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## **EUROPEAN SOCIAL CHARTER GOVERNMENTAL COMMITTEE**

### **REPORT CONCERNING CONCLUSIONS XXII-1 (2020) OF THE 1961 EUROPEAN SOCIAL CHARTER**

**(Croatia, Czech Republic, Denmark, Germany, Iceland,  
Luxembourg, Poland, Spain, the Netherlands with respect to Curaçao, the  
Netherlands with respect to Sint Maarten, United Kingdom)**

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

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

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<sup>1</sup> The detailed report and the abridged report are available on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

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## I. INTRODUCTION

1. This report is submitted by the Governmental Committee of the European Social Charter and the European Code of Social Security (hereafter the “Governmental Committee”) made up of delegates of each of the forty-three states bound by the 1961 European Social Charter or the European Social Charter (Revised). A representative of the European Trade Union Confederation (ETUC) attended the meetings of the Governmental Committee in a consultative capacity.
2. Since a decision of the Ministers’ Deputies in December 1998, the other signatory states were also invited to attend the meetings of the Governmental Committee (Liechtenstein, Monaco, San Marino and Switzerland).
3. The supervision of the application of the European Social Charter is based on an examination of the national reports submitted at regular intervals by the states parties. According to Article 23 of the 1961 Charter as amended by the 1991 Protocol, the party “shall forward copies of its reports [...] to such of its national organisations as are members of the international organisations of employers and trade unions”. Reports are made public on [www.coe.int/socialcharter](http://www.coe.int/socialcharter).
4. Responsibility for the examination of state compliance with the Charter lies with the European Committee of Social Rights (Article 25 of the 1961 Charter), 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) 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).
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 In accordance with Article 21 of the 1961 Charter as amended by the 1991 Protocol, the national reports on the articles of the Charter relating to Labour rights to be submitted in application of the European Social Charter concerned Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain and the United Kingdom. The reports covered the reference period 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 XXII-1 (2020) of the European Committee of Social Rights (hereafter, ECSR) were adopted in March 2021 with respect of Croatia, Czech Republic, Denmark, Germany, Iceland, Luxembourg, Poland, Spain, the Netherlands with respect to Curaçao, the Netherlands with respect to Sint Maarten, and the United Kingdom.
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 on 1 May 2021 for Germany, one month after Germany deposited the instrument of ratification.

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

## **II. Examination of Conclusions XXII-1 (2020) of the European Committee of Social Rights**

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

12. The Governmental Committee examined the situations not in conformity with the European Social Charter listed in Appendix III to the present report.

### **A. Proposed recommendations**

13. In the 2021 supervisory cycle, the Governmental Committee proposes 19 recommendations concerning Article 20: 16 under the revised Charter (with respect to Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, Georgia, Hungary, Latvia, Lithuania, Malta, North Macedonia, Russia, Turkey and Ukraine) and 3 under Article 1.2 of the 1988 additional Protocol to the 1961 Charter (with respect to Denmark, Netherlands with respect to Curaçao and Netherlands with respect to Sint Maarten).

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 following up the decisions adopted by the European Committee of Social Rights, 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 Ministers were particularly relevant for the discussion of the Governmental Committee on the national situations. They were presented during the 142<sup>nd</sup> meeting of the Governmental Committee in May 2021 by Ambassador Ivan Orlic, 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 general—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 European Committee of Social Rights concluded that situation in 27 State Parties was not in conformity with Article 20.c of the 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 the 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/1 of the Additional Protocol on equal pay to facilitate the 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 conclusion of the ECSR and included the description of the national situations as presented by the respondent states, together with a possibility of either detailed or a general recommendation for the 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, 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.

18. 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 Turkey (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.

19. 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,).

20. 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**

21. 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.

22. 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).

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

24. 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 on ....  
at the .... meeting of the Ministers' Deputies)

The Committee of Ministers,

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

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

Considering the reports on the European Social Charter submitted by the Governments of Andorra, Armenia, Austria, Azerbaijan, Bosnia-Herzegovina, Estonia, Georgia, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, the Netherlands, the Netherlands in respect of Sint Maarten, the Netherlands in respect of Curaçao, Republic of North Macedonia, Norway, Poland, Romania, Russian Federation, Serbia, Slovak Republic, Sweden, Turkey and Ukraine;

Having regard to the failure to submit a report by 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<sup>2</sup>**

#### **1961 EUROPEAN SOCIAL CHARTER**

##### **Article 1 of the Additional Protocol to the 1961 Charter- Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

25. The Secretariat presented the main criteria used by the European Committee of Social Rights to assess compliance with Article 1 of the Additional Protocol to the 1961 Charter (and Article 20 of the revised Charter).

26. 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 the 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.

27. 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 be discrimination as referred to in this article and that it shall not prevent the adoption of specific measures aimed at removing de facto inequalities.

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



28. 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 can only 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.

29. 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.

30. 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 hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.

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

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.

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

33. 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.

34. 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.

35. 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.

36. The Secretariat also recalled that, in line with the ECSR 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.

37. With regard to the selection of situations for consideration by the Governmental Committee, the Secretariat pointed out that they only concerned findings of non-compliance (other than those for which compliance 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.

### **Croatia (Article 1 of the Additional Protocol to the 1961 Charter)**

38. The ECSR concluded that the situation in Croatia was not in conformity with Article 1 of the Additional Protocol to the 1961 Charter on the grounds that the obligation to ensure access to effective remedies in cases of gender pay discrimination has not been fulfilled and that the obligation to ensure pay transparency was not satisfied.

39. The representative of Croatia explained that there were very few gender discrimination cases lodged in Croatia but that this could not imply that there were no legal remedies – persons who suffer discrimination can bring cases to court and there is a shift in the burden of proof, ensuring effective access to remedies. She also pointed out to the fact that legislative amendments may also be considered, but as that Croatia has already received a CM recommendation on the issue in March 2021, which it is implementing.

40. The Governmental Committee considered that there is no reason to adopt another recommendation to Croatia on this matter.

### **Czech Republic (Article 1 of the Additional Protocol to the 1961 Charter)**

41. The ECSR concluded that the situation in the Czech Republic was not in conformity with Article 1 of the Additional Protocol of 1988 to the 1961 Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

42. The Czech Representative provided that the Czech Republic had just received a CM recommendation in this field, similarly to Croatia.

43. The Governmental Committee considered that there is no reason to adopt another recommendation to the Czech Republic on this matter.

### **Denmark (Article 1 of the Additional Protocol to the 1961 Charter)**

44. The ECSR concluded that the situation in Denmark was not in conformity with Article 1 of the Additional Protocol to the 1961 Charter on the ground that the obligation to make measurable progress in reducing the gender pay gap had not been fulfilled. The ECSR noted that, according to the report, in 2016 the gross gender pay gap per hour worked in the private sector stood at 11.3%, and the gap in standardised hourly earnings stood at 12.8% (calculated as the difference between average gross hourly earnings of male and female employees as a percentage of the overall gross average earnings; the data do not include the agriculture and fisheries industry or private companies with fewer than 10 employees and relate only to 25-59 year-olds. In the public sector, at central government level, the gross pay gap per hour worked stood at 2.8% (the gap in standardised hourly earnings at 5.6%), at 15.7% in regional government (the gap in standardised hourly earnings at 22%) and at 2.3% in municipal authorities (the gap in standardised hourly earnings at 6.4%). Furthermore, the overall gender pay gap stood at 10.2% (the gap in standardised hourly earnings at 14.5%) in 2016. The Committee noted that, according to Eurostat data, the gender pay gap was 15.1% in 2015 and in 2016, 14.8% in 2017 and 14.6% in 2018 (compared with 17.1% in 2008), slightly below the average of the 28 European Union countries, which was 15% in 2018 (data as of 29 October 2020).

45. The representative of Denmark accepted that it remained an important challenge and that the authorities continued to work on this problem.

46. The Governmental Committee adopted by consensus the following recommendation:

#### **Draft Recommendation RecChS(2022).. on the application of the European Social Charter by Denmark (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,<sup>3</sup>

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

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<sup>3</sup> in its composition restricted to the Representatives of States Parties to the European Social Charter or the Revised European Social Charter.

Whereas the European Social Charter of 1961 came into force on 2 April 1965 with respect to Denmark;

Whereas the Government of Denmark submitted in 2020 its 40th report on the application of the 1961 Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the 1961 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 1961 Charter;

In the light of the fact that the ECSR concluded that the situation in Denmark was not in conformity with Article 1 of the Additional Protocol to the 1961 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 was 15.1% in 2015 and in 2016, 14.8% in 2017 and 14.6% in 2018 (compared with 17.1% in 2008). In the course of a ten-year period the gender pay gap has not been significantly reduced and hence there has been no measurable progress.

In the light of the information submitted by Denmark in the 142<sup>nd</sup> session of the Governmental Committee, held from 10 to 12 May 2021, according to which the equal pay principle is enshrined both in legislation and in the many collective agreements which govern the Danish labour market. Occupational segregation is caused by a multitude of factors such as traditional carrier choices for men and women, personal preferences and family background and expectations. The Government has a continuous focus on how we can break the gender-segregation in education, which largely replicates gender stereotypes. To this end, the Minister for Employment and Gender Equality is creating an alliance with the vocational schools and the social partners to find common solutions on how to increase the level of women and promote a more equal gender balance in the educational lines. The Danish Government is aware that a gender pay gap still exists and that progress is slow and will therefore continue the efforts to tackle the gender-segregation on the labour market in close cooperation with the Social Partners and other stakeholders.

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 Denmark:

- address the gender pay gap and adopt measures which could include inter alia:
  - o obligations for private enterprises to closely monitor the equal pay situation;
  - o obligations for public and private actors to gain and disseminate knowledge on wage development and wage distribution;
  - o reducing vertical segregation in the labour market;
  - o combatting stereotypes in the labour market, by introducing policies to promote, inter alia, a more equal distribution of parental leave uptake;
- indicate the decisions and actions taken to comply with this Recommendation in the next report under on the Charter provisions concerned.

## **The Netherlands in respect of Curaçao (Article 1 of the Additional Protocol to the 1961 Charter)**

47. The ECSR concluded that the situation in the Netherlands in respect of Curaçao was not in conformity with Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that it was not established that the right to equal pay is adequately guaranteed in law and in practice. There was no information, as in previous cycles, on: whether in all gender discrimination cases there is a shift in the burden of proof; information on sanctions and remedies, in particular whether there is a limit to the amount of compensation that may be awarded to victims of discrimination, or information on sex discrimination cases (including claims for equal pay for work of equal value) brought before the courts.

48. The representative of the Netherlands in respect of Curaçao gave some information on Article 3 of the Constitution, which guaranteed equal rights regardless of gender. The Civil code also provided for the a remedy to any worker to complain about discrimination. In 2018 a Committee was created for revision of labour laws, but process in adapting labour laws was slow.

49. The Governmental Committee adopted by consensus the following recommendation:

### **Draft Recommendation RecChS(2022).. on the application of the European Social Charter by the Kingdom of the Netherlands in respect of Curaçao (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,<sup>4</sup>

Having regard to the European Social Charter of 1961, in particular Part IV thereof;

Whereas the European Social Charter of 1961 came into force on 22 May 1980 with respect to the Kingdom of the Netherlands in respect of Curaçao;

Whereas the Kingdom of the Netherlands in respect of Curaçao submitted in 2020 its 8<sup>th</sup> report on the application of the 1961 Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the 1961 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 1961 Charter;

In the light of the fact that the ECSR concluded that the situation in the Kingdom of the Netherlands in respect of Curaçao was not in conformity with Article 1 of the Additional Protocol to the 1961 Charter on the ground that it was not established that the right to equal pay is adequately guaranteed in law and practice. The ECSR noted the lack of information since the constitutional reform of 2010 and on its implementation. It was not established that the right to equal pay for work of equal value is adequately guaranteed in the law; no information of effective remedies or shift in the burden of proof in equal pay cases; no information on whether legislation permits in equal pay cases comparisons of pay and jobs to be made outside the undertaking/company directly concerned and under what circumstances, information on pay transparency and on whether there are certain exceptions to the prohibition on discrimination on grounds of sex in respect of certain occupations, and on statistics and measures taken to reduce the gender pay gap.

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<sup>4</sup> in its composition restricted to the Representatives of States Parties to the European Social Charter or the Revised European Social Charter.

In the light of the information submitted by the Kingdom of the Netherlands in respect of Curaçao at the 142<sup>nd</sup> session of the Governmental Committee, held from 10 to 12 May 2021, according to which. the Government instituted in 2019 a tripartite ‘Committee on Revision of Labor Laws’, in order to meet the international (labor)standards established in the ratified ILO Conventions. There are proposals to modify the Labor Regulation 2000 (working hours and rest, additional articles about work and persons with limitations. P.B 2000 no 67 & 68)), the Ordinance on Labor Migrants (P.B 2001 no 82) and the Ordinance on Temporary Employment (P.B 1989 no 73). The Covid-19 pandemic effects forced the Government to appeal on Dutch financial support to adapt, update and implement new laws and regulations. The Government though, cannot guarantee a specified time frame for the conclusion of last mentioned (labor law) revision process.

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 Kingdom of the Netherlands in respect of Curaçao:

- ensure explicit statutory protection of the principle of equal pay;
- ensure the existence of effective remedies;
- provide for the shift of the burden of proof in pay discrimination cases;
- adopt measures to improve pay transparency, mainly by allowing job comparisons and information on pay;
- produce statistics to measure progress in reducing the gender pay gap;
- 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;
- provide all information requested and fulfil its obligations to cooperate under the national reporting mechanism;
- indicate the decisions and actions taken to comply with this Recommendation in the next report on the Charter provisions concerned.

### **The Netherlands in respect of Sint Maarten (Article 1 of the Additional Protocol to the 1961 Charter)**

50. The ECSR concluded that the situation in the Netherlands in respect of Sint Maarten was not in conformity Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that there was a lack of sufficient measurable progress in respect of the obligation to promote the right to equal pay.

51. No information was presented or sent. The Governmental Committee adopted by consensus the following recommendation:

**Draft Recommendation RecChS(2022).. on the application of the European Social Charter by the Kingdom of the Netherlands in respect of Sint Maarten (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,<sup>5</sup>

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

Whereas the European Social Charter of 1961 came into force on 22 May 1980 with respect to the Kingdom of the Netherlands in respect of Sint Maarten;

Whereas the Kingdom of the Netherlands in respect of Sint Maarten submitted in 2020 its 2<sup>nd</sup> report on the application of the 1961 Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the 1961 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 1961 Charter;

In the light of the fact that the ECSR concluded that the situation in the Kingdom of the Netherlands in respect of Sint Maarten was not in conformity Article 1 of the 1988 Additional Protocol to the 1961 Charter on the ground that there was a lack of sufficient measurable progress in respect of the obligation to promote the right to equal pay. The report did not refer to the positive measures to promote equal opportunities between women and men taken since the constitutional reform of October 2010 or on the position of women in the labour market, employment and training as requested in its previous conclusion (Conclusions XX-I (2012)). As regards the gender pay gap, the report stated that the most recent Labour Force Survey indicates an average monthly male and female income of respectively NAf 2.000 and NAf 2.500. The unadjusted average female's salary was therefore 25% of the average male salary in 2018.

No information was submitted by the Kingdom of the Netherlands in respect of Sint Maarten in the 142<sup>nd</sup> 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 the Kingdom of the Netherlands in respect of Sint Maarten:

- provide specific information about the developments taken as regards the effective implementation of the principle of equal pay;
- collect specific and updated data in order to measure the gender pay gap;
- 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.

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<sup>5</sup> in its composition restricted to the Representatives of States Parties to the European Social Charter or the Revised European Social Charter.

## Article 1 – Right to work

**Article 1§1 ESC – 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.**

52. The Secretariat recalled that under this provision, the Committee 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. Trends are important for the assessment, however, the overall level is what is usually decisive. The Committee looks at all states in the same way. The average EU level is taken as some objective reference and it has been seen that the Committee expresses concerns when the situation is much below it (by several % points).

53. Further, the Committee assesses an employment policy 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) 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.

## ESC 1§1 SPAIN

54. The ECSR concluded that the situation in Spain was not in conformity with Article 1§1 of the 1961 Charter on the ground that employment policy efforts have not been adequate in combatting unemployment and promoting job creation.

55. The representative of Spain presented following information:  
*“In view of the findings of non-conformity of Spain with paragraph 1 of article 1 of the 1961 Charter, allegations are presented responding two main questions:*

- *legislative measures and active policies undertaken to fight against unemployment (and especially those developed in the context of the crisis caused by the pandemic).*
- *data about the reduction of unemployment figures, as a consequence of the application of such policies.*

*We have shortened the report that we once sent to the secretariat, in order to accommodate it at an adequate time of intervention.*

*Before responding to the conclusion of non-conformity with respect to Article 1.1 of the Charter, I would like to say a few words to situate the context in which Spain and its current government are immersed in their fight against unemployment and in an efficient, fair and sustainable recovery.*

*During this time, Spain has also demonstrated a strong commitment to equality and equity and to the modernization of our labor market, with several priorities: reducing structural unemployment and youth unemployment, reducing temporary employment, correcting duality. or increasing the effectiveness of public employment policies.*



*At the same time, it has deployed an international activity to cement that commitment: ratification of ILO Conventions 190, 177 and 189 (of which the only remains to deposit the ratification instruments, once the internal legislative process has been completed), as well as the ratification of the Revised European Social Charter and the application of the Collective Claims Protocol, all in 2021.*

*In the internal sphere, the modification of the Labor Reform that years ago contributed to the precariousness of employment, and legislative innovations such as the Law regulating work on digital platforms (riders), a pioneer in Europe, is being finalized.*

#### **EMPLOYMENT DATA**

*I will comment before about the employment situation according to the latest data for this year. 2021 is the year in which the legislative and action measures have got a stronger impact over the labor market. Unfortunately, we are in situation to offer just an advance of figures. It is not possible to offer consolidated data for the entire year, which for obvious reasons they may not be known until the first quarter of 2022.*

*In the last nine months, the total number of people registered as unemployed has decreased by 826,102 eight hundred twenty six thousand and one hundred two. Registered unemployment falls in all economic sectors and in all age groups. By economic sectors, it decreased in all of them, compared to October of 2020. Unemployment in the month of November also fell in the group Without Previous Employment by 7,756 seven thousand and seven hundred fifty six people (-2.77%) two point seventy seven per cent less. In all sectors of activity and, especially in the Services sector, unemployment is already at levels lower than those at the start of the pandemic.*

*By sex and age, unemployment falls more among women than among men. There are 40,322 forty thousand three hundred twenty two, meaning two point zero nine percent less (-2.09%) women registered less in the public employment services, reducing the total to 1,888,257 one million eight hundred eighty eight thousand and two hundred fifty seven. Female unemployment has fallen by 416,522 four hundred sixteen thousand and five hundred twenty two women since February, and there are already fewer unemployed women than before the pandemic. Male unemployment stands at 1,294,430 one million two hundred ninety four thousand and four hundred thirty, falling by 34,059 (-2.56%) men. Thirty four thousand and fifty nine, meaning two point fifty six less.*

*Unemployment among young people under 25 years of age fell in November by 11,554 eleven thousand five hundred fifty four people (-4.50%) meaning four point fifty less, compared to the previous month. The number of unemployed people under 25 years of age has fallen by 120,961 one hundred thousand nine hundred sixty one since March, leaving 16,006 sixteen thousand and six young people unemployed less than at the beginning of the pandemic. In year-on-year terms, registered unemployment falls in all autonomous communities.*

*The decline is more pronounced among women than among men and there are fewer women and less than 25 years of age unemployed than before the pandemic. In November, a total of 282,981 two hundred eighty two thousand and nine hundred eighty one permanent contracts were signed, the highest figure in the entire historical series.*

*The total number of registered unemployment stands, therefore, at 3,182,687 three million, one hundred eighty two thousand and six hundred eighty seven people, the lowest figure in a month of November since 2008. It also reduces the levels prior to the pandemic: in November there*

are 63,360 sixty three thousand and three hundred sixty people registered as unemployed less than in February 2020.

November closes the longest cycle of unemployment decline in the historical series with nine consecutive months. An unprecedented drop in unemployment, which has dropped for the first time in the last 46 years since there are records. All jobs destroyed since 2019, the last before the pandemic, have been recovered.

The number of Social Security affiliates reached a record 19,690,590 nineteen million, sixninety thousand and five hundred ninety workers, the highest figure in the series since 2002. This, despite the effects of the pandemic, has been possible thanks to the active employment policies undertaken by the government, many of them agreed with the social partners. Likewise, the “social shield” against the effects of the health crisis, with two objectives: interrupting business activity as little as possible and shielding workers against the devastating effects of the economic crisis.

A detail of these policies will be discussed below.

#### **MEASURES TO PROMOTE YOUTH EMPLOYMENT.**

I will mention now the action policies which are responsible of the improving of the situation, as it is reflected in the precedent data.

*Shock Plan for Youth Employment 2019-2021.*

*The Shock Plan for Youth Employment 2019-2021 is aimed at one of the priority groups for employment policies and continues to be implemented to this day.*

#### **YOUTH WARRANTY PLAN PLUS**

*On June 8, 2021 the Youth Guarantee Plan Plus “decent work for young people” was approved. So is applied the Recommendation of the EU Council of October 30, 2020, “A bridge towards employment: reinforcement of the Youth Guarantee ”. This new Recommendation is extended to a new period 2021-2027, coinciding with the multiannual financial framework of the European Union.*

#### **MEASURES FOR LONG-TERM UNEMPLOYED**

*Plan Reincorpora-t*

*It is a three-year Plan (2019-2021), to prevent and reduce Long-Term Unemployment approved on April 5, 2019.*

*Bonus for permanent hiring.*

*For the hiring of long-term unemployed, it is a discount of the employer's contribution to Social Security.*

#### **MEASURES TO CONTAIN THE EFFECTS OF THE HEALTH CRISIS.**

#### **GENERAL MEASURES.**

*Already in 2020, with the emergence of the COVID-19 crisis, various measures were adopted to contain the effects of the health crisis on the economy and for the protection of employment, with a triple objective: to reinforce the protection of workers, families and vulnerable groups; support continuity in productive activity and maintenance of employment; and strengthen the fight against the disease.*

*The fundamental measure was to prioritize the Temporary employment regulation file (ERTE) instead of the Employment regulation file (ERE). The latter is a measure to facilitate dismissal. The first, supports companies with concrete economic measures on the condition of maintaining their workforce.*

*The requirement of the contribution period for unemployment benefits was eliminated, and companies were exempted from paying 75% of the business contribution to Social Security (100% in companies with less than 50 workers). The compensation is the correlative commitment to maintain employment for at least 6 months after the worker's reinstatement.*

*For self-employed workers, an extraordinary benefit was created for cessation of activity or reduction of their turnover. Additionally, exemption from payment of Social Security fees.*

*For training contracts, the interruption of the calculation of the duration of temporary and training contracts was established, so as not to deprive the company of its ability to organize its resources or imply a loss of rights in the contracts for the workers.*

*All these measures were prolonged in successive months, as the pandemic developed, through regulations approved by the government in March, May, June and September 2020. The objective of these regulations was:*

- Facilitate the transition to the normal development of the business activity, gradually reincorporating the affected workers, prioritizing the reduction of working hours.*
- Maintain employment, by prohibiting the termination of labor relations*
- Extend the scope of protection measures based on workers and flexibility of employment at the pace of the adoption of new restrictive measures to contain the virus.*

*Along with these large measures, other complementary measures were adopted: extraordinary subsidies for certain groups, compatibility of unemployment benefit with the performance of agricultural tasks, flexibility of professional training for employment in the workplace and incentives for tourism and hospitality activity , seriously affected by the health distancing measures.*

## **MEASURES AIMED AT SPECIFIC SECTORS OF WORKERS**

*Exceptional measures for domestic workers and temporary contracts.*

*In May 2020, an extraordinary subsidy was established for people integrated in the Special System of Household Employees, as well as an exceptional unemployment subsidy for the end of temporary contract.*

*Agricultural sector workers.*

*A Royal Decree-Law of April 7, 2020 declared the unemployment benefit compatible with the performance of agricultural tasks, in order to favor temporary hiring in this sector.*

*It also allowed migrant workers to join this system.*

*Training for employment.*

*In order to continue with professional training for employment, it was allowed to suspend face-to-face educational activity, replacing it with distance and online modalities.*

*Tourism and hospitality sectors*

*Since March 2020, urgent measures are taken to respond to the economic impact of COVID-19, and, again in July: a 50% discount on Social Security business contributions.*

**REMOTE WORK.**

*In September 2020, by Royal Decree-Law 28/2020, the non-face-to-face work modality begins to be regulated to allow the continuity of work activity without having to go to the workplace.*

**GENERAL ACTIVATION STRATEGY FOR EMPLOYMENT**

*The COVID-19 crisis has also been taken into account when preparing the Spanish Activation Strategy for Employment, which will succeed the Strategy for the period 2017-2020. The new Strategy will follow the priorities set in the national and European plans for economic and social reconstruction and will include the recommendations made to Spain within the European Semester.*

**RECOVERY, TRANSFORMATION AND RESILIENCE PLAN.**

*In 2021, the new employment policies have begun to articulate through the Recovery, Transformation and Resilience Plan. This will allow executing the financial resources of the European Recovery Fund (European Recovery Instrument), the central element of which is constituted by the Recovery and Resilience Mechanism. It will make it possible to carry out the necessary structural reforms aimed at changing the production model for the recovery of the economy after the crisis caused by COVID-19. After its approval by the Council of Ministers, the Plan was positively evaluated by the European Commission on June 16, 2021.*

*This Component includes, in terms of active employment policies, the following investments: Youth Employment; Employment Women; Orientation and Entrepreneurship; Acquisition of new skills for digital, green and productive transformation; New territorial Projects for rebalancing and equity; and Governance of the promotion of the National Plan for Active Employment Policies. In addition, the simplification of contracts with the generalization of the indefinite contract, the reinforcement of the causality of temporary contracts and the reform of training contracts, the review of incentives for hiring and the establishment of a permanent mechanism of internal flexibility , job stability and requalification of workers in transition”.*

56. The Governmental Committee welcomed the information provided, as positive and encouraging, invited the authorities to include it in its next report and decided to await the next assessment by the ECSR.

**Article 15§1 ESC – to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private.**

57. The Secretariat presented the main criteria used by the European Committee of Social Rights to assess compliance with Article 15§1 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 specialized bodies, public or private.

58. The questions posed for this cycle of supervision focused exclusively on the education of children with disabilities.

59. In order to assess the effective equal access of children with disabilities to education, the Committee needs 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.

**ESC 15§1 Poland**

60. The ECSR concluded that the situation in Poland was not in conformity with Article 15§1 of the 1961 Charter on the ground that the right of children with disabilities to mainstream education was not effectively guaranteed.

61. The Secretariat explained that the Conclusion XXII-1 is based on unfavourable statistical data as regards access of children with disabilities to mainstream education. Previously the situation was found to be in conformity with the Charter, however, in Conclusions XIX-1 the Committee concluded that the situation in Poland was not in conformity with Article 15§1 of the Charter on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training. The GC examined the situation in 2018. It noted information on various measures taken to address the problem, invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR.

62. The representative of Poland presented the following information:

*L'évaluation de la situation en Pologne est basée sur une interprétation du paragraphe 1 de l'article 15 qui brouille la différence entre le contenu des dispositions de la Charte de 1961 et de la Charte révisée. Plus concrètement, il résulte de cette interprétation que les Etats qui ont ratifié la Charte de 1961 ont les obligations concernant l'éducation au lieu d'obligations dans le domaine de la formation professionnelle.*

*La partie introductive à l'article 15 de la Charte révisée fait référence au droit des personnes handicapées à l'indépendance, à l'intégration sociale et à la participation à la vie sociale. Par conséquent, son paragraphe 1 établit l'obligation d'assurer aux personnes handicapées une éducation et une formation professionnelle. L'article 15 de la Charte de 1961 se limite à l'emploi des personnes handicapées. Le paragraphe 1 prévoit proprement l'obligation de fournir des moyens de formation professionnelle.*

*La différence est claire. Certes, étant donné l'évolution de la politique à l'égard des personnes handicapées, le champ d'application de cette disposition de l'ancienne Charte paraît très restreint. Néanmoins, ce problème ne peut pas être résolu en interprétant librement la Charte.*

*Cette modification d'obligations a entraîné une déclaration faite par la Pologne au Comité des Ministres du Conseil de l'Europe en 2012 portant sur la question plus générale de l'interprétation de la Charte et sur la question particulière de son article 15, paragraphe 1. La Pologne a déclaré qu'elle respectera cette disposition et présentera les rapports sur sa mise en œuvre conformément à ce que prévoit la Charte sociale européenne. Cette précision figure dans chaque rapport sur la mise en œuvre de l'article 15, sans toutefois déclencher une quelconque réaction de la part du Comité d'experts indépendants, ce que nous déplorons. En marge de mes observations il faut se poser la question quelles sont les règles d'interprétation de la Charte.*

*Pour nous et je crois que pour toutes les Parties à la Convention de Vienne sur le Droit des Traités de tels principes pose son article 31 qui stipule très clairement dans son paragraphe 1 que, je cite*

*« un traité doit être interprété de bonne foi suivant le sens ordinaire à attribuer aux termes du traité dans leur contexte et à la lumière de son objet et de son but » fin de citation*

*Il en ressort que l'imposition de la compréhension du terme « formation professionnelle » comme « éducation », en particulier dans le contexte clair de l'article 15 de la Charte de 1961, n'est pas acceptable.*

*Ce que je viens de dire était nécessaire pour définir le cadre pour l'évaluation de la mise en œuvre de l'article 15 paragraphe 1 par la Pologne.*

## *2/ Conclusion négative – position*

*Le Comité a conclu que la Pologne ne met pas en œuvre cette disposition correctement parce que le droit des enfants handicapés à l'éducation dans les écoles ordinaires n'est pas effectivement garanti. En concluant ainsi le Comité a fait référence au contenu de la disposition de la Charte révisée et non pas au contenu de celle de la Charte de 1961.*

*De plus, cette conclusion repose principalement sur les informations et les données statistiques qui ne figuraient pas dans le rapport polonais.*

*Ce rapport contenait les informations sur la formation professionnelle, y compris l'accessibilité, les modifications introduites au système de formation professionnelle et l'accès à l'enseignement supérieur. Des travaux en cours sur un nouveau modèle d'éducation professionnelle des élèves ayant des besoins éducatifs particuliers ont été présentés. Il convient de rappeler que les informations de même étendue, présentées lors du cycle de contrôle précédent, ont permis au Comité d'évaluer positivement la mise en œuvre de cette disposition.*

*Pour permettre au Comité gouvernemental d'apprécier la mise en œuvre de l'article 15 paragraphe 1 de la Charte de 1961 par la Pologne je voudrais compléter les informations contenues dans notre rapport par des informations sur les mesures adoptées récemment et celles qui sont mises au point.*

*Le rapport a indiqué qu'en 2017, les travaux ont été entrepris sur un nouveau modèle d'éducation des élèves ayant des besoins éducatifs particuliers, dans le cadre d'une vaste réforme du système éducatif. Le but était, entre autres, d'améliorer la qualité de la formation professionnelle, afin d'assurer la meilleure préparation possible des jeunes handicapés à l'indépendance et à l'inclusion dans la vie sociale et professionnelle. En 2018, les instruments juridiques de base ont été modifiés. Outre les changements concernant l'organisation de la formation professionnelle dans le cadre du système scolaire et les matières enseignées, ont été introduites les mesures améliorant l'accessibilité et l'accompagnement, encourageant ou facilitant ainsi l'enseignement dans des écoles professionnelles générales.*

*La Stratégie pour les personnes handicapées de 2021 à 2030, adoptée en février 2021 prévoit des solutions qui développent le système existant. En ce qui concerne la formation professionnelle initiale, la Stratégie propose des solutions relevant de l'éducation inclusive ainsi que concernant la préparation à l'entrée sur le marché du travail et l'orientation professionnelle. Le développement de partenariats des écoles professionnelles et des universités avec les employeurs et les institutions du marché du travail sera soutenu. Des activités seront mises en œuvre pour accroître l'implication active des jeunes handicapés dans le choix d'une carrière et l'acquisition des compétences. Pour accompagner la transition entre les étapes particulières de la formation et du système éducatif au marché du travail, un dispositif a été prévu.*

*Un autre volet important de la Stratégie est la formation des personnes handicapées tout au long de la vie professionnelle. Dans ce cadre, des mesures ont été prévues pour l'extension de l'offre d'éducation, de formation et de développement professionnel.*

*La fourniture des informations sur l'ensemble d'offre des formations organisées par les institutions du marché du travail, les organisations non gouvernementales et le système éducatif sera assurée, sous forme accessible, pour faciliter ou inciter à la formation.*

*Le soutien de la part des experts du Fonds National de Réadaptation des Personnes Handicapées sera largement proposé aux institutions du marché du travail, aux organisations non gouvernementales et aux centres de conseil psychologique et pédagogique. Les mesures que je viens d'indiquer de façon plutôt générale, sont présentées dans la Stratégie sous une forme détaillée, c'est à dire sous forme de programmes et de projets, ainsi que complétées par les indicateurs de leur mise en œuvre, les précisions sur la période de mise en œuvre, les institutions responsables et, c'est qui est particulièrement important, les sources de financement.*

*Le prochain rapport apportera les informations détaillées sur ces mesures, leur mise en œuvre et les résultats”.*

63. The Chair asked the Secretariat, if it could present the standpoint of the ECSR on the matter.

64. In reply, Mr. Henrik Kristensen, the Deputy Head of the Department of the European Social Charter and the European Code of Social Security, gave a following statement:

*“When making its legal assessments, the ECSR interprets the Charter on the basis of a dynamic and teleological approach. Taking its cue from the Vienna Convention on the Law of Treaties, the ECSR interprets the treaty in the light of its object and purpose and in the light of the present-day context. This is also sometimes termed the living instrument doctrine.*

*As regards Article 15§1, it is correct that the 1961 Charter talks rather generally about the provision of “training facilities” whereas the Revised Charter version of this provision has introduced the more specific terms “guidance, education and vocational training”. However, the ECSR has for a very long time interpreted Article 15§1 of the 1961 Charter to cover also education for children with disabilities.*

*If you allow, I would like to quote a statement of interpretation on Article 15§1 included in the General introduction to Conclusions XVIII-2 from 2007 and addressed to the States Parties to the 1961 Charter, including Poland:*

*The ECSR stated as follows: “the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights”. Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.*

*So from this, I think it is quite clear why the ECSR considers education for children with disabilities to fall within the scope of Article 15§1 of the 1961 Charter and as I said it has proceeded on this basis in making its legal assessments of the situation in States for quite many years now, even before making the statement I just quoted. As a State Party Poland is of course entitled to its own reading of Article 15§1, but I don’t think this should be decisive for the Governmental Committee which should not be making legal interpretations of the meaning and scope of the Charter provisions.*

*I suppose you are all a little tired of discussing your Rules of Procedure by now, but I would refer you to Article 14 of those Rules according to which “the Committee 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.”*

*In other words, it seems to me that the GC should apply its normal working methods.*

*Having said that, the Secretariat will of course again bring the Polish position to the attention of the ECSR for possible future reference, however as indicated by the Polish delegate the*



*ECSR is well aware of the Polish position and has nevertheless maintained its interpretation. Of course, your Bureau also has the possibility of bringing this issue up in your regular meetings with the ECSR, should you consider it appropriate”.*

65. The representative of the Russian Federation stated that the ECSR cannot interpret 1961 Charter beyond its ordinary meaning.

66. The representative of Poland requested that the issue is presented at the meeting of the joint bureaus – the Bureau of the Governmental Committee and the Bureau of the ECSR. The Chair accepts this proposal.

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

***Article 18§2 1961 ESC - to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers.***

68. The Secretariat recalled that, according to the ECSR case-law, formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision. With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. In order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers. In addition, States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

**Article 18§2 ESC Iceland**

69. The ECSR concluded that the situation in Iceland was not in conformity with Article 18§2 of the 1961 Charter on the ground that the formalities for issuing work and residence permits had not been simplified.

70. The representative of Iceland presented the following information:

*“I must begin by informing the GC that by some mistake, the majority of the information which was provided regarding this case at our 2017 meeting was not included in the last report. Correspondingly, the ECSR’s conclusion does not appear to take that information into consideration in its conclusion. Furthermore, some of the information in the last report does not correctly reflect the current situation. I apologize for this oversight concerning the report. In this statement I will therefore underline some important clarifications concerning the case and inform you of recent developments that have taken place, both in law and in practice.*

*As was explained at the meeting in 2017 and in the last report, extensive legislative reform has taken place in this field, namely the entry into force of a new Act on Foreigners as well as of a new Regulation on the same subject in 2017. In connection with this legislative reform, amendments were also made to the provisions on work permits in the Act on Foreigners’ Right to Work.*

*In my intervention here today, I will first of all explain how the application procedure has been simplified and merged as far as possible into a “one-stop-shop” procedure while maintaining an active role of both the Directorate of Immigration and the Directorate of Labour in the process. I will also explain why the Icelandic Government believes that it’s important to include both Directorates in the process. Secondly, I will provide updated information regarding the current processing time for residence and work permits. Finally, I will explain the reform which has taken place concerning the possibility of applying for residence and work permits from within the country and the reasoning behind the current system.*

*In the first place, as regards the statement in the question of whether work and residence permits are issued through two distinct procedures, it should be emphasised that steps have in fact been taken to merge and simplify the application procedure for residence and work permits as far as possible into a single procedure, in the spirit of a “one-stop-shop” system, while nevertheless maintaining an active role of both institutions in the application process. The procedure makes it possible for an applicant to obtain residence and work permits at the same time and through a single application process which is as follows. The applicant applies for both permits at the same time by filling out the application for a residence permit and then the application for a work permit, which is attached to the residence permit application. Both applications are then simultaneously submitted to the same body, the Directorate of Immigration, rather than to two separate bodies.*

*Thus, Article 19(1) of the Foreign Nationals’ Right to Work Act now explicitly states that an application for a temporary work permit shall be submitted to the Directorate of Immigration, which then forwards it to the Directorate of Labour for processing. The explanatory notes to this provision state that this applies regardless of whether an application for a work permit is being submitted for the very first time or whether it’s an application for the renewal of a work permit. The explanatory notes furthermore state that the aim of this amendment was to clarify in law that this is in fact the procedure, as it has been the practice for decades that all applications for temporary work permits in Iceland are submitted to the Directorate of Immigration, not the Directorate of Labour.*

*So, the established practice in this area, that is in cases where a residence permit is dependent on the granting of a work permit (meaning in cases where work permits are granted based on either shortage of labour or for a job in which special skills are required) is that the Directorate of Immigration first confirms that the basic requirements for a residence permit are met, and if so, forwards the application for a work permit electronically*

*to the Directorate of Labour along with all the relevant documents. The Directorate of Labour subsequently examines whether the conditions are met to grant a work permit and notifies the Directorate of Immigration its decision. If the work permit is granted, the Directorate of Immigration completes the approval process by issuing a residence permit on the grounds of employment.*

*Thus, applications for work and residence permits are not submitted to two different governmental bodies, only to the Directorate of Immigration. Correspondingly, one single certification, i.e. the residence permit card, is issued by the Directorate of Immigration, for both work and residence permits, although the certification is based on two administrative decisions.*

*During the legislative reform of the Act on Foreigners and the Act on Foreign Nationals' Right to Work in 2016, the government considered carefully whether the Directorate of Immigration should be made responsible for the processing of applications for both work and residence permits. The government decided against such a procedure, on the basis that the expertise of the Directorate of Labour in labour market affairs is necessary to process applications for work permits that are dependent on the current situation on the labour market, such as temporary work permits due to labour shortage or for a job that requires expert knowledge. In that regard, it must be kept in mind that the Icelandic labour market is relatively small compared to many other countries, only amounting to around 200.000 participants. As such, is easily affected by external factors and is sensitive to fluctuations in labour market participation. It is therefore particularly important to call on the expertise of the Directorate of Labour to assess the situation on the labour market and shortage of labour.*

*Even in cases where the granting of a work permit is not based primarily on the current situation of the labour market, the expertise knowledge of the Directorate of Labour in labour market affairs nevertheless proves to be very important. In practice, the Directorate of Labour examines specifically whether the employment contract, upon which the application for a work permit is based, is in conformity with the relevant legislation and collective agreements. This is considered particularly important since foreign workers are more likely to become victims of violations of labour law, including labour trafficking. The Directorate of Labour therefore has the role of ensuring that their employment contracts, salaries etc. are in conformity with Icelandic labour law and the relevant collective agreements. This also strengthens the Directorate of Labour in its monitoring role of the labour market by enabling it to carefully monitor the situation of foreign workers in Iceland.*

*It should also be stressed that the Directorate of Labour does not investigate the personal situation of the applicant, since that is the Directorate of Immigration's responsibility. So, the two different bodies do not examine the same things, ask the same questions, or request the same documents, which would obviously complicate and lengthen the procedure. The role of the Directorate of Labour is simply to examine the current situation on the labour market as well as the situation of the prospective employer and employment contract that is to be made.*

*Based on this reasoning as a whole, the decision was therefore made to maintain an active role of both bodies in the application process, but based on a one-stop shop system for the applicant's convenience, enabling the applicant to apply for both permits at the same time by submitting both applications to the Directorate of Immigration*

*It should also be emphasised that this manner of procedure does not result in a longer than necessary processing time of applications. The average total processing time for both applications is 46 days, not 180 days as was said in the last report. This includes the processing time of the Directorate of Labour. This is the total average time for first-time permits and renewals and includes cases that have taken a longer than usual time to process due to a lack of information or documents. For first-time applicants, the average processing time of applications is 34 days. That includes priority applications with an expedited processing time, which typically only take around 22 days to process. Such applications make up 84% of first-time applications. Renewal applications on the other hand take a total average of 55 days to process. Around 8% of renewal applications are priority applications with an expedited processing time, which only take an average of 11 days to process.*

*It is the view of the Icelandic government that the processing procedure runs quite smoothly irrespective of the involvement of two governmental bodies, and that the active involvement of both Directorates in the process is very important.*

*Finally, as regards the possibility of submitting applications from within Iceland, a new rule was introduced in 2017 under Article 51 of the Act on Foreigners, according to which applicants for residence permits for work requiring expert knowledge, residence permits for athletes or residence permits for qualified professionals on grounds of collaboration and service contracts, can now file their application while they are in Iceland. This is provided that the applicant has permission to stay in the country based on a valid visa or while the applicant enjoys an exemption from needing a visa for entry into Iceland. The same applies if the applicant is exempt from needing a visa for entry into Iceland, if the person is the spouse or cohabiting spouse or child of an Icelandic or Nordic national or a foreign national who has a residence permit or if cogent considerations of fairness so demand. In these cases, therefore, applications can be filed while the applicant is in Iceland.*

*It is only in the case of individuals, who are not exempted from the obligation to carry a visa on arrival to Iceland and who apply for residence permits on grounds of shortage of workers that an application for a residence permit has to be submitted from outside the country. This is in line with the processing of a Schengen Visa application which is rejected if the applicant does not intend to leave the country before or on the expiry date of the issued Schengen Visa. Nonetheless, everyone can apply for a renewal within the country, if the residence permit type is renewable and it is applied for before the residence permit expires.*

*Moreover, an amendment was made in 2017 to Article 19(1) of the Foreign Nationals' Right to Work Act. The provision now states that an application for a temporary work permit can be submitted while the foreign national in question is in Iceland if he/she already has a residence permit to stay in Iceland. The aim of this amendment was, to make it easier for employers to hire foreign nationals already staying in Iceland, for example in cases where the person has come to Iceland for an interview, so that the person does not have to leave the country for the sole purpose of the application being filed.*

*On a final note, I should mention that a new coalition government was formed in Iceland only two weeks ago, on the 28th of November, following Parliamentary elections in September. The Agreement on the Platform for the Coalition Government, which provides the framework for the government's actions during the coming four-year election period, states that:*

*„The Act on Foreign Nationals and the Act on Foreign Nationals’ Employment Rights will be reviewed with the aim of increasing efficiency by simplifying processes and expanding provisions on the issuance of residence permits based on employment. Persons granted a residence permit in Iceland on humanitarian grounds or due to special ties with the country will be exempted from the requirement of a work permit. The social partners will be consulted in this work.“*

*It furthermore states that:*

*„The application process for residence and work permits will be simplified for individuals performing jobs that require specialist knowledge.“*

*Further legislative reform in this field is therefore envisaged in the next four years.*

*With me here today are representatives from both the Directorate of Immigration and the Directorate of Labour to answer any questions you may have”.*

71. The representative of the ETUC stated that the provided information was comprehensive but it had already presented at the 136<sup>th</sup> meeting of the Governmental Committee. The only new information he could identify was that a potential review was envisaged but it was not sure in which direction it would develop and whether it sufficed to remedy the situation. At the same time, he pointed, it was a third conclusion of non-conformity on this ground.

72. The Chair also expressed his view that it was an old case and that most of the information is the same as already assessed by the Governmental Committee.

73. The representative of Ireland, supported by numerous delegations, stated that the presentation was very comprehensive and clear and that, according to the representative of Iceland, the ECSR has not yet seen it. He suggested that the next assessment of the ECSR should be awaited first.

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

## APPENDIX I

### List of participants

- (1) 142<sup>nd</sup> meeting, hybrid, 10-12 May 2021  
(2) 143<sup>rd</sup> meeting, hybrid, 13-17 December 2021

#### List (1)

### List of participants

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**10-12 May 2021**  
*Hybrid*

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## Appendix II

### Table of signatures and ratifications

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints' procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	<b>26/02/03</b>	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	<b>03/11/99</b>	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	<b>25/06/1997</b>	
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	<b>06/05/1976</b>		
Turkey	06/10/2004	27/6/2007	
Ukraine	07/05/1999	21/12/2006	
United Kingdom	07/11/1997	<b>11/07/62</b>	

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 TURKEY
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 TURKEY

##### 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 TURKEY

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 TURKEY

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 Turkey
- 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
Turkey	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

### (RESC + ESC) Conclusions 2020/XXII-2: 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

### Warnings and Recommendations (RESC + ESC)

#### 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 Turkey

#### Renewed Recommendation(s)

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#### Warnings<sup>6</sup> (RESC + ESC)

##### *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.

##### **TURKEY**

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<sup>6</sup> If a warning follows a notification of non-conformity, it serves as an indication to the state that, unless it takes measures to comply with its obligations under the Charter, a recommendation will be proposed in the next part of a cycle where this provision is under examination.

- 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.

##### **TURKEY**

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.