Dear Members,

The next session of the Governmental Committee of the European Social Charter and the European Code of Social Security will take place from 30 September to 4 October 2013 in Strasbourg (France). Please find in Annex I the list of IOE European Members who have ratified the Social Charter.

The Governmental Committee is the Council of Europe body composed of one representative from each of the Contracting Parties plus two representatives from international organisations of employers and workers (with the status of observers). It meets twice per year to discuss the reports of non-conformity with the Charter referred to by the Committee of Social Rights.

The IOE will participate in the discussions and have the opportunity to communicate observations from national organisations concerning the non-conformity of Member States with the provisions of the European Social Charter, as well as the application of the European Code of Social Security.

The IOE will be the only institution at this meeting to defend and voice the interests of the business community.

Please also find attached the programme for the meeting (Annex II) which includes the articles to be dealt with in the session; the conclusions of the Committee of Social Rights (Annexes III and IV); and a list of the cases of non-conformity as determined by the Committee of Social Rights that will be specifically discussed during this meeting (Annex V).

We would be grateful if you could provide to the undersigned, Alessandra Assenza (assenza@ioe-emp.org), by Tuesday 24 September at the latest, any comments on your national situation that you would like to have conveyed before the Committee.

Do not hesitate to contact me should you need further information.

Best regards,

Alessandra Assenza

IOE Adviser
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<tr>
<th>STATES WHO HAVE RATIFIED THE EUROPEAN SOCIAL CHARTER</th>
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<td>Turkey</td>
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<td>Ukraine</td>
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<td>United Kingdom</td>
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Strasbourg, 26 July 2013
GC(2013)13 prov

128th meeting
(Strasbourg, 30 September – 4 October 2013)
(Council of Europe, Agora, room G.02)

DRAFT ANNOTATED AGENDA/
ORDER OF BUSINESS
MONDAY 30 SEPTEMBER, MORNING (9.30 am - 12.30 pm)

GENERAL ITEMS

I Opening of the meeting by the Chair

The meeting will be opened by the Chair of the Committee, Mme Jacqueline MARECHAL.

II Adoption of the draft agenda and the draft annotated agenda/order of business

The Committee is invited to adopt the draft agenda and the draft annotated agenda/order of business

III Information of general interest to the Committee

The Secretariat will present information of general interest to the Committee.

IV Adoption of the meeting report of the 127th meeting of the Governmental Committee

The Committee is invited to adopt the report of the 127th meeting.

V Election of the Chair and the Bureau

The Committee is invited to elect its Chair and its Bureau for the period 2014 - 2015.

VI Situation of States which did not submit a report with the fixed deadline

The Committee should encourage all member States to respect the fixed deadlines when sending their reports.

MONDAY 30 SEPTEMBER, AFTERNOON (2.00 pm to 5.30 pm)

EUROPEAN SOCIAL CHARTER

VII Continued examination of national situations relating to:


and

Conclusions 2012 – European Social Charter (ESCR)

- Article 1 – The right to work
- Article 9 – The right to vocational guidance
- Article 10 – The right to vocational training
- Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community
- Article 18 – The right to engage in a gainful occupation in the territory of other Parties
- Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
- Article 24 – The right to protection in cases of termination of employment
- Article 25 – The right of workers to the protection of their claims in the event of insolvency of the employer

**ADDENDUM**

The cases listed below are A situations (Conclusions of non-conformity for the first time) of such an importance that the Committee decided at its 127th meeting to consider them as B situations (Renewed conclusions of non-conformity) requiring a special oral examination at the 128th meeting.

<table>
<thead>
<tr>
<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>1§2</td>
<td>Azerbaijan, Bulgaria, Croatia, Germany, Latvia, Luxembourg, Moldova, Spain, “The former Yugoslav Republic of Macedonia”, Turkey</td>
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</tbody>
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**TUESDAY 1 OCTOBER, MORNING (9.30 am - 12.30 pm)**

A situations considered as B situations (continued)

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<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>15§1</td>
<td>Andorra, Belgium, Hungary (ADD), Moldova, Slovenia</td>
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<tr>
<td>15§2</td>
<td>Andorra, Cyprus, Greece, Hungary (ADD), Netherlands</td>
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</tbody>
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**TUESDAY 1 OCTOBER, AFTERNOON (2.00 am - 5.30 pm)**

A situations considered as B situations (continued)

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<th>Articles</th>
<th>States concerned</th>
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<tbody>
<tr>
<td>15§2</td>
<td>Slovak Republic, Slovenia, “The former Yugoslav Republic of Macedonia”</td>
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<tr>
<td>15§3</td>
<td>Andorra, Armenia, Cyprus, Georgia</td>
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<tr>
<td>20</td>
<td>Azerbaijan, Bulgaria, Moldova, Turkey</td>
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**WEDNESDAY 2 OCTOBER, MORNING (9.30 am - 12.30 pm)**

All the up-coming cases are B situations (Renewed conclusions of non-conformity)

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<tr>
<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>1§2</td>
<td>Netherlands in respect of Aruba (ADD)</td>
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<tr>
<td>15§1</td>
<td>France, Moldova, Slovak Republic, Denmark, Iceland, Luxembourg, “The former Yugoslav Republic of Macedonia”</td>
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**WEDNESDAY 2 OCTOBER, AFTERNOON (2.00 pm - 5.30 pm)**

*B situations (Renewed conclusions of non-conformity) (continued)*

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<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>15§2</td>
<td>Armenia, Belgium, Moldova, Slovak Republic, Iceland, Luxembourg</td>
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<tr>
<td>15§3</td>
<td>Estonia</td>
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**THURSDAY 3 OCTOBER, MORNING (9.30 am - 12.30 pm)**

*B situations (Renewed conclusions of non-conformity) (continued)*

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<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>18§1</td>
<td>France, Italy</td>
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<tr>
<td>18§2</td>
<td>Slovak Republic, Turkey</td>
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<td>18§3</td>
<td>Romania, Turkey, United Kingdom</td>
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**THURSDAY 3 OCTOBER, AFTERNOON (2.00 pm - 5.30 pm)**

*B situations (Renewed conclusions of non-conformity) (continued)*

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<th>Articles</th>
<th>States concerned</th>
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<tr>
<td>20</td>
<td>Portugal, Slovenia, Czech Republic, Netherlands in respect of Aruba (ADD)</td>
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<tr>
<td>24</td>
<td>Albania, Bulgaria, Cyprus, Italy, Malta</td>
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**FRIDAY 4 OCTOBER, MORNING (9.30 am - 12.30 pm)**

**VIII** Ways of streamlining and improving the reporting system of the European Social Charter

**GC(2013)15**

_Governmental Committee members are invited to finalise the debate on this issue on the basis of the written proposal drafted by the Secretariat. The document agreed upon will be submitted to the Committee of Ministers._

**FRIDAY 4 OCTOBER, AFTERNOON (2.00 pm - 5.30 pm)**

**IX** State of signature and ratification of the European Social Charter and its Protocols

_Representatives of the member States are invited to report on current developments in their respective countries with regard to the signature and/or ratification in particular of the Revised European Social Charter and the Protocol on the collective complaints procedure._

**X** Up-date of the list of International Non-Governmental Organisations (INGOs) entitled to submit collective complaints

**GC(2013)16**

_An up-dated list of INGOs entitled to submit collective complaints will be submitted to the Committee with a view to its adoption._
XI  Reports of Governmental Committee representatives attending other Council of Europe activities

Reports will be given on the 2nd meeting of the Committee of Experts on the rights of people with disabilities (CS-RPD) which took place from 12 to 14 June 2013 in Strasbourg and on the 26th session of the European Committee for Social Cohesion (CDCS) which took place from 25 to 27 September 2013 also in Strasbourg.

XII  Dates of up-coming meetings of the Governmental Committee and its Bureau

1. Bureau meeting: 28 November 2013
2. 129th meeting of the Governmental Committee: 19 - 23 May 2014
3. 130th meeting of the Governmental Committee: 28 September – 3 October 2014

The dates of the Bureau and of the Governmental Committee meetings are proposals which have to be confirmed.

XIII  Any other business

1. The Committee is invited to discuss the draft reply prepared by the Secretariat on the Parliamentary Assembly Recommendation 2020 (2013) with a view to its adoption.
   
   GC(2013)17

2. Representatives of the member States are invited to raise other items, which they would like share with the Committee as a whole.
Strasbourg, 19 March 2013

GC(2013)4

EUROPEAN SOCIAL CHARTER AND EUROPEAN CODE OF SOCIAL SECURITY
GOVERNMENTAL COMMITTEE

European Social Charter
Conclusions 2012


Austria, Croatia, Czech Republic, Denmark, Germany, Greece, Iceland, Latvia, Luxembourg, Poland, Spain, “The former Yugoslav Republic of Macedonia” and the United Kingdom

Conclusions 2012 – Social Charter (RESC)

Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands (incl. Aruba, Curacao, St Maarten and the Caribbean part), Norway, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Turkey and Ukraine

WORKING DOCUMENT
Articles 1, 9,10,15,18, 20, 24 and 25
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A. PRESENTATION OF THE CONCLUSIONS

1. The Committee's findings
2. The Committee's statement of interpretation and general questions

B. LATE SUBMISSION OF THE REPORTS

PART II CASES OF NON-COMPLIANCE

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Article 1§2 – Freely undertaken work; (non-discrimination, prohibition of forced labour, other aspects)
Article 1§3 – Free placement services
Article 1§4 – Vocational guidance, training and rehabilitation
Article 9 – Right to vocational guidance
Article 10§1 – Technical and vocational guidance training; access to higher technical and university education
Article 10§3 - Vocational training and retraining of adult workers
Article 10§4 – Long term unemployed persons
Article 10§5 – Full use of facilities available
Article 15§1 – Vocational training for persons with disabilities
Article 15§2 – Employment of person with disabilities
Article 15§3 – Integration and participation of persons with disabilities in the life of the community
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Part I: GENERAL OBSERVATIONS

A. PRESENTATION OF THE CONCLUSIONS

In 2012 the Committee examined state reports on the application of provisions belonging to the thematic group “Employment, training and equal opportunities”: the right to work (Article 1); the right to vocational guidance (Article 9); the right to vocational training (Article 10); the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15); the right to engage in a gainful occupation in the territory of other Parties (Article 18); the right to equal opportunities between women and men (Article 20); the right to protection in cases of termination of employment (Article 24); and the right of workers to the protection of their claims in the event of the insolvency of their employer (Article 25).

The deadline for the submission of reports was 31 October 2011. Reports on the Charter were presented by Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Turkey and Ukraine. Reports on the 1961 Charter were presented by Austria, Croatia, Czech Republic, Denmark, Germany, Greece Iceland, Latvia, Luxembourg, the Netherlands in respect of the Caribbean part and Curacao, Poland, Spain “the former Yugoslav Republic of Macedonia” and the United Kingdom.

Only Hungary did not submit a report on time, and the Netherlands failed to submit a report in respect of Aruba and St Maarten.

1. The Committee’s findings

The Committee published its Conclusions 2012 and XX-1 on 29 January 2013. adopted a total of 622 conclusions in respect of the 42 countries including 155 findings of violations of the Charter. A significant number of conclusions were deferred (168 deferrals in total or 27%) for lack of information.

The substantive findings of the Committee cover a very wide spectrum of situations related to while the many specific findings do not lend themselves to brief and simplistic categorisation, certain typical or recurring problems of conformity nevertheless stand out:

♦ The right to work and equal opportunities

Given the economic crisis it is perhaps not surprising that the Committee found a
number of countries to be in breach of Article 1§1 which obliges States to pursue a policy of full employment and to adequately assist the unemployed. 13 States: were found not to have demonstrated that their efforts in terms of job creation, training and assistance for the unemployed were adequate in the light of the economic situation and the level of unemployment.

Under Article 1§2 the Committee found 22 States are not in conformity with this provision. The majority of the violations concern excessive restrictions on the access of foreigners to employment, in particular in the civil service, but in some cases also in certain specific occupations.

Legislation not adequately prohibiting discrimination on grounds other than sex were found in some countries, for example the scope of the existing legislation is too restrictive, upper limits on compensation in discrimination cases do not ensure full reparation in all cases, the law does not provide for proper adjustment of the burden of proof in discrimination cases. Some countries do not adequately prohibit discrimination on certain grounds.

Discrimination in the labour market on grounds of sex, which is examined primarily under Article 20 on equal opportunities for men and women remains a problem issue in some countries. The Committee found 5 countries to be in breach of the Charter because underground mining is prohibited for women. In certain countries equal pay comparisons outside the company directly concerned are not possible and in others the upper limits on compensation in sex discrimination cases were not compatible with the Charter as they might not in all cases guarantee full reparation making good the loss suffered and being sufficiently dissuasive.

♦ The right to vocational training

With respect to right to vocational training and access to university education the large majority of the violations found by the Committee concern discrimination of foreigners with respect to financial assistance and tuition fees. Thus, 18 countries were found to be in breach of Article 10§5 (10§4 under the 1961 Charter), typically due to length of residence requirements imposed on lawfully resident foreign students (such requirements are compatible with the Charter in respect of students who enter the country for the sole purpose of studying, but not for foreigners who are lawfully resident for other reasons). Within EU member states, EU citizens are in general exempt from these discriminatory requirements and so the problems identified concern largely nationals of those States Parties who are not members of the EU. In certain countries length of residence requirements apply not only to financial assistance, but also access to education and training as such, which constitutes a violation of Article 10§1.
The rights of persons with disabilities

Under Article 15§1 on guidance, education and training for persons with disabilities two problems in particular arose: inadequate or lacking legislation explicitly prohibiting discrimination in education and insufficient "mainstreaming" of persons with disabilities into general education schemes. 10 countries violated Article 15§1 on one or both of these grounds.

Also the access of persons with disabilities to employment (ordinary and sheltered) pursuant to Article 15§2 gave rise to many conclusions of non-conformity on discrimination-related grounds. In respect of 12 countries the Committee did not find it established that there was effective anti-discrimination legislation, including in some cases accompanied by non-respect for the obligation under this Charter provision to provide reasonable accommodation (workplace adaptation, etc.). The lack of effective remedies against discrimination was also a problem in a number of countries.

Finally, problems relating to discrimination were also predominant under Article 15§3 which concerns the social integration and participation of persons with disabilities. 5 countries did not comply with this provision either because anti-discrimination legislation, including effective remedies, covering all the areas required by the Charter (housing, transport, telecommunications, culture and leisure) had not been shown to exist or because it did not cover all these areas.

The right to engage in gainful employment in other States Parties

Although Article 18 is not a full-fledged guarantee of free movement of workers as it exists between the EU member states, and thus does not require States to grant entry into their territories, it is nevertheless a right that quite frequently comes into conflict with the increasingly restrictive immigration laws in the States Parties. 14 countries in total were found to violate one or more of the different provisions of Article 18 5 were not in conformity with Article 18§1 because they had not shown that existing rules on work permits are applied in a spirit of liberality (assessed on the basis of refusal rates for work permit applications).

Under Article 18§2 several countries had not undertaken the required simplification of work and residence permit regulations, for example due to the existence of a dual application procedure, in other countries fees and charges for permits were considered to be excessive.

Under Article 18§3 a number of countries were found to be in breach because a foreign worker’s residence permit may be revoked if he loses his job and the foreign worker may be obliged to leave the country as soon as possible.
One country was held to be in violation of **Article 18§4**. The Committee considered that the blanket prohibition law on leaving the country for a period of up to five years after having had access to data of special importance or to top secret data constituting a state secret was too restrictive and went beyond what could be justified under Article G of the Charter.

♦ **The right to protection in cases of termination of employment**

12 countries violated **Article 24** on the right to dismissal protection. The findings included such issues as the maximum amount of compensation in case of unlawful dismissal being inadequate, insufficient protection during probationary periods (several countries), no provision for reinstatement and no provision for adjustment of the burden of proof in unlawful dismissal cases, however perhaps the most notable development was a new statement of interpretation by the Committee according to which the termination of employment on the sole ground that the person has reached pensionable age cannot be considered a justified dismissal. Such dismissals are permitted by the law in several countries.

♦ **The right of workers to protection of their claims in the case of the insolvency of the employers**

The Committee found 5 countries to be in violation of **Article 25** for not guaranteeing adequate protection of workers' claims in the event of the insolvency of the employer.

2. **The Committee’s statement of interpretation and general questions**

**Statements of interpretation**

In accordance with its practice, the Committee in Conclusions 201 and XX-1 made several statements explaining and developing its interpretation of certain specific provisions of the Charter. The General Introduction thus contained the following statements of interpretation:

*Statement of interpretation on Article 1§2: prison work*

Prisoners’ working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination enshrined in the Committee’s case law, this supervision, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions).
Statement of interpretation on Article 1§2: workers’ right to privacy

The Committee notes that the emergence of the new technologies which have revolutionised communications have permitted employers to organise a continuous supervision of employees and in practice enable employees to work for their companies at any time and in any place, including their homes with the result that the frontier between professional and private life has been weakened. The result is an increased risk of work encroaching upon all reaches of private life, even outside working hours and outside the place of work. The Committee considers that the right to undertake work freely includes the right to be protected against interferences with the right to privacy. Therefore it is essential that the fundamental right of workers to privacy should be asserted within the employment relationship so as to ensure that this right is properly protected.

Statement of interpretation on Article 1§2: requirement to accept the offer of a job or training or otherwise lose unemployment benefit

The requirement for persons claiming unemployment benefit to accept the offer of a job or training or otherwise no longer be entitled to unemployment benefit should be dealt with under Article 12§1. However, the Committee takes due account of the Guide to the concept of suitable employment in the context of unemployment benefit drawn up by the Committee of Experts on Social Security of the Council of Europe at its 4th meeting, held in Strasbourg from 24 to 26 March 2009, and holds that the loss of benefit or assistance when an unemployed person rejects a job offer may constitute a restriction on freedom to work where the person concerned is compelled, on pain of losing benefit, to accept any job, notably a job:

• which only requires qualifications or skills far below those of the individual concerned;
• which pays well below the individual’s previous salary;
• which requires a particular level of physical or mental health or ability, which the person does not possess at the relevant time;
• which is not compatible with occupational health and safety legislation or, where these exist, with local agreements or collective employment agreements covering the sector or occupation concerned and therefore may affect the physical and mental integrity of the worker concerned;
• for which the pay offered is lower than the national or regional minimum wage or, where one exists, the norm or wage scale agreed on for the sector or occupation concerned, or where it is lower, to an unreasonable extent, than all of the unemployment benefits paid to the person concerned at the relevant time and therefore fails to ensure a decent standard of living for the worker and his/her family;
• which is proposed as the result of a current labour dispute;
• which is located at a distance from the home of the person concerned which can be deemed unreasonable in view of the necessary travelling time, the transport facilities available, the total time spent away from home, the customary working arrangements in the person’s chosen occupation or the person’s family obligations (and in the latter case, provided that these obligations did not pose any problem in the person’s previous employment);

• which requires persons with family responsibilities to change their place of residence, unless it can be proved that these responsibilities can be properly assumed in the new place of residence, that suitable housing is available and that, if the situation of the person so requires, a contribution to the costs of removal is available, either from the employment services or from the new employer, so respecting the worker’s right to family life and housing. In all cases in which the relevant authorities decide on the permanent withdrawal or temporary suspension of unemployment benefit because the recipient has rejected a job offer, this decision must be open to review by the courts in accordance with the rules and procedures established under the legislation of the State which took the decision.

*Statement of interpretation on Article 1§2: length of alternative service to replace military service*

The length of service to replace military service (alternative service during which persons are deprived of the right to earn their living in an occupation freely entered must be reasonable. The Committee evaluates whether the length of such replacement service is reasonable in view of the period of military service, whether it is proportionate and not excessive.

The Committee recalls in this respect Recommendation R(87)8 of the Committee of Ministers Regarding Conscientious Objection to Compulsory Military Service which provides that ‘Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits.’

The Committee notes that compulsory military service has been abolished by many States Parties in the past decade and that only a minority of States retain such a service.

The Committee has in the past stated that alternative service which is not more than 1.5 times the length of military service is in principle in conformity with the Charter. The Committee wishes now to further develop its case law, the question remains one of proportionality and reasonableness but the approach need to be more flexible and holistic. Where the length of military service is short the Committee will not necessarily insist on alternative service being not more than 1.5 times the length of military service. Nevertheless, the longer the period of military service is the stricter the Committee will be in evaluating the reasonableness of any additional length of the alternative service.
Statement of interpretation on Article 18 ($1 and §3) : The right to engage in gainful employment in the territory of the States Parties

Article 18 requires each State Party to ensure to the nationals of any other Party the effective exercise of the right to engage in a gainful occupation in its territory, by applying existing regulations in a spirit of liberality ($1), and by liberalising regulations governing the employment of foreign workers (§3). As the Committee has already observed, economic or social reasons might justify limiting access of foreign workers to the national labour market. This may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers.

The Committee considers to be also in conformity with Article 18 §§1 and 3, the fact that a State Party, in view of ensuring free movement of workers within a given economic area of European States, such as the EU or the EEA, gives priority in access to the national labour market not only to national workers, but also to foreign workers from other European States members of the same area. An example of such a situation can be found in the application of the so called “priority workers” rule, provided for by the EU Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment. This Resolution states inter alia that EU Member States will consider requests for admission to their territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower, or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market.

In this regard the Committee notes, however, that in order not to be in contradiction with Article 18 of the Charter, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market. Such a situation, deriving from the implementation of “priority rules” of the kind just mentioned, would not be in conformity with Article 18§1, of the Charter, since it would prove an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of foreign workers of a number of States Parties to the Charter. It would also be contrary to Article 18§3, since the State in question would not comply with its obligation to progressively liberalise regulations governing the access to the national labour market with respect to foreign workers of a number of States Parties to the Charter.

The Committee refers to its general questions below on Article 18§1 and 18§3 (EU/EEA States).
Statement of interpretation on Article 18§2: dues and charges

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that 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.

Statement of interpretation on Article 18§3: recognition of certificates, qualifications and diplomas

Article 18§3 requires each State Party to liberalise regulations governing the employment of foreign workers, in order to ensure to the workers from other States parties the effective exercise of the right to engage in a gainful occupation. The Committee considers that, in view of ensuring the effective exercise of this right, the States Parties’ engagement in liberalisation shall include regulations governing the recognition of foreign certificates, professional qualifications and diplomas, to the extent that such qualifications and certifications are necessary to engage in a gainful occupation as employees or self-employed workers.

A requirement that foreign worker be in possession of certificates, professional qualifications or diplomas issued only by national authorities, schools, universities, or other training institutions, without opening the possibility of recognising as valid and appropriate substantially equivalent certificates, qualifications or diplomas issued by authorities, schools, universities or other training institutions of other States parties, which have been obtained as a result of training courses or professional careers carried out within other States Parties, would represent a serious obstacle for foreign workers to access the national labour market, and an actual discrimination against non-nationals. For this reason the Committee, taking inspiration also from the example of the legislative and jurisdictional practice of EU institutions aimed at guaranteeing the right to establishment by the harmonization and mutual recognition of qualifications, considers it necessary that States Parties make efforts to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, progressively reducing the disadvantages for foreign workers to engage in a gainful occupation due to lack of recognition of foreign diplomas or professional qualifications.
substantially equivalent to those issued by national authorities, schools, universities or other training institutions. The Committee refers to its general question below on Article 18§3 (recognition of certifications, qualifications and diplomas).

*Statement of interpretation on Article 18§3: consequences of job loss*

The Committee observes that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they refer to the same case in question - whether or not to enable a foreigner to engage in a gainful occupation. However, in case a work permit is revoked before the date of expiry, either because the employment contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.

*Statement of interpretation on Article 20: equal pay comparisons*

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, the Committee requires that it be possible to make pay comparisons across companies. It notes that 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.

*Statement of interpretation on Article 24: on age and termination of employment*

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.
The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

Statement of interpretation on Article 25: Right of workers to the protection of their claims in the event of the insolvency of their employer

The Committee recalls that, in the event of the insolvency of their employer, workers' claims must be guaranteed by a guarantee institution or by any other effective form of protection. The appendix to the Charter stipulates, inter alia, the minimum amounts of wages and paid absence that must be covered depending on whether recourse is had to a "privilege system" (three months prior to the insolvency) or a "guarantee system" (eight weeks).

The Committee has consistently held that the term "insolvency" includes both situations in which formal insolvency proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of his creditors and situations in which the employer's assets are insufficient to justify the opening of formal proceedings (see for example Conclusions 2003, p. 199). In this respect, the Committee wishes to make it clear that a privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25. While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets. It serves no purpose to have a privilege when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations.

General Questions

The Committee addresses the following general question to all the States Parties inviting them to provide replies in the next report on the provisions concerned:
Article 1§2: workers’ right to privacy

The Committee asks for information in the next report on measures taken by States Parties to ensure that employers give due consideration to workers’ private lives in the organisation of work and that all interferences are prohibited and where necessary sanctioned.

Article 1§2: existence of forced labour in the domestic environment

The Committee would like to draw the States’ attention to the problem raised by domestic work and work in family enterprises, both different phenomena but both which may give rise to forced labour and exploitation, problems at the heart of ILO Domestic Workers Convention No. 189 (2011). Work in family enterprises may give rise to excessive working hours, failure to remunerate properly, etc. The Committee asks States Parties for information on the legal provisions adopted to combat these practices and the measures taken to supervise their implementation. As regards domestic work the Committee considers that such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned (see ECtHR judgments in *Siliadin v. France*, 26 July 2005, final on 26 October 2005, and in *Rantsev v. Cyprus and Russia*, 7 January 2010, final on 10 May 2010). Consequently, the Committee asks whether the homes of private persons who employ domestic workers are subject to inspection visits. It further asks whether penal law effectively protects domestic workers in case of exploitation by the employer and whether regulations offer protection against abuse, by requiring, for example, that migrant workers recruited in one State for the performance of domestic work in another State receive an offer of employment in writing or an enforceable employment contract in this last State. It finally asks whether foreign domestic workers have the right to change employer in case of abuse or whether they forfeit their right of residence if they leave their employer.
Article 18§1 (EU/EEA States)

The Committee asks all States Parties being EU/EEA member states to provide information in the next report on the number of work permits granted to applicants from non-EEA States, as well as on work permit refusal rate with respect to applicants from such States, as this information is relevant in order to assess the degree of liberality in applying existing regulations governing access to national labour market. In this regard, the Committee observes that an absence or an extremely low number of work permits granted to nationals of non-EEA States Parties to the Charter, together with a very high work permit refusal rate with respect to applicants from such States, due to the application of rules like the so called “priority workers” rule (according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower), would not be in conformity with Article 18§1, since it would indicate an insufficient degree of liberality in applying existing regulations with respect to the access to the national labour market of nationals of non-EEA States Parties to the Charter.

Article 18§3 (EU/EEA States)

The Committee asks all States Parties being EU/EEA member states to provide information in the next report on the number of applications for work permits submitted by nationals of non-EEA States, as well as on the grounds for which work permits are refused to nationals of non-EEA States parties to the Charter. In this respect the Committee observes that should refusals always or in most cases derive from the application of rules – like the so called “priority workers” rule –, according to which a State will consider requests for admission to its territories for the purpose of employment only where vacancies cannot be filled by national and Community manpower, determining as a consequence to discourage nationals of non-EEA States from applying for work permits, this would not be in conformity with Article 18§3, since the State would not comply with its obligation to liberalise regulations governing the access to national labour market with respect to nationals of non-EEA States parties to the Charter.

Article 18§3: recognition of certificates, qualifications and diplomas

The Committee asks States Parties to provide information in the next report about the measures eventually adopted (either unilaterally, or by way of reciprocity with other States Parties to the Charter) to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, with a view to facilitating the access to national labour market. Such information shall concern the category of dependant employees, as well as the category of self-employed workers, including workers wishing to establish companies, agencies or branches in order to engage in a gainful occupation.
Article 20: equal pay comparisons

The Committee asks whether legislation permits, in equal pay cases, comparisons of pay to be made outside the company directly concerned, and under what conditions.

Article 20: positive action measures

The Committee asks States Parties to provide information in the next report on positive action measures taken to promote gender equality in employment.

Statement on deferred conclusions

The Committee recalls that its assessments of national situations in accordance with Article 24 of the Charter as amended by the Turin Protocol give rise to two types of conclusions only: conclusions of conformity and conclusions of non-conformity. Having regard to the fact that the Committee in several cases had to defer its conclusion due to lack of information in the national report, it wishes to emphasize that the absence of the requisite information amounts to a breach of the reporting obligation entered into by the States Parties concerned under the Charter.
B. LATE SUBMISSION OF THE REPORTS

The State which did not submit a report on time and consequently for which there are no conclusions is Hungary. No report was submitted in respect of the Netherlands Aruba and St Marteen.

The table of dates of submission of State reports for Conclusion XX-1 and 2012 (reports to be submitted before 31 October 2011) appears below.

**Dates of submission of State reports for Conclusions XX-1 and 2012**

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LUXEMBOURG  12/06/2012  
ARMENIA  26/06/2012  
PORTUGAL  24/07/2012  
CZECH REPUBLIC  27/07/2012  
BULGARIA  31/08/2012  
ICELAND  08/10/2012  

Reports not yet submitted  
HUNGARY  
NL ARUBA  
NL ST MAARTEN
For the information of the Governmental Committee, the table of dates of submission of State reports for Conclusions XX-2 and 2013 (reports to be submitted before 31 October 2011), **updated 18 March 2013**, appears below:

**Dates of submission of State reports for Conclusions XX-2 and 2013**

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**Reports not yet submitted**

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### Summary of the Committee’s Conclusions

| Article | ALBANIA | ANDORRA | AZERBAIJAN | BELGIUM | BOSNIA AND HERZEGOVINA | CYPRUS | ESTONIA | FINLAND | FRANCE | GEORGIA | HUNGARY | IRELAND | LITHUANIA | MOLDOVA | MALTA | MONTEVIDEO | NETHERLANDS | NORWAY | PORTUGAL | ROMANIA | RUSSIAN FEDERATION | SERBIA | SLOVAKIA | SLOVENIA | SWEDEN | SWITZERLAND | TURKEY | UKRAINE |
|---------|---------|---------|------------|---------|-------------------------|--------|---------|---------|--------|---------|---------|---------|-----------|---------|------|-----------|------------|-------|---------|---------|----------|----------------|--------|---------|---------|--------|-------------|--------|---------|
| Article 1.1 | -       | +       | -          | +       | -                       | -      | +       | -       | -      | +       | -       | +       | +         | -       | -    | +          | -           | +     | -        | +        | -        | -            | +      | -       | +        | +       | +            | -      | -       |
| Article 1.2 | -       | 0       | -          | -       | -                       | 0      | -       | 0       | +      | -       | +       | -       | 0        | +       | -    | +          | 0           | -     | 0        | -        | -        | +            | -      | -       | +        | 0       | -            | -      | -       |
| Article 1.3 | -       | +       | 0          | +       | +                       | 0      | +       | +       | +      | +       | -       | +       | +        | +       | -    | +          | +           | -     | 0        | +        | -        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 1.4 | +       | -       | +          | -       | -                       | 0      | 0       | -       | 0      | +       | -       | +       | -        | 0       | -    | +          | -           | +     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 9   | +       | -       | +          | 0       | +                       | +      | -       | -       | -      | +       | -       | +       | +        | +       | +    | -          | +           | +     | +        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 10.1| +       | -       | +          | 0       | +                       | +      | +       | +       | 0      | 0       | +       | +       | +        | -       | +    | -          | -           | +     | 0        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
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| Article 10.3| +       | -       | -          | 0       | 0                       | -      | 0       | 0       | +      | +       | +       | 0        | 0       | -    | +          | -           | +     | 0        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 10.4| +       | -       | -          | +       | +                       | 0      | +       | +       | +      | +       | +       | +        | 0       | +    | +          | -           | -     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 10.5| +       | -       | -          | -       | -                       | -      | +       | +       | -      | +       | +       | +        | 0       | 0    | -          | -           | +     | +        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 15.1| -       | -       | 0          | -       | +                       | 0      | +       | 0       | +      | +       | 0       | +       | +        | +       | 0    | -          | -           | +     | 0        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 15.2| -       | -       | -          | +       | 0                       | +      | 0       | 0       | -      | +       | +       | +        | -       | 0    | -          | -           | -     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 15.3| -       | -       | 0          | -       | +                       | 0      | +       | 0       | +      | +       | 0       | +       | +        | +       | 0    | -          | -           | +     | 0        | +        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 18.1| +       | +       | -          | +       | +                       | 0      | -       | 0       | +      | +       | +       | +        | 0       | +    | -          | -           | -     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 18.2| -       | +       | +          | 0       | +                       | -      | 0       | 0       | -      | +       | +       | +        | 0       | +    | -          | -           | 0     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 18.3| +       | -       | +          | +       | +                       | +      | 0       | +       | -      | -       | 0       | 0       | 0        | -       | -    | +          | +           | 0     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 18.4| +       | +       | +          | +       | +                       | +      | +       | +       | +      | +       | +       | +        | 0       | +    | -          | -           | 0     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 20  | 0       | 0       | 0          | +       | -                       | -      | +       | +       | -      | 0       | 0       | 0        | 0       | -    | +          | -           | +     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 24  | -       | -       | +          | -       | 0                       | -      | 0       | 0       | -      | -       | 0       | 0        | 0       | 0    | -          | -           | -     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       |
| Article 25  | -       | -       | 0          | +       | +                       | 0      | -       | 0       | +      | 0       | -       | 0        | +       | 0    | +          | -           | 0     | 0        | -        | +        | +            | -      | -       | +        | +       | +            | -      | -       | +       | +       | +            | -      | -       |

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25
## CONCLUSIONS XX-1 (2012)

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26
### Member States of the Council of Europe and the European Social Charter

**Situation as of 1st January 2013**

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**Number of States** 47  \[ 2 + 45 = 47 \]  \[ 11 + 32 = 43 \]  15
The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

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

X State having recognised the right of national NGOs to lodge collective complaints against it.
PART II  CASES OF NON-COMPLIANCE

A. CONCLUSIONS OF NON-CONFORMITY FOR THE FIRST TIME

The Secretariat considered that the following situations of non-conformity have to be subject to a special examination by the Governmental Committee because of the serious character of the situation, the importance of the right concerned or because of the number of persons concerned. It has selected the following situations on the grounds that they all concern equality and non-discrimination issues.

1. RESC 1§2 AZERBAIJAN
   The Committee concludes that the situation in Azerbaijan is not in conformity with Article 1§2 of the Charter on the grounds that
   - there is no shift in the burden of proof in discrimination cases, and
   - the prohibition on foreign nationals being employed in the civil service goes beyond that permitted by the Charter.

2. RESC 1§2 BELGIUM
   The Committee concludes that the situation in Belgium is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on foreigners non-nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.

3. RESC 1§2 BULGARIA
   The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§2 of the Charter on the grounds that:
   - Nationals of States Parties to the European Social Charter which are not members of the European Union or of the European Economic Area may not be employed in public service posts, which constitutes discrimination on grounds of nationality;
   - the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;

4. RESC 1§2 REPUBLIC OF MOLDOVA
   The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§2 of the Charter on the grounds that:
   - It has not been established that discrimination on the ground of age is prohibited;
   - discrimination on the ground of sexual orientation is not prohibited;
   - nationals of other States Parties do not have access to civil service jobs;
5. **RESC 1§2 TURKEY**
The Committee concludes that the situation in Turkey is not in conformity with Article 1§2 of the Charter on the grounds that there is insufficient protection against discrimination in employment, in particular on grounds of age and sexual orientation.

6. **ESC 1§2 CROATIA**
The Committee concludes that the situation in Croatia is not in conformity with Article 1§2 of the Charter on the ground that the list of jobs which are barred to foreign nationals is too broad.

7. **ESC 1§2 GERMANY**
The Committee concludes that the situation in Germany is not in conformity with Article 1§2 of the Charter on the ground that access for non-EU/EEA nationals to professions such as doctors and pharmacists is restricted.

8. **ESC 1§2 LATVIA**
The Committee concludes that the situation in Latvia is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on access to employment for non EU citizens go beyond those permitted by the Charter.

9. **ESC 1§2 LUXEMBOURG**
The Committee concludes that the situation in Luxembourg is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to employment in the public service for non-nationals are excessive.

10. **ESC1§2 SPAIN**
The Committee concludes that the situation in Spain is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to employment in the public service for non-nationals are excessive.

11. **ESC 1§2 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**
The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 1§2 of the 1961 Charter on the ground that nationals of other States Parties do not have access to civil service jobs.

12. **RESC 15§1 ANDORRA**
The Committee concludes that the situation in Andorra is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

13. **RESC 15§1 BELGIUM**
The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream education and training.
14. **RESC 15§1 REPUBLIC OF MOLDOVA**
The Committee concludes that the situation of the Republic of Moldova is not in conformity with Article 15§1 of the Charter on the grounds that:

- ......
- the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

15. **RESC 15§1 SLOVENIA**
The Committee concludes that the situation in Slovenia is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education and training is effectively guaranteed.

16. **RESC 15§2 ANDORRA**
The Committee concludes that the situation in Andorra is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that there are effective anti-discrimination legislation and remedies;
- it has not been established that the legal obligation to provide reasonable accommodation is respected;
- persons with disabilities are not guaranteed an effective access to the open labour market.

17. **RESC 15§2 CYPRUS**
The Committee concludes that the situation in Cyprus is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

18. **RESC 15§2 NETHERLANDS**
The Committee concludes that the situation in the Netherlands is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

19. **RESC 15§2 SLOVAK REPUBLIC**
The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that there is effective anti-discrimination legislation;
- ......

20. **RESC 15§2 SLOVENIA**
The Committee concludes that the situation in Slovenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

21. **ESC 15§2 GREECE**
The Committee concludes that the situation in Greece is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that people with disability are guaranteed effective equal access to employment.

22. **ESC 15§2 THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**
The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 15§2 of the 1961 Charter on the ground that it has not been established that persons with disability are guaranteed an effective equal access to employment.
23. RESC 15§3 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§3 of the Charter on the following grounds:

- it has not been established that housing, transport and telecommunications are covered by the anti-discrimination legislation;
- it has not been established that there are effective remedies available to disabled people alleging discriminatory treatment;
- it has not been established that disabled people have effective access to technical aids;
- it has not been established that disabled people have effective access to housing.

24. RESC 15§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that there is legislation ensuring people with disabilities effective protection against discrimination in the fields of housing, transport, telecommunications, culture and leisure activities.

25. RESC 15§3 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that disabled people are effectively protected against discrimination in the fields of housing, transport and cultural and leisure activities.

26. RESC 15§3 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

27. RESC 20 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Charter on the grounds that:

- There is no shift in the burden of proof in gender discrimination cases

28. RESC 20 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 20 of the Charter on the grounds that:

- the right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice,
- women are prohibited from working in underground mining.

29. RESC 20 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of sex discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

30. RESC 20 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Charter on the ground that the employment of women in underground mining is prohibited.
31. RESC 20 MOLDOVA
The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 20 of the Charter on the ground that the legislation prohibits the employment of women in heavy work and in underground work.

32. RESC 20 TURKEY
The Committee concludes that the situation in Turkey is not in conformity with Article 20 of the Charter on the grounds that:
- the employment of all women in certain underground or underwater occupations is prohibited;

Women who do not have an indefinite labour contract with at least six months service and who are not employed at a business employing thirty or more workers are not protected by the prohibition of dismissal on grounds of sex.

Each Representative concerned is invited to provide information on the measures which have been taken or have been planned to bring the situation into conformity with the Charter. This information has to be sent to the Secretariat in French or English, by e-mail, at the latest on 31 July 2013 and will be included in the Report of the last meeting of October 2013, as well as in the report to the Committee of Ministers.

Article 1§1 – Policy of full employment

1. RESC 1§1 ALBANIA
The Committee concludes that the situation in Albania is not in conformity with Article 1§1 of the Charter on the ground that the number of persons which have access to active labour market measures is too low.

Ground of non-conformity:

As regards active measures to assist unemployed persons in finding a job, the report describes three programmes which were made available by the Employment Office in 2010. A total of 1,757 persons participated in these programmes. Around 75% of the beneficiaries were long-term unemployed. Prior to enrolling in such programmes, the persons must have been registered with the Unemployment Office for three months. Taking into account the number of registered unemployed jobseekers in 2010, which was 142,800, the Committee finds that the number of persons which had access to training was too low (an activation rate of 1.2%).

2. RESC 1§1 ARMENIA
The Committee concludes that the situation in Armenia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity

The state programmes on employment implemented during the 2008-2010 period included vocational training, re-training, job fairs and public works. The report also mentions unemployment benefits and other financial assistance measures. In the absence of any information in the report, the Committee asks again if any specific measures have been taken to improve the employment prospects of long-term unemployed persons.
The Committee notes the number of persons that participated in some of the above-mentioned programmes, for instance in 2010, 1,513 persons received vocational training and 6,254 participated in public works. The report states that 38.6% of jobseekers were involved in employment programmes. The Committee nevertheless notes that this figure also includes those persons receiving unemployment benefits and other forms of financial assistance. It therefore asks the next report to provide the activation rate only in respect of unemployed persons participating in an active measure.

According to the report, public expenditure on active labour market policies amounted to 0.025% of GDP in 2010, which is by international comparison very low.

3. RESC 1§1 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity

According to another source a more integrated approach to employment, encompassing all relevant sectoral policies, would be needed to address the country’s considerable labour market challenges. Entity governments continue to lack the capacity to implement appropriate active labour market measures. Employment services are focusing on activities related to unemployment benefits rather than on mediation and services for job-seekers (European Commission, Bosnia and Herzegovina 2011 Progress Report).

It also notes from another source (Employment Services and Active Labour Market Programs in Eastern European and Central Asian Countries, Arvo Kuddo, October 2009) that funds in Bosnia and Herzegovina are distributed first to cover staff expenditure and other expenses for running the Employment Services, and second, to cover for law-bound expenditure for benefits and costs related to people who are insured and entitled to benefits. All other activities, including active labor market measures, are funded out of what is left. The financing system makes planning of revenue, expenditure, and implementation of labor market measures uncertain and difficult.

4. RESC 1§1 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity

The Committee nevertheless notes from Eurostat that the activation rate in Bulgaria, that is, the number of persons taking part in an active measure as a percentage of the unemployed, was only 11.9% in 2009. This was a low activation rate among the EU-27 countries that year, where the average was 28.9%.

Also according to Eurostat, public expenditure on active labour market policies in Bulgaria amounted to 0.26% of GDP in 2009, which again was a low figure among EU-27 countries (where the average public spending on active labour market measures as a% of GDP that year was 0.78%).

The Committee finds that employment policy efforts in Bulgaria, measured both in terms of the activation rate and spending on active labour market measures, were insufficient during the reference period, and asks whether there are plans to implement more measures in this area.
Finally, it notes from another source that barriers to labour market participation in Bulgaria partly reflect the insufficient provision of properly targeted and tailored active labour market policies. The quality of public services in the areas of activation, job search assistance and retraining is low as is public spending. Active measures coverage is also limited with only 12% of jobseekers participating in activation measures (European Commission, Recommendation for a Council Recommendation on the National Reform Programme 2011 of Bulgaria). The Committee asks in this respect if there are plans to strengthen the capacity to monitor and evaluate programme results with the aim of a better policy design in the employment field.

5. RESC 1§1 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity

The report provides very scarce information on the matters examined under Article 1§1. It does not indicate what active labour market measures are available in general to job seekers (besides reference to a State Programme on “Vocational Education for Employment” and employment programmes by municipalities to acquire computer skills and learn English). It also fails to provide complete information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed. Likewise, it contains no data as regards expenditure on active labour market policies (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. As the report contains no information on these matters, the Committee considers that there is nothing to show that employment policies have been adequate in tackling unemployment and in job creation.

6. RESC 1§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.

Ground of non-conformity

The Committee notes from Eurostat that the activation rate in Italy, i.e. the number of participants in active measures per 100 persons wanting to work, was 21.4% in 2009. This was below the EU-27 average that year, which stood at 28.9%.

Also according to Eurostat, public expenditure on active labour market policies in Italy amounted to 0.37% of GDP in 2009, which was again below the average of the EU-27 countries (where the average public spending on active labour market measures as a% of GDP that year was 0.78%). The Committee moreover notes that the level of spending on active measures has slightly decreased since the last report (0.4% in 2006).

Hence, the Committee finds that employment policy efforts in Italy, measured both in terms of the activation rate and spending on active labour market measures, were insufficient during the reference period.

The Committee recalls that labour market programmes should be targeted, effective and regularly monitored. The report contains scarce information as to the effectiveness of the active labour market policy measures which have been implemented. It therefore asks whether the outcome of measures has been monitored, and more generally, how the effectiveness of labour market policies is evaluated.
7. RESC 1§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.

Ground of non-conformity

Labour market measures are contained in Law No. 102-XV on employment and social protection of persons seeking a job. The active measures mentioned in this law are: mediation services; information and career counseling; orientation and training; public works; stimulating labor mobility; encouraging employers to hire; and financial support to employers creating new jobs. The report mentions that the lack of financial resources has prevented implementing all these active measures.

According to the report, public expenditure on active labour market policies amounted to 0.02% of GDP in 2010, which is by international comparison very low.

8. RESC 1§1 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and in promoting job creation.

Ground of non-conformity

The report provides no information on what active labour market measures are available in general to jobseekers (besides reference to two programmes to promote youth employment and an Action Plan on vocational training). Despite repeated requests, it also fails to provide information on the number of beneficiaries in the different types of active measures, and on the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed. Furthermore, it contains no data as regards expenditure on active labour market policies (as a percentage of GDP).

The Committee recalls that in order to assess the effectiveness of employment policies it requires information on the above indicators. As the report contains no information on these matters, the Committee considers that there is nothing to show that employment policies have been adequate in tackling unemployment and in job creation.

9. ESC 1§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.

Ground of non-conformity

The Committee notes the different active labour market programmes mentioned in the report (for instance, for young people, older workers, apprentices and women). It nevertheless asks the next report to specify the number of beneficiaries for each programme and the outcome in terms of labour market integration of participants.

The Committee notes from Eurostat that the activation rate in Greece (measured as participants in active measures per 100 persons wanting to work) was 15.5% in 2009. This was below the EU-27 average that year, which stood at 28.9%.
According to Eurostat, public expenditure on active labour market policies in Greece amounted to 0.22% of GDP in 2009, which was below the average of the EU-27 countries (0.78%). The Committee notes that the level of spending on active measures has increased since the last report (0.1% in 2006), but still remains one of the lowest among the EU-27 countries.

Hence, the Committee finds that employment policy efforts in Greece, measured both in terms of the activation rate and spending on active labour market measures, were insufficient during the reference period.

10. ESC 1§1 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.

Ground of non-conformity

The report also states that the share of participants in active measures (as an average of registered unemployed) was 95.6% in 2010 and 74.5% in 2009. This information however does not match with that provided by Eurostat. The Committee notes from the latter that the activation rate in Latvia (measured as participants in active measures per 100 persons wanting to work) was 3.6% in 2009. This was one of the lowest figures among the EU-27, where the average that year was 28.9%. Therefore, even if based on differences in the calculation of this indicator, the Committee finds that the discrepancy in figures pertaining to the activation rate is too high and asks the Government for an explanation.

According to Eurostat, public expenditure on active labour market policies in Latvia amounted to 0.31% of GDP in 2009, which is below the average of the EU-27 countries (where the average public spending on active labour market measures as a% of GDP that year was 0.78%).

Article 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

11. RESC 1§2 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 1§2 of the Charter on the grounds that it has not been established that the restrictions on access of foreign nationals to employment are not excessive.

Ground of non-conformity

As regards discrimination in employment on grounds of nationality the Committee recalls again that under Article 1§2 of the Charter while it is possible for states to make foreign nationals’ access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority. The Committee asks again whether and if so, what categories of employment are closed to non-nationals. The Committee concludes that it has not been established that restrictions on the employment on nationals of other states parties are not excessive.
12. RESC 1§2 ARMENIA

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

- the duration of alternative labour service replacing military service amounts to an excessive restriction on the right to earn one’s living in an occupation freely entered upon;
- it has not been established that the exceptions to the prohibition on forced labour are in conformity with the Charter.

1st Ground of non-conformity

Military service in Armenia lasts for 2 years. Article 2 of the Law on alternative service provides for two different alternative services: alternative military service and alternative labour service. Article 5 of the Law states that the term for alternative military service is 36 months and the term for alternative labour service is 42 months (Venice Commission Opinion On The Draft Law On Amendments and Additions to the Law On Alternative Service in Armenia December 2011). The Committee finds that 42 months for alternative labour service amounts to an excessive restriction on the right to earn one’s living in an occupation freely entered upon and is therefore not in conformity with the Charter.

2nd Ground of non-conformity:

The Committee recalls that forced labour is prohibited under Article 32 of the Constitution and Article 3§2 of the Labour Code. Under Article 3§2 of the Labour Code, employment rights may be restricted, but only by law and if this is necessary for the protection of public security, public order, public health and morals, the rights and interests of others, or persons’ honour and good reputation. The Committee asked how these provisions were applied and interpreted, and what penalties may be imposed.

The Committee found no such information in the report, therefore it concludes that it has not been established that the exceptions to the prohibition on forced labour are in conformity with the Charter.

13. RESC 1§2 AZERBAIJAN

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

- there is no shift in the burden of proof in discrimination cases, and
- the prohibition on foreign nationals being employed in the civil service goes beyond that permitted by the Charter.

1st Ground of non-conformity:

The Committee also previously requested information as to whether there is a shift in the burden of proof in discrimination cases. It appears to the Committee from the information provided in the report that this is not the case. Therefore the Committee concludes that the situation is not in conformity with the Charter in this respect.
2nd Ground of non-conformity:

As regards discrimination on grounds of nationality the Committee notes that positions in the civil service are reserved for citizens of the Azerbaijan Republic, this is irrespective of the powers or authority of the post. The Committee finds that this restriction/ban on foreign nationals being employed in the civil service goes beyond that permitted by the Charter.

14. RESC 1§2 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on foreigners non nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.

Ground of non-conformity:

As regards discrimination on grounds of nationality the Committee recalls that in its Conclusions XVII-1, it noted that foreigners may not be employed in federal public service posts that directly or indirectly entail the exercise of state authority or are concerned with safeguarding the general interests of the state. The Committee found that in principle these exceptions were compatible with the Charter, but requested further information on the actual jobs concerned.

Subsequent reports indicated that it was not possible to give a complete list of jobs in the federal public service that are closed to non-nationals, as it is for each Ministry or organ to decide on the basis of individual jobs whether or not the job involves the exercise of public authority. The reports stated, however, that all jobs involving the power to determine violations of legislation, the power to address warnings or commence criminal proceedings were restricted to nationals. The report added that functions related to health and safety at work, social security and social assistance were also restricted to nationals.

The Committee noted previously (Conclusions 2008) that such an application of the definition of public authority might be overly broad and asked for more detailed information on the situation, in particular the existence of any guidelines or such like on whether a job could be classified as involving the exercise of public authority. It further asked whether the functions related to health and safety at work, social security and social assistance mentioned above are all functions whose exercise may lead to the use of the penal law or which, in any other way, involve strictly speaking the exercise of public authority. The current report however simply repeats information provided previously.

However the report states that "statutory" posts in the federal civil service, even those not concerned with the exercise of public authority or order are reserved to nationals, nationals of the EEA and Swiss nationals. The Committee finds that this restriction goes beyond what is permitted by the Charter and therefore the situation is not in conformity.

15. RESC 1§2 BULGARIA

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

- Nationals of States Parties to the European Social Charter which are not members of the European Union or of the European Economic Area may not be employed in public service posts, which constitutes discrimination on grounds of nationality;
- the upper limit on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
1st Ground of non-conformity:

The Public Service Act was amended in 2008 and now only Bulgarian nationals, the nationals of other member countries of the European Union or the European Economic Area or Swiss nationals may be employed as public officials. The nationals of other States Parties to the European Social Charter cannot therefore be employed in the Bulgarian public service. The Committee considers this restriction to be excessive and to constitute discrimination on the grounds of nationality.

2nd Ground of non-conformity:

In its previous conclusion (Conclusions 2008), the Committee asked that the relationship between the Labour Code (which, under Article 225, provides for compensation of up to a maximum of six months wages in the event of unfair dismissal) and the Protection against Discrimination Act (which, under Section 71§1, does not mention any statutory limit to the amount of compensation for which a victim of discrimination may apply) be clarified and that it be shown, particularly on the basis of legal decisions, that there is no predetermined upper limit to the compensation payable in cases of discrimination which would preclude damages from making good the loss suffered and from being sufficiently dissuasive. In reply, the report draws attention to Article 225§1 of the Labour Code, which fixes a limit for compensation of up to a maximum of six months wages, and states that there are no court decisions on such matters. Consequently, the Committee considers that the situation is not in conformity with the Charter.

16. RESC 1§2 GEORGIA

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

- it has not been established that there is adequate protection against all forms of discrimination in employment
- it has not been established that a worker’s right to earn his living in an occupation freely entered upon is adequately protected.

1st and 2nd Ground of non-conformity:

The Committee previously asked the Government a significant number of questions on the elimination of all forms of discrimination in employment and on other aspects of a worker’s right to earn his living in an occupation freely entered upon. The report fails to answer these questions either adequately or at all.

Therefore the Committee concludes that it has not been established that there is adequate protection against all forms of discrimination in employment nor of a worker’s right to earn his living in an occupation freely entered upon.

17. RESC 1§2 THE REPUBLIC OF MOLDOVA

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

- It has not been established that discrimination on the ground of age is prohibited;
- discrimination on the ground of sexual orientation is not prohibited;
- nationals of other States Parties do not have access to civil service jobs;
- exceptions to the general prohibition of forced labour are too wide.
1st Ground of non-conformity:

The Committee previously asked the Government a significant number of questions on the elimination of all forms of discrimination in employment and on other aspects of a worker’s right to earn his living in an occupation freely entered upon. The report fails to answer these questions either adequately or at all.

The Committee notes for instance that there is no specific reference in the legislation to discrimination on the ground of age. According to the report, this aspect is covered, nonetheless, by the general clauses prohibiting discrimination. Since, however, the report does not present any court decisions making it possible to confirm this interpretation, there is nothing to show that discrimination on the ground of age is really prohibited.

2nd Ground of non-conformity:

It is also stated in the report that a bill on preventing and combating discrimination was rejected by parliament because, for the first time, sexual orientation had been referred to specifically in the list of prohibited grounds for discrimination. The Committee infers from this that discrimination on the ground of sexual orientation is not prohibited in the Republic of Moldova.

3rd Ground of non-conformity:

Lastly, civil service jobs are reserved for Moldovan nationals and this is an excessively broad restriction, which is not covered by Article G of the Charter, as the only jobs from which nationals of other States Parties can be barred are those that are inherently connected with the protection of law and order or national security or involve the exercise of public authority.

4th Ground of non-conformity:

Article 7 of the Labour Code places a general ban on forced labour, except for persons performing military service, non-military national service, prison labour, work in the context of natural disasters or work forming part of ordinary civic duties. The Committee considers that the last of these exceptions to the general prohibition of forced labour is too wide and without further information on how it is to be interpreted, not in conformity with the Charter.

18. RESC 1§2 TURKEY

Conclusion

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

- there is insufficient protection against discrimination in employment, in particular on grounds of age and sexual orientation.

Ground of non-conformity

The Committee previously noted that discrimination on the grounds of age and sexual orientation did not figure in the list of grounds of prohibited discrimination. It has repeatedly asked whether the said “any other similar ground” includes these two grounds for discrimination and what measures have been taken to combat these types of discrimination.
The current report fails to provide any confirmation that these are protected grounds. Furthermore the Committee notes that the report states that there have been no cases concerning any form of discrimination before the courts. The Committee therefore concludes that Turkey has failed to demonstrate that persons alleging discrimination in particular on grounds of age or sexual orientation are adequately protected and more widely that the protection against discrimination on the grounds required by the Charter is adequate and finds that the situation is not in conformity with the Charter.

19. ESC 1§2 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 1§2 of the Charter on the ground that the list of jobs which are barred to foreign nationals is too broad.

Ground of non-conformity

Foreigners including nationals of other States Parties are barred from certain jobs in Croatia. Among these are the occupations of lawyer (see Article 48 of the Legal Profession Act), of notary (see Article 13 of the Notaries Public Act) and legal expert (see Article 2 of the Permanent Court-Appointed Expert Witnesses Ordinance). The Committee notes that this restriction is laid down by the law within the meaning of Article G of the Charter but that, contrary to the requirements of Article G for restrictions on the rights embodied in the Charter, these occupations are not linked to the protection of law and order or national security and do not involve the exercise of public authority. The Committee considers this restriction to be excessive and to constitute discrimination on the ground of nationality.

20. ESC 1§2 GERMANY

The Committee concludes that the situation in Germany is not in conformity with Article 1§2 of the Charter on the ground that access for non-EU/EEA nationals to professions such as doctors and pharmacists is restricted.

Ground of non-conformity

Further the Committee notes that some professions are open only to Germans and specified groups of non-Germans, such as EU citizens and stateless people. By virtue of Section 3.1 No. 1 Federal Medical Regulation (Bundesärzteordnung): admission to medical practice is only for German citizens according to Article 116 Basic Law (Grundgesetz), citizens of EU Member States, parties to the Treaty on the European Economic Area, or stateless people; there are similar regulations in other areas, for example for pharmacists, see Section 2.1 No. 1 Law on Pharmacies (Apothekengesetz). The Committee finds such restrictions to go beyond those permitted by the Charter and therefore concludes that the situation is not in conformity with the Charter.

21. ESC 1§2 LATVIA

The Committee concludes that the situation in Latvia is not in conformity with Article 1§2 of the Charter on the ground that the restrictions on access to employment for non EU citizens go beyond those permitted by the Charter.

Ground of non-conformity

As regards lawyers/advocates it appears from the report and legislation that in order to become a sworn advocate in Latvia an individual must possess Latvian nationality. Citizens of other EU member states however may practice as advocates in Latvia under certain conditions. The Committee finds that the restrictions on non-Latvian non EU citizens from becoming advocates not to be in conformity with the Charter.
22. ESC 1§2 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to employment in the public service for non-nationals are excessive.

Ground of non-conformity

The report states that posts entailing direct or indirect involvement in the exercise of public authority, or in carrying out duties affecting the general interests of the state or other public entities, are reserved for nationals. A Grand Ducal regulation of 12 May 2010 lists the posts in this category. The Committee notes in particular that this concerns posts in the Secretariat of the State Council, in the departments of the Court of Auditors and of the Ombudsperson, in government services and their administrative departments, the administrative departments of the State Treasury and the Directorate of Financial Control, and in the tax administration and the Land and Map Registry.

Although these posts are related to the exercise of public authority, the Committee considers that it would be excessive to reserve all these posts for nationals. The Committee recognises that the employment of nationals of other contracting parties in a state party’s civil service may affect major national interests. In the present situation, a large number of posts are concerned. In each case, it is necessary to determine which duties truly entail direct or indirect involvement in the exercise of public authority and the protection of the country’s general interests. If these duties are merely ancillary tasks then the post in question should be restructured so that these duties are separated from the post’s other activities, thus opening up the access or promotion of nationals of other states parties to the restructured post. If these duties make up the bulk of the work in the post concerned, the state party is entitled to restrict access to it to its own nationals.

The Committee therefore asks that the next report stipulate whether the situation evolved following the comments made above and whether all the posts in the aforementioned sectors are reserved for nationals and, if so, that it justify the situation. Meanwhile it concludes that the situation is not in conformity with the 1961 Charter.

23. ESC 1§2 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 1§2 of the 1961 Charter on the ground that the restrictions on access to employment in the public service for non-nationals are excessive.

Ground of non-conformity

Article 57 of Law No. 7/2007 of 12 April 2007 on the basic status of public employees governs access to public service jobs for nationals of other states. Nationals of member states of the European Union and of states with which the European Union has signed agreements on the free movement of workers may be civil servants, with the same conditions of access to public service jobs as Spanish nationals, except for jobs which directly or indirectly entail participation in the exercise of public authority or in functions whose aim is to safeguard the interests of the state. The right also extends to the spouse of Spanish nationals and nationals of other EU member states, irrespective of their nationality, and to their descendants and spouses’ descendants of less than 21 years of age or over 21 and dependent, unless the spouses are legally separated.

Royal Decree No. 543/2001 of 18 May 2001, which remains in force despite the adoption of the Law of 2007, relates to access to public service posts in central government and its subordinate bodies for nationals of other states to whom the right to free movement of workers is applicable and lists the civil service corps and grades which are reserved for Spanish citizens. The Committee notes that this includes jobs in the corps of prison support staff, State lawyers, doctors, pharmacists and nurses working for the social security health inspectorate, junior employment and social security inspectors, senior labour and social security inspectors and senior lawyers working for the social security department.
Although these posts are related to the exercise of public authority, the Committee considers that it would be excessive to reserve all these posts for nationals. The Committee recognises that the employment of nationals of other contracting parties in a state party’s civil service may affect major national interests. In the present situation, a large number of posts are concerned. In each case, it is necessary to determine which duties truly entail direct or indirect involvement in the exercise of public authority and the protection of the country’s general interests. If these duties are merely ancillary tasks then the post in question should be restructured so that these duties are separated from the post’s other activities, thus opening up the access or promotion of nationals of other states parties to the restructured post. If these duties make up the bulk of the work in the post concerned, the state party is entitled to restrict access to it to its own nationals.

The Committee therefore asks that the next report stipulate whether the situation evolved following the comments made above and whether all the posts in the aforementioned sectors are reserved for nationals and, if so, that it justify the situation. Meanwhile it concludes that the situation is not in conformity with the 1961 Charter.

24. ESC 1§2 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 1§2 of the 1961 Charter on the ground that nationals of other States Parties do not have access to civil service jobs.

Ground of non-conformity

The Committee moreover notes that, according to the European Commission’s working paper on the 2011 progress report concerning “the former Yugoslav Republic of Macedonia”, the Law on Public Servants must be modified to give EU citizens access to posts in the public service (see SEC(2011) 1203 final, p. 33). It follows from this observation that workers who are nationals of States Parties have no access to civil service posts, even where they are not inherently connected with the protection of law and order or national security and do not involve the exercise of public authority. The Committee considers this restriction to be excessive and to constitute discrimination on the ground of nationality.

Article 1§3 – Free placement services

25. RESC 1§3 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that free placement services operate in an efficient manner.

Ground of non-conformity

The Committee recalls that in order to assess the effectiveness of employment services it looks at a number of performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time in filling vacancies. As the report contains no information on these matters for the third consecutive time, the Committee considers that there is nothing to show that employment services are operated in an efficient manner.
26. RESC 1§3 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that employment services operate in an efficient manner.

Ground of non-conformity

The Committee asks the next report to provide updated information on the operation of the Public Employment Services (PES), in particular on the number of placements made by the employment services.

The report containing no information, the Committee considers there is nothing to show that employment services are operated in an efficient manner.

27. ESC 1§3 CZECH REPUBLIC

The Committee concludes that the situation in the Czech Republic is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that employment services operate in an efficient manner.

Ground of non-conformity

The report however fails to provide any information on the public employment services (PES), which are the main thrust of this provision. The Committee therefore asks the next report to include information (for the different years of the reference period) on:

- the number of vacancies notified to the PES;
- the number of placements made by the PES (and the placement rate, measured as a percentage of the total vacancies notified);
- the placements made by the PES as a percentage of total hirings in the labour market.

Finally, the Committee notes from another source (European Commission, Recommendation for a Council Recommendation on the National Reform Programme 2011 of the Czech Republic) that the capacity of the public employment service should be strengthened in the Czech Republic to increase the quality and effectiveness of training, job search assistance and individualised services, linking funding of programmes to results. The Committee invites the Government to comment on these observations.

The report containing no relevant information, the Committee considers there is nothing to show that the employment services are operated in an efficient manner.
28. ESC §3 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 1§3 of the 1961 Charter on the ground that it has not been established that free placement services operate in an efficient manner.

Ground of non-conformity

The current report however fails to provide some of the previously requested information which is needed to assess the situation.

The Committee recalls that in order to assess the effectiveness of employment services it looks at a number of performance indicators, such as the number of vacancies notified to employment services, the number of placements made by these services and the average length of time in filling vacancies. As the report contains no information on these matters, the Committee considers that there is nothing to show that employment services are operated in an efficient manner.

Moreover, the Committee notes from another source (Reforming the Labour Market in Spain, OECD Economics Department Working Papers No. 485, Anita Wölfl, Juan S. Mora-Sanguinetti, 17 February 2011) that the matching of people to jobs in Spain, notably through the public employment services, needs to be made more efficient. The same source considers that despite the recent reform which allows private for-profit firms to provide placement services, more needs to be done, and that the performance of regional public employment services should be benchmarked.

Article 1§4 – Vocational guidance, training and rehabilitation

29. RESC §4 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

Ground of non-conformity

However, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training.

30. RESC §4 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

Ground of non-conformity

As Azerbaijan has accepted Article 9 of the Charter, measures relating to vocational guidance are dealt with under that provision. In this conclusion, the Committee found that the situation was not in conformity with the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.
31. RESC 1§4 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream training.

Ground of non-conformity

However, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training.

32. RESC 1§4 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

- the right to continuing vocational training for workers is guaranteed;
- specialised guidance and training for persons with disabilities is guaranteed.

1st Ground of non-conformity

The report fails again to provide information on continuing vocational training for workers and unemployed persons. The Committee therefore asks the next report to indicate what types of vocational training and education are available in the labour market and the overall participation rate in such training. It also asks what percentage of companies provide in-house training or other types of vocational training to employees, and on what conditions.

2nd Ground of non-conformity

Once again no information on this subject is given in the report. The Committee therefore asks the next report to indicate whether there is a domestic legal framework ensuring the right of persons with disabilities to education, guidance and vocational training. It also asks what type of training is available and the number of participants.

33. RESC 1§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

- the right to vocational guidance within the education system and labour market is guaranteed;
- continuing vocational training services operate in an efficient manner;
- the right of persons with disabilities to mainstream training is effectively guaranteed.

1st Ground of non-conformity

In these conclusions, the Committee found that the situation is not in conformity with Article 9 on the ground that it cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.
2nd Ground of non-conformity

The Committee asks the next report to indicate the overall participation rate in continuing vocational training. It also asks what percentage of companies provide in-house training or other types of vocational training to employees, and on what conditions. The Committee recalls that in order to assess the effectiveness of continuing vocational training it needs up-to-date information on these matters.

3rd Ground of non-conformity

It also found that the situation is not in conformity with Article 15§1 on the ground that: (i) there is no legislation explicitly protecting persons with disabilities from discrimination in education and training and (ii) the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

34. RESC 1§4 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of children with disabilities, and particularly children with intellectual disabilities, to mainstream training is effectively guaranteed.

Ground of non-conformity

Finally, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it cannot be established that mainstreaming of children with disabilities, and particularly children with intellectual disabilities, is effectively guaranteed in education and vocational training.

35. ESC 1§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§4 of the Charter on the grounds that it has not been established that:

- vocational guidance services operate in an efficient manner;
- the right to vocational training of employed and unemployed persons is adequately guaranteed;

Grounds of non-conformity

As the Slovak Republic has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are examined under these provisions.

In these conclusions, the Committee found that the situation is not in conformity with Article 9 of the Charter on the ground that it has not been established that vocational guidance services operate in an efficient manner.

In addition, it found that the situation is not in conformity with Article 10§3 of the Charter on the grounds that it has not been established that the right to vocational training of employed persons, and the right to vocational training of unemployed persons are adequately guaranteed.
36. ESC 1§4 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 1§4 of the Charter on the grounds that it has not been established that:

- the right to vocational guidance is guaranteed;
- the right to specialised guidance and training for persons with disabilities is guaranteed.

1st Ground of non-conformity

As Croatia has accepted Article 9 of the Charter, measures relating to vocational guidance are dealt with under that provision. In its conclusion, the Committee found that the situation was not in conformity with the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

2nd Ground of non-conformity

The report nevertheless acknowledges that given the insufficiency of the regulatory framework and the lack of a developed vocational rehabilitation model, vocational rehabilitation cannot be implemented in the way envisaged under the Act on Vocational Rehabilitation and Employment of Persons with Disabilities. In line with such limitations, vocational rehabilitation is only partly being carried out or not at all. A number of projects currently being developed on vocational training and employment of persons with disabilities are mentioned in the report.

37. ESC 1§4 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education is effectively guaranteed.

Ground of non-conformity

As “the former Yugoslav Republic of Macedonia” has accepted Article 15§1 of the Charter (right of persons with disabilities to vocational guidance, education and training), the Committee refers to its conclusion under that article, in which it found that that the situation is not in conformity with the Charter on the ground that (i) the anti-discrimination legislation covering education for persons with disabilities is inadequate; (ii) it has not been established that that mainstreaming of persons with disabilities is effectively guaranteed in education and training.
38. RESC 9 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed.

Ground of non-conformity

In its last conclusion, the Committee asked for information on the organisation of vocational guidance in the education system, including for the disabled persons, and for a description of how it operates in practice. It asked whether guidance services were provided within schools and education establishments.

The report does not contain any information on vocational guidance for the disabled.

In its last conclusion, the Committee asked for detailed information on expenditure, staffing and the number of beneficiaries of vocational guidance in the education system.

The report does not provide either specific information or at least a rough estimation of the above-mentioned issues pertaining to vocational guidance.

In its last conclusion, the Committee asked whether the vocational guidance on offer satisfied the demand. It also asked for information on the organisation of vocational guidance in the labour market for the disabled persons.

The report does not contain any information as to the above-mentioned issues.

In its last conclusion, the Committee asked for information on expenditure, staffing and the number of beneficiaries of vocational guidance in the labour market.

The report does not contain any information on the above-mentioned issues.

In its last conclusion, the Committee found the situation to be in conformity under this issue. The present report does not provide any information on possible changes of the situation. The Committee asks to be informed in the next report for any new possible developments.

The Committee considers that the information provided on the right to vocational guidance either in the education system or in the labour market is not sufficient to establish that the right to vocational guidance is guaranteed.

39. RESC 9 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 9 of the Charter on the ground that it cannot be established that the right to vocational guidance within the education system and labour market is guaranteed.

1st Ground of non-conformity

In its previous conclusions (Conclusions 2005, 2008), the Committee asked for information about expenditure on, the numbers of staff involved in and the number of persons assisted by the school vocational guidance system.
In view of the repeated lack of information, the Committee considers that it cannot be established that the right to vocational guidance within the education system is guaranteed by appropriate provisions of expenditure and staffing and made available to an appropriate number of beneficiaries.

2nd Ground of non-conformity

In its last conclusions (Conclusions 2005, 2008), the Committee asked for information on the ratio of the number of persons requesting assistance from the guidance services to the number of persons actually in receipt of such assistance and also details of the total budget allocated to vocational guidance, the staffing of vocational guidance services and the minimum qualifications required.

In reply, the report states that, during the reference period, the number of staff employed by the National Agency of Employment has been reduced and, as a result, these services were provided in an insufficient manner by the staff available. During the reference period (2007-2010), around 150 000 persons benefited of vocational guidance services provided by the National Agency of Employment, of which: 56,4% were women and 51,5% were young persons aged between 16-29 years old. In 2010, the agency received 32 400 lei (2 000 €) for vocational guidance purposes.

The Committee considers that this information is not sufficient in order to establish that the right to vocational guidance in the labour market is guaranteed by appropriate provisions of expenditure and staffing and made available to an appropriate number of beneficiaries.

40. RESC 9 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 9 of the Charter on the ground that it has not been established that vocational guidance services operate in an efficient manner.

Ground of non-conformity

The Committee deferred its previous conclusion (Conclusions 2008) because the information contained in the report was not sufficient to assess the situation properly. The current report fails again to provide the necessary information, limiting itself to a description of the legal basis of vocational guidance services.

The Committee recalls that in order to assess the effectiveness of vocational guidance services it needs up-to-date information on the funding, staffing and the number of beneficiaries of vocational guidance. As the report contains no information on these matters, the Committee considers that there is nothing to show that vocational guidance services are operated in an efficient manner.

41. ESC 9 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 9 of the Charter on the ground that it has not been established that the right to vocational guidance is guaranteed equally to nationals of other States Parties.

Ground of non-conformity

In its last conclusion, the Committee requested confirmation that all people are treated equally with regard to access to vocational guidance, including nationals of other States Parties. The report does not contain any information in this regard. In absence of this information, the Committee considers that it has not been established that the right to vocational guidance in Croatia is guaranteed.
Article 10§1 - Technical and vocational training; access to higher technical and university education

42. ESC 10§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 10§1 of the 1961 Charter on the ground that equal treatment of nationals of States Parties as to access to vocational training is not guaranteed because their access is subjected to the availability of places.

Ground of non-conformity

In its last conclusion, the Committee asked whether the nationals of other States party to the Charter legally resident or regularly working in Greece enjoy equality of access to university education or their access is subjected to the availability of places.

In reply, the report states that nationals of Member States of the Council of Europe, as well as third-country nationals, legally residing and regularly working in Greece and holding a Greek secondary education graduation certificate, have equal access to university and higher technical education. Nationals of Member States of the Council of Europe, as well as third-country nationals, legally residing and regularly working in Greece and holding a foreign secondary education graduation certificate, have access to university and higher technical education to a number of posts set every year by the Minister for Education, Lifelong Learning and Religious Affairs.

The Committee recalls that equal treatment with respect to access to vocational training must be guaranteed to non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

The Committee considers that equal treatment of nationals of States Parties as to access to vocational training is not guaranteed because their access is subjected to the availability of places and, therefore, finds the situation not to be in conformity with Article 10§1.

Article 10§3 - Vocational training and retraining of adult workers

43. RESC 10§3 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§3 of the Charter on the grounds that it has not been established that:

- the right to vocational training of employed persons is adequately guaranteed, and that
- the right to vocational training of unemployed persons is adequately guaranteed.

Grounds of non-conformity

In its last conclusion, the Committee noted that there was no information regarding its request for statistical data on participation of employed persons in continuing vocational training and on expenditure on training of this kind and it reiterated its request.
Once again, the present report fails to provide such information.

The Committee considers that, in absence of such information, it has not been established that the right to vocational training of employed persons is adequately guaranteed.

In its last conclusion, the Committee requested that each report on this provision provide information about the number of participants in continuing training measures and the activation rate of the unemployed – i.e. the number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures. The Committee equally asked for information about the total spending on continuing training of both employed and unemployed persons.

The report fails to provide such information.

The Committee considers that, in absence of such information, it has not been established that the right to vocational training of unemployed persons is adequately guaranteed.

**Article 10§4 - Long term unemployed persons**

44. **RESC 10§4 BELGIUM**

The Committee concludes that the situation in Belgium is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in German-speaking community.

**Ground of non-conformity**

In its previous conclusion, the Committee asked whether the equality of treatment regarding access to vocational training for the long-term unemployed was ensured for nationals of other States Parties legally resident in Flemish and German-speaking communities. In this respect it notes from the report that in the Walloon and Flemish region the vocational training services are accessible to everyone who is regularly resident in the Belgian territory. Having found no reply concerning the equality of treatment in German-speaking community the Committee considers that it has not been established that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in German-speaking community.

45. **RESC 10§4 GEORGIA**

The Committee concludes that the situation in Georgia is not in conformity with Article 10§4 of the Charter on the ground that it has not been established that the right to vocational training is guaranteed for the long-term unemployed.

**Ground of non-conformity**

In its last conclusion, the Committee asked for information on the specific measures aimed at the long-term unemployed, the number of people who were involved in training measures and the impact of the Governmental programmes on reducing long-term unemployment.

The Committee takes note of the several programmes and projects run by the government alone or in cooperation with other organisations. The report states that the long-term unemployed are given a special priority treatment in the described projects implemented at both national and local levels. However there is no indication as to how the long-term unemployed have benefited from the overall measures on vocational training.

The Committee also takes note of the overall expenditure in vocational training programmes and projects. However the report does not contain any reference to the specific, or at least, an estimated budget, allocated to
vocational training of long-term unemployed. The report also does not indicate what specific measures were aimed at the long-term unemployed or the number of people who were involved in training measures.

The Committee considers that the information provided on the right to vocational training of long-term unemployed is not sufficient to establish that the right to vocational training is guaranteed for the long-term unemployed.

46. RESC 10§4 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 10§4 of the Charter on the ground that it is not established that the right to vocational training for long term unemployed is guaranteed.

Ground of non-conformity

Portugal has submitted no information as to vocational training of long-term unemployed.

In its last conclusion, the Committee asked for information on the types of training and retraining measures available on the labour market specifically for the long-term unemployed, the number of persons in training and the impact of the measures on reducing long term unemployment and it deferred its decision, while waiting for the response from the government.

The report containing no information, the Committee considers that it is not established that the right to vocational training for long term unemployed is guaranteed and therefore the situation in Portugal is not in conformity with Article 10§4 of the Charter.

Article 10§5 - Full use of facilities available

47. RESC 10§5 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that the equal treatment of nationals of other States Parties as to fees and financial assistance is guaranteed.

Ground of non-conformity

In its previous conclusion the Committee noted that it was not clear whether the equal treatment of nationals of non-EU States Parties lawfully resident or regularly working in Cyprus with respect to fees and financial assistance in higher education was guaranteed. The Committee recalls that according to the Appendix to the Charter, equality of treatment in these matters shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence should be required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

In its previous conclusion, the Committee asked whether this was the case in Cyprus.

The present report containing no information on the repeated questions, the Committee considers that the situation in Cyprus is not in conformity with Article 10§5 of the Charter on the ground that it has not been established that the equal treatment of nationals of other States Parties as to fees and financial assistance is guaranteed.
48. RESC 10§5 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident in Finland are not treated equally with respect to financial assistance.

Ground of non-conformity

In its last conclusion, the Committee asked for information on the possibility of nationals of other States Parties who have obtained a temporary residence permit to be guaranteed an equal treatment with regard to financial assistance for training.

In reply, the report states that under Finnish legislation, student financial aid is not granted to persons who move to Finland for study purposes, irrespective of the form of residence permit. If a person moves to Finland with the purpose of studying, he/she is granted a temporary residence permit (B). If the studies take more than one year, the permit is usually granted for one year at a time. The permit is conditional on the student being admitted to a Finnish educational institution and that the studies lead to a degree or other qualification. It is only in exceptional cases that a permit is granted for other, non-qualifying studies. In addition, as the overriding principle is that a person coming to Finland to study must be able to cover his/her living expenses, he/she must demonstrate that he/she has sufficient financial means to study in Finland (in practice, 500€/month or 6,000€/year) and has a valid insurance policy that covers healthcare services.

The Committee recalls that under Article 10§5 of the Charter, no length of residence should be required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

Article 15§1 - Vocational training for persons with disabilities

49. RESC 15§1 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

Ground of non-conformity

The Committee concludes that the situation in Andorra is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

In view of the absence of answers to all these questions, the Committee does not consider it established that the right of people with disabilities to mainstream education is effectively guaranteed.

No data being available on the number of persons with disabilities in vocational training, including higher education, the Committee asks the next report to provide such data. The Committee underlines that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§1.
50. RESC 15§1 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that people with disabilities are guaranteed an effective right to mainstream education and training.

Ground of non-conformity

In its previous conclusions (2007 and 2008), the Committee had asked for figures on attendance by children with disabilities in mainstream and special compulsory and upper secondary education, for all communities. It also asked for figures on vocational training and university education. The Committee recalls that where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities’ duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23).

The Committee had also requested information on integration into mainstream primary education, on qualifications obtained at the end of schooling and on the success rate for children with disabilities as regards access to vocational training, further education and entry into the ordinary labour market.

The Committee notes that not all the information requested has been supplied and therefore reiterates its request and, in the meanwhile, concludes that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education.

According to EU SILC data for 2009, compiled by ANED, the proportion of disabled people (aged 30-34) having completed tertiary level education in Belgium was 23.6%, compared to 50% for non-disabled people. The proportion of young disabled people (aged 18-24) leaving school early in Belgium was 25.7%, compared to 11.5% for non-disabled people.

As regards the steps taken to promote integration into mainstream education, the report mentions a number of recent measures: the Flemish Government has adopted a Decree supporting supplementary hours and subsidies for specially adapted classes. Similarly, a Cooperation Agreement of 2004 between the French-speaking Community and the Cocof seeks to support schools (in either the mainstream or the special educational system), which welcome children with disabilities and a Decree of 3 March 2004 of the French-speaking Community seeks to reorganise the special educational system for pupils with specific needs. Another cooperation agreement, concluded on 10 October 2008 between the French-speaking Community and the Walloon Region, supports schooling of young disabled people, in particular by providing them a specialised support. Two further cooperation agreements have been signed in 2010 in the Walloon region, aimed at promoting integration of disabled children and better responding to their needs. The Committee requests the next report to provide information on the impact of these measures as regards the integration of children and students with disabilities in mainstream education.

- The report does not provide data for the Flemish Region/Community. According to data published by the European Agency for Development in Special Needs Education, in 2008-2009 there were some 871,920 pupils in primary and secondary school, including 54,336 pupils with special needs (32,068 children in primary school, 22,268 in secondary school). The great majority of pupils with special needs, i.e. 46,091 pupils (almost 85%), were in special schools (27,543 children in primary education and 18,548 pupils in secondary school, mainly in private special schools). Only 8,245 children with special needs (15%) were in mainstream education, 4,525 in primary school and 3,720 in secondary school.
In the Walloon region, according to data published by the European Agency for Development in Special Needs Education, in 2008-2009 there were 687,137 pupils in primary and secondary school, including 30,993 pupils with special needs (15,581 in primary school and 15,412 in secondary school). Almost all pupils with special needs, i.e. 30,773 pupils (over 99%), were in special schools (15,475 children in primary education and 15,298 pupils in secondary school). Only 220 children with special needs (0.7%) were in mainstream education, 106 in primary school and 114 in secondary school. According to the report, in 2009-2010, there were 32,248 children with disabilities in special schools (1,023 children in pre-school level, 15,809 children in primary school and 15,416 children in secondary school) and by 2010-2011 the number of children in mainstream schools had increased to 854 (2010-2011). The Walloon agency for disabled people (AWIPH) subsidizes services in collaboration with schools and provide educational aids in order to facilitate integration.

In the German-speaking community, 302 children with disabilities were in special education (145 in primary education and 157 in secondary education), out of a total population of 14,576 children. 239 integration projects in mainstream education were under way, including 30 in secondary education (integration in secondary education was introduced by a decree of 2009, which also increases the support to children with disabilities both in special and mainstream schools). School curriculum and exams in mainstream education can be adapted for children with disabilities and they obtain the same qualifications as other children. Those in special education obtain a standard certificate in primary school and a regular qualification if they attend secondary school. Teachers’ curriculum for pre-school and primary school include training to support pedagogy. Teachers in special schools are required to have a special training in support pedagogy. The situation is reassessed every year to decide the allocation of support teachers and resources.

In the Belgian federal system, vocational guidance and practical work experience (as part of employment policy) are a competence of the Regions, although the Walloon Region has, since 2000, represented that competence to the German-speaking Community for the territory of this community. Specific vocational guidance is organised in the Walloon region for people suffering from mental disabilities. Furthermore, 6 of the 13 vocational training centres in the Walloon region provide for specific guidance services, including skills assessment, for disabled people.

Vocational training (covering advanced vocational training and retraining), on the other hand, is a competence of the Communities, although the French-speaking Community has represented it to, respectively, the Walloon Region and the French Community Commission (Cocof) of the Region of Brussels-Capital.

In the Flemish community, since 2008, the vocational guidance activities addressed at people with disabilities are managed by a single service (GTB). Special training can be provided when the mainstream one does not appear to be appropriate. In both cases, individual training and training aimed at gaining work experience are available. Furthermore, financial aids is available to employers both in terms of wage contributions and reimbursement of costs for adapting the workplace. Out of 47,440 people with disabilities, 33,180 (69.9%) were reported to have benefited from these measures in 2010.

In the Walloon region, 13 vocational training centres are funded by the AWIPH and provide specific training in many different professional areas to people who can’t attend ordinary training because of their disability. Between 2007 and 2010, the number of people attending AWIPH special training remained rather stable (1,352 people in 2007, 1,369 in 2010), the number of training hours decreased (710,738 hours in 2007, 668,506 hours in 2010), the proportion of people getting work/study training (formation en alternance) increased from 21% in 2007 to 32% in 2010, the sums devoted to special training passed from 12,612,623€ in 2007 to 12,713,448€ in 2010. In particular, specific measures address 18-25 years old disabled people, as a follow-up to their educational path. Furthermore, an AWIPH agent is attached to all Employment/Training structures to care specially for disabled people, 103 people with disabilities benefited from work experience in companies and 710 had professional adaptation contracts.

Vocational guidance and training are also available to people with disabilities in the German-speaking community and are detailed in the report.
The Committee notes that the information provided does not reply to its question (see Conclusions 2008) about the extent of mainstreaming in vocational education, including university education. Accordingly, it cannot be established that the situation in Belgium complies with Article 15§1 of the Charter.

51. RESC 15§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation of the Republic of Moldova is not in conformity with Article 15§1 of the Charter on the grounds that:

- ......
- the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

Ground of non-conformity

The 1991 law on social protection of persons with disabilities guarantees the right to education in pre-school and comprehensive school-type institutions for persons with disabilities. In case their health conditions do not allow them to attend the comprehensive educational institutions, they may study in special institutions or may benefit from home-education, at the parents’ choice. In addition, persons with disabilities have preferential rights to attend specialised secondary and higher education institutions and are entitled to school tax exemptions and additional scholarship irrespective of whether they already benefit from disability pensions or allocations. According to the report, thanks to these measures, 13 motor-impaired students are registered into higher education institutions.

The report indicates a number of recent legislative initiatives in the field of education of children with disabilities: a National Strategy “Education for all” was approved as from 2003; a Strategy for the Social Inclusion of Disabled people (2010-2013) was approved in 2010; a Programme for the development of inclusive education for 2011-2020 was approved in 2011 (out of the reference period); a Consolidated Development Strategy for teaching 2011-2015 was approved end 2010. Furthermore, an amendment to the Code of Education is planned to set up support teachers in view of promoting inclusive education. A Coordination council has also been set up in 2010 to promote the reform of the residential care system and the development of inclusive education. Other Ministerial orders aiming at promoting inclusive education and reforming residential institutions have been issued in 2009 and 2010 as well as instructions to educational institutions recommending a number of measures to facilitate access to disabled students (extra-school programmes, elimination of physical barriers, free accommodation at universities etc.).

In practice, however, mainstream education seems to be the exception rather than the rule. According to the report, 2500 children were in special secondary schools for children with sensorial and physical disabilities and 671 in schools for children with mental disabilities. The report indicates a diminution, between 2007 and 2010, in the number of children placed in special institutions for children with special needs (from 4441 to 3171) and in the number of children placed in residential institutions (decrease by 32.6%), 431 children having reintegrated their families and 106 having been placed in alternative services.

A report of 2009, commissioned by Unicef, on “Assessment and Recommendation on Child Disability Prevention and Care System in Moldova” (http://www.unicef.org/moldova/ro/Children_with_disabilities_ENG.pdf) indicates that in practice only 2.7% of approximately 11,800 children with disabilities aged 7 to 18 years old are using inclusive education services. Furthermore, 68% of disabled children are placed in residential educational institutions, so that they are physically and socially excluded from families and communities. The physical environment of schools does not fit the needs of children with disabilities. The lack of professionals involved in inclusive education and the shortage of training methodologies and tools, make schools not acceptable and available for children with disabilities, that’s why most parents choose residential institutions instead of inclusive education institutions. While a better situation exist in Chisinau, Balti and Criuleni, the same quality of service is not ensured throughout the country.
A report by the Center for Legal Assistance for Persons with Disabilities, appended to the 2010 memorandum to the OHCHR mentioned above, indicates that autistic children are not allowed to go to kindergarten or school. It is estimated that out of the approximately 40,000 children born annually, some 240-280 children/year are potential children with autistic syndrome, a figure which is underestimated because, for reasons of prejudices and stereotypes, a number of parents prefer not to register children with the specialized hospitals. The same applies to children with severe or medium level of mental disability, who are not integrated in kindergartens.

Efforts are being made to ensure, in certain universities, initial training on inclusive education teaching and thanks to the contribution of Unicef and NGOs in 2010 some 1664 people have been trained in this field, but much remains to be done to establish integration methodologies and tools.

The Committee refers to its conclusions 2005 and 2008, raising a number of detailed questions aimed at assessing whether disabled persons are guaranteed an effective right to education both in law and in practice. Since these questions remain unanswered, the Committee reiterates them and underlines that, should the next report fail to provide the requested information once more, nothing will demonstrate that the situation is in conformity with Article 15§1 of the Charter. In the meanwhile, in the light of the information available, it concludes that the situation in the Republic of Moldova is not in conformity with Article 15§1 of the Charter on grounds that mainstreaming of people with disabilities is not effectively guaranteed in education and training.

The report does not provide information as regards vocational training. According to the Center for Legal Assistance for Persons with Disabilities, in a report appended to the 2010 memorandum to the OHCHR mentioned above, the Republic of Moldova has no coherent policy on integrating people with disabilities in the labour field or providing them vocational guidance services. The same conclusion appears in the Unicef report of 2009 mentioned above.

In the light of these elements and of the absence of reply to the questions already raised in the conclusions 2005 and 2008, the Committee reiterates its questions, it points out that, should the requested information not be provided in the next report, nothing will allow to establish that the situation is in conformity with Article 15§1 of the Charter, and concludes that mainstreaming of persons with disabilities in vocational training is not effective in the Republic of Moldova.

52. RESC 15§1 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education and training is effectively guaranteed.

Ground of non-conformity

The Committee further notes from ANED (http://www.disability-europe.net/dotcom) that children with intellectual disabilities may not be placed in mainstream schools because the ability to achieve the set educational standard for elementary school is the precondition for placement of the child in a mainstream school. While children with mild intellectual disabilities are sent to primary schools with an adapted programme, children with moderate, severe and profound intellectual disabilities are usually directed to residential institutions. Special elementary schools intended for children with sight impairments, hearing or speech impairment, or physical impairments are also organised as institutions and children live there during the week. At the end of the school year 2007/2008 there was one school for blind and partially sighted with 27 children, 3 schools for deaf and hard of hearing with 147 children and one school for physically impaired children with 56 children. Parents or legal guardians have, according to the Primary Schools Act, the right to enrol their child into a public school in a school district where they live, and the school is obliged to accept the child. Article 11 provides that children with special needs should have proper conditions for education. For children with special needs there is a limitation in Section 49 of the Act, which states that parents have a right to enrol a child with special needs to a school in their school district, except when this school does not meet the child’s needs. In this case the placement commission names a school to which the child will be enrolled. In practice, many children and young people with disabilities have to leave home when they are placed in special educational programmes in schools of institutions.
The Committee observes that although the report replies to many questions asked in previous conclusions, certain important issues have not been addressed despite repeated requests, in particular what measures are in place to facilitate the integration of children with disabilities into mainstream education (including children with intellectual disabilities) and how the quality of education, sufficient resources and monitoring are ensured in special institutions. The Committee also notes that legislative reforms have been adopted that emphasise the principles of equality and inclusion of persons with disabilities. However, these reforms entered or will enter into force outside the reference period.

The Committee recalls, as stated in its decision on the merits of collective complaint Autism-Europe v. France No. 13/2002 (decision of 4 November 2003, §48) that “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”. Children, young people and adults with disabilities must be catered for by the mainstream system; education and training for persons with disabilities must be provided in ordinary classes and, only where this is impossible, in special schools.

The Committee finds, in the light of foregoing, that it has not been established that mainstreaming of children with disabilities, and particularly children with intellectual disabilities, is effectively guaranteed in education.

The Committee observes that the report again does not address or properly answer its previous questions (Conclusions 2007 and 2008) on vocational training of persons with disabilities. In particular: how many persons receive training through mainstream structures, how many through specialised structures, how many requests are made for admission to mainstream and specialist provision.

In the absence of this information, the Committee already on two occasions deferred its conclusion and underlined that if replies to all questions were not included in the next report, there would be nothing to show that the situation in Slovenia is in compliance with Article 15§1 of the Revised Charter in this respect. Consequently, it has not been established that the situation is in conformity with the Charter.

Article 15§2 - Employment of persons with disabilities

53. RESC 15§2 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that there are effective anti-discrimination legislation and remedies;
- it has not been established that the legal obligation to provide reasonable accommodation is respected;
- persons with disabilities are not guaranteed an effective access to the open labour market.

First ground of non-conformity

The Committee also asked whether effective remedies were available for persons alleging discriminatory treatment in employment. Given the absence of an answer, the Committee considers that it has not been established that there are effective remedies available for persons alleging discriminatory treatment in employment. The Committee underlines that should the next report not provide the requested information, nothing will demonstrate that the situation is in conformity with Article 15§2.

Second ground of non-conformity

The report notes that the requirement of reasonable accommodation is dealt with by Section 19 of the Law of 17 October 2002 on the Rights of Persons with Disabilities and the Government provides financial aids to this end. In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee asked in its previous conclusion (Conclusions 2008):

how such reasonable accommodation obligation is implemented in practice. The report states that the Law of 17 October 2002 on the Rights of Persons with Disabilities provides that companies recruiting persons with disabilities
may receive state aid to adapt their premises and guarantee access to employment of persons with disabilities. The Committee wishes the next report to indicate the amount of this state aid;

whether there is case law on the issue and whether reasonable accommodation has prompted an increase in employment of persons with disabilities in the open labour market.

Since the report fails once more to reply to the last question, the Committee considers that it has not been established that the reasonable accommodation obligation is effectively guaranteed.

Third ground of non-conformity

According to the report in 2010 there were 331 persons with disabilities of working age, among whom 139 were working. The report also indicates that all the persons with disabilities who were working, were working in sheltered employment. In this regard, the Committee stresses that Article 15§2 "requires states to promote access to employment on the open labour market for persons with disabilities. It applies to both physically and intellectually disabled persons" (Conclusions I, Statement of Interpretation on article 15§2, p. 208) and "Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market". The Committee wished also to be informed on any measures introduced to enable the integration of persons with disabilities into the ordinary labour market and the rate of progress into it. The report not providing once again such information, the Committee considers that it has not been established that adequate measures are taken to encourage the employment of persons with disabilities in an ordinary working environment. Moreover, in view of the fact that no person with disability is working in the ordinary job market, the Committee considers that mainstreaming in employment is not effectively guaranteed.

54. RESC 15§2 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

Ground of non-conformity

In its previous Conclusions (2008), the Committee had requested updated figures on the number of persons with disabilities integrated in the ordinary labour market and the general rate of progress of persons with disabilities from sheltered employment into the ordinary labour market. The report merely indicates that, in 2010, 228 disabled people (compared to 192 in 2007, 198 in 2008, 200 in 2009) benefited from the Supported Employment Scheme.

According to EU Statistics on Income and Living Conditions data for 2009, compiled by ANED, the employment rate for disabled people (aged 20-64) in Cyprus was 53.3%, compared to 73.1% for non-disabled people. The unemployment rate was 8.4% and the economic activity rate 58.2%. The ANED report stresses the need for reliable, up to date and easy to access data allowing comparison between the situation of disabled and non-disabled people.

The Committee highlights that it also needs to systematically be provided with updated figures concerning the total number of people with disabilities employed (on the open market and in sheltered employment), those benefiting from employment promotion measures and those seeking employment as well as those that are unemployed. In the absence of these figures, it cannot be established that the situation is in conformity with Article 15§2 of the Charter.

The Committee refers to its previous conclusion (2008) as regards the remedies available against discrimination before the courts and the Equality Body.

It notes that the report does not contain any new information on the outstanding issues raised in its Conclusions 2008, concerning the effectiveness of sanctions imposed by the Equality Body in cases of discrimination and the effective implementation of the reasonable accommodation requirements. The report also fails to reply to the Committee’s question about any legislative change in this field and any measure taken in practice to implement reasonable accommodation.
The 2010 report on measures to combat discrimination (by the European Network of Legal Experts in the Non-Discrimination field) indicates that, in July 2006, the Cypriot Constitution was amended to give supremacy to EU laws, a development significant vis-à-vis the national anti-discrimination legislative framework because, prior to its enactment, the anti-discrimination provision of Article 28 of the Constitution was interpreted by the Courts to mean that any positive measures taken in favour of vulnerable groups were violating the Constitution’s equality principle. The above mentioned report indicates however that, despite this development, quotas in employment in the public service in favour of persons with disabilities remained at very low levels.

No case has actually been examined in court so far to assess how courts would determine whether accommodation is ‘reasonable’ or whether it imposes a ‘disproportionate burden’; there are however a number of decisions by the Equality Body addressing complaints for the non-provision of reasonable accommodation. The Report 2010 on measures to combat discrimination presents examples of such decisions but does not indicate what has been the impact of the recommendations made. In particular, it appears that the Equality Body has never applied any sanction in case of discriminations on grounds of disability and such sanctions appear anyway to have a limited deterrent impact. The Equality Body itself admits that, generally, its decisions and recommendations are complied with by the authorities at an approximate rate of 60%. Furthermore, the ANED 2009 report on employment of disabled people states that there is no research evidence to suggest that disabled people enjoy reasonable accommodation in the workplace and the Report on measures to combat discrimination confirms that, apart from cases submitted to the Equality Body, no mechanism is set up to monitor the effective implementation of the reasonable accommodation provisions. In September 2010, the Equality Body issued a Code of Conduct on disability discrimination at the workplace, providing that the duty to provide reasonable accommodation is premised upon the principle that the measure must ensure equality in opportunity and not in the result. The Code also offers a non-exhaustive list of guidelines on reasonable accommodation measures and explicitly provides that the employer’s failure to adopt reasonable accommodation measures amounts to unlawful discrimination and is punishable with a fine or even imprisonment as all other forms of discrimination.

In order to assess whether the right to non-discrimination in employment is effectively guaranteed for persons with disabilities, the Committee reiterates its previous questions concerning in particular the effective implementation of the reasonable accommodation obligation, as they were not addressed in the current report, i.e.:

- how is the reasonable accommodation obligation implemented in practice (please provide relevant examples, including case law)?
- what measures are taken to ensure its implementation?
- has the reasonable accommodation obligation prompted an increase in employment of persons with disabilities in the open labour market?

In the meanwhile, the Committee concludes that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

**55.RESC 15§2 NETHERLANDS**

The Committee concludes that the situation in the Netherlands is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

**Ground of non-conformity**

The report does not indicate neither the number nor the percentage of persons with disabilities employed in the open labour market. Thus, the Committee does not consider that an effective equal access to employment is guaranteed.

**56.RESC 15§2 SLOVAK REPUBLIC**

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that there is effective anti-discrimination legislation;
- .......

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Ground of non-conformity

In its last conclusion (Conclusions XIX-1 (2008)), the Committee asked for information on the implementation in practice of the new Anti-discrimination Act (No. 365/2004) in order to establish whether the right of persons with disabilities to employment is effectively guaranteed.

In particular, the Committee asked the following questions:

- what steps were taken by employers to comply with the requirement of reasonable accommodation;
- whether reasonable accommodation prompted an increase in employment of persons with disabilities in the open labour market;
- whether there was any relevant case law in this regard.

In view of the absence of answers to all these questions, the Committee considers that it has not been established that there exists an effective anti-discrimination legislation.

57. RESC 15§2 SLOVENIA

The Committee concludes that the situation in Slovenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

Ground of non-conformity

However, the Committee notes from another source\(^1\) that the Social Care Act is discriminatory in the area of equal access to employment, since adults who obtain the status of a person with disabilities under this Act have the right to receive social benefits, but are automatically presumed unable to live independently or unemployable regardless of their actual ability to work. The Act creates an obligation for persons who wish to work to renounce the disability status and consequently lose their eligibility for social benefits. Adults with status of a person with disabilities under the Social Care Act (including people with mild, moderate and severe intellectual disabilities) are entirely excluded from the provisions of the Vocational Rehabilitation and Employment of Persons with Disabilities Act. They are automatically determined as being incapable of paid employment, and cannot even register at an Employment Office as job-seekers. The Committee observes that on two occasions (Conclusions 2007 and 2008) it asked for the Government’s comments on this issue. It reiterates its request.

According to a study "Implementation of the concept of reasonable accommodation in the area of employment of persons with disabilities" conducted in 2009 and funded by the Ministry of Labour, reasonable accommodation request in 2008 were granted in: 20 cases of technical solutions (18 under the Pension and Disability Insurance Act and 2 under the Vocational Rehabilitation and Employment of Persons with Disabilities Act) and 34,103 cases of organisational solutions (33,907 under the Pension Act and 196 under the Vocational Rehabilitation Act).

However, according to ANED\(^2\), there is no information on the practical implementation of the measures provided by the Vocational Rehabilitation and Employment of Persons with Disabilities Act. The Committee further notes from the same source that in 2008 the Fund for the Encouragement of the Employment of Persons with Disabilities decided to

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reimburse the costs of one accommodated work place in the country (amounting to €5,023) and one supported employment work place (at a cost of €1,528 Euro). Another request for supported employment workplace was rejected. According to the management report of the Fund, cited by ANED, €60,000 was budgeted for accommodated and supported work places, however, there are no explanations as to why the money was not spent or how this budget was spent in 2008.

The Committee asks the Government to comment on this and to provide more detailed information concerning the implementation of the reasonable accommodation obligation in practice (in this connection, the Committee asks for statistics showing the number of requests for reasonable accommodation measures, the number of request granted and the costs refunded), and whether it prompted an increase in employment of persons with disabilities in the open labour market.

In the absence of complete or relevant information the Committee already on two occasions deferred its conclusion and underlined that if replies to all questions were not included in the next report, there would be nothing to show that the situation in Slovenia is in compliance with Article 15§1 of the Revised Charter in this respect. Consequently, it has not been established that the situation is in conformity with the Charter.

58. ESC 15§2 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that people with disability are guaranteed effective equal access to employment.

Ground of non-conformity

The report does not provide any of the requested data concerning the number of people with disabilities, the number of people with disabilities of working age, the number of those employed in the open labour market and in sheltered employment and the number of disabled people seeking employment / unemployed. The Committee reiterates its request for such data and stresses that, should next report fail to provide updated indications in this respect, there will be nothing to prove that the situation in Greece is in conformity with Article 15§2 of the Social Charter of 1961.

The Committee notes from another source (ANED report 2009 on the employment of disabled people) that, according to EU SILC data for 2009, compiled by ANED, the employment rate for disabled people (aged 20-64) in Greece was 31.4%, compared to 68.1% for non-disabled people. The unemployment rate was 17.9% and the economic activity rate 38.2%. According to data of 2002, 8.9% of disabled people were unemployed compared to 9.6% of general population, 18.2% of the population (half of whom were over 65) had a health problem or disability and 84% of disabled people or people with health problems were reported to be economically inactive, compared to 58% of the general population. The Committee had asked in this respect what measures had been taken to improve the situation. In the absence of any relevant data, the Committee does not find it established that the situation has been brought to conformity with Article 15§2 of the Social Charter of 1961.

59. ESC 15§2 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 15§2 of the 1961 Charter on the ground that it has not been established that persons with disability are guaranteed an effective equal access to employment.

Ground of non-conformity

According to the report, in December 2010 there were 2,326 unemployed persons with disabilities. No other data is provided. The Committee observes that to assess the effective equal access of persons with disabilities to employment, it systematically should be informed of the following key figures:

- the total number of disabled persons in working age;
- the total number of persons with disabilities employed in the ordinary market as well as that of those employed in sheltered employment;
- the rate of progression of persons with disabilities from sheltered employment to the ordinary labour market.
The Committee previously asked for a more detailed and clear description of available measures aimed at promoting the employment of persons with disabilities. It takes note of measures provided under the Law on Employment of Disabled Persons, such as tax exemption and financial incentives paid from the Special Fund. However, the Committee finds that the information provided in the report is still unclear and incomplete. It notes that during the entire reference period (2007-2010) a total of 874 application received financial support from the Special Fund. The Committee reiterates its questions about measures envisaged to increase the employment of persons with disabilities and asks for relevant statistical data.

The Committee further notes from another source that during the period 2000-2010, financial incentives to support employment and benefits to people with disability have been gradually withdrawn. In the period 2004-2009, the Law on Employment of Persons with Disabilities underwent eight changes that gradually restricted the benefits provided by the state and reduced the benefits for employment of persons with disabilities. The percentage allocation to the Special Fund (of the revenue from the employment tax) was progressively reduced from initial 15% to 5%, resulting in a lack of funds for employment of people with disability or workplace adaptation. The Committee would like to receive the Government’s comments on this.

The Committee observes that the report does not address its questions on sheltered employment and the measures introduced to enable the integration of persons with disabilities into the ordinary labour market; it therefore reiterates the questions put forward in the previous conclusion and points out that should this information not be provided in the next report, there will be nothing to establish that the situation is in conformity in this respect.

Article 15§3 - Integration and participation of persons with disabilities in the life of the community

60. RESC 15§3 ANDORRA

The Committee concludes that the situation in Andorra is not in conformity with Article 15§3 of the Charter on the following grounds:

- it has not been established that housing, transport and telecommunications are covered by the anti-discrimination legislation;
- it has not been established that there are effective remedies available to disabled people alleging discriminatory treatment;
- it has not been established that disabled people have effective access to technical aids;
- it has not been established that disabled people have effective access to housing.

First and second grounds of non-conformity

The Committee notes that sections 14, 15, 19 and 21 of the Rights of Disabled Persons' Act of 17 October 2002 guarantees and encourages equal access for disabled persons to culture, leisure and sport. In its previous conclusion (Conclusions 2008), the Committee asked for information on any anti-discrimination legislation covering all the areas cited above, as well as its content and any judicial or non-judicial remedies in the event of discrimination, and a description of any relevant case-law. The report does not indicate neither whether all the spheres are covered by anti-discrimination legislation nor the remedies that are available. In view of the absence of information, the Committee considers that it has not been established that anti-discrimination legislation covers housing, transport, telecommunications and that there are effective remedies available to disabled people alleging discriminatory treatment in all the specified areas.

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Third ground of non-conformity

The Committee asked whether disabled persons were eligible for technical aids free of charge or were obliged to cover a part of their cost. If an individual contribution was required it asked whether the state at least was meeting part of the cost. It also asked whether disabled persons were eligible for support services, such as personal assistance or home help, free of charge or were obliged to meet part of the cost themselves. Finally, it asked whether there were arrangements for assessing the obstacles to communication and mobility faced by persons with disabilities and to identify the technical or support measures they needed to overcome these obstacles. Since the report does not reply to these questions, the Committee considers that there is no effective access to technical aids.

Fourth ground of non-conformity

The Committee asked for information on grants available to individual people with disabilities for home renovation work, lift installation and the removal of barriers to mobility, the number of beneficiaries of such grants and the general progress made on improving access to housing. In view of the absence of answers, the Committee considers that it has not been established that there is an effective access to housing.

61. RESC 15§3 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that there is legislation ensuring people with disabilities effective protection against discrimination in the fields of housing, transport, telecommunications, culture and leisure activities.

Ground of non-conformity

The Committee reiterates that the right of persons with disabilities to social integration provided for by Article 15§3 requires the removal of barriers to communication and mobility to give disabled persons access to road, rail, sea and air transport, public, social and private housing, and cultural activities and leisure, such as social and sporting activities. For this purpose, Article 15§3 requires the following to be established:

- anti-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications, culture and leisure, as well as effective remedies for those who have been treated unlawfully;
- a coherent policy for the disabled, and positive action measures to achieve the aims of social integration and full and comprehensive participation by people with disabilities. These measures must be co-ordinated and based on clear legal foundations.

While the report contains some information on the legal framework providing for the removal of barriers to mobility and for ensuring disabled people participation to cultural and sport activities, it is not clear whether all the different fields mentioned above are adequately covered. The Committee accordingly asks the next report to indicate whether anti-discrimination legislation in conformity with the requirements of Article 15§3 exists and how it is implemented, including as regards the remedies available. In the absence of such information, the Committee considers that it is not established that the situation is in conformity with Article 15§3.

Braille books and "talking books" are available and, in two provinces, library home services are provided to mobility impaired people. A programme aimed at providing computer access to visually impaired people is implemented since 2008.

Several sources⁴ point out that, although the Broadcasting Law makes it compulsory to provide television programmes accessible to hearing impaired people, only one private television channel provides sign language interpretation for some of its programmes. Other television channels only offer subtitles, which however are not easily accessible to people with hearing problems as they are often not literate enough to be able to follow them.

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⁴ ArmeniaNow.com article of 06/05/2011 “Rights of disabled people in Armenia highlighted on International Disability Day” ; UNISON NGO website ; About.com - Deafness, article of 28/04/2009
Furthermore, hearing impaired people do not have access to teleprinters, videophones or relay operators. The Committee asks next report to comment on these remarks and to indicate the measures taken to improve access to communication and media services to disabled people. It furthermore asks what is the legal status of sign language.

In response to the Committee’s request of information on the practical implementation of the provisions aimed at improving transport for the disabled people (Government Decree N392-N of 16 February 2006), the report acknowledges that, despite some progress (two out of 36 trolley-buses as well as certain streets, underground passages and building entrances have been adapted), much remains to be done. A draft law "on protection of rights of the disabled persons and their social inclusion" would provide for transportation means adapted for disabled persons and for ensuring accessible environment in view of their social inclusion. The Committee asks next report to provide updated information on the progress made in making transport accessible to disabled people, also as regards rail transport.

The Committee refers to its previous Conclusion (2008), indicating that the law, at least since 2006, sets standards for accessibility of buildings for mobility impaired people, which are obligatory for all construction companies. The Committee requests information on how these provisions are applied in practice and what remedies are available. Furthermore, it reiterates its question as to whether financial assistance is provided for adapting existing housing. The Committee also notes from another source that access to polling stations is reported not to be adequately available to disabled people and requests clarifications in this respect.

Under Article 26 of the Law "on social protection of rights of disabled persons and their social inclusion", disabled persons should be ensured participation in cultural and sport events. The report indicates that state assistance is provided to some NGOs, ensuring the participation of around 600 disabled people to sport activities. Creative education, free instruction of arts and crafts are available to disabled children in Yerevan and Vanadzor. A source indicates that while several schools in Yerevan are equipped with ramps, most of their facilities (including bathrooms) are inaccessible for people with mobility problems.

62.RESC 15§3 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that disabled people are effectively protected against discrimination in the fields of housing, transport and cultural and leisure activities.

Ground of non-conformity

The Committee noted in its previous Conclusions (2008) that Cyprus’s anti-discrimination legislation (Act No. 127(I)/2000 on persons with disabilities) expressly refers to mobility, transport, telecommunications, culture and leisure and had asked for additional information on the Act within the material scope of Article 15§3. On the matter of legal remedies, the Committee had asked for examples of relevant case-law. It also had asked if all the authorities involved in implementing policies for persons with disabilities have integrated planning programme. The report does not reply to these questions, therefore the Committee reiterates them.

The ANED report (2009) on social inclusion and social protection of disabled people indicates that there are transportation allowances for certain groups of disabled people who, due to their impairments, are unable to use transportation means independently. Certain groups of disabled people can also buy a tax free car and are entitled to own a preferential parking card.

However, the ANED report on social inclusion and social protection of disabled people indicates that public transport is not yet developed in Cyprus, which causes difficulties both to disabled and non-disabled people. The 2010 report on measures to combat discrimination confirms this situation and adds that no regulations have been issued by the competent ministries to implement the legal provisions concerning accessibility of public transport. In this respect, the report states that a campaign was launched in 2010 to replace old buses with new ones, adapted to disabled people. All major bus transport corporations have, according to the report, already replaced their buses. The ANED report

5 Global accessibility news, 12/04/2012 Persons with disabilities to gain access to Armenia’s polling stations in 40 years, NGO says
6 UNISON NGO website - http://unison.am/en/faq
furthermore indicates that the department of road transportation has issued five licenses to taxis specifically adapted to disabled people.

The law does not provide for free access to public transport to disabled people, the fares being decided by each transport corporation. The Grants and Benefits Service of the Ministry of Finance provides a monthly transportation benefit to disabled workers and students (including vocational training students).

As already asked in its Conclusions 2008, the Committee wishes to know what measures are being taken to improve access to public transport for persons with disabilities and what are the regulations applying to sea transport.

The report does not provide any information on this point. According to information available on the ANED database, Regulation 61 of the Roads and Buildings Regulations of 1999 sets accessibility standards for newly built buildings in order to safeguard accessibility for all disabled people: all public buildings are expected to follow the standards for becoming accessible to all disabled people, but no time frame is set for the implementation of the Law. According to the 2010 report on measures to combat discrimination, not all needs of all disabilities are covered, for example there is no clear provisions for accessibility to the internal spaces of buildings and there are implementation problems because supervision of compliance is lacking. The same report indicates that buildings housing governmental services are exempted from accessibility regulations, which in any event cover only buildings built after 1999.

The ANED report 2009 on the implementation of policies supporting independent living for disabled people indicates on the one hand that there are no statistical data regarding disabled people who live independently in their own houses, those who live with their families, those who live in supported settings and those who live in institutions and, on the other hand, that the support services for independent living, direct payments towards this end and other measures (housing improvements, technical equipment etc.) are limited. According to this report, there is no general policy to legitimize disabled people’s rights to independent living. Furthermore, the range of support that is available to disabled people living in their own homes in the mainstream community is allegedly extremely limited. The policies and schemes available concern both disabled people and elders, which indicates that the state views these two groups as one, and only the recipients of public assistance allowance can request housing grants.

The same report indicates some relevant pieces of legislation adopted between 1991 and 2006 and mentions as a positive step the adoption, in the framework of the new housing policy of the Ministry of Interior, of a Unified Plan for Accommodation, which entails financial support to disabled people when buying or building a house. The actual amount for each applicant depends on his/her salary and family status. In order to promote deinstitutionalization, ‘houses in the community’ are also being established, providing accommodation for up to five disabled people. There are currently nine state ‘houses in the community’. In addition, there are currently six state institutions, known as “shelters for the elder and people with disabilities”. Other institutions and “community houses” exist, which are not run by the state. The state, via the Social Welfare Services of the Ministry of Labour and Social Insurance, offers three types of support to elder and disabled people: home care, day care and institutional care. The Social Assistance for Improving Housing Conditions scheme promotes independent living in individually owned houses, by allocating up to €12,000 to improve housing conditions. However, the ANED report points out that the criteria applied to be eligible to the scheme are too restrictive. Another scheme, entitled “Support of Families for Caring for their Elder and Disabled Members” concern inter alia disabled people’s parents.

The law does not provide for free or reduced rate access to cultural and leisure facilities and activities, each organisation offering these services being free to define their rules and policies. Deciding on a complaint filed in 2010, the Equality Body found in May 2012 that sport venues are not accessible yet to people with disabilities and concluded that by not taking the necessary measures, Cyprus is liable to be exposed internationally for violation of the obligations it has undertaken.

In the absence of any reply to the question raised in its Conclusions 2008, the Committee asks again what measures are being taken to improve access.

The Committee emphasised in its Conclusions 2008 that if the report would not provide all the requested information, there would be no evidence that the situation in Cyprus is in conformity with Article 15§3 of the Charter.
The Committee concludes that the situation in Georgia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

Ground of non-conformity

The Committee concludes that the situation in Georgia is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

According to the report, the Law on Social Protection for Persons with Disabilities of Georgia of 1995, as amended in 2001, sets the main framework for the state policy on disability and defines disabled persons’ rights and means to exercise those rights on equal terms as those of other people. In particular, Article 7 of the Law states that Government bodies, entreprises, establishments and organisations shall provide disabled people with conditions enabling them to have free access to residential, public and industrial buildings, and transport and communication facilities.

In 2008, the Parliament adopted a Concept Paper on Social Integration of Persons with Disabilities, envisaging empowerment of disabled persons to prevent their alienation from social, economic, political and cultural life. A state Action Plan on Social Integration of Persons with Disabilities for 2010-2012 was prepared in cooperation with all interested parties and adopted in 2010. The Plan aims at improving the life environment of disabled people, improving prevention and rehabilitation and supporting their equal participation to all aspects of social life. The Plan covers different areas concerning accessibility of information on disability related issues and accessibility of environment and services (see below for details) and includes awareness-raising initiatives and the creation of counseling centres to provide legal, medical and other advisory services to disabled persons.

Under other State Programmes, a number of services has been developed and offered, in terms of diagnostics, rehabilitation and care structures such as: day-centers care (including transport and catering), residential care of persons with mental disorders, community care of disabled persons (over 16 years old), recreation and resort rehabilitation centres for disabled children, psycho-somatic rehabilitation of disabled children with neuromuscular disorders, early diagnostics of developmental disorders and intervention for children.

The report underlines that, despite the negative economic conjoncture in 2009, the budget for these programmes has increased from 3,829,106 GEL in 2006 (approximately 1,861,728 €) to 5,152,600 GEL in 2010 (approximately 2,504,970€).

As the report does not reply to the question raised in its Conclusions 2008, the Committee reiterates its request for information on the existence of any anti-discrimination legislation covering the areas relevant to Article 15§3 of the Charter, as well as its content and any judicial or non-judicial remedies that it provides for in the event of discrimination, with a description of relevant case-law examples. The Committee also reiterates its question on whether integrated programming is applied by all authorities involved in the implementation of policies for disabled persons. In the meanwhile, the Committee concludes that the situation is not in conformity with Article 15§3 of the Charter on the ground that it has not been established that persons with disabilities enjoy effective protection against discrimination in the fields of housing, transport, telecommunications and culture and leisure activities.

Sign language is recognized as a mean of communication and the State undertakes to create the necessary conditions for its wide use and development. For example, sign language translation of news on national television is provided for by the Action Plan 2010-2012 mentioned above, which also promotes computerisation and accessibility of means of communication for visually and hearing impaired people. Sign language interpretation, as well as the development and distribution of Braille material, audiobooks and audio players, was also already provided by previous state programmes.

The Committee asks to be kept informed of the measures taken to ensure access to communication adapted to different forms of disability, in particular as regards new information and telecommunication technologies.
The Committee asks to be kept informed of the measures taken to ensure access to communication adapted to
different forms of disability, in particular as regards new information and telecommunication technologies.

Increased accessibility of public infrastructure is one of the targets of the Action Plan 2010-2012 mentioned above
and it includes state institutions and other public buildings as well as transport terminals (airport, car parks, wayside
infrastructure). According to information available on Disabilitynet.info, public transport is not yet sufficiently
accessible to disabled persons in Georgia.

The Committee asked in its Conclusions 2008 what arrangements had been made for the implementation of legal
rules and regulations concerning mobility and transport and how disabled access to public transport (by road, rail, air
and sea) is guaranteed. It also asked for information on whether free or reduced fares are available for disables
persons, where necessary to cover additional costs. As the report does not reply to these questions, the Committee
reiterates them.

Action Plan 2010-2012, as already mentioned, provides that disabled people should get access to public buildings. In
addition, the report indicates that a number of care structures exist for disabled people and their functioning is being
strenghtened. The Committee reiterates its question as regards the grants available to disabled people for housing rehabilitation, lift
construction and removal of obstacles to mobility, as well as on the number of beneficiaries and the results achieved
in promoting accessible housing.

The Committee reiterates its question as regards the grants available to disabled people for housing rehabilitation, lift
construction and removal of obstacles to mobility, as well as on the number of beneficiaries and the results achieved
in promoting accessible housing.

The Law on Social Protection for Persons with Disabilities provides the obligation for Government bodies and
agencies at central and local levels to ensure that cultural, entertaining and sports facilities are readily accessible for
disabled people; these bodies and agencies are also in charge of provision of special sports equipment and other
needed facilities to disabled people. These services shall be free of charge or be accessible on favorable terms by
disabled people, as defined by the legislation in force. Funds destined to building, social, cultural and sports facilities,
as well as for purchasing and storing relevant equipment intended for disabled people are tax free.

The Committee requests information on the concrete results achieved in making culture, sport and other leisure
activities available to disabled people.

Article 18§1 – Applying existing regulations in a spirit of liberality

64.RESC 18§1 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 18§1 of the Charter on
the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

Ground of non-conformity

In its previous conclusion (Conclusions 2008) the Committee asked for statistics relating to the granting and
refusal rates of work permits. It reiterated that this information is essential for assessing whether the existing
regulations are applied in a spirit of liberality. The Committee notes that the report does not provide this
information. Therefore, the Committee holds that it has not been established that the existing regulations are
applied in a spirit of liberality.
65. RESC 18§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that existing regulations are applied in a spirit of liberality.

**Ground of non-conformity**

The Committee recalls that its assessment of the degree of liberality in applying existing regulation is based on figures showing the refusal rates for both work permits for the first time as well as for renewal applications (Conclusions XVII-2, Spain).

The Committee notes that the report does not contain any statistics concerning the refusal rates of employment permits. Therefore, it holds that it has not been established that existing regulations are applied in a spirit of liberality.

66. ESC 18§1 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 18§1 of the 1961 Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

**Ground of non-conformity**

The Committee notes that the report fails to provide information regarding the refusal rate (i.e. the total number of applications for residence/work permit and the total number of granted and refused permits). Therefore, the Committee holds that it has not been established that the existing regulations are applied in a spirit of liberality.

**Article 18§2 – Simplifying formalities and reducing dues and taxes**

67. RESC 18§2 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 18§2 of the Charter on the ground that the level of fees for residence permits is excessive.

**Ground of non-conformity**

The Committee now notes that certain categories of persons may be exempted from the payment of such fees, but however, their level has remained the same in the reference period (€281 for a temporary permit and €321 for a permanent permit). The Committee recalls that chancery dues and other charges for permits must not be excessive and in any event, must not exceed the administrative cost incurred in issuing them.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that 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.

The Committee holds that the fees are too high and therefore, the situation is not in conformity with the Charter.
68. RESC 18§2 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 18§2 of Charter on the ground that the fees for work permits are excessive.

Ground of non-conformity

As regards fees, according to the report, they range between € 500 and € 2,250, depending on the duration of the employment permit, whether new or renewed. However, there are categories that are exempted from the requirement to pay fees. These are permit applications under the spousal/dependant scheme, applications in respect of spouses of EU nationals, applications for unlimited permits etc. The Committee observes that the amount of fees has considerably gone up since its last examination of the situation under this provision, when they ranged between € 65 and € 500.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that 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.

The Committee considers that the fees charged for permits are excessive and therefore the situation is not in conformity with the Charter.

69. ESC 18§2 GREECE

The Committee concludes that the situation in Greece is not in conformity with Article 18§2 of the 1961 Charter on the grounds that:

- formalities concerning the issuance of work and residence permits have not been simplified during the reference period;
- the fees charged for issuing long term residence permits are excessive.

1\textsuperscript{st} Ground of non-conformity

According to the report a bill was passed by the Greek Parliament (20/9/2011) on the reorganisation of the permit system for the residence of foreign citizens in Greece. The provisions of the Law passed include the necessary national adaptations, in relation with the obligations arising from the provisions of Regulation 1030/2002/EU, as amended by Regulation 380/2008/EU and the arrangements for the gradual transformation of the Aliens and Immigration Services of the Decentralised Administrations to 'one-stop shop' services, in the context of the issuance of residence permits in the form of stand-alone document (electronic card), a process which is expected to limit the time needed for issuing residence permits. The Committee wishes to be kept informed about these developments.

The Committee notes that during the reference period formalities concerning the issuance and delivery of work and residence permits have not been simplified. Therefore, the Committee holds that the situation is not in conformity with the Charter.

2\textsuperscript{nd} Ground of non-conformity

In reply to the Committee’s question, the report states that the amount of fees for the issuance and renewal of residence permits is stipulated in Article 92 of Law 3386/2005. As regards the long-term resident permit, its cost was reduced, per provisions of Article 30 of Law 3838/2010, from € 900 to € 600.
According to the report, these fees are collected for the State and a significant percentage of the collected revenues is spent for the operating costs of the departments serving third-country nationals, as well as for the expenses of Ministries and Decentralised Administrations of the country administering migration policy issues. The report states that the part of the fee revenues will be spent towards materialisation of the gradual transformation of the competent Aliens and Immigration services to "one-stop-shop" services.

In view of the above, the Committee holds that the level of fees for the issuance and renewal of residence permits, albeit having been reduced, is still excessive. Therefore, the situation is not in conformity with the Charter.

70. ESC 18§2 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 18§2 of the 1961 Charter on the ground that the formalities for issuing work and residence permits have not been simplified during the reference period.

Ground of non-conformity

The Committee notes that there have been no legislative developments during the reference period. The 'one stop shop' to process both work and residence permits has not been introduced. According to the report, the Directorate of Labour has to await the decision of the Directorate of Immigration on whether the applicant will be granted a residence permit, so that the former takes its own decision whether to grant the work permit. The average processing time for applications for these permits is 90 days.

The Committee notes that there have been no developments during the reference period and period the existing formalities for issuing work and residence permits have not been simplified. Therefore, the situation is not in conformity with the Charter.

71. ESC 18§2 UNITED KINGDOM

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 18§2 of the 1961 Charter on the ground that the fees charged for work permits are excessive.

Ground of non-conformity

The Committee notes from another source (http://www.workpermit.com/uk) that the Social Charter nationals (CESC) are a separate category when it comes to immigration fees. The fees for this category are slightly lower than for other applicants. According to this source the main applicant in Tier 1 should pay £ 734 (932€) if applying from outside the UK and £1,350 (1,714€) if applying in the UK.

According to Article 18§2 of the Charter, with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. The Committee observes that 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.

The Committee notes that fees are high and therefore, it holds that the situation is not in conformity with the Charter.
**Article 18§3 – Liberalising Regulations**

**72.RESC 18§3 BELGIUM**

The Committee concludes that the situation in Belgium is not in conformity with Article 18§3 of the Charter on the ground that the foreign worker’s residence permit may be revoked if he/she loses his/her job and he/she may be obliged to leave the country as soon as possible.

**Ground of non-conformity**

The Committee notes from the additional information provided by the Government that in principle, the loss of employment automatically leads to a loss of the right of residence of economic migrant. Where there is no more economic activity, the Aliens Act provides for the loss of the right of residence. In some exceptional cases, the right of residence can be extended for a period of three months.

The Committee observes that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they refer to the same case in question - whether or not to enable a foreigner to engage in a gainful occupation. However, in case a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.

The Committee holds that the Belgian legislation does not comply with this approach. Therefore, it considers that the situation is not in conformity with the Charter.

**73.RESC 18§3 REPUBLIC OF MOLDOVA**

The Committee concludes that the situation in Moldova is not in conformity with Article 18§3 of the Charter on the ground that termination of employment contract of the foreign worker leads to cancellation of the temporary residence permit thus obliging him/her to leave the country as soon as possible.

**Ground of non-conformity**

According to the legislation of Moldova, the work permit can be revoked when the work contract is terminated for justified reasons, and this decision can be the sole basis for the revocation of the temporary residence permit.

The Committee observes that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they refer to the same case in question - whether or not to enable a foreigner to engage in a gainful occupation. However, in case a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.

The Committee holds that the situation is contrary to Article 18§3 of the Charter, as the foreign worker should leave the country as soon as possible if he/she loses the job.
74.RESC 18§3 ROMANIA

The Committee concludes that the situation in Romania is not in conformity with Article 18§3 of the Charter on the grounds that:

- the loss of employment leads to the cancellation of the residence permit thereby obliging foreign workers to leave the country.

Ground of non-conformity

The Committee notes from the report that according to GEO No. 56/2007, if the work permit of a foreign worker is cancelled due to termination of employment contract, foreign worker can work with another employer only if issued a new work permit. However, cancellation of the employment authorisation of the foreign worker also terminates his/her right to stay in Romania therefore obliging him/her to leave the country.

75.RESC 18§3 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that:

- it has not been established that a residence permit of a foreign work who loses his/her job is not automatically revoked.

Ground of non-conformity

The Committee notes that the report does not provide any information regarding the situation whereby a foreign worker loses his job while his/her residence permit is still valid. In the absence of any additional information from the Government in reply to the supplementary questions, the Committee holds that it has not been established that foreign workers do not lose their residence permit in case they lose a job.

76.RESC 18§4 RUSSIAN FEDERATION

The Committee concludes that the situation in the Russian Federation is not in conformity with Article 18§4 of the Charter on the ground that the law provides for prohibition to leave the country which is not justified in the meaning of Article G of the Charter.

Ground of non-conformity

In this connection the Committee recalls that under Article 18§4 of the Charter, States undertake not to restrict the right of their nationals to leave the country with a view to engaging in a gainful occupation in other Parties to the Charter. The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are 'prescribed by law and are necessary in a democratic society for the protection of the rights’. The Committee considers that the blanket prohibition to leave the country as stipulated in the law on the procedure for leaving and entering the Russian Federation is too restrictive and goes beyond what can be justified under Article G of the Charter. Therefore, the Committee holds that the situation is not in conformity. The Committee asks how many persons have been affected by the prohibition to leave the country.
Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination

77. RESC 20 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Charter on the grounds that:

- ..... 
- There is no shift in the burden of proof in gender discrimination cases

Ground of non-conformity

From the information provided under Article 1§2 it appears to the Committee that during judicial proceedings in discrimination cases there is no shift in the burden of proof. Therefore the Committee finds that the situation is not in conformity with the Charter.

78. RESC 20 BOSNIA AND HERZEGOVINA

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 20 of the Charter on the grounds that:

- the right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice,
- women are prohibited from working in underground mining.

1st Ground of non-conformity

According to the report only 35.6% of women are in employment, and the unemployment rate amongst women amounts 25.6%. The Committee asks the next report to provide information on the gender pay gap.

However the Committee notes that the employment rate of women is low, and that according to other sources “.....Little progress has been made in the field of women’s rights.......harmonisation of the Entity and Cantonal laws with the gender equality law proceeded very slowly.....The main mechanisms for ensuring gender equality are adequately funded but still do not monitor sufficiently implementation of the gender law and gender action plans. Cooperation between ministries and agencies, including the Ombudsman’s Office, remains weak.......the labour market participation of women is low.” (Commission staff working document Bosnia and Herzegovina 2010 Progress report COM(2010) 660).

Therefore from all the information available to it the Committee concludes that equal treatment and equal opportunities are not guaranteed in practice.
2nd Ground of non-conformity

According to the report no exceptions are permitted for certain occupations. However the Committee noted under Article 8 (see conclusions 2011) that women are prohibited from working in underground mining. Section 52 of the Labour Act of the Federation of Bosnia and Herzegovina prohibits the employment of women in mines except women performing management which does not require manual work or women performing health and social protection jobs, as well as women working in education who must spend time in underground parts of mines, or those who must enter underground parts of mines to perform non-manual works. A similar prohibition regarding the employment of women in mines exists in Section 78 of the Labour Law of the Republika Srpska and Section 76 of the Labour Act of the District of Brcko. It concludes that such a prohibition is not in conformity with Article 20. The Committee asks whether there are any other occupations which are prohibited for women.

79. RESC 20 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 20 of the Charter on the ground that there is a predetermined upper limit on compensation for employees who are dismissed as a result of sex discrimination which may preclude damages from making good the loss suffered and from being sufficiently dissuasive.

Ground of non-conformity

The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The Committee refers to its conclusion under Article 1§2 concerning an upper limit for compensation paid to the victims of discrimination in which it notes that the report refers to Article 225§1 of the Labour Code, which fixes a limit for compensation equivalent to not more than 6 months wages. Consequently, the Committee considers that the situation is not in conformity with the Charter.

80. RESC 20 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 20 of the Charter on the ground that the employment of women in underground mining is prohibited.

Ground of non-conformity

The Committee previously requested information on occupations reserved to one gender. The report provides the following information:

“Excluded from the scope of the Law on Equal Treatment of Men and Women in Employment and Vocational Training, are listed in the Annex of the above mentioned Law and are the following:

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- Employment of women for underground work in mines. “

Furthermore as regards the prohibition on women working in underground mining the Committee recalls that it has held that legislation which prohibits the employment of women in underground mining is contrary to the principle of equality as enshrined in Article 20 of the Charter. Therefore in this respect the Committee finds that the situation is not in conformity with the Charter.
81. RESC 20 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 20 of the Charter on the ground that legislation only permits equal pay comparisons between employees working for the same company or undertaking.

Ground of non-conformity

The Committee notes from the information in the report that under French law in order to make a pay comparisons the employees must belong to the same enterprise or undertaking. Therefore the principle of equal pay for work of equal value cannot be invoked in respect of persons working for different enterprises even if covered by the same collective agreement. The Committee refers to its interpretative statement in the General Introduction in this respect and finds that the situation is not in conformity with the Charter.

82. RESC 20 GEORGIA

The Committee concludes that the situation in Georgia is not in conformity with Article 20 of the Charter on the ground that it has not been established that there is adequate protection against gender discrimination in employment.

Ground of non-conformity

The Committee observes that legislation provides that women who believed they have been subject to gender discrimination may take their case to court. However it requested previously information on the burden of proof (whether legislation provided for a shift in the burden of proof) and on remedies, in particular, on any limits to compensation that may be awarded to victims of discrimination. The report fails to provide a response to these questions.

The Committee also asked whether in equal pay litigation cases, it was possible to make comparison of pay and jobs across enterprises. Again no information is provided. The Committee refers to its statement in the General Introduction on this issue.

The Committee therefore finds that it has not been established that there is adequate protection against gender discrimination in employment.

83. RESC 20 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 20 of the Charter on the ground that the legislation prohibits the employment of women in heavy work and in underground work.

Ground of non-conformity

The Committee notes that Article 248 of the Labour Code prohibits the employment of women in heavy work along with underground work with the exception of work in sanitary services and work not requiring physical effort. It points out that this type of prohibition is at variance with the principle of equality enshrined in Article 20 of the Charter.
84. RESC 20 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 20 of the Charter on the ground that it has not been established that equal opportunities and equal treatment in matters of employment without discrimination on grounds of sex are guaranteed.

Ground of non-conformity

The previous conclusion was deferred pending information on a certain number of issues. The report provides a description of the legal situation which is unchanged since the last Conclusion and no other information. The Committee therefore requests the next report to provide full answers to the questions posed in the previous Conclusion (Conclusions 2008) as well as updated information on the position of women in employment and training, including information on the gender pay gap. It refers to its statement in the General Introduction in this respect.

Meanwhile it is forced to conclude that the situation is not in conformity with the Charter on the ground that it has not been established that equal opportunities and equal treatment in matters of employment without discrimination on grounds of sex are guaranteed.

85. RESC 20 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 20 of the Charter on the grounds that:

- the employment of all women in certain underground or underwater occupations is prohibited;
- Women who do not have an indefinite labour contract with at least six months service and who are not employed at a business employing thirty or more workers are not protected by the prohibition of dismissal on grounds of sex.

1st Ground of non-conformity

The Committee notes that according to the report the employment of women in underground or underwater positions such as mines, cabling sewerage or tunnel construction is prohibited. The Committee finds that such a prohibition is not in conformity with the Charter.

2nd Ground of non-conformity

The Committee understands from the report those who have been dismissed on grounds of sex are only protected against unfair dismissal where they had indefinite labour contract with at least six months service and are employed at a business employing thirty or more workers. The Committee finds that this situation is not conformity with the Charter.
Article 24 – Right to protection in cases of termination of employment

86. RESC 24 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Charter on the following grounds:

- it has not been established that the grounds for dismissal with notice that are considered as valid by legislation or domestic case law do not go beyond what is permitted by Article 24 of the Charter;

Ground of non-conformity

The Committee notes that the report fails to provide information on all valid grounds of dismissal with notice. Therefore, the Committee holds that it has not been established that the grounds for dismissal with notice that are considered as valid by legislation or the domestic case law do not go beyond what is permitted by Article 24 of the Charter.

87. RESC 24 ARMENIA

The Committee concludes that the situation in Armenia is not in conformity with Article 24 of the Charter on the grounds that:

- the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified;
- the maximum compensation for unlawful termination of employment is inadequate.

1st Ground of non-conformity

In its previous conclusion the Committee asked whether Armenian law provided for termination of the employment relationship on the ground that an employee had reached a certain retirement age. In this connection the report states that pursuant to Article 113 of the Labour Code the employers have the right to terminate employment prior to the expiry of employment contract when the employee reaches retirement age.

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.
The Committee holds that the situation is not in conformity with the Charter as the termination of employment at the initiative of the employer on the sole ground that they have the pensionable age, which is permitted by law, is not justified.

2\textsuperscript{nd} Ground of non-conformity

In reply to the Committee's question, the report states that according to Article 265 of the Labour Code, as amended (HO-117-N of 15 July 2010) if the court decides that the employment contract was dissolved in the absence of lawful grounds or in violation of the procedure defined by the legislation, the employee may be reinstated if the restoration of employment relations between the employer and the employee is possible. If such action is impossible due to economic, technological or organisational issues, then the employer will be obliged to pay compensation in the amount not less than the double of the average salary but not more than 12 times the average salary.

The Committee recalls that Article 24 of the Revised Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.

The Committee holds that the situation is not in conformity with the Charter as the maximum compensation for unlawful dismissal is inadequate.

88. RESC 24 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that:

- employees undergoing a probationary period of 6 months are not protected against dismissal;
- the termination of employment at the initiative of the employer for some categories of employees, on the sole ground that they have the pensionable age, which is permitted by law, is not justified.

1\textsuperscript{st} Ground of non-conformity

In its previous conclusion (Conclusions 2008) the Committee asked whether employees were excluded from any protection against unfair dismissal in the course of the six months probationary period. In this regard it notes from the report that during the period of probation termination of employment by virtue of Article 71 of the Labour Code does not fall within the scope of preliminary protection against dismissal envisaged by Article 333 of the Labour Code and thus the employer is not obliged to provide the reasons for termination of employment.

In this connection, the Committee recalls that under Article 24 of the Charter exclusion from the protection against dismissal of the employees who have not completed a continuous period 6 months with their employer regardless of their qualifications is contrary to the Charter as it goes beyond what is permitted by the Appendix to the Charter. Therefore, the Committee considers that the situation is not in conformity with Article 24.

2\textsuperscript{nd} Ground of non-conformity

In its previous conclusion the Committee asked whether dismissal on the ground of age could constitute a valid reason for termination of employment. It notes in this regard that with the amendment of the Labour Code (SG 7 of 2012) the employer can no longer terminate the employment relationship on the ground that the person has acquired the pension entitlement. The employer may terminate an employment contract with notice upon reaching 65 years of age for professors, associate professors and doctors of science.
The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee holds that the termination of employment at the initiative of the employer for some categories of employees, on the sole ground that they have the pensionable age, which is permitted by law, is not justified.

89. RESC 24 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Charter on the grounds that:

- the categories of persons excluded from protection go beyond what is allowed under the Appendix to the Charter.

Ground of non-conformity

In its previous conclusion the Committee noted that the Termination of Employment Law stipulates that an employee is only entitled to compensation in the event of unfair dismissal if he or she has not yet attained the age of 65 years. It asked whether the legal framework complies with the principle that termination of employment is only permitted when it is objectively and reasonably justified by a legitimate aim such as legitimate employment policy, labour market objectives or the operational requirements of the undertaking.

The Committee notes from the report that the protection afforded under the Termination of Employment Law no longer applies when the employee reaches pensionable age. The Committee holds that this situation is contrary to the Charter as the categories of persons excluded from protection go beyond what is allowed under the Appendix to the Charter.

90. RESC 24 FINLAND

The Committee concludes that the situation in Finland is not in conformity with Article 24 of the Charter on the ground that the legislation does not provide for the possibility of reinstatement in case of unlawful dismissal.

Ground of non-conformity

The Committee notes that the Finnish legislation does not provide for the possibility of reinstatement in case of unlawful dismissal. It recalls that Article 24 requires that such a possibility must be guaranteed by legislation. Therefore, the Committee considers that the situation is contrary to the Charter.
91. RESC 24 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 24 of the Charter on the grounds that:

- legislation permits the exclusion of employees from protection against dismissal for one year during the probationary period;
- employees having reached the normal retiring age are excluded from the protection of the Unfair Dismissals legislation which goes beyond what is permitted by the Appendix to the Charter.

1st Ground of non-conformity

The Committee notes from the report that some categories of employees are not covered by the Unfair Dismissal legislation, such as: employees with less than one year's continuous service; employees who had reached the normal retiring age; employees working for a close relative in a private house or farm; members of the Garda Síochána and the Defence Forces; persons undergoing training by the National Training and Employment Authority; managers of local authorities.

As regards exclusion of employees undergoing a period of probation, according to the report, for this exclusion to apply, a written employment contract must be in place and the duration of the probation must be one year or less and be specified in the employment contract. An employee must have been in the same employment for at least a year in order to bring a claim for unfair dismissal. However, an employee with less than 12 months' continuous service can still bring a claim for unfair dismissal if the dismissal resulted from trade union membership or any matters connected with pregnancy or birth.

In this regard, the Committee recalls that under Article 24 exclusion of employees from protection against dismissal for six months or 26 weeks during the probationary period is not reasonable if applied indiscriminately, regardless of the employee’s qualification (Conclusions 2005, Cyprus). The Committee considers that one year period of exclusion is manifestly unreasonable and therefore the situation in Ireland is not in conformity with the Charter on this ground.

2nd Ground of non-conformity

As regards exclusion of employees having having reached the normal retiring age from the protection of the Unfair Dismissals legislation, the Committee holds that such exclusion is contrary to the Charter as it goes beyond what is permitted by the Appendix to the Charter. Therefore, the situation is not in conformity on this ground.

92. RESC 24 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Charter on the grounds that:

- the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.
Ground of non-conformity

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee thus holds that the situation in Malta is not in conformity with the Charter as the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

93. RESC 24 NETHERLANDS

The Committee concludes that the situation in the Netherlands is not in conformity with Article 24 of the Charter on the ground that the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

Ground of non-conformity

The Committee recalls that according to the Appendix to the Charter, for the purposes of Article 24 the term ‘termination of employment’ means termination of employment at the initiative of the employer. Therefore, situations where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, do not fall within the scope of this provision.

The Committee further recalls that Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).

The Committee holds that under Article 24 dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter.

The Committee thus holds that the situation in the Netherlands is not in conformity with the Charter as the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.
94. RESC 24 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 24 of the Charter on the ground that it has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases.

Ground of non-conformity

In its previous conclusion the Committee noted that unless it was alleged that a dismissal was discriminatory, the burden of proof lay with the plaintiff. The Committee asked whether Norwegian law provided for an appropriate adjustment of the burden of proof between employee and employer. In the absence of a reply, the Committee holds that it has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases.

95. RESC 24 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 24 of the Charter on the ground that the maximum compensatory payment in case of unlawful termination of employment is inadequate.

Ground of non-conformity

In this connection the Committee recalls that under Article 24 employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation is appropriate if it includes reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. Therefore, the Committee holds the maximum compensation of 12 months is inadequate and the situation is not in conformity with the Charter.

96. RESC 24 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 24 of the Charter on the ground that the maximum amount of compensation in case of unlawful dismissal is inadequate.

Ground of non-conformity

The Committee recalls that Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief. In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee.

The Committee notes that according to Article 21, if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation should be paid in the amount not less than the employee’s four months’ wages and not more than his eight months’ wages.

The Committee considers that the situation is not in conformity with the Charter as the maximum amount of compensation in case of unlawful dismissal is inadequate.
Article 25 - Right of workers to protection of their debts in the event of the insolvency of their employer

97. RESC 25 ALBANIA

The Committee concludes that the situation in Albania is not in conformity with Article 25 of the Charter on the ground that workers claims are not effectively protected in case of insolvency of their employer under the privilege system alone.

Ground of non-conformity

The Committee has consistently held that the term "insolvency" includes both situations in which formal insolvency proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of his creditors and situations in which the employer's assets are insufficient to justify the opening of formal proceedings (see for example Conclusions 2003, p. 199).

In this respect the Committee wishes to make it clear that a privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25. While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets. It serves no purpose to have a privilege when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations.

Therefore, the Committee holds that the situation is not in conformity with the Charter as there is no alternative to the privilege system, which in it itself does not provide effective guarantee of protection of workers' claims in situations where the employer no longer has any assets.

98. RESC 25 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers' claim in case of insolvency of their employer is excessive.

Ground of non-conformity

In reply to the Committee’s question, the report states that the average time that elapses between the filing of the claim and the payment of any sums owed was 11 months. The Committee considers that the average period of 11 months is excessive and therefore, the situation is not in conformity with the Charter.

99. RESC 25 LITHUANIA

The Committee concludes that the situation in Lithuania is not in conformity with Article 25 of the Charter on the ground that the average time to satisfy workers’ claim in case of insolvency of their employer is excessive.

Ground of non-conformity

According to the report, the number of applications for bankruptcy proceedings have significantly increased during the reference period, amounting to 957 in 2008 and 1,844 in 2009. They have slightly decreased in 2010, amounting to 1,636. Due to an increased number of applications, the duration of time from the submission of an application and the transfer of money to employees increased from four months in 2008 to twelve months 2010. In 2010 1,093 applications were examined and 20,439 employees received allowances. The Committee considers that the average period of twelve months is excessive and therefore, the situation is not in conformity with the Charter.
100. **RESC 25 ROMANIA**

The Committee concludes that the situation in Romania is not in conformity with Article 25 of the Charter on the ground that it has not been established that workers’ claims in case of insolvency of the employer are adequately protected in practice.

**Ground of non-conformity**

The Committee recalls that in order to demonstrate the adequacy in practice of the protection, States must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid and on the overall proportion of workers’ claims which are satisfied by the guarantee institution and/or the privilege system.

Since the report does not provide this information, the Committee holds that it has not been established that workers’ claims in cases of insolvency are adequately protected in practice.

101. **RESC 25 TURKEY**

The Committee concludes that the situation in Turkey is not in conformity with Article 25 of the Charter on the ground that employees having worked for less than one year for the same employer are excluded from protection against insolvency.

**Ground of non-conformity**

Article 9 of the Regulation, entitled “Procedures and Principles Regarding the Payment” states that the “Worker Claim Record” must cover the period prior to the employer’s becoming insolvent and the employee must have worked in the same workplace for at least one year immediately preceding the employer’s becoming insolvent.

The Committee holds that exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter. Therefore, it holds that the situation is not in conformity with Article 25.
B-RENEWED CONCLUSIONS OF NON CONFORMITY

Article 1§1 - Policy of full employment

102. RESC 1§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have been inadequate in view of the persisting high levels of unemployment in a context of relative economic growth.

Ground of non-conformity

The Committee nevertheless notes from Eurostat that the activation rate in the Slovak Republic, that is, the number of persons taking part in an active measure as a percentage of the unemployed, was 15.6% in 2009. This was below the EU-27 average that year, which stood at 28.9%

The Committee notes that the OECD has pointed out the need of adapting labour market policies in the Slovak Republic by shifting the priority of ALMP spending more towards training measures (OECD economic survey of the Slovak Republic 2010). More specifically, it has also considered there was a need to improve the activation of long-term unemployed, recommending the expansion of training measures and narrowing the targeting of subsidized job creation to the long-term unemployed (OECD Economic Policy Reforms : going for growth).

The Council of the European Union (Council Recommendation on the National Reform Programme 2011 of the Slovak Programme) has also recommended the Slovak authorities to take measures to improve the targeting, design and evaluation of active labour market policies, especially for the young and long-term unemployed.

According to Eurostat, public expenditure on active labour market policies in the Slovak Republic amounted to 0.23 % of GDP in 2009, which is well below the average of the EU-27 countries (where the average public spending on active labour market measures as a percentage of GDP that year was 0.78%). Given the high level of unemployment in the Slovak Republic (14.4%), the extremely high long-term unemployment rate (64%), and very high youth unemployment rate (33.6%), the Committee considers that the employment policy effort measured by the level of expenditure on ALMP as well as the activation rate is inadequate.

The situation is not in conformity on this ground since Conclusions XV-2 (2003).

On the previous occasion the representative from the Slovak Republic provided information on measures it was undertaking in order to promote employment and also referred to the amendments to the employment service legislation (Detailed report concerning conclusions 2008 §22-27).

The Governmental Committee noted the positive developments in the Slovak Republic, invited the government to supply all relevant information in the next report and decided to await the ECSR’s next assessment (ibidem §28).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article1§1 of the Charter.

Additional measures are required by the Slovak Republic.
103. ESC 1§1 CROATIA

The Committee concludes that the situation in Croatia is not in conformity with Article 1§1 of the Charter on the ground that employment policy efforts have been inadequate in combatting unemployment and promoting job creation.

Ground of non conformity

As regards the activation rate, the report states that the proportion of unemployed which participated in an active employment measure rose from 3.3% in 2007 to 4.4% in 2010. The Committee notes that in terms of international comparison this is a very low percentage. Given that unemployment increased during the reference period, the Committee considers that the number of jobseekers who received active assistance was very low, and asks whether there are plans to make active measures available to a larger number of beneficiaries.

In terms of public expenditure on active labour market policies, the report indicates that it amounted to 0.06% of GDP in 2010. Whilst this represented an increase from 0.03% in 2006, again in terms of international comparison this is a very low amount of public spending on active measures.

Hence, the Committee finds that employment policy efforts in Croatia, measured both in terms of the activation rate and spending on active labour market measures, were insufficient during the reference period.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion the Croatian representative provide information on measures it was undertaking to improve in order to promote employment (Detailed report concerning conclusions 2010 §16).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §17).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Croatia brings the situation into conformity with Article 1§1 of the 1961 Charter.

Additional measures are required by Croatia.

104. ESC 1§1 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 1§1 of the 1961 Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity
The number of participants in active employment measures was 5,910 unemployed persons in 2010 (35,417 beneficiaries for the whole reference period). The Committee notes the number of beneficiaries in the different types of active measures, but asks the next report to indicate the overall activation rate, i.e. the average number of participants in active measures as a percentage of total unemployed.

As regards expenditure on active labour market policies, the report indicates that it increased from 0.07% of GDP in 2007 to 0.12% in 2010. The Committee notes that this is still a low level in terms of comparison with other States Party.

Hence, despite some progress noted during the reference period, the Committee notes a persisting high level of unemployment and low labour market participation in the "the former Yugoslav Republic of Macedonia".

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the representative from “the Former Yugoslav Republic of Macedonia” provided information on measures it was undertaking to improve in order to stimulate employment and reduce unemployment (Detailed report concerning conclusions 2008 §29).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §30).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the “former Yugoslav Republic of Macedonia” brings the situation into conformity with Article 1§1 of the 1961 Charter.

Additional measures are required by “the Former Yugoslav Republic of Macedonia”.

Article 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

105. RESC 1§2 CYPRUS

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

Ground of non-conformity

In previous conclusions (Conclusions XVI-1, Conclusions 2004 and 2008), the Committee maintained that the duration of the service that replaced compulsory military service, generally twice the length of the military service itself, was excessive. The report contains no information on this point. However the Committee notes from information provided by the Cypriot Representative to the Governmental Committee (Detailed report (2010)6 §§ 21-22) that the legislation governing alternative service for conscientious objectors was amended in 2007 and the duration of alternative service had been reduced. Currently military service is of 24 months duration, alternative service has been reduced from 42 to 34 months and special military service from 34 to 30 months.
The Committee considers that the overall length of alternative military service amounting to almost three years is too long and therefore remains excessive and not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions 2004.

On the previous occasion the representative from Cyprus provided information on changes to the situation (Detailed report concerning conclusions 2008 §21).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §22).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Cyprus brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required by Cyprus

106. RESC 1§2 IRELAND

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

- the upper limits on the amount of compensation that may be awarded in discrimination cases (with the exception of gender discrimination cases) may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- army officers cannot seek early termination of their commission unless they repay to the state at least part of the cost of their education and training, and the decision to grant early retirement is left to the discretion of the Minister of Defense, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

1st Ground of non-conformity

The Committee recalls that it has repeatedly stated that remedies available to victims of discrimination must be adequate, proportionate and dissuasive. The Committee wishes to clarify is position on the issue of ceilings to compensation in discrimination cases (decision of the Court of Justice of the European Union of 2 August 1993 in the case of Marshall v. Southampton and South West Hampshire Area Health Authority (No. 2) ) the Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed. The ceiling for compensation that may be awarded in employment equality cases (other than on the ground of gender) was increased by the Civil Law (Miscellaneous Provisions) Act 2011 to provide for greater redress in situations of low-paid employment. The maximum amount that may be awarded by the Equality Tribunal in such cases is now 2 years remuneration or 40,000€, whichever is the greater. The Committee notes however that this is the absolute maximum the Equality Tribunal can award and may preclude damages from making good the loss suffered and from being sufficiently dissuasive. Therefore the Committee concludes that the situation is still not in conformity with Article 1§2 on this ground.
The situation is not in conformity on this ground since Conclusions 2006.

On the previous occasion the representative from Ireland provided information on the situation but stated that the situation remained unchanged (Detailed report concerning Conclusions 2006 11§33).

The Governmental Committee invited Ireland to bring the situation into conformity with Article 1§2 of the Charter (ibidem §4).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.

Second Ground of non-conformity

The Committee recalls that it has previously found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defense. This could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1, pp. 409-410) and the report does not refer to any change.

The situation is not in conformity on this ground since Conclusions XIV-1 (1998). On the previous occasion the representative from Ireland outlined the reasons for the requirement, he again highlighted the size of the Irish Air force and the necessity to ensure pilots trained for the air force did not simply depart for civilian airlines (Detailed report concerning Conclusions 2007 §35).

The Portuguese, Belgian, French representatives and the representative of the ETUC pointed out that the real problem of the situation was that the decision to release a pilot from the airforce was discretionary (ibidem §36).

The Governmental Committee proceeded to vote on a warning to Ireland, which was not adopted (9 votes in favour, 9 votes against and 11 abstentions) (ibidem §37).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.
107. RESC 1§2 ITALY

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

- access for non-EU nationals of States Parties to public service employment is excessively restricted;
- the Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft.

First ground of non-conformity

As concerns foreign nationals’ access to public service employment, the Committee recalls its previous conclusion (Conclusions 2008) in which it noted that the regulation setting out the rules governing access to public service employment (D.P.R. No. 487 of 9 May 1994) prevents nationals of non-European Union States Parties from filling certain public service posts, some of which are unrelated to national security or the exercise of public authority for the protection of law and order. The Committee considered that this regulation places excessive restrictions on access to public service employment for nationals of non-European Union States Parties, and thus constitutes discrimination against them on grounds of nationality, in breach of Article 1§2 of the Charter. The report (which cites the words of the representative of Italy in the Governmental Committee in detail) recognises that non EU-nationals are completely barred from civil service jobs. However, it also mentions Article 2 of Legislative Decree No. 286/1998 – the Consolidated Act on Immigration – which enshrines the principle of equal treatment of Italian and foreign nationals. It also states that in several judgments, courts have found in favour of non-EU nationals who wished to gain access to civil service posts, thus placing them on an equal footing with EU nationals. The Committee notes that the report fails to indicate whether these changes in case-law emanate from superior court decisions with a general application, which are the only ones capable of setting aside the inadequate legislation. Accordingly, it considers that there has been no change in the situation, meaning that access to civil service jobs is still excessively restricted for non-EU nationals of States Parties, which constitutes discrimination against them on the ground of their nationality in breach of Article 1§2.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the representative from Italy provided the following information: EU nationals have the right to enter public employment, though only to posts which don’t involve direct or indirect participation in the exercise of public authority or the protection of the general interests of the State. It is not possible to access posts of the public employment that involve direct or indirect participation in the exercise of public authority or the protection of the general interests of the State.

In respect of non-EU nationals, domestic law prescribes a general ban from public service employment. According to article 3 of the law N°215, a difference of treatment, which is based on a characteristic related to racial or ethnic origin, shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, the objective is legitimate and the requirement is proportionate. On the other hand, over the last few years, several judgments were issued in favour of non-EU nationals that wish to have access to public employment. In fact, according to some sections of case law, the exclusion principle of
the foreign nationals from the public service employment constitutes discrimination, especially in the light of art. 2 Immigration Consolidation Act. (Detailed report concerning Conclusions 2008 §41).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §42).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Italy brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.

Second ground of non-conformity

The Committee notes that the Navigation Code has not been amended despite the fact that the representative of Italy notified the Governmental Committee that a bill was being drawn up (Detailed report(2010)6, §43). The Navigation Code (see sections 1091 and 1094) therefore still provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft, thus constituting excessive coercion to work.

The situation is not in conformity on this ground since Conclusions IV (1975).

On the previous occasion the representative from Italy announced that a bill to amend the Navigation Code was currently being prepared. It would do away with the criminal penalties against seafarers and civil aviation personnel who deserted their posts or refused to obey orders, except in cases where the safety of the vessel or aircraft was at risk (Detailed report on conclusions 2008 §43).

Several representatives highlighted that a bill had been announced previously but there had been no further progress (ibidem §44).

The Governmental Committee vote on a proposal for a Recommendation, which was not adopted (10 votes for, 3 against and 17 abstentions). It recalled that a Recommendation had already been adopted against Italy and urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§2 of the Charter (ibidem §48-49).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Italy brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.
The Committee concludes that the situation in Portugal is not in conformity with Article 1§2 of the Charter on the ground that the Merchant Navy Criminal and Disciplinary Code provide for prison sentences against seafarers who abandon their posts even when the safety of the ship or the lives or health of the people on board are not at stake.

**Ground of non-conformity**

The Committee has previously found that the situation in Portugal is not in conformity with Article 1§2 of the Revised Charter because Articles 132 and 133 of the Merchant Navy Criminal and Disciplinary Code provide for sanctions against seafarers who abandon their posts, in particular prison sentences. The report points out that Constitutional Court ruling No. 527/95 declared part of these articles unconstitutional and that they have not been applied for over 30 years. The report also indicates that, according to the Port and Maritime Transport Institute (IPTM, IP), most of the disciplinary and labour regimes applicable to maritime workers are set out in collective agreements. Moreover, in accordance with the Constitution and the principle of the most favorable treatment of workers, they take precedence over hierarchically superior laws like Articles 132 and 133 which lay down regimes that contradict constitutional principles and establish illegal and/or less favorable treatment for workers. The Committee notes that the situation has not changed since when it found it not to be in conformity with the Charter, in spite of the information given by the Portuguese representative to the Governmental Committee in 2009 that a bill was before Parliament to repeal the impugned provisions of the Merchant Navy Penal and Disciplinary Code. The Committee refers to its analysis of the situation in Conclusions XIV-1, in particular, the fact that Articles 132 and 133, even though partly set aside by the Constitutional Court ruling, may still be applied in circumstances which go beyond those allowed under Article G of the Charter because, in certain cases, crew members directly concerned with the maintenance, security or regular operation of a vessel can leave it without endangering the safety of the vessel or the life and health of those on board. The Committee therefore reiterates its finding of non-conformity.

The situation is not in conformity on this ground since Conclusions XIV-1 (1998).

On the previous occasion the representative from Portugal stated that a Bill seeking to remove the impugned provisions from the Merchant Navy Criminal and Disciplinary Code was currently before the Parliament (Detailed report concerning Conclusions 2008 §57).

The Governmental Committee did not take any steps but urged the Government to bring the situation into conformity with the Article 1§2 of the Charter as soon as possible and decided to await the next assessment of the ECSR (ibidem §58).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Portugal brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.
The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§2 of the Charter on the ground that it has not been established that the restrictions on access of foreign nationals non EU/EEA nationals to posts in the public/state service, not linked to state sovereignty, are not excessive.

Ground of non-conformity

The Committee had repeatedly asked whether Slovakian citizenship was a precondition for all employment in the public service or whether certain positions are open to foreign nationals. The current report fails again to provide any real information on this point, it simply states that all citizens are guaranteed equal access to the civil service. However the Committee notes from information provided by the Slovak Representative to the Governmental Committee (Detailed report(2010)6) that the Public Service Act does not define Slovak citizenship as a prerequisite for the performance of public service, which means that citizens of other member states have open access to posts. EU citizens are employed in accordance with the same rules as the employment of Slovak citizens. However the Committee asks whether non nationals, non EU members may apply to posts in the public service, further it seeks information on the nature of posts/jobs covered by the Public Service Act.

The Slovak Representative to the Governmental Committee also provided information on the restrictions on the access of citizens of other member states to posts covered by the State Service Act. The legislation provides a list of posts in the state service divided into a general section and a specific section which are reserved for nationals. The general section of the list includes state service posts in the areas of Justice, Defense, Industrial Ownership, Interior, Protection of Official Secrets and state service posts in the Supreme Audit Office, the Ministry of Foreign Affairs, the Public Prosecution Office, the Regional Public Prosecution Offices, the Upper-tier Military Prosecution Office and the Territorial Military Prosecution Offices. The specific section of the list includes state service posts in every service office that are of extraordinary importance and posts that require authorisation for access to official secrets.

All other state service posts in the state service (including management posts) are open to citizens of states that are members of the European Union and, under the new draft Public Service law, to EEA and Swiss nationals. Again the Committee asks whether non EU/EEA nationals may apply to posts in the state service.

The Committee concludes that the situation is not conformity with the Charter on the grounds that again it has not been established that the restrictions on access of foreign nationals not EU/EEA nationals to posts in the public/state service not linked to the exercise of state sovereignty, are not excessive.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion the representative from the Slovak Republic provided information on the restrictions on access to employment in the state service and public service (Detailed report concerning Conclusions 2008 §58).

The Governmental Committee invited the Government to provide all the relevant information in its next report (ibidem §59).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 1§2 of the Charter.

The Slovak Republic must provide the necessary information.
110. RESC 1§2 TURKEY

Conclusion

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

- the upper limits on the amount of compensation that may be awarded in discrimination cases may preclude damages from making good the loss suffered and from being sufficiently dissuasive;
- restrictions on access of nationals of other States Parties to several categories of employment are excessive;
- under Martial Law, it is possible to suspend or transfer civil servants and local government employees because their employment posed a threat to security in general, law and order or public safety;
- the Commercial Code authorised during the reference period the captain of a ship to use force to bring sailors back on board, even in cases where there is no threat to the safety of the vessel.

1st Ground of non-conformity

Previously the Committee considered that the situation was not in conformity with the Charter since, with the exception of cases where discrimination is connected with membership or non-membership of a trade union, there is an upper limit on the compensation awarded to employees who have suffered discrimination of up to 8 months wages. The Committee finds that the information provided does not indicate that there has been any change. The Committee considers that compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.

The situation is not in conformity on this ground since Conclusions XVIII-1 (2006).

On the previous occasion the representative from Turkey stated that there had been a misunderstanding on the part of the ECSR about the situation (Detailed report concerning Conclusions 2008 §63-64).

The Governmental Committee invited the Government to provide all the relevant information in its next report (ibidem § 65).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.
2nd Ground of non-conformity

The Committee also found previously that the situation was not in conformity because nationals of other parties to the Charter are excluded from several categories of employment (Conclusions XVI-1 and 2008); restrictions on access to occupations including that of doctor, dentist, pharmacist, ophthalmologist and veterinarian, newspaper editor still apply. The Committee notes from the information in the report that there has been no change to this situation.

The situation is not in conformity on this ground since Conclusions XVI-1 (2003).

On the previous occasion the representative from Turkey stated that certain jobs were still reserved for nationals in order to protect the Turkish labour market from the effects of the global economic crisis (Detailed report concerning Conclusions 2008 §66-67).

The Governmental Committee voted on a warning; 8 votes in favor, 13 against and 8 abstentions. The warning was not adopted. It then urged Turkey to bring the situation into conformity with Article 1§2 of the Charter by reducing the list of jobs reserved for nationals (ibidem §68-69).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.

3rd Ground of non-conformity

The Committee found previously that the situation was not in conformity with Article 1§2 because, under certain provisions of Martial Law No. 1402/1971 as amended by Act No.4045/1994 (Section 2) and Act No. 23935/1983, it was possible to suspend or transfer civil servants or local government employees on the ground that their employment posed a threat to security in general, law and order or public safety.

The Committee was of the view that, because of the imprecise manner in which it is described, this circumstance cannot be considered to fall within the scope of Article G of the Charter (Conclusions 2008). No further information was provided on this issue. Therefore the Committee concludes that the situation is still not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions XVI-1 (2003).

On the previous occasion the representative from Turkey stated that in fact this emergency legislation was not applied in practice (Detailed report concerning Conclusions 2008 §73).

The Governmental Committee adopted a warning: 19 votes in favour, 2 against, and 8 abstentions (ibidem §77).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.

4th Ground of non-conformity

The Committee has found previously that the situation was not in conformity with Article 1§2 because under Article 1467 of the Commercial Code, captains may use force to ensure that their ship is properly run and discipline is maintained. It notes that according to the report and the information provided to the Governmental Committee, a new Commercial Code is being drawn up and that this article will no longer be included. However, as it was still in force during the reference period, the Committee concludes again that the situation is not in conformity with Article 1§2 of the Martial law and state of emergency legislation.

The situation is not in conformity on this ground since Conclusions XIII-3 (1995).

On the previous occasion the representative from Turkey informed the Committee that the Turkish government had prepared a draft bill for a new “Turkish Code of Commerce” and in this draft law the said provision is deleted (Detailed report concerning Conclusions 2008 §70).

The Governmental Committee adopted a warning: 16 votes in favour, 2 votes against and 11 abstentions (ibidem §72).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 1§2 of the Charter.

Legislative amendments are required.

111. ESC 1§2 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 1§2 of the 1961 Charter on the ground that during the reference period legislation required employers to make foreign workers redundant first when reducing manpower or to avoid having to reduce the working hours of all employees.

Ground of Non Conformity

Lastly the Committee previously held that Section 8§2 of the Aliens Employment Act, was not in conformity with Article 1§2 of the Charter. This required employers who were reducing manpower to make foreign workers who had entered the labour market for the first time redundant first. Section 8§2 also provided that in the event of reduced activity in the company the employment contracts of foreign nationals may be terminated if such action might prevent shorter working hours in the long run for all workers. The report states that this provision was repealed in 2011 (outside the reference period). The Committee asks the next report to provide fuller details but concludes that during the reference period the situation was not in conformity with the Charter in this respect.

The situation is not in conformity on this ground since Conclusions XVI-1 (2003).
On the previous occasion the representative from Austria indicated that a new government bill would be submitted to Parliament, which would delete Section 8 paragraph 2 of the Alien’s Employment Act entirely from the Act (*Detailed concerning Conclusions XIX-I (2008) §32*).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (*ibidem* §34).

The ECSR noted that this provision had been repealed in 2011 (but that during the reference period it had remained in force). The Governmental Committee could welcome this positive development.

**112. ESC 1§2 GREECE**

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

- restrictions on access of nationals of non-European Union States Parties to posts in the public service are excessive;
- during the reference period the length of the alternative service to armed military service was excessive.

1st Ground of non-conformity

The previous conclusion was one of non conformity on the grounds that there are excessive restrictions on the access of nationals of non-European Union States Parties to posts in the public service. The Committee recalls that nationals of States Parties that are not members of the European Union are not entitled to work in some sectors of the Greek public service even where the posts do not involve the exercise of public authority. The report indicates that there has been no change to the situation.

The situation is not in conformity on this ground since Conclusions XVI-1 (2003).

On the previous occasion the representative from Greece stated that some exemptions from the rules are made in respect of certain occupations, such as teaching, nursing also for musicians. Foreigners can also work in the public sector under a private law contract. However for economic reasons there was no intention to broaden access to the public service (*Detailed report concerning Conclusions XIX-I (2008) §35-37*).

A number of representatives pointed out that a very limited number of posts were open to foreigners (*ibidem* §38).

The Governmental Committee voted on a warning; 10 in favour, 8 against and 10 abstentions, the warning was not carried (*ibidem* §40).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Greece brings the situation into conformity with Article 1§2 of the 1961 Charter.

Legislative amendments are required.

2\textsuperscript{nd} Ground of non-conformity

The Committee recalls that it had previously noted that armed military service lasts twelve months. Certain conscripts may only serve nine months, others six and some three. There are two forms of replacement for armed military service: unarmed military service and alternative service. The two types of service differ in length. The Committee considered that the periods of unarmed military service to replace armed military service were compatible with Article 1§2 of the 1961 Charter, whereas it found that the length of the alternative service to armed military service was excessive and not in conformity with the Charter.

However, the Committee notes that the situation has been amended and unarmed military service has been abolished further duration of alternative service has been reduced, the alternative service duration has been set as follows:

- at 15 months for those who would be required to serve full military service,
- at twelve months for those who would be required to serve nine months military service,
- at nine months for those who would be required to serve six months military service and
- at five months for those who would be required to serve three months military service.

The Committee considers that this brings the situation into conformity with the Charter but notes that these changes occurred outside the reference period. Therefore during the reference period the situation was not in conformity with the 1961 Charter.

The situation is not in conformity on this ground since ground since the decision on the merits of 25 April 2001 in collective complaint No. 8/2000 - Quaker Council of European Affairs v. Greece.

On the previous occasion the representative from Greece indicated that the length of alternative service had been reduced from 34 months to 24 months (\textit{Detailed report concerning Conclusions XIX-1 (2008)5 §43}).

The Governmental Committee invited the Government to provide all the relevant information in its next report (\textit{ibidem} §45).

The ECSR noted that the situation had been amended (but that during the reference period it had remained unchanged). The Governmental Committee could welcome this positive development.
The Committee concludes that the situation in Iceland is not in conformity with Article 1§2 of the 1961 Charter on the grounds that

- legislation prohibiting discrimination in employment on grounds other than sex is inadequate;
- access for nationals of states parties, non-EU/EEA nationals, to the profession of pharmacists was restricted during the reference period.

1st Ground of non-conformity

The Committee recalls that it previously found that the situation was not in conformity with Article 1§2 of the 1961 Charter on the grounds that Legislation prohibiting discrimination in employment on grounds other than sex was inadequate.

There has been no change to this situation. According to the report the Ministry of Welfare is working on, in co-operation with the social partners, a proposal for a new bill which is supposed to implement the two Directives 2000/43/EC and 2000/78/EC. The plan is to submit the bill to the Parliament in the autumn 2012. The bill will prohibit discrimination based on grounds such as racial or ethnic origin, disability, sexual orientation, age and religion. This will include establishing in law, definitions of direct and indirect discrimination, harassment and prohibiting victimization and incitement or instruction to discriminate. The Committee asks to be kept informed of all development in this respect but concludes that the situation is not in conformity with the 1961 Charter.

The situation is not in conformity on this ground since Conclusions XVIII-1 (2006).

On the previous occasion the representative from Iceland stated that a bill on non-discrimination, which was to transpose Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000 into domestic law, had been added to the parliament’s agenda for discussion (Detailed report concerning Conclusions XIX-1 (2008) §47).

The Governmental Committee urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§2 of the 1961 Charter (ibidem §49).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Iceland brings the situation into conformity with Article 1§2 of the 1961 Charter.

Legislative amendments are required.

2nd Ground of Non-conformity

As regards restrictions to the profession of pharmacy a new Act No. 34/2012 on Healthcare Workers, which also applies to the work carried out by pharmacists, will enter into force on 1 January 2013. A separate regulation will be issued at the same time and will address the education, rights and obligations of those who are granted an operating license as a pharmacist in Iceland. Neither the Act nor the regulation contains any condition of pharmacists having to be Icelandic nationals. On the Act’s entry into force the older Pharmacists Act No. 35/1978 will be repealed. The Committee notes this positive development but notes that during the reference period the situation was not in conformity with the 1961 Charter.
The situation is not in conformity on this ground since Conclusions XVIII-1 (2006).

On the previous occasion the representative from Iceland said that, where primary school teachers were concerned, parliament had just adopted a new act abolishing the requirement for applicants to be Icelandic nationals in order to be entitled to a licence to practise this profession. A similar act concerning pharmacists had been tabled in Parliament in the last few days (Detailed report concerning Conclusions XIX-1 (2008) §50-52).

The Governmental Committee invited the Government to provide all the relevant information in its next report (ibidem §33).

The ECSR noted that the situation had been amended but during the reference period it had remained unchanged. The Governmental Committee could welcome this development.

**Article 1§3 – Free Placement Services**

**114. RESC 1§3 SLOVAK REPUBLIC**

*The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that placement services operate in an efficient manner.*

**Ground of non conformity**

*In its previous conclusion (Conclusions 2008) the Committee found the situation in the Slovak Republic was not in conformity with Article 1§3 of the Charter because the information necessary to assess the situation was missing. The current report fails again to provide sufficient information, merely indicating the legal basis of employment services.*

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion the representative of the Slovak Republic provided the following information: the right to free employment services in the Slovak Republic is guaranteed. In accordance with the Employment Services Act, all offices of labour, social affairs and family in the Slovak Republic provide information and counselling on employment free of charge for job seekers and persons interested in employment. The offices of labour, social affairs and family do not monitor indicators from which it would be possible to calculate the time required to fill a vacancy or the number of visits a job seeker must make to the office of labour, social affairs and family necessary to obtain a job. It is also impossible to provide information on the market share of public employment services in the total number of persons recruited on to the labour market, because the Central Office of Labour, Social Affairs and Family does not have the necessary information on the total number of persons recruited on to the labour market (Detailed report concerning Conclusions XIX-1 (2008) §84).
The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §85)

The ECSR has confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 1§3 of the Charter.

The Slovak Republic must provide the necessary information.

**Article 1§4 - Vocational guidance, training and rehabilitation**

**115.RESC 1§4 BULGARIA**

*The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§4 of the Charter on the ground that access to vocational guidance, training or rehabilitation for nationals of other States Party is subject to an excessive length of residence requirement.*

**Ground of non-conformity**

*In previous conclusions, the Committee noted that nationals of other States Parties lawfully resident or working regularly in Bulgaria enjoyed equal treatment regarding all the aspects considered under Article 1§4, as long as they held a permanent residence permit, which was only granted to foreign nationals who have spent at least five years in the country. On this basis, it found that the situation was not in conformity with the Charter on the ground that access to vocational guidance, training or rehabilitation was subject to a length of residence requirement (Conclusions 2008).*

*The information given by the current report shows that access to certain employment services continues being open only to foreigners with a permanent residence permit, for which 5 years of legal residence in the country are still required. In the absence of developments on this point, the Committee repeats its conclusion of non-conformity.*

*The situation is not in conformity on this ground since Conclusions 2008.*

On the previous occasion the representative from Bulgaria provided the following information that training for adults and vocational orientation as an employment service, is aimed at improving the skills of the workforce and ensuring that workers meet the demand of the labour market. Foreign citizens who are permitted to work perform limited and specialized employment on short term work permits and must already possess the required specialized knowledge, skills and professional experience for the corresponding work. Moreover, foreigners are only granted a permit for a specific job for a specific period. After the fulfillment of the obligations under the labour contract the foreigner leaves the country. Thus there is no provision for training etc. for this category of worker.
Where a foreigner wishes to settle permanently in Bulgaria then he/she may acquire a permanent residence permit on the ground of nine hypotheses stipulated in the Foreigners in the Republic of Bulgaria Act one of which is the 5 years of uninterrupted lawful residence. Permanent residence permit guarantees access to all economic and social rights including the described employment service. The requirements does not apply for citizens of another member country of the EU or another member country of the European Economic Area (Detailed report concerning conclusions 2008 §72).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR. (ibidem §73).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Bulgaria brings the situation into conformity with Article 1§4 of the Charter.

Legislative amendments are required.

116. RESC 1§4 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 1§4 of the Charter on the ground that career counseling services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

Ground of non-conformity

However, it found the situation not to be in conformity with the Charter under Article 9 on the ground that career counseling services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

See Article 9.

117. RESC 1§4 IRELAND

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

- access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed
- there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing vocational training.

Grounds of non-conformity

However, it also found that the situation with regard to vocational guidance (Article 9) is not in conformity with the Charter on the ground that vocational guidance for nationals of other States Party which are not members of the European Union is not guaranteed.
Likewise, it found that the situation with regard to continuing vocational training for workers (Article 10§3) is not in conformity with the Charter on the ground of the indirect discrimination suffered by nationals of other States Party residing or working lawfully in the country since they are probably more affected than Irish nationals due to the length of residence condition.

See Articles 9 and 10§3.

118. RESC 1§4 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that:

- there is no legislation explicitly protecting persons with disabilities from discrimination in training;

Grounds of non-conformity

It also found that the situation is not in conformity with Article 15§1 on the ground that: (i) there is no legislation explicitly protecting persons with disabilities from discrimination in education and training and (ii) the right of persons with disabilities to mainstream education and training is not effectively guaranteed.

See Article 15§1.

119. RESC 1§4 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 1§4 of the Charter on the grounds that it has not been established that:

- the right of persons with disabilities to mainstream training is effectively guaranteed

Ground of non-conformity

Finally, it found that the situation is 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.

See Article 15§1.
120. ESC 1§4 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

Ground of non-conformity

However, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in training.

See Article 15§1.

121. ESC 1§4 POLAND

The Committee concludes that the situation in Poland is not in conformity with Article 1§4 of the Charter on the grounds that access to continuing training for nationals of other States Parties is subject to an excessive length of residence requirement.

Ground of non-conformity

According to the report, the Act on employment promotion and labour market institutions does not restrict access to training for all foreigners, namely those who are registered as unemployed. To get the status as unemployed, a foreigner must be unemployed, willing to work and possess an appropriate type of residence permit.

In previous conclusions, the Committee noted that a permanent residence permit was only granted to foreign nationals who have spent at least three years in Poland as temporary residents, can show that they have permanent family or economic ties with Poland and have secure accommodation and a secure income in the country. This length of residence requirement is extended to five years in respect of nationals of non-European Union member states party to the Charter. On the basis of such considerations, it found that the situation was not in conformity with the Charter on the ground that access to further training for nationals of other States Parties was subject to an excessive length-of-residence requirement. The Committee also stated that the procedure for obtaining a simplified residence permit did not affect its conclusion (Conclusions XVIII-2 and XIX-1).

The information given by the current report concerning how a foreigner may be registered as unemployed is also not relevant regarding the ground of non-conformity. The Committee therefore repeats its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion the representative from Poland confirmed that there were restrictions in Poland on access to vocational training for foreign nationals. She explained that the justifications for the regulations in force were that foreign nationals were only admitted onto the Polish employment market under strict conditions i.e. for a defined period of time and in order to carry out a specific job for which they already had qualifications and for a given employer (Detailed report concerning Conclusions XIX-1 (2008) §93).
The Governmental Committee recalled that it had previously adopted a warning in respect of this situation. It repeated its warning to Poland and urged the Government to take all the necessary steps to bring the situation into conformity with Article 1§4 of the Charter (ibidem §95).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Poland brings the situation into conformity with Article 1§4 of the 1961 Charter.

Legislative amendments are required.

**Article 9 - Right to vocational guidance**

122. RESC 9 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 9 of the Charter on the ground that career counseling services in the labour market are accessible only to unemployed persons and workers given notice of redundancy.

**Ground of non-conformity**

In its previous conclusion (Conclusions 2008) the Committee found that the situation in Estonia was not in conformity with Article 9 of the Charter because vocational guidance services in the labour market were only accessible to unemployed persons and workers given notice of redundancy.

The present report confirms that the Unemployment Insurance Fund only provides individual career counseling to unemployed persons and employees who have received a notice of lay-off. All other persons may nevertheless receive information related to career and job-seeking. Several amendments were made to the Labour Market Services and Benefits Act in 2009, including to the notion of labour market service, which is now defined as a service provided to unemployed persons, job-seekers and other persons prescribed in the Act.

The Committee considers that despite the amendments the situation has not been brought into conformity because career counseling services under the Act are still confined to unemployed persons and persons who have received notice of termination of their employment or service relationship. The fact that persons who are not registered as unemployed or as job-seekers have the right to receive information concerning the situation on the labour market as well as some other labour market services and benefits is not sufficient to bring the situation into conformity.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion, the representative of Estonia said that the interval between the two ECSR examinations (Conclusions 2007 and Conclusions 2008) had been very short, because of the transition between the two reporting systems. Guidance services in Estonia were supplied under legislation and a programme that would expire in 2013. The programme was financed by the European Social Fund and targeted certain groups, such as the unemployed and persons given notice of redundancy. This was a means of offering these services to a larger number of people. She informed the Committee that amendments to the legislation would be passed at the end of the
programme, in 2013, when other employed persons would then become eligible for vocational guidance services (*Detailed report concerning Conclusions 2008, §83*).

The Governmental Committee noted the information supplied and decided to await the ECSR's assessment when the programme ended in 2013 and the law was amended (*ibidem, §87*).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Estonia brings the situation into conformity with Article 9 of the Charter.

Amendments to the legislation or rules are required.

123. **RESC 9 IRELAND**

*The Committee concludes that the situation in Ireland is not in conformity with Article 9 of the Charter on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed.*

**Ground of non-conformity**

In its conclusion of 2007, the Committee found the situation not to be in conformity on the ground that access to vocational guidance for nationals of the other States Parties which are not members of the European Union was not guaranteed. The present report states, as previously, that nationals of the EU member states and refugees are guaranteed equal access to vocational guidance. The Committee, as in its conclusion of 2007, understands that access to vocational guidance for nationals of the other States Parties which are not members of the European Union is not guaranteed. The situation of Ireland is not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions 2007.

During the examination of Conclusions 2007, the representative of Ireland said that he was not in a position to submit written information concerning all cases of non-conformity for the first time relating to Conclusions 2007, because these cases were subject to review by "interdepartmental committees". He said that the written information concerning all cases will be addressed in next reports on the relevant provisions (*Detailed report concerning Conclusions 2007, §152*).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 9 of the Charter.

Amendments to the legislation or rules required.
Article 10§1 - Technical and vocational training; access to higher technical and university education

124. RESC 10§1 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§1 of the Charter on the ground that the indirect discrimination of nationals of other States Parties due to the length of residence requirements does not guarantee equal access to higher education for all.

Ground of non-conformity

In its previous conclusion (Conclusions 2007, Ireland), the Committee noted that a one year length of residence requirement applied to everyone for access to higher education, but not for secondary education. Nationals and non-nationals were thus treated in the same way. The Committee however considered that this amounted to indirect discrimination, since nationals of other States Parties lawfully residing or working in Ireland were potentially more affected than Irish nationals and found for this reason Ireland not to be in conformity with Article 10§1 of the Charter.

The current report states that refugees are entitled to the same access to education and training as Irish nationals but it provides no information as to possible changes on the matter of the requested length of residence for access to higher education. In the absence of such information in the report, the Committee maintains its finding of non-conformity.

During the examination of Conclusions 2007, the representative of Ireland again said that the legislation on the length of residence condition (Articles 9, 10, 15 and 18 of the Charter) was still being considered by interdepartmental committees to establish whether it could be modified. He acknowledged that it was a slow process (Detailed report on Conclusions 2007, §153).

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).

On the previous occasion the representative of Ireland said that the legislation on the length of residence condition (Articles 9, 10, 15 and 18 of the Charter) was still being considered by interdepartmental committees to establish whether it could be modified. He acknowledged that it was a slow process (Detailed report concerning Conclusions 2007 §153).

The Committee voted on a warning to Ireland, which was rejected (9 votes for, 10 against and 13 abstentions) (ibidem §161).

The Committee urged the Government of Ireland to bring the situation into conformity with Article 10§1 of the Charter (ibidem, §162).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 10§1 of the Charter.

Legislative amendments are required.
The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§1 of the Charter on the ground that it has not been established that the right to vocational education is adequately guaranteed.

Ground of non-conformity

In its last conclusion, the Committee found the situation not to be in conformity on the ground that it had not been established that the right to vocational education was adequately guaranteed and it posed several questions regarding the implementation of reforms undertaken in the field of secondary and higher education, including the transfer of competences to the local institutions, as well as about the measures taken to make general secondary and higher education qualifications relevant from the perspective of professional integration in the job market.

The report provides no information on the issues raised.

The Committee asks that next report contains a description of the secondary and higher education system as well as the continuous training system concerning the above-mentioned issues. In the meantime, having not received adequate information in order to assess the situation, the Committee concludes that the situation is not in conformity with Article 10§1 of the Charter.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion the representative from the Slovak republic provided the following information In accordance with the Plan of Legislative Tasks of the Government of the Slovak Republic for 2008, the Ministry of Education of the Slovak Republic is preparing comprehensive legislation in the area of vocational education and training, whose objective is to create a system of coordination of vocational training and the labour market; to create conditions for the entry of employers and employers’ organisations in vocational education; - to develop a two-level model of vocational education at state and school level; - to modify the current methodology of financing vocational education and training based on the principle of financial equality so as to accommodate the economic demands involved in the education and training process in vocational education to create a functional system of multi-source financing of vocational education that will address raising and redistributing of financial resources for the needs of vocational education with the involvement of the employers sphere. (Detailed report concerning Conclusions XVIII-2 (2007) §261).

The Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §262).

The ECSR has confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 10§1 of the Charter.
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 10§1 of the Charter.

The Slovak Republic must provide all relevant information.

126. ESC 10§1 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 10§1 of the 1961 Charter on the ground that nationals of States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

Ground of non-conformity

In its last conclusion, the Committee found the situation in Austria not to be in conformity with Article 10§1 of the 1961 Charter as nationals of States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria were granted access to university education only subject to the availability of places.

The report, among other, states that, based on the student-teacher ratio, the university may determine that within a particular degree programme, the conditions for studying would further deteriorate, until no longer being justified, if a greater number of foreign nationals and stateless individuals were admitted. In this case, the senate can determine how many of such individuals can be admitted each semester without causing the conditions for studying to deteriorate up to a point where they may no longer be justified, and set criteria according to which a possible limited admission will be implemented.

The Committee quotes its case law on equality of treatment with respect to access to vocational training and recalls that length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

Therefore, since the situation remained the same during the reference period, the Committee reiterates its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of Austria stated that the draft legislation amending the University Studies Act was before Parliament and would be adopted by the end of 2009. This amendment forms part of the larger reform of the whole educational system and takes account of the situation of non-conformity under Article 10§1 (Detailed report concerning Conclusions XIX-1 (2008), §103).

The Governmental Committee welcomed the developments, invited the Government of Austria to provide the relevant information in the next report and decided to await the next assessment of the ECSR (ibidem §114).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Austria brings the situation into conformity with Article 10§1 of the 1961 Charter.

Legislative amendments are required.

**Article 10§2 - Apprenticeship**

**127. RESC 10§2 SLOVAK REPUBLIC**

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 10§2 of the Charter on the ground that it has not been established that the right to apprenticeship is adequately guaranteed.

**Ground of non-conformity**

In its last conclusion, the Committee found the situation in the Slovak Republic not to be in conformity with Article 10§2 of the Charter on the ground that it had not been established that the right to apprenticeship was adequately guaranteed.

It recalls that according to Article 10§2 young people shall have the right to access apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training. Apprenticeship must combine theoretical and practical training and close ties must be maintained between training establishments and the working world. Under Article 10§2 the Committee examines apprenticeship arrangements taking place within the framework of an employment relationship between the employer and the apprentice and leading to vocational education. Apprenticeship is assessed on the basis of the following elements: length of apprenticeship, division of time between practical and theoretical learning, remuneration of apprentices, termination of apprenticeship contract etc. Other important indicators of compliance are the number of young people enrolled and the total spending, both public and private, on these types of training and the availability of places for all those seeking them.

The Committee requested in its last conclusion for information to be provided in the light of these criteria. The report fails to provide such information and the Committee therefore reiterates its request and in the meantime considers that it has not been established that the right to apprenticeship is adequately guaranteed.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of the Slovak Republic said that Slovak Republic did not have a specific Act on apprenticeship and apprenticeship training was covered by the Schools Act. However, the act on vocational education and training was in preparation which is intended to provide a comprehensive legal framework for vocational education and training in specialised secondary schools and educational facilities in the Slovak Republic (*Detailed report concerning Conclusions XIX-1 (2008), §107*).

The Governmental Committee welcomed the developments, invited the Government of the Slovak Republic to provide all the information in the next report, and decided to await the next assessment of the ECSR (*ibidem*, §109).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 10§2 of the Charter.

The Slovak Republic must provide all relevant information.

**Article 10§3 - Vocational training and retraining of adult workers**

**128. RESC 10§3 BELGIUM**

*The Committee concludes that the situation in Belgium is not in conformity with Article 10§3 of the Charter on the ground that it has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community.*

**Ground of non-conformity**

*In its last conclusion, the Committee found the situation in Belgium not to be in conformity with Article 10§3 of the Charter as it had not been established that nationals of other States Parties legally resident or regularly working in Belgium were guaranteed equal treatment as regards access to continuing training in the German-speaking community.*

*In this respect it notes from the report that in the Walloon and Flemish region the vocational training services are accessible to everyone who is regularly resident in the Belgian territory. Having found no reply concerning the equality of treatment in German-speaking community the Committee considers that it is not established that the equality of treatment as regards access to training is guaranteed to nationals of other States Parties in German-speaking community.*

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).

On the previous occasion, the representative of Belgium stated that the Vocational Guidance Act of 2008 guaranteed the equality of treatment of foreign nationals for access to continuing training in the German-speaking community (*Detailed report concerning Conclusions 2008, §101*).

The Governmental Committee invited the Government of Belgium to provide all the information in the next report and decided to await the next assessment of the ECSR (*ibidem*, §102).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Belgium brings the situation into conformity with Article 10§3 of the Charter.

Belgium must provide all relevant information.
129. RESC 10§3 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter on the ground that there is indirect discrimination of nationals of other States Parties residing or working lawfully in the country due to the length of residence condition for access to continuing education.

Ground of non-conformity

In its previous conclusion (Conclusions 2007, Ireland), the Committee noted that a one year length of residence requirement applied to everyone for access to continuing vocational training. Nationals and non-nationals were thus treated in the same way. The Committee however considered that this amounted to indirect discrimination, since nationals of other States Parties lawfully residing or working in Ireland were potentially more affected than Irish nationals.

The current report states that refugees are entitled to the same access to education and training as Irish nationals but it provides no information as to possible changes on the matter of the requested length of residence for access to continuing vocational training. In the absence of such information, the Committee maintains its finding of non-conformity.

The situation is not in conformity since Conclusions XVI-2 (2003).

During the examination of Conclusions 2007, the representative of Ireland referred to her statement in connection with Article 10§1 (Detailed report concerning Conclusions 2007, §173).

The Committee referred to its decision relative to the article 10§1 (ibidem, §174).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 10§3 of the Charter.

Legislative amendments are required.

Article 10§4 - Long term unemployed persons

130. ESC 10§4 AUSTRIA

The Committee concludes that the situation in Austria is not in conformity with Article 10§4 of the 1961 Charter on the ground that equal treatment of nationals of other States Parties not members of EU/EEA lawfully resident or regularly working in Austria is not guaranteed with regard to fees and to financial assistance for training.

Ground of non-conformity

In its last conclusion, the Committee found the situation not to be in conformity with Article 10§4 of the 1961 Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in Austria is not guaranteed with regard to fees and to financial assistance for training.
The report states that students with Austrian citizenship or who are EU citizens or to whom Austria must grant, under a state treaty, the same rights of occupational access as are enjoyed by Austrian nationals are not required to pay tuition fees if they do not exceed the statutory duration of studies per period of study by more than 2 semesters.

Regular students from another country do not pay tuition fees if the university last attended in their home country has concluded a partnership agreement with the Austrian university that also provides for tuition fees to be mutually waived. Regular students from a foreign country which is among the least developed countries do not pay tuition fees. Regular students from developing countries can receive a refund of the tuition fees from the particular university.

The Committee recalls that equal treatment with respect to utilization of available facilities for vocational training must be guaranteed to non-nationals. Therefore, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

Therefore, since the situation remained the same during the reference period, the Committee reiterates its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).

On the previous occasion, the representative of Austria said that there were no new developments as regards the legal situation: the requirement of having spent five years to become eligible for financial assistance for fees and living expenses still remained (Detailed report concerning Conclusions XIX-1 (2008), §110).

The Governmental Committee expressed its concern about this situation and urged the Government of Austria to bring the situation into conformity with the Charter (ibidem, §114).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Austria brings the situation into conformity with Article 10§4 of the 1961 Charter.

Legislative amendments are required.

131. ESC 10§4 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 10§4 of the Charter on the ground that nationals of other States Parties to the Charter and the 1961 Charter not members of the EU do not enjoy equal treatment with regard to financial assistance for education and training.

Ground of non-conformity

The report confirms that, as a rule, foreign students enrolled in education programmes are not eligible for financial assistance. Foreign students enjoy equal treatment only if they fulfil certain conditions.

The Committee recalls its previous conclusion that the situation as regards foreigners’ right to financial assistance is not in conformity with the Charter. In as much as the above information does not indicate any changes to the situation, the Committee can only reiterate that the rules in place amount to imposing a length of residence requirement (in combination with employment requirements as the case may be) on non-EU nationals of States Parties to the Charter or the 1961 Charter in violation of Article 10§4 of the 1961 Charter.
The situation is not in conformity on this ground since Conclusions XVI-2 (2003).

On the previous occasion, the representative of Denmark explained that to become eligible under the Educational Grant and Loan Scheme (SU) which is designed to support students in full-time education, non-Danish nationals are required to have resided in Denmark for two years, to be combined either with marriage to a Danish citizen or with having been in paid employment of at least 30 hours per week. However, the Act of Integration of Aliens also includes seven other provisions under which foreign nationals with a prior residence of less than two years could qualify for the SU. This requirement imposed on foreign nationals was meant to ensure that the person concerned has acquired a certain degree of connection to Denmark and therefore was justifiable as a restriction (Detailed report concerning Conclusions XIX-1 (2008), §115).

While acknowledging that, in general terms, the Danish educational system is very generous, the Governmental Committee noted that there still is a differential treatment of nationals of other States Parties legally resident in Denmark in respect of access to financial aid (ibidem, §117).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Denmark brings the situation into conformity with Article 10§4 of the 1961 Charter.

Legislative amendments are required.

132. ESC 10§4 SPAIN

The Committee concludes that the situation in Spain is not in conformity with Article 10§4 of the 1961 Charter on the ground that it has not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working in Spain is guaranteed with respect to financial assistance.

Ground of non-conformity

In its last conclusion, the Committee found the situation in Spain not to be in conformity with Article 10§4 of the 1961 Charter on the ground that it had not been established that the right to equal treatment for nationals of other States Parties lawfully resident or regularly working in Spain was guaranteed with respect to financial assistance.

The present report provides no information to indicate that there have been any changes to the situation during the reference period. The Committee therefore reiterates its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion, the representative of Spain stated that there was no discrimination vis-à-vis participants in the vocational training activities for employment (Detailed report concerning Conclusions XIX-1 (2008), §126).
The Governmental Committee invited the Government of Spain to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem, §126).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Spain brings the situation into conformity with Article 10§4 of the 1961 Charter.

Spain must provide all relevant information.

133. ESC 10§4 UNITED KINGDOM

The Committee concludes that the situation in United Kingdom is not in conformity with Article 10§4 of the 1961 Charter on the ground that nationals of other States Parties not EU nationals, residing or working lawfully in the United Kingdom are not treated on an equal footing with the United Kingdom nationals with respect to fees and financial assistance for higher education.

Ground of non-conformity

The Committee previously concluded that the situation in the United Kingdom was not in conformity with Article 10§4 of the 1961 Charter because nationals of other States Parties not EAA nationals, residing or working lawfully in the United Kingdom are not treated on an equal footing with the United Kingdom nationals with respect to fees and financial assistance for higher education. The Committee recalls that in order to be eligible for home rate of fees or to receive tuition fee loans non EAA nationals must have resided in the UK for three years prior to starting the course. The Committee notes that there has been no change to this situation. Therefore the Committee finds the situation still not to be in conformity with the 1961 Charter.

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).

On the previous occasion, the representative of the United Kingdom provided clarifications concerning the situation of overseas students from non-EEA countries who had to pay higher fees for education unless they were regularly resident in the United Kingdom for at least three years before the start of their studies (Detailed report concerning Conclusions XIX-1 (2008), §128).

The Governmental Committee expressed its concern about the length of residence of three years and a differential treatment of some overseas students as regards reduction of fees and urged the Government of United Kingdom to take measures to bring the situation into conformity (ibid., §130).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that United Kingdom brings the situation into conformity with Article 10§4 of the 1961 Charter.

Legislative amendments are required.
Article 10§5 - Full use of facilities available

134. RESC 10§5 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.

Ground of non-conformity

In its last conclusion, the Committee found the situation in Belgium not to be in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.

The present report does not indicate any changes as to the situation which the Committee previously found to be not in conformity.

The Committee therefore reiterates its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions XIII-4 (1996).

On the previous occasion, the representative of Belgium said that the length of residence requirement in the French community was five years while in the Flemish community two years. She added that the authorities do not intend to change this situation (Detailed report concerning Conclusions 2008, §113).

The Committee voted on a warning which was not carried. The Governmental Committee expressed its concern about the situation in Belgium which has not been in conformity since 1996 and urged the Government of Belgium to take measures to bring the situation into conformity (ibidem, §§115 and 116).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Belgium brings the situation into conformity with Article 10§5 of the Charter.

Legislative amendments are required.

135. RESC 10§5 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education.

Ground of non-conformity

In its previous conclusion (Conclusions 2008), the Committee found the situation not to be in conformity with Article 10§5 of the Charter on the ground that equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education.
The present report states that the situation has not changed as to this regard. The Circulaire No. 2011-0013 of 28 June 2011 stipulates that foreign students, aside from the particular case of refugees and stateless, must possess a residence permit, have lived for at least 2 years in France and be attached to a fiscal household in France (mother, father or legal representative).

The Committee recalls that under Article 10§5 equal treatment implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.

Considering that the requirement of 2 years of prior residence applies in the same manner to the above-mentioned category of students who are not present in French soil for the sole purpose of education, the Committee reiterates its conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions 2003.

On the previous occasion, the representative of France made some clarifications to the situation regarding access to social scholarships (Detailed report concerning Conclusions 2008, §117).

The Governmental Committee expressed its concern about the fact that there might be a case of indirect discrimination of non-EU nationals, urged the Government of France to provide all the information in its next report and decided to await the next assessment of the ECSR (ibidem, §120).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that France brings the situation into conformity with Article 10§5 of the Charter.

Legislative amendments are required.

136. RESC 10§5 IRELAND

The Committee concludes that the situation in Ireland is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties lawfully resident or working in Ireland are not treated equally with respect to fees (non-EU nationals) and financial assistance (EU and non-EU nationals).

Ground of non-conformity

In its conclusion of 2007, the Committee found that the situation was not in compliance with the Charter in view of the length-of-residence requirement imposed for entitlement to financial assistance for training. It noted that applicants’ parents, or applicants themselves in the case of adult students, had to have been ordinarily resident in the administrative area of the local authority for one year in order to be eligible for maintenance grants. The rule applied to Irish nationals, EU nationals and non-EU nationals who were married to or the children of Irish or other EU nationals. EU nationals who did not satisfy this condition but had been ordinarily resident in an EU member state for one year and for a purpose other than receiving full-time education were eligible to apply for a means-tested grant covering fees. The Committee inferred from this that non-EU nationals did not receive any form of financial assistance with tuition fees or maintenance unless they satisfied the above rule concerning
their spouse or children. In the absence of new information on this subject in the report, the Committee maintains its finding of non-conformity.

The situation is not in conformity on this ground since Conclusions 2007.

During the examination of Conclusions 2007, the representative of Ireland referred to her statement on length of residence under Article 10§1 (Detailed report concerning Conclusions 2007, §192).

Furthermore, the representative of Ireland added that this period applied either nationally or at local authority level (ibidem, §197).

The Committee urged the Government of Ireland to bring the situation into conformity with Article 10§5 of the Charter (ibidem, §198).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Ireland brings the situation into conformity with Article 10§5 of the Charter.

Legislative amendments are required.

137. RESC 10§5 NORWAY

The Committee concludes that the situation in Norway is not in conformity with Article 10§5 of the Charter on the ground that a length of residence and employment requirement is imposed on nationals of certain other States Parties lawfully resident or regularly working in Norway as a condition for entitlement to financial assistance for education.

Ground of non-conformity

The Committee refers to its previous finding that the situation is in breach of the Charter due to the two-year length of residence and employment requirement to which the allocation of financial assistance from the State Educational Loan Fund is subjected as far as non-EEA nationals are concerned (see Conclusions 2008). The report indicates that the situation has not changed and explains that the underlying aim of the otherwise very generous study financing system is to ensure the availability for society and for the labour market of persons with appropriate qualifications. In order to achieve this aim, it is necessary that “close ties” exist between the person applying for a student grant and Norwegian society/labour market. In the Government’s view, people who have resided in Norway for two year and who, during this period, have been part of the Norwegian labour market, have acquired such close ties. The report further states the wording of Article 10§5 refers to “granting financial assistance in appropriate cases”. In the Government’s view, persons with close ties to Norway constitute precisely such appropriate cases.

The Committee takes note of the information provided and can only reiterate that although financial assistance can be subject to different conditions, these conditions must be applied in a manner that respects the principle of equal treatment of non-nationals lawfully resident or regularly working in the territory. As this is not the case in Norway due to the existence of a length of residence and employment requirement for non-EEA nationals the Committee finds the situation be in violation of the Charter.

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).
On the previous occasion, the representative of Norway said that Norway had a very generous education system which welcomed foreign students. In particular, there were no tuition fees for anyone, while living expenses could be financed through loans from the loan fund. Foreign nationals were subject to two years of prior residence requirement for eligibility to student loans (Detailed report concerning Conclusions 2008, §123).

The Governmental Committee expressed its concern about the situation, and invited the Government of Norway to take measures to bring the situation in conformity with the Charter (ibidem, §125).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Norway brings the situation into conformity with Article 10§5 of the Charter.

Legislative amendments are required.

138. RESC 10§5 SWEDEN

The Committee concludes that the situation in Sweden is not in conformity with Article 10§5 of the Charter on the ground that nationals of other States Parties to the Charter and the 1961 Charter not members of the EU must have a permanent residence permit in order to be entitled to study support for education and vocational training.

Ground of non-conformity

In its previous conclusion, the Committee held that the situation in Sweden was not in conformity with Article 10§5 as foreign students are subject to a permanent residence requirement for entitlement to financial assistance for education and training. The Committee notes the information provided, in particular as regards the generous nature of the study support system making grants and loans available to a very wide-ranging target group of students at compulsory, secondary and post-secondary level.

The Committee refers to its constant case law according to which equal treatment must be guaranteed to lawfully resident nationals of other States Parties to the Charter and the 1961 Charter with the proviso that this does not apply to students who have entered the territory for the sole purpose of attending education and training. The Committee considers that the rules applicable in Sweden amount to a length of residence requirement affecting persons who reside lawfully for other purposes than education and training, but have not (yet) been granted a permanent residence permit. The situation is therefore in breach of the Charter.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion, the representative of Sweden provided written information according to which Sweden has a very generous system of study support which is universal and unlike many other countries, is not means-tested and is available for everyone (Detailed report concerning Conclusions 2008, §130).
The Governmental Committee expressed its concern about the situation, and invited the Government of Sweden to take measures to bring the situation in conformity with the Charter (ibidem, §134).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Sweden brings the situation into conformity with Article 10§5 of the Charter.

Legislative amendments are required.

**Article 15§1 - Vocational training for persons with disabilities**

**139. RESC 15§1 FRANCE**

The Committee concludes that the situation in France is not in conformity with Article 15§1 of the Revised Charter on the ground that it has not been established that people with autism are guaranteed effective equal access to (mainstream and special) education.

**Ground of non-conformity**

As regards school integration of autist children, the report presents a new Autism plan 2008-2010, which pursues three objectives:

- improving scientifical knowledge of autism as well as professional training and practice – an assessment of current state of knowledge on autism was published in March 2010 and professional training on these issues, as well as the issuing of practice recommendations, were scheduled to start in 2011;
- better identifying autist persons so as to improve assistance to them and their families – the budget allocated to the diagnosis of autism has been increased, some standard criteria have been set to better assess the results of the Ressource Centres for Autism (CRA), cooperation has started between CRA and MDPH;
- diversifying approaches while respecting individual fundamental rights – over 170 million euros have been earmarked for setting-up by end 2012 some 4,100 extra places for autist people (2,100 places for children in special education institutions; 2,000 places for adults in special institutions and home care services), end 2010 some 1,330 places for children and 342 places for adults had effectively been set up; in addition, 24 structures experimenting behavioural methods were set up in 2009 and 2010.

The report indicates that a number of measures are still under way and that the results achieved through this Plan are under assessment. While noting the new measures under way and the fact that their impact remains to be assessed, the Committee notes that the report does not indicate the impact of the previous Autism Plan and the changes resulting in practice from the adoption of the new WHO definition of autism. It also notes that it is currently seized of a new complaint (No. 81/2012, Action européenne des handicapés (AEH) v. France), registered in April 2012, concerning the problems regarding access of autistic children and adolescents to education and access of young adults with autism to vocational training. In the absence of sufficient information regarding the effective equal access of persons with autism to mainstream and special education, the Committee finds that the additional information provided in the report is not sufficient to make it reconsider its previous conclusion on this subject.

The situation is not in conformity on this ground since the decision of the merits of 4 November 2003 regarding Collective Complaint N° 13/2002, Autism-Europe v. France.
On the previous occasion, the representative of France recalled that following the decision of violation in collective complaint 13/2002, Autism-Europe v. France with regard to access to education of persons with autism, France launched a first Autism Plan 2005-2007. Progress concerning the implementation of this plan was taking time. When information in this regard was submitted to the ECSR, the time lapse (three years) between the authorisation to establish places for the education of persons with autism and their actual establishment had not yet elapsed. Thus, the figures referred to in the conclusion of non-conformity were those of the places for the education of persons with autism which were authorised and financed, not those established. The latter figures would become available shortly. The representative of France *inter alia* indicated that by the end of December 2007, 2852 places for special education were established (be it in establishments for persons with autism or in the other special education facilities available – “SESSAD, MAS, FAM”

7). Moreover, she informed that guidelines were under preparation to better classify the different forms of autism in order to appreciate progress achieved more thoroughly. She also reiterated that a second Autism Plan 2008-2010 foresaw yet further measures concerning education of persons with autism. Information on the implementation of this plan as well as any concrete figure concerning the outcome of the previous plan would be submitted in the next report on Article 15§1. The representative of France also confirmed that the data provided concerned special education facilities (*Detailed report concerning Conclusions 2008 §§ 140 and 142*).

The Governmental Committee welcomed the willingness and efforts of France to guarantee effective equal access to education for persons with autism. It noted the new information concerning access of persons with autism to special education and decided to await the next assessment of the ECSR (*ibidem* §144).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that France brings the situation into conformity with Article 15§1 of the Charter.

Additional measures are required.

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7 SESSAD : « *Services d'éducation spéciale et de soins à domicile* » - Educational and domiciliary care services ;
MAS : « *Maisons d'accueil spécialisées* » - Specialised care homes ;
FAS : « *Foyers d'accueil médicalisés* » - Centers of medical care.
140. RESC 15§1 REPUBLIC OF MOLDOVA

The Committee concludes that the situation of the Republic of Moldova is not in conformity with Article 15§1 of the Charter on the grounds that:

- there is no legislation explicitly protecting persons with disabilities from discrimination in education and training
- .......

First ground of non-conformity

Concerning anti-discrimination legislation, the Constitution’s equality provision at Article 16 does not provide a ban on discrimination on grounds of disability or health status, or even a generic “other status” ground which might encompass such discrimination. The memorandum of the UN mentioned in the Conclusion acknowledges that the Republic of Moldova still lacks an anti-discrimination law providing an effective ban on discrimination on grounds of disability, combined with patterns and practices of unchallenged discrimination against persons with disabilities.

A draft anti-discrimination law was put on the Parliamentary agenda in 2008, but then withdrawn. A new one was tabled before the Parliament in 2011, which would ban direct and indirect discrimination and would set up an enforcement body, “the Council for Preventing and Combating Discrimination”, with the power to issue fines to persons and entities found guilty of discriminating. The bill presents however some shortcomings: for example, while it introduces a ban on discrimination on grounds of disability, it does not include a requirement of “reasonable accommodation” as per the CRPD; a second issue concerns the enforcement mechanism and the lack of effective remedies afforded; finally, the bill provides in its draft Article 7(3) for exceptions which, if wrongly applied, might undermine the effectiveness of the law itself.

The Committee recalls that it had already asked in its conclusions 2005 and 2008 for clarifications as regards the existence of appropriate anti-discrimination legislation in the field of education and as regards a Code on education on mainstreaming in ordinary and special education, which was under preparation. Having received no reply on these points and in the light of the information concerning the anti-discrimination bill tabled for adoption, it reiterates its requests for information and concludes in the meanwhile that the rights of persons with disabilities to protection against discrimination are not guaranteed in the Republic of Moldova. It furthermore points out that should the next report not provide the requested information, nothing will allow to establish that the situation is in conformity with Article 15§1 of the Charter.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion, the representative of the Republic of Moldova informed the Committee that a Code on Education, regulating inter alia mainstreaming, had been adopted on 19 December 2008. She also highlighted that there was a plan to reorganise ordinary and special education to progressively realise inclusive education. Moreover a strategy concerning the integration of persons with disabilities was being elaborated to cover all areas of life, not only education. As to anti-discrimination legislation, she referred to a draft law which was before the Government. She pointed out that the areas of education and training were covered by the draft and that protection against discrimination was provided for inter alia on the grounds of disability. She also highlighted that the draft law provided for legal remedies (Detailed report concerning Conclusions 2008, §§147 and 148).
The Governmental Committee welcomed the efforts and willingness of the Republic of Moldova and urged it to continue by adopting the anti-discrimination legislation as soon as possible. Meanwhile, it decided to await the next assessment of the ECSR (ibidem §149).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Republic of Moldova brings the situation into conformity with Article 15§1 of the Charter.

The adoption of legislation is required.

141. RESC 15§1 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

Ground of non-conformity

The Committee notes that the report continues not to provide the following relevant figures:

- the total number of students with disabilities attending mainstream education;
- the total number of students with disabilities attending special education;
- the percentage of students with disabilities entering the labour market following mainstream or special education.

In view of this lack of information, the Committee again asks the next report to provide the relevant figures mentioned above and concludes that, in the absence of this information, it is not established that the right of persons with disabilities to mainstream education is effectively guaranteed.

In its previous conclusion (Conclusions XIX-1 (2008)), the Committee asked for information on:

- the number of places at vocational training facilities, including special facilities;
- the extent to which the training offer matches the demand;
- the number of persons with disabilities attending vocational training, including higher education, and the other forms of special training available;
- whether training facilities are available for adults living in institutions.

Since the report does not provide information on these issues, the Committee reiterates its questions and concludes that, in the absence of this information, it is not established that the right of persons with disabilities to mainstream training is effectively guaranteed.

The situation is not in conformity on this ground since XVIII-2 (2007).

On the previous occasion, the representative of the Slovak Republic acknowledged that complications with the Statistical Office resulted in difficulties in providing the ECSR with the necessary data to assess the situation with regard to mainstreaming of persons with disabilities in education and training. Such data would presently be available and would be submitted to the ECSR. As to the issue of the definition of disability, which was raised by Conclusions XVIII-2 and XIX-1, the representative of the Slovak Republic clarified that Slovak legislation, (e.g. Act No. 448/2008 concerning monetary
contributions as compensation for severe disability) is not based on the definition of disability endorsed by the WHO (International Classification of Functioning, Disability and Health – ICF 2001); it refers to the definition of the International Statistical Classification of Diseases and related Health Problems – ICD. He also explained that the “special homes” in which some children with severe health problems are placed for care are considered “special education institutions” where education tailored to each individual is provided (Detailed report concerning Conclusions XIX-1 (2008), §§ 146-148).

The Governmental Committee invited the government of Slovakia to provide the relevant statistics and information on ordinary and special education in its next report and decided to await the next assessment of the ECSR (ibidem §149).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 15§1 of the Charter.

The Slovak Republic must provide the necessary information.

142. ESC 15§1 DENMARK

The Committee concludes that the situation in Denmark is not in conformity with Article 15§1 of the 1961 Charter on the ground that there is no legislation explicitly protecting people with disabilities from discrimination in education.

Ground of non-conformity

The Committee refers to its previous Conclusions (XIX-I and XVIII-2), where it had noted that although Danish legislation on education provides all children with the right to free compulsory education, this does not amount to non-discrimination legislation. As this situation has not changed, it remains not in conformity with Article 15§1 of the Social Charter of 1961.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of Denmark informed the Governmental Committee that the Act on Education for Young Persons with Special Needs entered into force in August 2007. She specified that the act concerns young persons with a mental disability, brain injuries, physical disabilities and multiple disabilities which are of such a nature that mainstream education cannot be suitable. The act establishes that special needs education must be made available free of charge to young people irrespective of their degree of disability in all municipalities. She added that as of February 2009, 2000 youngsters were taken into special needs education and it was foreseen that such a number would increase. She also mentioned that education for young persons with special needs was evaluated on an on-going basis and that appeals could be brought before the Special Education Board on a municipality’s decision concerning the content of the education programme. Finally she assured the Committee that Denmark would include all relevant information to demonstrate that students with
disabilities receive the support they need to be able to take in ordinary education on the same footing with other young persons. Responding to a question as to whether the new law explicitly protected persons with disability from discrimination in education, the representative of Denmark replied in the negative. However she noted that the principle of equality of treatment was enshrined in the acts and executive orders concerning education. She also pointed out that Denmark had ratified the UN Convention on the rights of persons with disabilities (Detailed report concerning Conclusions XIX-1 (2008) §§131-134).

The Governmental Committee invited Denmark to provide the relevant information on protection from discrimination on the basis of disability in education in its next report, and decided to await the next assessment of the ECSR on Article 15§1 of the Charter (ibidem §135).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Denmark brings the situation into conformity with Article 15§1 of the Charter.

The adoption of legislation is required.

143. ESC 15§1 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 15§1 of the 1961 Charter on the ground that there is no legislation explicitly prohibiting discrimination in education and training on the ground of disability.

Ground of non-conformity

The Committee recalls that, under Article 15§1 it 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 compelling justification for special or segregated education 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. Legislation may be general anti-discrimination legislation, specific legislation concerning education or a combination of the two (Conclusions 2007, General Introduction, Statement of Interpretation on Article 15§1). In the light thereof, the Committee acknowledges the developments reported but notes that, although a bill prohibiting discrimination is currently being prepared, no such legislation was in force in Iceland during the reference period. Accordingly, the Committee finds that the situation in Iceland is not in conformity with Article 15§1 of the 1961 Charter.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of Iceland informed the Governmental Committee that a bill on anti-discrimination legislation implementing the EU Directives 2000/43/EC and 2000/78/EC would be submitted in Parliament in 2009/2010. She assured that while preparing such bill, the conclusions of the ECSR on the issue would be taken into consideration. Moreover, with specific regard to protection of persons from discrimination in education and training, she pointed out that Parliament had adopted a new Compulsory School Act and Upper Secondary School Act in 2008 which includes
provisions on rights of pupils with special needs. She also announced that the Minister of Education, Science and Culture would issue a regulation stipulating further the implementation of these acts and case procedure (Detailed report concerning Conclusions XIX-1 (2008) §§138-140).

The Governmental Committee welcomed the developments in Iceland and invited the government to adopt the anti-discrimination legislation. Meanwhile, it decided to await the next assessment of the ECSR (ibidem §141).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Iceland brings the situation into conformity with Article 15§1 of the Charter.

The adoption of legislation is required.

**144. ESC 15§1 LUXEMBOURG**

The Committee concludes that the situation in Luxembourg is not in conformity with Article 15§1 of the 1961 Charter on the grounds that it has not been established that people with disabilities are guaranteed an effective right to mainstream training.

**Ground of non-conformity**

The report indicates that, as regards special training, there were 610 disabled students in 2007/2008, 516 in 2008/2009 and 367 in 2009/2010. The report explains however that the number of disabled students in mainstream training is not known because disabled students are not identified as such as long as, through reasonable accommodation measures, they can follow mainstream courses and only when this is not the case they are identified as disabled students and reoriented to special adapted courses.

As regards university education, disabled students enjoy in principle equal access, but no data are available on the subject. According to EU SILC data for 2009, compiled by ANED, the proportion of disabled people (aged 30-34) having completed tertiary level education in Luxembourg was 29.7, compared to 42.5 for non-disabled people. The proportion of young disabled people (aged 18-24) leaving school early in Luxembourg was 17.6, compared to 13.6 for non-disabled people.

The Committee repeats its request for data and points out that, where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities’ duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23). Given the lack of information about mainstreaming of people with disabilities, the Committee does not consider it established that they enjoy effective equal access to ordinary training.

The situation is not in conformity on this ground since Conclusions XIX-1(2008).

On the previous occasion, the representative of Luxembourg provided written information (Detailed report concerning Conclusions XIX-1 (2008) §142).
The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §143).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Luxembourg brings the situation into conformity with Article 15§1 of the Charter.

Additional measures are required.

145. ESC 15§1 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee concludes that the situation in “the former Yugoslav Republic of Macedonia” is not in conformity with Article 15§1 of the 1961 Charter on the grounds that

- the anti-discrimination legislation covering education for persons with disabilities is inadequate;
- it has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.

First ground of non-conformity

The Committee notes from the report the adoption in 2010 of the Law on Prevention and Protection against Discrimination (the Anti-discrimination Law). It bans any direct or indirect discrimination on the grounds of, inter alia, disability, in several areas including education, science and sport (Section 3); Section 8 of the Law stipulates that "discrimination of persons with intellectual and body disability refers to deliberate prevention from or obstructed access to health protection, [...] deprivation of the right to education, work and of the rights arising out of the labour relation." The Committee notes, however, that although the Law was adopted and entered into force in April 2010, according to its Section 46, the application of the Law commenced only on 1 January 2011. Consequently, while the new Anti-discrimination Law meets the requirements of Article 15§1 of the Charter, it falls outside the reference period. The Committee will refer to it in the next conclusion and it asks the Government to provide information about the implementation of this Law in the next report.

Since the legal framework in the relevant field has not changed during the reference period, the Committee maintains its previous conclusion of non-conformity on this ground.

The situation is not in conformity on this ground since Conclusions XIX-1(2008).

On the previous occasion the situation was not dealt with.

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that "the former Yugoslav Republic of Macedonia” brings the situation into conformity with Article 15§1 of the 1961 Charter.

The “former Yugoslav Republic of Macedonia” must provide the necessary information.
Second ground of non-conformity

In the previous conclusion (Conclusions XIX-1) the Committee found that the implementation of the principle of inclusion of children with disabilities in mainstream schools was insufficient and asked about measures taken to improve the situation.

With regard to available data, the report states that in the school year 2010/2011 there were 285 students enrolled in the four special high schools (among them 227 student with intellectual disabilities), 583 students in special primary schools and 548 students with disabilities and with special educational needs in regular primary schools. The Committee further notes from another source\(^8\) that there are 45 special classes in primary schools with 993 pupils and 4 special secondary schools with 307 students. According to the same source the curriculum they offer is outdated and graduate students cannot enrol in the open market with the knowledge they got. The Committee asks the Government to comments on this.

The Committee refers to its previous conclusion, where it posed a number of questions regarding the access and organisation of education for children with disabilities in special and mainstream schools; it finds that the report does not provide answers to most of them, and that relevant statistical data are lacking. The Committee reiterates those questions and concludes that that the information and figures provided in the report are insufficient to establish that the situation is in conformity.

The Committee takes on note of the information provided in the report, with regard to vocational training available under the Law on Social Security and the Law on Employment of Disabled Persons. It observes that the access to training under the Law on Employment requires a rather complex procedure involving referral to training by the employer and/or the Employment Service Agency, and prior assessment and opinion of the Commission for Evaluating the Working Abilities within the Pension and Disability Insurance Fund on the work ability for the job position for which the person is to be trained. The Committee notes from ANED that the number of occupations in the centres for training and rehabilitation is limited, mainly in manufacturing (such as sewing, packaging, envelope sticking etc.).

The Committee further notes from ANED that the vocational training for people with disability is very limited and dated. Disability is not included within the Law for Vocational Education and Training, implemented by the Center for Vocational Education and Training, which is a public service institution. The reception centres and institutions for children and juveniles with educational and social difficulties include reception centres for care of educationally neglected children and juveniles. These institutions provide housing, education and vocational training.

The Committee again observes that the report does not provide information on most of the questions and issues concerning vocational education of person with disabilities raise in the previous conclusion. It reiterates these questions and recalls that Article 15§1 of the Charter requires persons with disabilities to be integrated into mainstream facilities to the maximum extent possible – special facilities should be the exception – and it requires states to provide evidence that this is the case or at least that substantial efforts are being made to achieve this.

The situation is not in conformity on this ground since Conclusions XIX-1(2008).

On the previous occasion, the situation was not dealt with.

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that "the former Yugoslav Republic of Macedonia" brings the situation into conformity with Article 15§1 of the 1961 Charter.

The “former Yugoslav Republic of Macedonia” must provide the necessary information.

**Article 15§2 - Employment of persons with disabilities**

**146. RESC 15§2 ARMENIA**

The Committee concludes that the situation in Armenia is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective protection against discrimination in employment.

**Ground of non-conformity**

According to the report, in 2011 some 5.8% of the total population had disabilities, i.e. around 185,000 persons, including around 119,800 people of working age (from 18 years old to pensionable age).

The Committee notes that the employment rate of disabled people remains particularly low: only 9% of disabled people are employed, i.e. 0.9% of the working population (the proportion decreased from 2009, when it was 1.6%, as a result of the economic crisis). As of 1/01/2011, there were 93,200 job seekers, of which 1,170 disabled people, i.e. only 1% of unemployed disabled people of working age. Those of them finding a job through the state employment service passed from 125 in 2008 (including 70 following specific programmes) to 110 in 2010 (including 96 following specific programmes). The number of disabled people finding employment as a result of vocational training increased from 14 in 2008 (out of 90 participants) to 20 in 2010 (out of 81 participants).

A survey carried out in 2007 with the assistance of the World Bank pointed out a number of shortcomings, detailed in the report (under Article 1), explaining why the proportion of disabled people applying for jobs is so small and what are the obstacles to the employment of disabled people. These results were confirmed by a smaller scale survey in 2009.

Concerning anti-discrimination legislation, general anti-discrimination provisions are included in the Constitution (Article 14.1), the Labour Code (Article 3.3) and the Law « on employment of population and social protection in case of unemployment ». Furthermore, the 1993 Law on the Social Protection of People with Disabilities stipulates that “people with disabilities have the same rights, freedoms and obligations as other persons” and covers rehabilitation, education, vocational training, labour rights, accessible environment and social care. The current anti-discrimination provisions are however not effectively implemented, as acknowledged by a survey cited in the report (as well as the NGO "Unison"). A new draft law explicitly prohibiting all discrimination on the basis of disability was to be submitted to the government end 2011. The Committee requests information in this respect and wishes to know in particular what judicial and non-judicial redress is provided in cases of discrimination on the basis of disability, including relevant case-law.
The Labour Code provides for some guarantees for disabled workers and, under its Article 141, persons with disabilities may require to benefit from a flexible schedule (based on medical examination). In response to the Committee’s request of clarifications on Article 17 of the Law on Social Protection of Disabled Persons, the report informs that the law covers both the public and the private sector. This provision prohibits all employers to dismiss or refuse to hire a disabled person, to promote or redeploy him/her to another workplace, except when a medical-social expertise concludes that the disabled person’s health hinders the performance of occupational duties or threatens the health and occupational safety of other persons. The report indicates that this provision will be amended, once a social model of disability is introduced. The Committee asks the next report to provide information on the amendments and their implementation as well as on how the legal obligation to ensure reasonable accommodation, i.e. to adjust the workplace to the needs of disabled people, is implemented in practice, to provide any relevant data on compliance and relevant examples and whether it has prompted an increase in employment of persons with disabilities in the open labour market. In the light of the information available on the current situation, the Committee does not find it established that people with disabilities are guaranteed effective protection against discrimination in employment.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion, the representative of Armenia provided written information including a range of statistical data (Detailed report concerning Conclusions 2008 §161).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §162).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Armenia brings the situation into conformity with Article 15§2 of the Charter.

Legislative amendments are required.

147. RESC 15§2 BELGIUM

The Committee concludes that the situation in Belgium is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that persons with disabilities are guaranteed effective equal access in employment.

Ground of non-conformity

The Committee highlights that it needs to be systematically provided with up-to-date figures for all the country’s entities concerning the total number of people with disabilities, including those of working age; the number of people with disabilities employed (in the ordinary market or in sheltered employment); the number of people with disabilities benefiting from employment promotion measures and the number of people with disabilities seeking employment or unemployed. In the absence of these figures, it cannot be established that the situation in Belgium is in conformity with Article 15§2 as regards access of persons with disabilities to employment.
The Committee, referring to its previous conclusion (Conclusions 2008) reiterates that it needs to know, for all the regions in the country: how reasonable accommodation is implemented in practice, whether there is any case law on the subject and whether this has prompted an increase in the employment of persons with disabilities in the open labour market; whether compensation is available for material and non-material damage to persons who have been discriminated against, whether legal and non-legal remedies are available to them and whether there is any case law on the subject.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion, the representative of Belgium provided information in writing including a range of statistical data (Detailed report concerning Conclusions 2008 §163).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §164).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Belgium brings the situation into conformity with Article 15§2 of the Charter.

Belgium must provide the necessary information.

148. RESC 15§2 REPUBLIC OF MOLDOVA

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter on the ground that it has not been established that people with disabilities are guaranteed effective protection against discrimination in employment.

Ground of non-conformity

According to the reply given to the Governmental Committee, the new law on safety and health at the workplace of July 2008 (Act 186/2008) includes a requirement of reasonable accommodation and remedies against discrimination in employment exist in Article 20 of the Constitution and Article 55 of the Labour Code. The Committee notes that the provisions referred to do not contain any reference to anti-discrimination of disabled people in the labour market and asks the next report to provide the translation of the relevant provisions of the law of 2008 referred to. It notes from another source ("A comprehensive anti-discrimination law for the Republic of Moldova", article by Claude Cahn, UN Human Rights advisor) that the Constitution’s equality provision (Article 16) does not encompass disability, that a draft anti-discrimination law presented to the Parliament was withdrawn and that the new one, tabled before the Parliament in 2011, raises a number of problems (see Conclusions 15§1). Different sources also indicate that the requirement of reasonable accommodation is not yet provided for in the Republic of Moldova. In the light of this situation, the Committee

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9 MDAC Mental Disability Advocacy Centre - Moldova; "A Comprehensive Anti-Discrimination Law for the Republic of Moldova", article by Claude Cahn, UN Human rights Advisor on UN Moldova website; OSCE-ODIHR opinion on the revised draft law on preventing and combating discrimination of the Republic of Moldova 13/10/2011; EU Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, 9/02/2012.
reiterates the questions raised in the Conclusions 2008 and concludes in the meanwhile that it is not established that the rights of persons with disabilities to protection against discrimination in employment are adequately guaranteed.

The 1991 Law on social protection of disabled people provides that every company, institution and organisation is required to reserve at least 5% of the total number of jobs for people with disabilities. The Center for Legal Assistance of Persons with Disabilities states however that this provision is not applied and that the lack of a coherent social policy of inclusion of disabled people into the workforce is acknowledged in the Social Inclusion Strategy for people with disabilities for 2010-2013, adopted in July 2010 (Act 169/2010). There are no incentives for employers to recruit people with disabilities, with the exception of institutions in which at least half of the employees are disabled, which are subsidised by the state budget.

The Center for Legal Assistance of Persons with Disabilities points out that a main obstacle to the employment of people with disabilities results from the fact that in the Moldovan legal framework they are defined as unfit to work and that, regardless of the individual capacities, as long as the person moves around in a wheelchair or has a poor eyesight, he/she is considered invalid and will be employed according to the medical prescription and not his/her working capacity.

The Committee requests the next report to inform it of the follow-up given to the various legislative and non-legislative initiatives under way with a view to improving inclusion of disabled people in employment. It also requests information on the effective application of provisions concerning disabled people’ employment (in particular, the Strategy for People with Disabilities 2010-2013) and on remedies available to enforce disabled people’ employment rights as well as updated data on the number of disabled people employed in the open market and sheltered employment. In the meanwhile, the Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 15§2 of the Charter.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion, the representative of the Republic of Moldova reiterated the information concerning the draft anti-discrimination legislation (see Article 15§1). As to the requirement of reasonable accommodation, she informed the Governmental Committee that the new law on safety and health at the workplace of July 2008 included such a requirement. She also clarified that remedies against discrimination in employment exist and referred to Article 20 of the Constitution and to Article 55 of the Labour Code (Detailed report concerning Conclusions 2008, §§ 173 and 174).

The Governmental Committee welcomed the efforts of the Republic of Moldova and urged it to continue by adopting the anti-discrimination legislation as soon as possible (ibidem §175).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Republic of Moldova brings the situation into conformity with Article 15§2 of the Charter.

Additional measures are required.
149. RESC 15§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 15§2 of the Charter on the following grounds:

- it has not been established that persons with disabilities are guaranteed an effective equal access to employment.

Ground of non-conformity

In its last conclusion (Conclusions XIX-1 (2008)), the Committee asked whether the jobs created following the new support project dated 2005 were in the open labour market or whether they were protected forms of employment. Given the lack of information on this issue, the Committee reiterates its question.

In its last conclusions the Committee wished to receive information on:

- the difference between sheltered workshops and sheltered workplaces;
- regulations regarding the conditions of work and pay in sheltered employment;
- the extent of involvement of trade unions in sheltered employment.

The report does not contain information on these issues either, therefore the Committee insists on receiving the requested information in the next report.

Finally, in its previous conclusion (Conclusions XIX-1 (2008)), the Committee asked to be informed on the measures introduced that permits the integration of persons with disabilities into the ordinary labour market and the rate of progress into it. The report does not make reference to such measures, therefore the Committee reiterates its questions.

In view of the absence of answers to all these questions, the Committee does not consider that an effective equal access to employment is guaranteed.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of the Slovak Republic acknowledged that the mandatory quota system was not effective and that instead of filling their quota, employers preferred acquiring goods produced by persons with disabilities. He thus did not have any figures concerning the mandatory quota. He did, however, provide figures with regard to the number of jobseekers with disabilities. He then described the instruments of active labour market policy implemented under the Employment Services Act to support the placement of the disabled. He highlighted in particular that in 2008: (i) employers created 731 jobs for persons with disabilities; (ii) 189 citizens with disabilities were retained in employment by 33 employers; (iii) 333 new jobs were created for persons with disabilities in the sectors of sole trader or sole proprietor (Detailed report concerning Conclusions XIX-1 (2008) §164).

The Governmental Committee invited the Slovak Republic to provide the relevant statistics and information on equal access to employment for persons with disabilities in its next report and decided to await the next assessment of the ECSR (ibidem §167).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 15§2 of the Charter.

The Slovak Republic must provide the necessary information.

150. ESC 15§2 ICELAND

The Committee concludes that the situation in Iceland is not in conformity with Article 15§2 of the 1961 Charter on the ground that there is no legislation explicitly prohibiting discrimination in employment on the ground of disability.

Ground of non-conformity

The Committee acknowledges the developments reported but notes that, although a bill prohibiting discrimination is currently being prepared, no such legislation was in force in Iceland during the reference period. Accordingly, the Committee finds that the situation in Iceland is not in conformity with Article 15§2 of the 1961 Charter.

The situation is not in conformity on this ground since Conclusions XVIII-2 (2007).

On the previous occasion, the representative of Iceland referred to her intervention under Article 15§1 concerning developments with regard to the anti-discrimination bill (Detailed report concerning Conclusions XIX-1(2008) §156).

The Governmental Committee welcomed the developments in Iceland and invited the Government to adopt anti-discrimination legislation. In the meantime, it decided to await the next assessment of the ECSR (ibidem §157).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Iceland brings the situation into conformity with Article 15§2 of the Charter.

The adoption of legislation is required.

151. ESC 15§2 LUXEMBOURG

The Committee concludes that the situation in Luxembourg is not in conformity with Article 15§2 of the 1961 Charter on the ground that it has not been established that people with disabilities are guaranteed effective equal access to employment.

Ground of non-conformity

In its previous conclusion (Conclusions XIX-1), the Committee reiterated that in the absence of any overall statistics on the total number of disabled persons of working age, on those working in ordinary and sheltered employment and on those registered as unemployed or seeking work, it considered that the employment situation of persons with disabilities under Article 15§2 of the Charter could not be established. As the report fails again to provide some essential information, it cannot be established that the situation is in conformity with Article 15§2 of the 1961 Charter.
According to the 2011 Report on measures to combat discrimination (by the European Network of Experts in the non-discrimination field), only people who have a 30% disability and have been officially recognised as such are entitled to claim a reasonable accommodation and are covered by the anti-discrimination law. The Committee asks the next report to clarify the situation of disabled people not corresponding to these criteria and to provide any relevant example of case-law concerning discrimination of disabled workers, in particular as regards reasonable accommodation.

Public financial assistance is available to support the employment of disabled people. Among the measures available, there are State contributions, for a certain period, to wages as well as to the cost of training or of reasonable accommodation. In the public sector, a 5% quota is reserved to disabled workers. For the private sector, the number is one disabled worker for 25 employees, 2% for 50 employees, 4% for 300 employees. Private sector employers not complying with the quota obligation must pay a fine. According to the 2011 Report on measures to combat discrimination, the majority of employers choose to pay the amount due, rather than to employ disabled people. The Committee asks the next report to provide information on the rate of compliance with the quota obligation in the public and private sector.

As regards sheltered employment, the report indicates that disabled people working there have a normal employment contract, a right to a minimum salary and to join trade unions. The report also states that the rate of transfer of disabled workers to ordinary employment is minimal and explains that all disabled worker is assessed by a special commission (COR), which assesses whether the worker can work in the ordinary labour market or should be oriented to sheltered workshops. Two degrees of appeal are available against this decision. The Committee reiterates its request for information on relevant case-law.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion, the representative of Luxembourg referred to the information provided in response to the Article 15§1 conclusion of non-conformity (Detailed report concerning Conclusions XIX-1 (2008) §158).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §159).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Luxembourg brings the situation into conformity with Article 15§2 of the Charter.

Luxembourg must provide the necessary information.
Article 15§3 - Integration and participation of persons with disabilities in the life of the community

152. RESC 15§3 ESTONIA

The Committee concludes that the situation in Estonia is not in conformity with Article 15§3 of the Charter on the ground that there is no anti-discrimination legislation to protect persons with disabilities which explicitly covers the fields of housing, transport, telecommunications and cultural and leisure activities.

Ground of non-conformity

The Committee notes that on 1 January 2009 the new Equal Treatment Act entered into force. According to Section 2(1), discrimination on the grounds of ethnic origin, race, colour is prohibited in relation to access to and supply of goods and services which are available to the public, including housing. However, disability does not belong to the grounds applicable in this regard. Discrimination on the ground of disability is prohibited under Section 2(2), which covers, inter alia, area of employment and vocational training, but does not refer to areas covered by Article 15§3.

In the meantime, the Committee reiterates that Article 15§3 requires explicit non-discrimination legislation covering both the public and private spheres in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been treated unlawfully. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two. The Committee considers that according to the information available to it the situation in Estonia is not in conformity with the Revised Charter because there is no anti-discrimination legislation to protect persons with disabilities which explicitly covered the fields of housing, transport, telecommunications and cultural and leisure activities.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion, the representative of Estonia said that the equal treatment legislation had come into force on 1 January 2009, but that following debate in parliament it had been modified. The new law banned discrimination on grounds of disability, without any explicit reference to housing, transport, telecommunications and cultural and leisure activities. Because it was so recent, it was necessary to await practical implementation. The Constitution did not explicitly prohibit discrimination on grounds of disability. Article 28 of the Constitution only dealt with positive discrimination. Persons who thought they had been discriminated against could bring an action in the courts on grounds of violation of the Constitution. The Estonian President had signed the United Nations Convention on the Rights of Persons with Disabilities on 25 September 2007 and it was now being ratified (Detailed report concerning Conclusions 2008, §184).

The Governmental Committee noted the information, invited the Government to supply detailed information in the next report and decided to await the next assessment of the ECSR (ibidem §187).
The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Estonia brings the situation into conformity with Article 15§3 of the Charter.

The adoption of legislation is required.

**Article 18§1 - Applying existing regulations in a spirit of liberality**

153. RESC 18§1 FRANCE

The Committee concludes that the situation in France is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that existing regulations are applied in a spirit of liberality.

**Ground of non-conformity**

However, the Committee notes from the report that there is currently no data available on the number of applications for work permits requested and refused. The setting up of the analysis tool FRAMIDE was postponed because of technical problems.

The report provides statistics regarding the number of granted permits by nationality. The Committee recalls that its assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits (Conclusions XVII-2, Spain). In the absence of such information, the Committee reiterates its previous conclusion of non-conformity as it has not been established that existing regulations are applied in a spirit of liberality.

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion the representative from France stated that that the information requested was now available as a result of the creation of a new computer file, FRAMIDE (France Migration Détachement), by decree on 3 March 2009 which appeared in the Official Journal on 28 April 2009. This allows for the automated processing of nominative data relating to procedures for the granting of work permits to foreign nationals and should be operational by the end of 2009 (Detailed report concerning Conclusions 2008 §202).

The Governmental Committee welcomed the positive developments. It noted the information provided by the representative and asked the Government to include all relevant information in its next report (ibidem §204).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that France brings the situation into conformity with Article 18§1 of the Charter.

France must provide all the necessary information.
154. RESC 18§1 ITALY

The Committee concludes that the situation in Italy is not in conformity with Article 18§1 of the Charter on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

Ground of non-conformity

In this connection, according to the report in the year 2009 7688 work permits were rejected. The report also provides statistics concerning the numbers of foreign nationals residing in Italy for different reasons, such as work, family, health, studies, asylum etc. However, the Committee notes that the report does not, again, provide pertinent information on the number of work permit applications made. In the absence of this information, the Committee cannot determine whether the refusal rate is high. Therefore, the Committee reiterates its previous finding of non-conformity on the ground that it has not been established that the existing regulations are applied in a spirit of liberality.

The situation is not in conformity on this ground since Conclusions 2007.

On the previous occasion the representative from Italy announced that because a new information system had been introduced, it would now be easier to obtain the data required under Article 18§1 of the Charter (Detailed report concerning Conclusions 2008 §205).

The Governmental Committee welcomed this positive development. It asked the Government to provide all relevant information in its next report (ibidem §206).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Italy brings the situation into conformity with Article 18§1 of the Charter.

Italy must provide all the necessary information.

Article 18§2 - Simplifying existing formalities and reducing dues and taxes

155. RESC 18§2 SLOVAK REPUBLIC

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 18§2 of the Charter on the ground that the rules governing the issuance of work and residence permits have not been simplified.

Ground of non-conformity

The Committee notes that as regards the issue of work and residence permits, the situation has remained the same and no simplification of the dual procedure took place during the reference period. Therefore the Committee holds that the situation is not in conformity with the Charter as the rules governing the issuance of work and residence permits have not been simplified.

The situation is not in conformity on this ground since Conclusions XVI-2 (2003).
On the previous occasion the representative from the Slovak Republic stated that new legislation transferring responsibility for immigration from the police to the civil authorities, thus simplifying formalities, had not yet been adopted but should be shortly (Detailed report concerning Conclusions 2008 §174).

The Governmental Committee urged the Government to take all the necessary steps to bring the situation into conformity with Article 18§2 of the Charter (ibidem §176).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Slovak Republic brings the situation into conformity with Article 18§2 of the Charter.

Additional measures are required.

156. RESC 18§2 TURKEY

The Committee concludes that the situation in Turkey is not in conformity with Article 18§2 of the Charter on the ground that there is a dual procedure for obtaining work and residence permits.

Ground of non-conformity

The Committee observes that there have been a number of improvements, such as the possibility to apply for a work permit using an electronic form. However, it notes that amendments envisaging a one-stop-shop for work and residence permits have not been enforced during the reference period, thus maintaining the dual system for granting of work and residence permits. Therefore, it maintains its previous finding of non-conformity on this issue.

The situation is not in conformity on this ground since Conclusions XIII-3 (1996).

On the previous occasion the Representative from Turkey stated that the residence permit is an important complementary element to the work permit. The work and residence permit are tied together. It is not strictly dual application, as foreigners do not apply to two different authorities with double application forms. Foreigners apply to Turkish missions abroad with only one application form including all necessary documents. If they are able to get working visa, then they are registered with the Ministry of Interior after entering into Turkey. (Detailed report concerning Conclusions XIX-1 (2008) §§177-182).

The Governmental Committee noted the information provided by the representative and asked the Government to include all relevant information in its next report. (ibidem §184).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 18§2 of the Charter.

Additional measures are required.
**Article 18§3 - Liberalising regulations**

**157. RESC 18§3 ROMANIA**

The Committee concludes that the situation in Romania is not in conformity with Article 18§3 of the Charter on the grounds that:

- the lack of simplification of formalities for obtaining work and residence permits still represents a serious obstacle for foreign workers to access national labour markets;

**Ground of non-conformity**

In its previous conclusion (Conclusions 2008) the Committee held that the situation was not in conformity with the Charter as formalities for the granting of temporary residence permits had not been simplified and there were two distinct procedures for issuing work and residence permits. It notes that there have been no changes to this situation. Therefore, it reiterates its previous conclusion of non-conformity on this ground as the lack of simplification of formalities for obtaining work and residence permits still represents a serious obstacle for foreign workers to access national labour markets.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the Representative from Romania explained that a long stay visa for employment is issued by the Romanian diplomatic missions and consular offices, on the basis of the work permit issued by the Romanian Office for Immigration. The Romanian Office for Immigration issues the work permit in 30 days after the day it has received the request from the employer. A foreigner can then request a long stay visa for employment within 30 days after the work permit is issued (*Detailed report concerning Conclusions 2008 §220*).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR. (*ibidem §221*).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Romania brings the situation into conformity with Article 18§3 of the Charter.

Additional measures are required.

**158. RESC 18§3 TURKEY**

*The Committee concludes that the situation in Turkey is not in conformity with Article 18§3 of the Charter on the grounds that:*

- rules governing self-employment of foreign workers have not been liberalised;
Ground of non-conformity

It notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2010)5 §192) that legislation had been adopted by the Parliament during the reference period removing restrictions on self employment of foreigners. However the legislation had not been approved by President and was therefore before the Parliament again. The draft legislation, inter alia, abolishes the 5 year residence requirement for persons wishing to engage in a self employed activity where they should demonstrate the creation of 10 new jobs on the Turkish market. The Committee wishes to be kept informed on the iter of adoption of the draft legislation. However, it notes that in the reference period Turkey has not liberalised its regulations governing access to self-employment of foreign workers. Therefore, it holds that the situation is contrary to the Charter.

The situation is not in conformity on this ground since Conclusions XIII-1 (1995).

On the previous occasion the Representative from Turkey provided information on the efforts made to amend the legislation (see above) (Detailed report concerning Conclusions 2008 §192).

The Governmental Committee encouraged the Government to take all the necessary steps to bring the situation into conformity on both grounds with the Charter and decided to await the next assessment of the ECSR (ibidem §200).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Turkey brings the situation into conformity with Article 18§3 of the Charter.

Amendments to the legislation are required.

159. ESC 18§3 United Kingdom

The Committee concludes that the situation in United Kingdom is not in conformity with Article 18§3 of the 1961 Charter on the ground that the foreign worker's residence permit may be revoked if he loses his job and the foreign worker may be obliged to leave the country as soon as possible.

Ground of non-conformity

In this connection the Committee notes from the Governmental Committee report (Detailed report(2010) §50) that nationals of countries other than EEA or Swiss nationals require a permit to work in the UK. The permit is however awarded to the employer allowing him to employ a particular foreign worker in a particular post. The worker then approaches the British Embassy in his country of residence for an entry visa which is normally granted in parallel with the work permit. If the worker loses his job for some reason then he has no permit to work in the UK and so would be obliged to leave the country. He cannot simply transfer to another employer without that employer first seeking a permit to employ that worker.

In practice if his entry visa has not expired the authorities would allow him a period of grace to find alternative employment but he has no permit to work and so theoretically should leave the country.

According to the representative of the United Kingdom, the work permit is granted to the employer giving him the right to employ that worker and not to the worker giving him the right to work in the United Kingdom.
The Committee observes that both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they refer to the same case in question - whether or not to enable a foreigner to engage in a gainful occupation. However, in case a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.

The Committee holds that the UK legislation does not comply with this approach. Therefore, it considers that the situation is not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions XIX-1 (2008).

On the previous occasion the representative from the United Kingdom provided the following information: "Nationals of countries other than EEA or Swiss nationals require a permit to work in the UK. The permit is however awarded to the employer allowing him to employ a particular foreign worker in a particular post. The worker then approaches the British Embassy in his country of residence for an entry visa which is normally granted in parallel with the work permit. If the worker loses his job for some reason then he has no permit to work in the UK and so would be obliged to leave the country. He cannot simply transfer to another employer without that employer first seeking a permit to employ that worker. In practice if his entry visa has not expired the authorities would allow him a period of grace to find alternative employment but if he has no permit to work and so theoretically should leave the country. As previously stated the work permit is granted to the employer giving him the right to employ that worker not to the worker giving him the right to work in the United Kingdom." (Detailed report concerning Conclusions XIX-I (2008) §201).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §202).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the United Kingdom brings the situation into conformity with Article 18§3 of the 1961 Charter.

Amendments to the legislation are required.
Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

160. RESC 20 AZERBAIJAN

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 20 of the Charter on the grounds that

- Legislation prohibits the employment of women in underground mining and other "labour intensive jobs".
- ....
- ....
- ....

Ground of non-conformity

The Committee recalls that it previously found the situation not to be in conformity on the grounds that legislation prohibits the employment of women in underground mining and other labour intensive jobs which is contrary to the principle of equality as enshrined in Article 20 of the Charter. According to the report there are proposals before the Cabinet of Ministers recommending the repeal of these provisions. However the Committee notes that during the reference period these provisions remained in force so the situation is still not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the representative from Azerbaijan stated that the Ministry of Labour and Social Protection of the Population of the Republic of Azerbaijan has addressed a letter to the Cabinet of the Ministers of the Republic of Azerbaijan requesting that appropriate orders be given to the institutions concerned to make proposals for adequate legislation changes in order to bring situation into conformity with Article 20 of the Revised Social Charter (Detailed report concerning Conclusions 2008 §229)

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §230)

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Azerbaijan brings the situation into conformity with Article 20 of the Charter.

Amendments to the legislation are required.
161. RESC 20 PORTUGAL

The Committee concludes that the situation in Portugal is not in conformity with Article 20 of the Charter on the ground that, in equal pay cases, legislation only permits comparisons of pay between employees working for the same company.

The Committee recalls that the promotion of equal treatment of the sexes and equal opportunities for women and men by means of collective agreements is a prerequisite for the effectiveness of the rights in Article 20. Having noted in its previous conclusion (Conclusions 2008) that many agreements contain discriminatory practices or clauses as regards pay, the Committee notes that the impugned provisions can be declared null and void by means of a judicial procedure provided for under Article 479 of the new Labour Code. It also takes note of the awareness-raising actions undertaken by the Commission for Equality at Work and in Employment (CITE) to include gender-equality matters in collective agreements. It asks that the next report describe the impact of such steps on the content of collective agreements.

The situation is not in conformity on this ground since Conclusions 2006.

On the previous occasion the representative from Portugal stated that although many measures had been taken to promote gender equality no changes however had been made to the specific provision in the Labour Code which envisaged pay comparisons within the same company (Detailed report on Conclusions 2008 §233-234).

The Governmental Committee took note of the information provided and decided to await the next assessment of the ECSR (ibidem §237).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Portugal brings the situation into conformity with Article 20 of the Charter.

Amendments to the legislation is required.

162. RESC 20 SLOVENIA

The Committee concludes that the situation in Slovenia was not in conformity with Article 20 of the Charter on the ground that during the reference period women were prohibited from working in underground mines, and were prohibited from night work in industry and in the construction sector.

Ground of non-conformity

The Committee previously found that the situation was not in conformity with the Charter on the grounds that women are prohibited from working in underground mines, and in principle are prohibited from night work in industry and in the construction sector. These prohibitions are a result of Slovenia’s ratification of certain ILO Conventions, which Slovenia was in the processing of renouncing. This process was completed outside the reference period. However during the reference period these prohibitions remained in place therefore the Committee concludes that the situation was not in conformity during the reference period.

The situation is not in conformity on this ground since Conclusions 2006.
The representative of Slovenia provided the following information: the legal provisions in the Act surrounding the ban in principle on women working in industry and construction and performing underground work in mines, are a consequence of the fact that based on the act of succession (Ur. l. – MP RS No. 15/92) Slovenia is still a signatory to ILO Convention 45. Concerning the Employment of Women on Underground work in Mines of all Kinds, which prohibits women from working in mines, and ILO Convention 89 Concerning Night Work of Women Employed in Industry, which prohibits women from working at night in industrial enterprises. Here we should point out that a proposal has already been formulated for withdrawing from Convention 45, and this has also been deliberated over and confirmed by the social partners in Slovenia. Withdrawal in accordance with Convention 45 takes effect one year after registration of the withdrawal at the ILO. The procedure for withdrawal from Convention 89 can only be started after the expiry of the period in which withdrawal in accordance with the Convention is not permitted, this being 2012, and up until withdrawal Slovenia is bound by its provisions (Detailed report concerning Conclusions 2008 §238).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (ibidem §239).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Slovenia brings the situation into conformity with Article 20 of the Charter.

Slovenia must provide additional information.

**Article 1, Protocol 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

**163. ESC A1 P1 CZECH REPUBLIC**

*The Committee concludes that the situation in the Czech Republic is not in conformity with Article 1 of the Additional Protocol on the ground that the legislation only permits equal pay comparisons between employees working for the same company or undertaking.*

**Ground of non-conformity**

*The Committee recalls that the previous Conclusion was one of non-conformity on the grounds that legislation does not permit pay comparisons to determine equal work of equal value beyond a single employer. According to the report there has been no change to this situation. Therefore the Committee finds that the situation is still not in conformity with the 1961 Charter in this respect. The Committee refers to its statement of interpretation in the General Introduction on this issue.*

The situation is not in conformity on this ground since Conclusions XVII-2 (2005).
On the previous occasion the representative from the Czech Republic stated that legislation guaranteed the principle of equal pay for men and women outside the scope of a single employer, but only if the employees worked *de facto* for a single employer but were remunerated by different employers. The application of the principle of equal pay for equal work or for work of equal value in the form required by the ECSR could not be ensured in practice, because it was not possible to ascertain either the specific wages of particular employees between different employers, or whether particular employees of different employers perform equal work or work of equal value (*Detailed report concerning Conclusions XIX-1 (2008), §§ 212-213*).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR (*ibidem* §218).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that the Czech Republic brings the situation into conformity with Article 1 of the Additional Protocol to the 1961 Charter.

Legislative amendments are required.

**Article 24 - Right to protection in case of dismissal**

164. RESC 24 ALBANIA

*The Committee concludes that the situation in Albania is not in conformity with Article 24 of the Charter on the following grounds:*

- ....
- *the maximum compensation for unlawful termination of employment is inadequate and the legislation does not provide for the possibility of reinstatement in the private sector.*

**Ground of non-conformity**

According to the report, in case the dismissal of an employee in public administration has been declared unlawful, the court may also order reinstatement. However, the report states that employees other than civil servants do not have a right to reinstatement but only to financial compensation in case of unlawful dismissal. *The Committee holds that the situation is not in conformity with the Charter as the legislation does not provide for the possibility of reinstatement in the private sector.*

In its previous conclusion the Committee noted that pursuant to Article 146§3 of the Labour Code when the termination of an employment contract is considered to be invalid, the employer shall be under an obligation to pay the employee a compensation of up to maximum one year’s salary. *The Committee held that this situation was contrary to the Charter as the compensation for unlawful dismissal was subject to a maximum of one year’s wages.*
In this regard the Committee notes from the report of the Governmental Committee of the Social Charter to the Committee of Ministers of the Council of Europe (Detailed report(2010) 6, §243) that the Government considered amending Article 146 to take into account the conclusion of non-conformity of the Committee. It was planned to intervene during 2010 in order to promulgate a specific regulation on this issue. A working group had been established with a view to preparing amendments to Article 146 of the Labour Code.

Since the report does not provide any further information on this issue, the Committee considers that the situation which it has previously found not to be in conformity on this ground has not changed. Therefore, it reiterates its previous conclusion of non-conformity.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the Representative from Albania provided the following information: the Government intended to amend the Labour Code during 2010 and by the order no. 275, date 06.02.2009 of the Minister of Labour, Social Affairs and Equal Opportunities, a working group for the revision of the Albanian Labour Code had been established (Detailed report concerning Conclusions 2008 §243).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR. (ibidem §244)

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Albania brings the situation into conformity with Article 24 of the Charter.

Amendments to the legislation are required.

165. RESC 24 BULGARIA

The Committee concludes that the situation in Bulgaria is not in conformity with Article 24 of the Charter on the grounds that:

- ...  
- the maximum amount of compensation for unlawful dismissal is not adequate.

Ground of non-conformity

The Committee further notes from the report, however, there has been no follow up to these developments and the compensation for unlawful dismissal is still limited to 6 months’ wage. According to the report, removing the cap on compensation would either dissuade the worker to look for a new job or would make the employer dependent on the efficiency of the judicial system.

The Committee reiterates its previous finding of non-conformity on the ground that the maximum amount of compensation for unlawful dismissal is not adequate.

The situation is not in conformity on this ground since Conclusions 2003.
On the previous occasion the representative from Bulgaria announced that a bill had been prepared with a view to amending the Labour Code and entirely removing the limits of compensation in such cases. The bill would soon be presented to the National Council for Tripartite Cooperation in order to be discussed with the social partners. It would subsequently be presented to the National Assembly for adoption. If the procedure was followed without delays it could be expected that the amendments would be adopted by the National Assembly and would enter into force no later than 6 months (*Detailed report concerning Conclusions (2008 §243 and §§ 245-246).*).

The Governmental Committee noted the positive developments in Bulgaria, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR’s next assessment (*ibidem* §250).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Bulgaria brings the situation into conformity with Article 24 of the Charter.

Amendments to the legislation are required.

### 166. RESC 24 CYPRUS

The Committee concludes that the situation in Cyprus is not in conformity with Article 24 of the Charter on the grounds that:

- ...  
- the employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal.

**Ground of non-conformity**

In its previous conclusion (Conclusions 2008) the Committee held that the situation was not in conformity with the Charter as law excluded from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of their qualifications. It notes from the Governmental Committee report (TS-G (2010) 5) as well as from the report that there have been no changes in this regard as Cyprus believes that the probationary period of six months is not excessive and is of a reasonable duration.

As there have been no changes to the situation, the Committee reiterates its previous finding of non-conformity on the ground that the employees who have not been employed with their employer for a continuous period of 26 weeks are not entitled to protection against dismissal.

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion the representative from Cyprus indicated there had been no change to the situation. The ECSR conclusion had been made available to the tripartite technical committee that is discussing the modernisation of termination of employment legislation. None of the partners has raised any issue related to making alterations to
the period of probation. Furthermore, given that all employees are covered under Contract Law, irrespective of the length of work, an employee who believes he/she has been unlawfully dismissed even before the completion of the 26 weeks period may lodge a complaint to the District Court claiming compensation. *(Detailed report concerning Conclusions 2008 §§251-252).*

The Governmental Committee took note of the information provided, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR’s next assessment *(ibidem §256).*

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Cyprus brings the situation into conformity with Article 24 of the Charter.

Amendments to the legislation are required.

**167. RESC 24 ITALY**

The Committee concludes that the situation in Italy is not in conformity with Article 24 of the Charter on the ground that employees undergoing the probationary period of 6 months are not adequately protected against dismissal.

**Ground of non-conformity**

In this connection it notes from the Governmental Committee report¹ as well as from the national report that domestic employees do not fall under the scope of the said legislation because domestic work is considered a special kind of working relationship. The worker is engaged more in a trustee relationship than in the industrial process and thus has weaker protection against dismissal (no right to reintegration or compensation). They did however enjoy the right to a legal notice period, and severance pay, in cases of dismissal, as provided by Act No. 339/58 and by collective agreements. As regards workers undergoing a probation period of 6 months, they do not have the right to a notice period or to payment of compensation in the event of dismissal, but the employer does have the obligation of motivating the dismissal.

The Committee observes that despite the fact that dismissal during probationary period is subject to certain limits, the employees still do not have the right to a notice period or to payment of compensation in the event of dismissal. The Committee considers that this situation amounts to a violation of Article 24 of the Charter as the protection provided for the employees on probationary period of 6 months is not adequate.

The situation is not in conformity on this ground since Conclusions 2003.

On the previous occasion the representative from Italy confirmed that workers undergoing a probation period of 6 months did not have the right to a notice period or to payment of compensation in the event of dismissal, although the employer did have the obligation of motivating the dismissal. *(Detailed report concerning Conclusions (2010) §261).*
The Governmental Committee took note of the information provided, urged the Government to take all necessary steps to bring the situation into conformity and decided to await the ECSR’s next assessment (ibidem §264).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Italy brings the situation into conformity with Article 24 of the Charter.

Amendments to the legislation are required.

168. RESC 24 MALTA

The Committee concludes that the situation in Malta is not in conformity with Article 24 of the Charter on the grounds that:

- employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees;

Ground of non-conformity

The Committee notes that the report does not provide any information on this issue. It notes however from the report of the Governmental Committee to the Committee of Ministers (T-SG(2010)6, §265) that all matters relating to employment and industrial relations were extensively discussed in detail between the Social Partners following the issue of a White Paper before the implementation of the current provisions of the Employment and Industrial Relations Act. These discussions included the length of the probationary periods as well as matters regarding protection against and redress in cases of dismissal during employment. According to the representative of Malta, an employee claiming unfair dismissal, during probationary period, on the grounds of discrimination can still refer his case to the Industrial Tribunal, which is the Maltese labour court.

Furthermore, the representative stated that a review of the Employment and Industrial Relations Act was being considered and it was likely that these and other issues would be up for further discussions between the social partners.

Since the report does not provide any further information on this matter, the Committee understands that the situation remained unchanged during the reference period. Therefore, it reiterates its previous conclusion of non-conformity on this ground.

The situation is not in conformity on this ground since Conclusions 2008.

On the previous occasion the representative from Malta provided the following information: “…currently there is no obligation on the employer to provide a reason for dismissal during the probationary period, but this is not absolute. An employee claiming unfair dismissal on the grounds of discrimination can still refer his case to the Industrial Tribunal, which is the Maltese labour court. In fact, according to Article 75 (1) (a) of the Act, an employee can take his case to the Tribunal and in such proceedings there is a reversal of the burden of proof with the employer having to provide sufficient reasons to contradict any prima facie claims of discriminatory actions leading to dismissal. Hence one can conclude that an employee does have a degree of redress in such a situation.
It is also pertinent to underline that a review of the Employment and Industrial Relations Act is being considered and it is likely that these and other issues will be up for further discussions between the social partners" (Detailed report concerning Conclusions 2008 §265).

The Governmental Committee invited the Government to provide all the relevant information in its next report and decided to await the next assessment of the ECSR. (ibidem §266).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so that Malta brings the situation into conformity with Article 24 of the Charter.

Legislative amendments are required.
PART III DEFERRED CASES

DEFERRED CONCLUSIONS

In its General Introduction to Conclusions 2009 (§22), the ECSR has decided that it will defer a conclusion for lack of information only once before adopting a conclusion of non-conformity on the ground that it has not been established by the State in question that the situation is in conformity with the Charter. In practical terms, this means that where conclusions contained in the present volume have been deferred, the requested information must be included in the next report on the provision concerned (i.e. in four years’ time), otherwise the conclusion will be one of non-conformity decided that “where national reports do not contain the information necessary for a proper assessment of the situation three times in a row, the Committee proceeds to reach a conclusion of non conformity.”

In its Conclusions XX-1 (2012) and 2012, the ECSR deferred its Conclusion on the following situations:

ALBANIA RESC 24
ANDORRA RESC 1§2, 20
ARMENIA RESC 1§3, 20
AUSTRIA ESC 1§4, 9, 15§1, 15§2
AZERBAIJAN RESC 1§3
BELGIUM RESC 15§3,
BULGARIA RESC 25
BOSNIA-HERZEGOVINA RESC 1§2, 1§3, 1§4, 9
CYPRUS RESC 1§3, 1§4, 10§1, 10§3, 15§1
CZECH REPUBLIC ESC 1§1, 15§2
DENMARK ESC 18§2, Article 1 of the Additional Protocol
ESTONIA RESC 1§1, 1§2, 24
RUSSIAN FEDERATION 15§1, 15§2, 20, 24,
FINLAND RESC 1§4, 10§3
FRANCE RESC 1§2, 10§1, 10§4, 15§2, 15§3, 18§2, 24
GEORGIA RESC 1§3, 10§2,
GERMANY ESC 18§1, 18§3
GREECE ESC 1§3, 15§1, 18§3, 20
ICELAND ESC 1§1, 1§4, 18§3
IRELAND RESC 1§1, 1§3, 15§3, 18§1, 18§3 and 25
ITALY RESC 15§2, 18§2,
LITHUANIA RESC 1§1,
LUXEMBOURG ESC 1§3, 10§4, 18§1
REPUBLIC OF MOLDOVA RESC 24
MALTA RESC 1§1, 1§2, 1§4, 9, 10§2, 10§3, 15§2, 20, 25
MONTENEGRO 1, 9, 10§1 to 4, 15, 20, 24
NETHERLANDS RESC 18§3
NETHERLANDS CARIBBEAN ESC 1§1, 1§2, 1§3, 1§4, Article 1 of the Additional Protocol
NETHERLANDS CURACAO ESC 1§1, 1§2, 1§3, 1§4, Article 1 of the Additional Protocol
POLAND ESC 1§2
PORTUGAL RESC 1§1, 10§5, 25
ROMANIA RESC 1§§1, 2, 3, 4; 15§1; 20, 24
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<td>UNITED KINGDOM ESC</td>
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The Governmental Committee is invited to ask States to reply appropriately to the requests for information made by the European Committee of Social Rights.
European Social Charter
Conclusions 2012

The Netherlands in respect of Aruba

Conclusions 2012-Social Charter (RESC)
Hungary

ADDENDUM TO WORKING DOCUMENT
Articles 1, 15 and Article 1 of the 1988 Additional Protocol
PART I: CASES OF NON-COMPLIANCE

A. CONCLUSIONS OF NON-CONFORMITY FOR THE FIRST TIME

The delegates concerned are invited to provide written information on the measures which have been taken or have been planned to bring the situation into conformity with the Charter. This information has to be sent to the Secretariat in French or English, by e-mail, at the latest on 30 September 2013.

Article 1§1 - Policy of full employment

169. ESC 1§1 THE NETHERLANDS IN RESPECT OF ARUBA

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Ground of non-conformity

The report provides no information on spending on active labour market measures, nor on the total number of beneficiaries of all active labour market measures. It simply provides information on the number of persons who have participated in "the reintegration project" (55 in 2007 and 27 in 2008) and in the "education for employment" project. The Committee recalls that this information is vital for its assessment of the situation.

The Committee considers that in light of the lack of information it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

Article 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

170. ESC 1§2 THE NETHERLANDS IN RESPECT OF ARUBA

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1§2 of the Charter on the grounds that:

........

it has not been established that there is adequate protection against forced labour in respect of civil servants.

Ground of non-conformity

The Committee had previously noted that Section 82 of the organic law of Civil Servants provided that unpaid compulsory work could be imposed on civil servants who fail to fulfil their professional obligations. It noted that this provision had been found by the ILO Committee of Experts on conventions to be contrary to the Forced Labour Convention (Convention No. 29 of the ILO) and asked for further information as to its content and application. The Government had responded that the provision was not applied in practice, but that the intention was to review it, but due to its non-application this has not been prioritised.
The Committee recalled that the non-application of legislation is not sufficient to ensure a situation is in conformity with the Charter (notably in Conclusions XIII-3, Iceland). It therefore requested further information on the content of the provision; to whom it applies, in what circumstances etc. No such information is provided therefore the Committee concludes that it has not been established that there is adequate protection against forced labour in respect of civil servants.

**Article 1§3— Free placement services**

171. **ESC 1§3 THE NETHERLANDS IN RESPECT OF ARUBA**

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1§3 of the Charter on the ground that it has not been established that free placement services operate in an efficient manner.

**Ground of non-conformity**

The Committee previously noted the low placement rates by the public employment servicers and asked for the reasons for this. It further asked for information on the number of placements made by private agencies as well as those made by public services as a share of total hirings in the labour market (Conclusions 2006). The report provides almost no new information and not the information requested by the Committee on placement rates. Therefore the Committee concludes that it has not been established that free placement services operate in an efficient manner.

**Article 1§4 – Vocational guidance, training and rehabilitation**

172. **RESC1§4 HUNGARY**

The Committee concludes that the situation in Hungary is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

**Ground of non-conformity**

As Hungary has accepted Article 9, 10§3 and 15§1 of the Charter, measures relating to vocational guidance, to vocational training and retraining of workers, and to guidance and vocational training for persons with disabilities are examined under these provisions.

In these conclusions, the Committee found that the situation with regard to vocational guidance and vocational training of adult workers (Articles 9 and 10§3) is in conformity with the Charter.

However, it found the situation not to be in conformity with the Charter under Article 15§1 on the ground that it has not been established that mainstreaming of persons with disabilities is effectively guaranteed in education and training.
173. ESC1§4 THE NETHERLANDS IN RESPECT OF ARUBA

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1§4 of the Charter on the ground that it has not been established that appropriate vocational guidance, training and rehabilitation is guaranteed.

Ground of non-conformity

The Committee notes that the report simply states no new developments. However the Committee recalls that the Netherlands in respect of Aruba has never submitted a report under Article 1§4. Therefore it concludes that it has not been established that appropriate vocational guidance, training and rehabilitation is guaranteed.

Following the decision of the GC at its 127th meeting the A situations below concerning equality and non-discrimination will be examined orally during the 128th meeting.

ARTICLE 15§1- Vocational training for persons with disabilities

174. RESC 15§1 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 15§1 of the Charter on the ground that it has not been established that the right of persons with disabilities to mainstream vocational training is effectively guaranteed.

Ground of non-conformity

In its previous conclusion the Committee requested the report to highlight the measures taken to encourage access to higher education in general and to mainstreaming in particular. It finds that the information provided in reply to be vague and lacking concrete examples, apart from one experimental programme where hearing students help their hearing impaired classmates to take notes.

......

In the absence of the relevant information, the Committee finds that it has not been established that the situation is in conformity with the Charter as regards mainstreaming of vocational training.

ARTICLE 15§2- Employment of persons with disabilities

175. RESC 15§2 HUNGARY

The Committee concludes that the situation in Hungary is not in conformity with Article 15§2 of the Charter on the grounds that

- it has not been established that the legal obligation to provide reasonable accommodation was respected during the reference period;
- it has not been established that persons with disabilities are guaranteed an effective equal access to employment.
First ground of non-conformity

In previous conclusions (Conclusions XVIII-2 and XIX-1) the Committee asked whether the requirement of reasonable accommodation is ensured in law and how it is implemented in practice. The report states that the Equal Opportunities Act does not include such a requirement, however the Equal Treatment Authority also receives complaints in this regard and investigates the issue of reasonable accommodation on its own initiative. According to the report, the Equal Treatment Authority receives 1-2 complaints of this kind per year an example of one case is provided.

The Committee further notes from another source that the Hungarian legal framework contains an obligation to accommodate the needs of persons with disabilities in the course of the recruitment procedure, and also to adapt the working environment to the needs of the already employed employees with disabilities. However, it is not expressly stated that the employer shall be obliged to adapt the working environment to the special needs of a person with disability (e.g. move an office to the ground floor of the building to provide access to a person in a wheelchair) with a view to actually employing that particular person.

The Committee notes from ANED that the new Labour Code of 2012 contains a provision on reasonable accommodation (Article 51.5); as the Code was adopted outside the reference period, the Committee invites the government to provide relevant information in the next report. The Committee reiterates its request for detailed information concerning the implementation of the reasonable accommodation obligation in practice (in this connection, the Committee asks for statistics showing the number of requests for reasonable accommodation measures, the number of requests granted and the costs refunded), and whether it prompted an increase in employment of persons with disabilities in the open labour market.

In the light of the foregoing, the Committee considers that it has not been established that the reasonable accommodation obligation was effectively guaranteed during the reference period.

Second ground of non-conformity

The Committee takes note of information submitted with regard to the organisation of social employment, the functioning of the rehabilitation allowance and the increase in the amount of the rehabilitation contribution to be paid by employers who fail to meet the employment quota.

However, despite repeated requests, the report does not provide any information and/or data on the impact of these measures on effective access to employment and keeping in employment of persons with disabilities. Consequently, it cannot be established that the situation is in conformity with Article 15§2 on this point.
B-RENEWED CONCLUSIONS OF NON CONFORMITY

Article 1§2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

176. ESC1§2 THE NETHERLANDS IN RESPECT OF ARUBA

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1§2 of the Charter on the grounds that:

the protection against discrimination in employment is inadequate; and

Ground of non-conformity

The Committee previously found the situation not to be in conformity with the Charter on the grounds that the protection against discrimination in employment was inadequate (Conclusions XVIII-1, 2006). The only information provided on the legal system relates to discrimination on grounds of gender which the Committee will examine under Article 1 of Protocol. No other new information is provided. The Committee therefore reiterates its previous finding of non-conformity and repeats again the questions posed in the previous conclusion (Conclusions XVIII-1, 2006).

The situation is not in conformity on this ground since Conclusions XVII-2 (2005).

On the previous occasion the delegate from the Netherlands in respect of Aruba acknowledged that the situation on the island regarding protection against discrimination was not in conformity with Article1§2 of the charter. A tripartite committee has been established on the island in order to modernize the Labour Code, but the Committee had not finished its work. The tripartite Committee will take into account the ECSR’s conclusions under Article 1§2 of the Charter in order to ensure its recommendations are in accordance with the requirements of the Charter (Detailed report concerning Conclusions XVIII-1 (2006) §51).

The Governmental Committee noted the positive developments announced, urged the Government to accelerate the procedure and decided to await the next assessment of the ECSR (ibidem §53).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so the Netherlands in respect of Aruba brings the situation into conformity with Article 1§2 of the Charter.
Article 1 of the 1988 Additional Protocol - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

177. ESC A1 P1 THE NETHERLANDS IN RESPECT OF ARUBA

The Committee concludes that the situation in the Netherlands in respect of Aruba is not in conformity with Article 1 of the Additional Protocol to the Charter on the grounds that:

- legislation prohibits women from performing night work;
- No particular steps were taken to promote women’s access to employment

First ground of non-conformity

The Committee previously concluded that the situation in the Netherlands in respect of Aruba was not in conformity with Article 1 of the Additional Protocol inter alia on the grounds that legislation excluded women from night work (Conclusions XVII-2, 2005). No new information has been submitted on this issue. The Committee therefore reiterates its finding of non-conformity on this ground.

The situation is not in conformity on this ground since Conclusions XVII-2 (2005).

On the previous occasion, the delegate from the Netherlands in respect of Aruba provided the following information in writing: “The Government agrees with the comments made by the ECSR as it regards the exceptions to the equality principle on behalf of women that need to be objectively justified by their particular needs, which is not the case of night work. As the Government previously communicated to the ECSR, the Government considers the protection of women from night work to be a form of discrimination, reason why article 17 of the Labour Ordinance has not been applicable for over 10 years. The fact that article 17 has not been removed from the text of the law in no way reflects a non-commitment or an inconsistency in the Government’s statements to abolish discriminatory regulations against women or any other groups. Article 17 was declared non-applicable but not deleted from the law text due to limited financial resources and the lack of legal experts to work on the changes; however, it was a first-step towards eliminating the discrimination against women in practice, awaiting the opportunity to make it lawfully permanent, though of no consequence since custom and practice paired with international conventions make decisive arguments in front of the courts. There have been no decisions by the courts regarding discrimination during the reporting period.

The Government now has the resources available and a panel of experts to introduce the changes in the labour legislation, which allows for the permanent removal of the discriminatory stipulations” (Detailed report concerning Conclusions XVII-2 (2005) §271).

The Governmental Committee noted the positive developments and decided to await the next assessment of the ECSR (ibidem §272).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so the Netherlands in respect of Aruba brings the situation into conformity with Article 1 of the Additional Protocol of the Charter.
Second ground of non-conformity

The Committee previously concluded that the situation in the Netherlands in respect of Aruba was not in conformity with Article 1 of the Additional Protocol inter alia on the ground that no particular steps were taken to promote women’s access to employment (Conclusions XVII-2, 2005). The current report provides no information on the employment situation of women such as the employment rate, unemployment rate or gender pay gap. The Committee asks that this information be provided in the next report. As regards measures to promote women’s access to employment the report provides information on human rights training for staff in the Department of Social Affairs and educational measures to prevent stereotyping in schools. However the Committee found no information on measures taken to promote access to employment for women. Therefore the Committee concludes again that the situation is not in conformity with the Charter.

The situation is not in conformity on this ground since Conclusions XVII-2 (2005).

On the previous occasion, the delegate from the Netherlands) in respect of Aruba provided the following information in writing: “The current participation in the labour market (as of June 2005) is at 53% for men and 47% for women, a slight increase for women’s participation in the labour market since the Government’s First Report. Of the available female workforce, 54% participate in the labour market, as opposed to 68% of all men who participate. The difference can be partially attributed to the choice of the women to stay at home and care for their children; this despite the fact that the level of education of women is increasing. In general, a meager 58% of the available workforce actively participate in the labour market. In other words, the Government intends to work on improving the participation of both men and women in the labour market.

To this end, the Government initiated a re-integration pilot project in 2003 (a project initiated by the Department of Social Affairs and in collaboration with the Labour Department), including but not limited to women, for persons who are difficult to place in employment, for example men and women on welfare and/or who have been unemployed for extended periods, ex-convicts, substance abusers etc.

This year the Government launched a third re-integration campaign covering 60 participants whose unemployment duration varied from one to fifteen years. The Government will submit to the ECSR a final report with the details of the project in a subsequent report. The Government at the moment does not have any programs in line specifically to encourage or promote the participation of women in the labour market” (Detailed report concerning Conclusions XVII-2 (2005) §271).

The Governmental Committee noted the positive developments and decided to await the next assessment of the ECSR (ibidem §272).

The ECSR confirmed its finding of non-conformity. It is therefore for the Governmental Committee to take the most appropriate steps so the Netherlands in respect of Aruba brings the situation into conformity with Article 1 of the Additional Protocol of the Charter.
Cases of non-conformity as determined by the Committee of Social Rights to be discussed during this Meeting:

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