age clause, or by the employer without preventive dismissal assessment) when the employee reaches the pensionable age, is a objectively justified distinction on the grounds of age. According to article 7 paragraph 1 sub b of the Equal treatment in Employment Act (Wet Gelijke behandeling op grond van leeftijd bij de arbeid) the unjustified distinction doesn't apply if the distinction relates to reaching the pensionable age.

The Equal Treatment in Employment Act is an implementation of the European Council Directive establishing a general framework for equal treatment in employment and occupation (OJ L303/16). One of the most important considerations in the drafting of the law (article 7 par 1 Equal treatment in Employment Act) was that dismissal on reaching a certain age ensures that, without regard to the person, an objective criterion can be maintained on which the employee leaves the labour market without it being necessary to determine whether the person concerned still qualifies. This is preferable to a system in which it would have to be assessed on a case-by-case basis whether the aging employee still qualifies.

This argument, and the other arguments used in the drafting of the Equal Treatment in Employment Act in the context of efficiency and proportionality, are, in the opinion of the Netherlands, also relevant to the question of whether dismissal due to reaching the pensionable age is in accordance with article 24 of the Charter. Article 24 states that it is the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service. Precisely to avoid having to assess on a case-by-case basis whether the aging employee still qualifies, the Netherlands has chosen to apply an objective dismissal criterion for the pensionable employee. The chosen age limit is widely supported in society. Many collective labour agreements and individual employment contracts contain provisions stipulating that the contract ends automatically when the employee reaches the pensionable age. This is permitted under the Equal treatment in Employment Act (age discrimination). The objective justification of this distinction is given in the explanatory note to the Equal Treatment in Employment Act. Dismissal on reaching a certain age is intended to ensure that, without regard to the person, an objective criterion can be maintained on which the employee leaves the labour market without it being necessary to determine whether the person concerned still qualifies. A second argument relates to the labour market. The labour market also benefits from dismissal on reaching the pensionable age. Employees who have reached the statutory retirement age 'make way' for recent graduates and younger employees.

On grounds of age, the Equal Treatment in Employment Act allows for distinction if there is an objective justification for the distinction. The objective justification for this age distinction, is that employees who have reached the statutory retirement age are not comparable in all respects with employees who have not reached that age. For employees who have reached the statutory retirement age, the need to provide for their own subsistence by means of employment no longer applies. They are entitled to claim a General Old Age Pension (AOW) as a basic income, often supplemented by a pension benefit. This justifies that a less strict regime relating to labour law is maintained for pensioners.

The Dutch legislation with regard to dismissal on reaching the pensionable age does not stand alone. As indicated above the Equal Treatment in Employment Act is an implementation of a

European directive. On December 2 2000 the European Council Directive establishing a general framework for equal treatment in employment and occupation (OJ L303/16) came into force. The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. Article 6 of the Directive relates specifically to equal treatment on grounds of age. This article highlights the justification of differences of treatment on grounds of age. The first paragraph of article 6 states that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

In conclusion: Having regard to the foregoing it is the opinion of The Netherlands that the termination of employment on reaching the pensionable age is justifiable within the context of article 24 ESC by equal treatment legislation and labour market objectives.

In view of the foregoing the Netherlands has no measures adopted or envisaged to change the situation since 2019".

240. Several representatives and the Chair considered that further clarifications concerning the situation were still needed and, in particular, when a dismissal needs to be justified and when the sole justification would be the age of an employee.

241. The Governmental Committee invited the authorities to assess the situation together with the Secretariat and provide comprehensive and more precise information to the ECSR for the next assessment.

RESC 24 TÜRKIYE

242. The ECSR concluded that the situation in Türkiye was not in conformity with Article 24 of the Charter on the ground that the amount of compensation that a worker could receive in case of unlawful dismissal was not adequate.

243. The ESCR observed that, according to the Labour Law, when it is ruled by a court or a special judge that the termination of employment is invalid, the employer is obliged to reinstate the worker within one month. In case it fails to do so, the employer shall be obliged to pay compensation that is equal to a minimum of four-months' and a maximum of eight-months' salary of the worker. In both cases, the worker receives compensation amounting to four months of wages for the financial losses incurred. In addition, in case the worker is not reinstated, he/she also receives compensation (between four and eight months of wages).

244. The ECSR recalled that, under the Charter, workers dismissed without a valid reason must be granted adequate compensation or other appropriate relief. The Statement of interpretation on Article 8§2 and 27§3 (Conclusions 2011) clarifies that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation may preclude damages from fulfilling this role. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues, and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time. The ECSR noted in respect of the situation in Türkiye that the legislation set a ceiling to the maximum compensation that a worker may receive in case he/she is not reinstated. There was no information about

non-pecuniary damage that can be sought through other legal avenues. Therefore, the ECSR concluded that the amount of compensation was not adequate nor dissuasive.

245. The Turkish representative submitted the following information:

"According to Article 21 of Labour Law No: 4857, titled "Consequences of termination made for invalid reasons", if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee's four months' wages and not more than his eight months' wages shall be paid to him by the employer. In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work. The employee shall be paid up to four months' total of his wages and other entitlements for the time he is not re-engaged in work until the finalization of the court's verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above-stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work. For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination.

The provisions of subsections 1,2 and 3 of this Article shall not be altered by any agreement whatsoever; any agreement provisions to the contrary shall be deemed null and void. Article 20 titled "Object to termination notice and procedure" of the Labour Law No. 4857 was regulated as follows after the amendment made on 12/10/2017: "The worker whose employment contract is terminated, is required to apply to the mediator pursuant to the provisions of Labour Courts Law with the claim of reinstatement within one month following the date of notification of the termination asserting that no reason was shown in the notice of termination or that the reason shown was not a valid reason. In case that no agreement is reached as a result of mediation activity, lawsuit could be opened before labour court within two weeks following the date of issuance of the final minutes. If the parties agree, the dispute could be referred to a special adjudicator rather than the labour court. If the case is rejected procedurally due to opening the case directly without first applying to the mediator, the decision of rejection is communicated ex officio to the parties. Parties could apply to the mediator within two weeks following the ex officio notification of the decision of rejection which has become final. The burden to evidence that the termination is based on a valid reason is to be borne by the Employer. If the worker claims that the termination is based on another reason, he/she is obliged to evidence this claim. The case shall be finalized immediately. If the decision given by the Court is appealed, the regional court of justice shall rule immediately and finally. Furthermore, the following paragraphs have been added on 12/10/2017 to Article 21 of Labour Law No. 4857 titled "Consequences of termination for invalid reasons": "The court or special arbitrator shall determine the compensation regulated under the second paragraph and the fees and other entitlements regulated under third paragraph monetarily based on the fee on the date of the case."

"In case that, as a result of mediation activities, the parties agree on the reinstatement of the worker, they are required to determine the following:
a) Date of starting the work;
b) Monetary amount of the fee and other rights regulated under the third paragraph;
c) Monetary amount of the compensation regulated under the second paragraph if the worker is not reinstated to work.

Otherwise, it shall be deemed that no agreement is reached and the final minutes is prepared accordingly. In case that the worker is not reinstated on the agreed date, the termination shall become valid and the employer shall only be responsible from the legal consequences thereof." The amendments in question aim at regulating the case suing method that provides protection

against conditions when the employment contract is terminated, as well as accelerating the process by imposing an obligatory mediation system. By the way, the employee may request the compensation not only on the basis of Article 21 of the Labour Code but also on the basis of the Code of Obligations and Civil Code and also the Law on Human Rights and Equality Institution. The provisions in Civil Code and Code of Obligations should be taken into account also in the employment relations. It is considered possible for the employee to demand financial and moral compensation due to the attacks arising from the employment relationship to his/her personal rights within the framework of general provisions of the Civil Code and Code of Obligations. If it is the case, the ceiling calculations for compensation between four and eight months' wages stipulated in Articles 17 and 21 of the Labour Law are not valid for the compensation of financial and moral damages. It means that there is no upper limit for the compensation for financial and moral damages under the framework of the Civil Code and Code of Obligations.

In the light of the above mentioned explanations, a worker can claim adequate compensation and the amount of compensation that a worker can receive in case of unlawful dismissal is guaranteed and it could be considered as adequate".

246. The Chair requested clarification on the notion of compensation for "attacks" by the employer, since the compensation should not have any ceiling, irrespectively of any mistreatment by the employer. The representative of Türkiye stated that it was additional protection under the Civil Code. The Chair noted that the ceiling persists, apart from some specific situations. A delegation, supported by the representative of ETUC, suggested the application of the working methods with a vote on a possible recommendation.

247. Accordingly, the Governmental Committee proceeded to vote on a recommendation, which was not carried (1 vote in favour, 8 against and 24 abstentions). Subsequently, a vote on a warning was successfully carried with 8 votes in favour, 0 against and 22 abstentions.

Article 25 RESC – Right of workers to the protection of their claims in the event of the insolvency of their employer

248. The Secretariat recalled that under Article 25 all workers have the right to protection of their claims in the event of the insolvency of their employer. The parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection. Certain categories of workers, due to the special nature of their employment relationship, may be excluded from the protection by competent national authority and after consulting organisations of employers and workers.

249. The workers' claims covered by this provision shall include at least:

a the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

b the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

c the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege

system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

250. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level. The protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Guarantees must exist for workers that their claims will be satisfied in such cases.

251. A privilege system, on its own cannot be regarded as an effective form of protection in situations where there is no alternative to it and alone it cannot provide effective guarantee of protection, due to the fact that the employer has no assets.

252. In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, *inter alia*, on the average duration of the period until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.

RESC 25 ALBANIA

253. The ECSR concluded that the situation in Albania was not in conformity with Article 25 of the Charter on the ground that workers claims were not effectively protected in case of insolvency of their employer under the privilege system.

254. Already in its previous conclusion (Conclusions 2012), the ECSR had noted that there was no alternative mechanism to the privilege system, which in it itself did not provide effective guarantee of protection of workers' claims in situations where the employer no longer had any assets. Therefore, it had concluded that the situation was not in conformity with Article 25 of the Charter. In 2020, given that the amendments on the Labour Code confirmed the establishment only of a privilege system, not complemented by an alternative mechanism to effectively guarantee workers claims in cases where there were no assets, the ECSR reiterated its previous finding of non-conformity on the ground that workers claims were not effectively protected in case of insolvency of their employer under the privilege system alone.

255. No information was provided by Albania ahead of the meeting. The representative of Albania explained that the Labour Code did not regulate such situations but a specific Law provided for debtor's obligations in cases when bankruptcy procedure has started. A law was being drafted on the specific issue of guaranteeing the workers claims in cases in which there were no assets by the employer, with a view to its adoption in September.

256. The Chair noted that the situation had not changed so far. Also the representative of ETUC pointed to the fact that the law referred to dated back to 2016 and had been assessed by the ILO and by the ECSR which both referred to the assessments by other relevant bodies. Accordingly, there had been no change and it was unclear what direction the new amendments would go.

257. Some delegations suggested that Albania should submit the necessary information to the ECSR, in particular on the new law. The representative of France indicated that it should be under a warning for the persistent lack of information.

258. The representative of ETUC pointed that it was unclear, given the possible change of reporting, if and when Albania was going to report next on this aspect. Hence, it would be necessary to act there and then and to adopt the working methods.

259. The Governmental Committee proceeded to vote on a recommendation, which was not carried with no votes in favour, 9 against and 20 abstentions and then voted on a warning (14 in favour, 2 against and 13 abstentions), which was adopted.

RESC 25 TÜRKIYE

260. The ECSR concluded that the situation in Türkiye was not in conformity with Article 25 of the Charter on the grounds that:

- holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred was not covered by the Turkish legislation;

- the amounts due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system were not covered by the Turkish legislation.

261. The ECSR already concluded in its previous conclusions (Conclusions 2016) that the situation was not in conformity with Article 25. In 2020, the ECSR noted from the report that under Article 1 of Law on Unemployment Insurance, when the wages for paid leave were not paid and the insurance premiums for the wages were not declared, no payments would be made. In the light of the above, the ECSR considered that in the case of non-payment of the employer's contributions, such a situation could unduly penalise employees during insolvency proceedings. Therefore, it concluded that the situation was still not in conformity with Article 25.

262. The Secretariat recalled that the situation had already been examined by the Governmental Committee in 2017, when it had taken note of the information provided and had decided to await the next assessment by the ECSR.

263. The representative of Türkiye submitted the following information:

"First ground of non-conformity with Article 25 of the Charter

In the 1st paragraph of Article 53 of the Labor Law No. 4857, entitled "Annual paid leave and leave periods", workers who have worked for at least one year are given annual paid leave. In addition, in the first paragraph of Article 59 of the same law, titled "Leave Fee at the Termination of the Contract"; it is stated that if the employment contract is terminated for
any reason, the wages for the annual leave periods that the worker entitled to but not used, shall be paid to him or the beneficiaries over his/her wages on the date of termination of the contract. The statute of limitations for this wage starts from the date of termination of the employment contract. According to Article 91 of the Labor Law No. 4857; upon the applications of the workers regarding their individual receivables arising from the law, employment and collective bargaining agreements, action may be taken in accordance with the provisions of the first paragraph, provided that the employment contract continues. According to Article 3 of the Labor Courts Law No. 7036; In lawsuits filed with the demand of employee or employer receivables and compensation based on individual or collective labor agreements and reemployment, the application to a mediator is a condition of action. Therefore, disputes regarding the individual receivables of workers whose

employment contract has been terminated are primarily resolved by the mediator, and in case of no agreement, through the judiciary.

In the Additional Article 1 of the Unemployment Insurance Law No. 4447; in cases where the employer has difficulty in paying due to the employer's declaration of concordat, obtaining a certificate of insolvency for the employer, bankruptcy or postponing the bankruptcy, an Unemployment Insurance Fund was organized in order to cover the quarterly unpaid wages of the workers arising from the employment relationship. In the Additional Article 1 of the Unemployment Insurance Law No. 4447, titled "The Employer's Insolvency", "In cases where the employer has difficulty in paying due to the employer's declaration of concordat, obtaining a certificate of insolvency for the employer, bankruptcy or postponing the bankruptcy A separate Wage Guarantee Fund is established within the scope of the Unemployment Insurance Fund in order to cover the quarterly unpaid wages of the workers arising from the employment relationship. In the payments to be made within the scope of this article, the payment is made on the basis of the basic wage, on the condition that the worker has worked at the same workplace in the last year before the employer's insolvency.

In determining the amount of payments made within the scope of the wage guarantee fund, the premium notifications made to the Social Security Institution for the relevant month are taken as basis. The amount of wages for national holidays, public holidays, weekends and paid leave and overtime wages for which premium notification has been made to the Social Security Institution, is evaluated within the scope of the Wage Guarantee Fund. In case the employers do not make the required premium notifications to the Social Security Institution on behalf of the worker, some sanctions are imposed on the employers in terms of social security legislation, and the records are updated ex officio as a result of the examinations made. In this respect, the Social Security Institution has been notified of premiums and the receivables for national holidays, general holidays, weekends and paid vacations, which are earned without working, are also paid within the scope of the Wage Guarantee Fund.

In the subparagraph (b) of the first paragraph of Article 4, titled "Definitions", of the Wage Guarantee Fund Regulation, it is defined as "worker receivables document refers to the document showing that the worker will receive wages by months". Within the scope of the application, the determination of the amount of wage receivable from the workplace where the workers have difficulty in paying is declared by the worker through the said worker's receivable document. The amount of wage receivable included in the relevant document is compared with the premium notifications made to the Social Security Institution for the month in which the wage receivable on behalf of the worker is concerned. Based on the lower amount, payment can be made within the scope of the Unemployment Insurance Fund. In the determination of the amount of wages of the workers, it is a necessity for the healthy implementation of the application to be based on the premium notifications made to the Social Security Institution for the relevant month. Because, in this context, the amount of wages for national holidays, general holidays, weekends and paid leave and overtime wages for which a premium notification has been made to the Social Security Institution and earned without working is covered from the Wage Guarantee Fund. In line with the Passive Labor Force Circular regarding the implementation of the relevant provision, the condition of working uninterruptedly at the same workplace within the last one year is not required, and even one day of work in the workplace within the last year is considered sufficient for payment within the scope of the Wage Guarantee Fund. In sum, employees who have worked at the workplace for at least 1 day in the year preceding the date of insolvency can benefit from the Fund if they meet the other conditions in the legislation.

In the light of the above mentioned explanations, we believe that holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred is covered by Turkish legislation.

Second ground of non-conformity with Article 25 of the Charter

- *the amounts due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system are not covered by Turkish legislation.*

Within the scope of the Wage Guarantee Fund, in order for the workers to benefit from the wage guarantee fund in case of insolvency at the workplace;

• Working within the scope of Law No. 4447, subject to a service contract during the period of remuneration,
• The employer has insolvency due to bankruptcy, announcing a bankruptcy, a decision to suspend the bankruptcy or obtaining a certificate of insolvency,
• The employee must have worked at the same workplace for at least one day in the last year before the employer's insolvency,
• The remuneration must not have expired (5 years).

The workers who meet the eligibility conditions mentioned above are paid by the Wage Guarantee Fund, which they will receive for a maximum of 3 months before the employer's inability to pay. Workers who have worked at the same workplace for at least one day in the last year before the employer's insolvency can receive a maximum 3-month wage from the employer within the scope of the Fund, provided that they meet the eligibility conditions in the previous paragraph.

Payment Amount
Within the scope of the Wage Guarantee Fund, workers are paid as much as they will receive from the employer, not exceeding 3 months. In any case, the payments made within the scope of the Wage Guarantee Fund cannot exceed the daily earning upper limit determined in accordance with Article 82 of the Law No. 5510. For the year 2021; the highest one-month Wage Guarantee Fund payment amount is 19.450.24TL. Within the scope of the Wage Guarantee Fund, 48,665,282 TL was paid to 10,436 people in 2020. Detail information about the Wage Guarantee Fund could be reachable by this link:
https://www.iskur.gov.tr/is-arayan/issizlik-sigortasi/ucret-garanti-fonu/

By the way, the employee may request the compensation not only on the basis of Article 21 of the Labour Code but also on the basis of the Code of Obligations and Civil Code and also the Law on Human Rights and Equality Institution. The provisions in Civil Code and Code of Obligations should be taken into account also in the employment relations. It is considered possible for the employee to demand financial and moral compensation due to the attacks arising from the employment relationship to his/her personal rights within the framework of general provisions of the Civil Code and Code of Obligations.

In the light of the above mentioned explanations, the amounts of payments due in respect of other types of paid absence relating to a prescribed period which shall not be less than three months under a privilege system and eight weeks under a guarantee system are any way covered by Turkish legislation".

264. The Governmental Committee requested the authorities to provide the information in its next report and to await the next assessment by the ECSR.

APPENDIX I

List of participants

(1) 142nd meeting, hybrid, 10-12 May 2021
(2) 143rd meeting, hybrid, 13-17 December 2021

List (1)

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142nd meeting of the Governmental Committee
10-12 May 2021
Hybrid

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hybrid

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APPENDIX II

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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**		
Türkiye	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)

Article 1§1
1. RESC 1§1 ALBANIA
2. RESC 1§1 ARMENIA
3. RESC 1§1 BOSNIA AND HERZEGOVINA
4. RESC 1§1 MONTENEGRO
5. RESC 1§1 NORTH MACEDONIA
6. 1961 ESC 1§1 SPAIN
7. RESC 1§1 UKRAINE

Article 1§2
8. RESC 1§2 ARMENIA
9. RESC 1§2 AZERBAIJAN
10. RESC 1§2 CYPRUS
11. RESC 1§2 RUSSIA
12. RESC 1§2 SERBIA
13. RESC 1§2 TÜRKIYE
14. RESC 1§2 UKRAINE

Article 15§1

15. 1961 ESC 15§1 POLAND
16. RESC 15§1 ROMANIA
17. RESC 15§1 UKRAINE

Article 15§2
18. RESC 15§2 ROMANIA

Article 15§3
19. RESC 15§3 HUNGARY
20. RESC 15§3 SERBIA
21. RESC 15§3 TÜRKIYE

Article 18§2
22. 1961 ESC 18§2 ICELAND
23. RESC 18§2 UKRAINE

Article 18§3
24. RESC 18§3 UKRAINE

Article 18§4

25. RESC 18§4 RUSSIA
26. RESC 18§4 UKRAINE

Article 24 – Right to protection in case of dismissal
27. RESC 24 CYPRUS
28. RESC 24 MALTA
29. RESC 24 THE NETHERLANDS
30. RESC 24 TÜRKIYE

Article 25 – Right of workers to protection of their claims in the event of the insolvency of their employer
31. RESC 25 ALBANIA
32. RESC 25 TÜRKIYE

Article 20 – Right of men and women to equal opportunities (Article 20)/Article 1 of the additional Protocol of 1988
RESC 20 Albania
RESC 20 Andorra
RESC 20 Armenia
RESC 20 Austria
RESC 20 Azerbaijan
RESC 20 Bosnia and Herzegovina
RESC 20 Cyprus
RESC 20 Estonia
RESC 20 Georgia
RESC 20 Hungary
RESC 20 Latvia
RESC 20 Lithuania
RESC 20 Malta
RESC 20 Montenegro
RESC 20 the Netherlands
RESC 20 North Macedonia
RESC 20 Russian Federation
RESC 20 Serbia
RESC 20 Slovak Republic
RESC 20 Slovenia
RESC 20 Türkiye
RESC 20 Ukraine

ESC 1 of the 1988 Add Prot Croatia
ESC 1 of the 1988 Add Prot Czech Republic
ESC 1 of the 1988 Add Prot Denmark
ESC 1 of the 1988 Add Prot The Netherlands in respect of Sint Marteen
ESC 1 of the 1988 Add Prot The Netherlands in respect of CURAÇAO

APPENDIX IV

List of deferred Conclusions (RESC + ESC)

Albania	RESC Article 1.3
Andorra	RESC Articles 1.2, 15.3
Armenia	RESC Articles 15.2, 24
Austria	RESC Articles 1.2, 15.3
Azerbaijan	RESC Article 1.1
Cyprus	RESC Articles 1.1, 1.4, 10.3, 10.4, 15.1
Czech Republic	ESC Articles 1.2, 15.2
Deutschland	ESC Articles 1.2, 1.4, 9, 18.3
Denmark	ESC Article 1.4
Spain	ESC Articles 1.2, 15.1, 15.2
Estonia	RESC Articles 1.2, 10.1, 10.4, 15.1
Georgia	RESC Article 1.1, 1.2
Hungary	RESC Article 1.2, 1.3, 15.1
Iceland	ESC Articles 1.2, 1.4, 15.1
Lithuania	RESC Articles 1.2, 10.1, 10.3, 15.1, 15.2, 15.3
Luxembourg	ESC Articles 1.1, 1.4, 10.1, 10.3
Latvia	RESC Articles 1.4, 10.3, 10.5, 15.1, 15.2, 15.3
"The former Yugoslav Republic of Macedonia"	RESC Article 1.3, 1.4, 15.1
Malta	RESC Article 1.2
Montenegro	RESC Articles 10.2, 15.3
Netherlands	RESC Articles 1.2, 1.4, 10.1, 15.1, 15.2
Netherlands-Curacao	ESC Article 1.2
Poland	ESC Articles 1.2, 1.3
Russian Federation	RESC Articles 1.1, 10.1, 10.3
Serbia	RESC Articles 1.1, 10.1, 10.4, 18.2, 18.4, 24
Slovak Republic	RESC Articles 1.2, 1.4, 9, 10.1, 10.3, 15.1, 15.2, 18.2, 24
Slovenia	RESC Articles 1.2, 15.1, 15.3
Sweden	RESC Article 1.2
Türkiye	RESC Articles 1.1, 1.4, 10.3
Ukraine	RESC Articles 10.5, 15.3
UK	ESC Articles 1.2, 10.1, 10.3, 10.4, 15.1, 18.3

APPENDIX V

Conclusions 2020: examples of progress in the application of the European Social Charter relating to Employment, training and equal opportunities":

In its Conclusions 2020/XXII-2, 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 1§1

Germany

Thanks to a programme designed to help young people between 12 and 26 years of age with special needs for assistance in integrating into school, training and work (*Jugend stärken im Quartier*, Supporting Youth in the Neighbourhood), 175 projects were implemented nationwide between 2015 and 2018 reaching nearly 57,000 young participants, of whom around 59% subsequently started (or restarted) school or vocational training.

Lithuania

The project entitled "Support for the long-term unemployed" enabled 67.7% of the 15,000 participants to find a job (2014-2018), and the project entitled "Support for older unemployed people" enabled more than half (53.5%) of the 14,400 participants to return to the job market (2015-2018).

Slovak Republic

Law No. 336/2015 on Support for the Least Developed Districts was adopted in 2015 with a view to mitigating regional disparities. On the basis of this law, in 2017, the funds allocated to active labour market measures in the 12 least developed districts accounted for 113% of the funds allocated to the other districts (on average), and approximately 49,300 jobs were created there.

Sweden

During the 2015-2018 period, nearly 397,200 long-term unemployed persons (of whom approximately 45.6% were women) participated in the “Job and Development Guarantee” programme created for their benefit.

Article 1§2

Andorra

With regard to legislation prohibiting discrimination in general, the report states that at the beginning of 2019, the *Consell General* approved Law No. 13/2019 of 15 February 2019 on equal treatment and non-discrimination (*Llei per a la igualtat de tracte i la no discriminació*). This Law came into force on 21 March 2019 (outside the reference period). The Committee takes note of this major development in anti-discrimination legislation. Given that Law No. 13/2019 came into force outside the reference period, the Committee asks for the next report on this thematic group to provide detailed information on the contents of this law, particularly in response to the aforementioned questions regarding the legislation prohibiting all forms of discrimination in

employment, particularly those on grounds of race, ethnic background, sexual orientation, religion, age, political opinions and information on available remedies.

Latvia

As regards the burden of proof in cases of alleged discrimination in employment, the Committee notes in the 2019 Country Report on Non-discrimination of the European Equality Law Network that the provision on the shift in the burden of proof included in the Labour Law. The same source indicates that in 2018, the Labour Law was amended to include a provision on the shift in the burden of proof in alleged discrimination cases on grounds of language.

Article 10§1

Slovak Republic

The ECSR noted in its conclusion that a substantial reform of the system of vocational education and training (Law No. 61/2015) was implemented as of the 2016/2017 school year. It notes that this dual education system allows pupils to acquire theoretical knowledge at school which is put into practice during workplace training in companies. According to the information provided, the new system put in place by the authorities demonstrated positive results and the situation has been brought into conformity in this respect, although information is still awaited on measures taken to integrate migrants and refugees in vocational education and training.

Slovenia

The reform of vocational and technical education paved the way for the introduction of modular education programmes offering a wider range of options, with an increase in practical training taking account of local employers' needs in terms of vocational skills. In 2017, at the end of a consultation process carried out with employers' organisations and trade unions, the authorities reintroduced apprenticeships in the education system. The chosen mechanism enables apprentices, who have student status, to spend at least 50% of their time in practical training (on average, an apprentice spends two days a week at school and three days with his/her employer). They are also protected by labour legislation and have the right to be paid.

Article 15§1

In Austria the Committee noted an increase in the number of children with disabilities in inclusive education and noted the adoption and implementation of a programme on Inclusive Model regions to enable children with disabilities to attend mainstream schools.

In Denmark a general law prohibiting discrimination in employment was adopted which prohibits discrimination on grounds of disability in education.

Article 15§2

In Iceland legislation prohibiting discrimination on grounds of disability in employment and providing for reasonable accommodation entered into force - Equal treatment on the Labour Market Act 86/2018

Article 20

Albania

Law No. 136/2015 of 5 December 2015 (which came into force in June 2016) made amendments to the Labour Code. As a result, where there has been a breach of Article 9, the burden of proof has now been shifted to the employer where the plaintiff is able to provide evidence enabling the

court to presume that the employer has engaged in discriminatory conduct. The report also states that a new Code of Administrative Procedure (Law No. 44/2015 approved by the Assembly of the Republic of Albania on 30 April 2015), which came into force on 28 May 2016, contains a provision which reverses the burden of proof in cases of discrimination (Article 82(2)).

Andorra

The Equal Treatment and Non-Discrimination Act, No. 13/2019 of 15 February 2019 entered into force on 21 March 2019. It defines the principle of equal pay between men and women. Under Article 13(1), the principle entails an obligation to provide the same remuneration, whatever the nature of this remuneration, for work of equal value, without any form of discrimination against women regarding the elements or conditions of the work in question. This Act applies to both private and public sectors.

Moreover, the Industrial Relations Act, No. 31/2018 of 6 December 2018 (which was amended by the Equal Treatment and Non-Discrimination Act, No. 13/2019, and which came into force on 1 February 2019) states explicitly that women must not be subject to any discrimination concerning the elements or conditions of their remuneration.

Montenegro

The new Labour Code (No. 74/19) published in the Official Gazette on 30 December 2019 and which came into force on 8 January 2020 (*outside the reference period*) has replaced the 2008 Labour Code. The new Labour Code provides that every worker is entitled to equal pay for equal work or work of equal value.

Romania

The Agency for Equal Opportunities between Women and Men was re-established in 2015 (by Law No. 229/2015 amending and supplementing Law No. 202/2002). As a legal entity, it is a specialised body of the central public administration under the Ministry of Labour and Social Protection, and its purpose is to promote the principle of equal opportunities and treatment for women and men so as to eliminate all types of gender discrimination from all national policies and programmes.

APPENDIX VI

Recommendations proposed and warnings adopted

Recommendations

1. RESC 20 Albania
2. RESC 20 Andorra
3. RESC 20 Armenia
4. RESC 20 Austria
5. RESC 20 Azerbaijan
6. RESC 20 Bosnia and Herzegovina
7. ESC 20 Denmark
8. RESC 20 Estonia
9. RESC 20 Georgia
10. RESC 20 Hungary
11. RESC 20 Latvia
12. RESC 20 Lithuania
13. RESC 20 Malta
14. ESC 20 Netherlands with respect to Curaçao
15. ESC 20 Netherlands with respect to Sint Maarten
16. RESC 20 North Macedonia
17. RESC 20 Russian Federation
18. RESC 20 Ukraine
19. RESC 20 Türkiye

Renewed Recommendation(s)

–

Warnings[8]

Article 1.2

ARMENIA

- the upper limit on the amount of compensation awarded in discrimination cases might preclude damages from fully compensating the loss suffered and from being a sufficient deterrent;
- it has not been established that legislation provides for a shift in the burden of proof in discrimination cases;
- the duration of alternative civil service amounts to an excessive restriction of the right to earn one's living in an occupation freely entered upon.

AZERBAIJAN

- it has not been established that protection against discrimination in employment on grounds of sexual orientation is ensured;
- legislation does not provide for a shift in the burden of proof in discrimination cases.

[8] 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.

TÜRKIYE

- the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from fully compensating the loss suffered and from being sufficiently dissuasive;
- it has not been established that civil servants are sufficiently protected against arbitrary suspensions or transfers.

Article 15.1

ROMANIA

- the right of children with disabilities to mainstream education and training is not effectively guaranteed

Article 20

SLOVAK REPUBLIC

- the legislation explicitly includes only certain elements of pay under the principle of equal pay;
- the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled

Article 24

CYPRUS

- the employees who have not been employed with their employer for a continuous period of 26 weeks (probationary period) are not entitled to protection against dismissal;
- the categories of persons excluded from protection against unlawful dismissal go beyond what is allowed under the Appendix to the Charter.

MALTA

- employees undergoing a probation period of six months are not protected against dismissal;
- termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which was permitted by law, is not reasonably justified.

TÜRKIYE

- the amount of compensation that a worker could receive in case of unlawful dismissal is not adequate.

Article 25

ALBANIA

- workers claims are not effectively protected in case of insolvency of their employer under the privilege system.

TÜRKIYE

- holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred was not covered by the Turkish legislation;

APPENDIX VII

Statement included upon the request of the Russian Federation as regards the procedure for adoption of recommendations

"The Russian Federation expresses concern with the unprecedented and radical departure from the traditional working methods of the Governmental Committee and the repeated violations of its Rules of Procedure with regard to Item V of the agenda - "Discussion on the draft recommendations prepared on Conclusions discussed re. Article 20 of the Revised Charter/Article 1.2 of the Additional Protocol to the 1961 Charter".

Under this item, on the very first day of the 143rd meeting, 22 draft recommendations of the Committee of Ministers concerning purported violations of the European Social Charter by 22 of its States Parties were put up before the Governmental Committee for immediate decision. In violation of Article 4, paragraph 1 of the GC Rules of Procedure and the corresponding paragraph 27 of Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, these draft recommendations were not distributed sufficiently in advance of the meeting to allow their thorough consideration by States Parties. In fact, they were distributed at the end of the working day preceding the first working day of the 143rd session.

A request by the Russian Federation to postpone the examination of the drafts, supported by several other delegations, was rejected out of hand (despite many instances of postponing other decisions both before this meeting and during this meeting). The request to put this motion to a vote was denied. Instead, there was a vote on whether to proceed on the basis of the draft recommendations, or to adopt recommendations without any drafts whatsoever.

Electronic voting on this decision, in violation of Article 13 of the GC Rules of Procedure, did not allow for abstention. In response to a direct question on this matter, the Secretariat stated that the option to abstain was not available. However, in all other instances of electronic voting carried out during the meeting the option to abstain was available and was frequently used by delegations. Thus, delegations were once again denied the opportunity to express their true position on the matter. Nevertheless, a significant number of delegations (13) voting against using the draft recommendations as basis for discussion; however, this fact was likewise disregarded.

As a result, 22 draft recommendations have been considered in the span of 1 working day, without proper preparation, and 20 have been declared as adopted. No in-depth examination or substantive discussion on the arguments provided by States Parties was conducted, the proceedings consisted of proceeding to a vote as quickly as possible, or – in many occasions – taking the decision without a vote.

When voting on a recommendation against the Russian Federation (and only then), the initial results of the electronic vote, which were insufficient to adopt the recommendation, were declared erroneous and a second electronic vote was carried out on the same question, so as to declare the recommendation adopted.

In violation of Article 16, paragraph 4 of the GC Rules of Procedure, a decision on a warning against a Member State was declared to have been adopted by simple majority. It required the intervention of the Russian delegation to revert this decision.

The Russian Federation's consistent calls for proper following of the Rules of Procedure were not heeded. As grounds for this rejection, reference has been made to a decision taken at the 142nd meeting of the GC. However, the request to see the report of that meeting containing the decision, was denied. In fact, in violation of Article 11 of the Rules of Procedure, that meeting report was not drafted at the end of the 142nd meeting and was not adopted at the beginning of the 143rd meeting. By the beginning of the 143rd meeting, even a draft meeting report was not yet available to the delegations (despite the fact that over seven months have passed since the 142nd meeting took place). The draft report of the 142nd meeting was only made available to delegations after this item of the agenda of the 143rd meeting was concluded. This draft contained numerous inconsistencies and controversies, including with regard to the decision in question, that had to be addressed during the 143rd meeting.

In particular, the draft propagated the idea that not adopting recommendations whenever the ECSR considered was somehow "dysfunctional", that the Charter "contains an implicit assumption that recommendations shall be adopted", and that the practice of the ECSR developed within the collective complaints procedure should be applied to all States Parties, including those not Parties to the Additional Protocol on the collective complaints procedure.

While fully supporting the need to improve the functioning of the Charter system, the Russian Federation stresses that the collective complaints procedure is entirely separate from the Charter's reporting mechanism, and no "precedent" or "case-law" may stem from that procedure in relation to States not participating in that procedure. Such decisions can only be adopted on a case-by-case basis, after individual consideration of all circumstances. If the consideration does not lead to a recommendation, that does not imply "dysfunction", but is simply how the mechanism functions. Possible improvements of this mechanism, including with regard to the follow-up by the GC and the Committee of Ministers to the conclusions prepared by the ECSR on the basis of the reports submitted by States Parties, fall under the competence of the Ad hoc working party on improving the European Social Charter system (GT CHARTE) established by the Committee of Ministers Resolution on the follow-up to the decisions of the 131st Ministerial session of the Committee of Ministers in Hamburg, May 2021, on the improvement of the Charter system. The outcome of the work of GT-CHARTE, and eventual decisions of the Committee of Ministers on the matter, should not be pre-empted by the bodies of the Charter.

Taking into account the above-mentioned considerations, the Russian Federation cannot support both the form and the substance of the consideration of Item V of the agenda of the 143rd meeting and is forced to disassociate itself from any perceived outcome of this consideration. It expects this issue to be reviewed at the level of the Committee of Ministers".

APPENDIX VIII

Reply by the Bureau of the Governmental Committee to the statement made by the Russian Federation

"The Bureau of the Governmental Committee takes due note of the statement distributed by the Russian delegation for the GR-SOC concerning the 143rd meeting of the Governmental Committee (GC) held on 13-17 December 2021. However, the Bureau considers that the statement contains a number of inaccuracies and is based on an apparent lack of familiarity with the GC's procedures and practices. Consequently, the Bureau would like to clarify certain aspects of the role and working methods of the GC and the conduct of its 143rd meeting.

At the outset, the Bureau wishes to recall that the GC is a treaty body set up pursuant to Article 27 of the 1961 European Social Charter and is not an inter-governmental committee set up by the Committee of Ministers and operating on the basis of specific terms of reference. Since the adoption of the 1991 Amending Protocol and the subsequent unanimous decision of the Committee of Ministers inviting the States Parties and the treaty bodies to envisage the application of certain provisions of said Protocol before its entry into force, the role and functioning of the GC has de facto been governed notably by Article 4 (amending Article 27 of the 1961 Charter) of the 1991 Amending Protocol, which provides inter alia, that the GC "shall prepare the decisions of the Committee of Ministers […]" and in the light of the conclusions of the ECSR "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 […]".

This role of the GC is expressly reflected in Article 14 of the GC's own Rules of Procedure which refers to the application of the 1991 Amending Protocol before its entry into force and provides that the GC "shall not make legal interpretations of the provisions of the Charter and shall undertake the responsibilities provided for in Article 4 of the Amending Protocol."

The GC's more specific working methods when examining the follow-up to ECSR's conclusions of non-conformity are laid down in the Rules of Procedure, notably in Article 16. According to the established procedural practice consistently applied by the GC over more than 30 years and accepted in good faith by all States Parties, including the Russian Federation, the GC has always considered proposals for a recommendation on the basis of the ECSR's conclusions, the GC's own working document (setting out, inter alia, the details of the situation of non-conformity, its prior history and any prior follow-up) as well as the oral and/or written response of the State concerned. In other words, proposals for recommendations have been voted (or adopted by consensus) without prior examination of a draft recommendation text (admittedly, extremely few such proposals have been adopted over the past two decades). The actual text of the draft recommendation has then been drafted afterwards in consultation with the State Party concerned before transmitting it via GR-SOC to the Committee of Ministers together with the GC's abridged report.

At its 142nd meeting in May 2021, the GC proceeded to a detailed examination inter alia of ECSR conclusions of non-conformity in respect of 22 States on the issue of equal pay for women and men on the basis of the documents mentioned above and including a thorough discussion of the responses of the States concerned. On this occasion, several

representatives expressed the view that these situations merited a recommendation having regard to the recommendations adopted previously by the Committee of Ministers to 14 other States in the framework of the collective complaint's procedure on the exact same issue (equal pay for women and men) as well as to the Committee of Ministers declaration addressed to all 47 member States, also on the issue of equal pay. However, instead of immediately proceeding to voting on whether to propose a recommendation in the 22 cases, the GC decided to postpone the voting to the 143rd meeting, while instructing the Secretariat to prepare and distribute 22 draft recommendation texts in advance of that meeting. This slight innovation compared to past practice (while remaining firmly within the stipulations of the Rules of Procedure) was accepted by all representatives participating at the 142nd meeting, including the representative of the Russian Federation.

At its 143rd meeting the GC then resumed consideration of the 22 cases with a view to voting. Unfortunately, the draft recommendation texts had been distributed very late, namely on 10 December 2021, but the Chair nevertheless considered that it was possible to proceed to voting, especially since the cases had been discussed in detail at the 142nd meeting and as, in any event, the GC in its past practice had always voted on proposals for recommendations without draft texts being prepared in advance.

However, following insistent objections by the Russian representative (supported by certain other representatives) to taking into account the distributed draft texts and to proceeding to voting on any proposals for recommendations, the Chair proposed to follow Article 13§2 of the Rules of Procedure regarding procedural questions and to vote accordingly. 21 representatives then voted in favour of having regard to the distributed draft texts and proceeding to voting on the proposals for recommendations. 13 representatives voted against. Since procedural questions are decided by a simple majority of votes cast (only votes "for" or "against" are regarded as "cast", see Article 13§3 of the Rules of Procedure), the GC therefore proceeded to vote on the proposals for recommendations.

Proposals for recommendations were adopted in respect of 19 States, either by consensus or by achieving the required qualified two-thirds majority of votes cast. In respect of three States, the proposal for recommendation was not adopted, for two States because the required qualified two-thirds majority of votes cast was not achieved and for one State it was decided not to vote.

The Bureau states emphatically that all votes during the 143rd were conducted in scrupulous observance of the Rules of Procedure and with access to voting for all representatives, including electronic voting for representatives who were not physically present at the meeting (which was held as a hybrid meeting). The "incidents" referred to by the Russian delegation, such as the technical problems with the KUDO system when voting on the proposal for a recommendation in respect of the Russian Federation itself and the erroneous reading out of a warning as having been adopted despite not having obtained the requisite majority, were immediately rectified in good faith.

The Bureau fully acknowledges that it would have been preferable that the draft recommendation texts had been distributed earlier than was the case. The GC and its Secretariat are taking all necessary steps to avoid such late distribution in the future. The same applies to the errors made in respect of the submission of the draft report of the 142nd meeting. Incidentally, this report has subsequently been adopted by written

procedure with the support of all GC representatives, except the Russian Federation representative.

Finally, the Bureau firmly rejects the notion that the GC in any way applied to all States Parties the "practice of the ECSR developed within the collective complaints procedure". This is not the role of the GC, it has no competence to do so (cf. Article 14 of the Rules of Procedure). Instead, in strict accordance with its mandate, the GC on the basis of social, economic and other policy considerations took the view that problems of conformity with the Charter related to equal pay for women and men are of the utmost concern in today's Europe and merit strong and principled follow-up. In doing so, the GC was keenly aware of the political guidance on equal pay principles provided by the Committee of Ministers through its adoption of recommendations and a declaration on this issue in March 2021. In fact, the Bureau considers that the now adopted proposals for recommendations add themselves logically and consistently to the approach to equal pay mapped out by the Committee of Ministers.

The Bureau therefore looks forward with full confidence to the Committee of Ministers' examination and adoption of the proposals for recommendations in the near future".