PART II – Conclusions of non-conformity to be discussed orally by the
Governmental Committee – Revised European Social Charter (RESC)

18 March 2016

GOVERNMENTAL COMMITTEE
OF THE EUROPEAN SOCIAL CHARTER
AND THE EUROPEAN CODE OF SOCIAL SECURITY

Conclusions 2015
European Social Charter

Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine
Article 7§1 - Prohibition of employment under the age of 15

1. RESC 7§1 ARMENIA

The Committee takes note of the information contained in the report submitted by Armenia.

The Committee noted previously that the minimum age for admission to employment or work is 16 (Conclusions 2011). Article 32 of the Constitution provides that children under the age of 16 shall not be permitted to work full-time, and the procedure and conditions for their employment to a part-time job shall be defined by the law. Section 15(2) of the Labour Code states that from the age of 16, persons have the legal capacity to acquire and implement labour rights and engage in work on a full time basis, subject to exceptions stipulated in the Code and other laws.

The Committee noted previously that according to Article 17 of the Labour Code, it is prohibited to conclude a labour contract with a person below the age of 14. It also noted that Article 17(2) of the Labour Code permits persons between the ages of 14 and 16 to work, with the consent of their parent or guardian (Conclusions 2011). The Committee asked what types of work are allowed to be performed by children between 14 and 16, whether this is considered to be light work and its duration.

The report indicates that according to the amendments brought to the Labour Code by Law No HO-117-N of 24 June 2010, Article 17 (2(1)) states that persons between the ages of 14 and 16 may be involved only in temporary works not causing damage to health, safety, education and morality. According to Article 17(3) of the Labour Code, persons at the age of 14 to 18 may not be involved in work on days off, non-working days — holidays and commemoration days — except for the cases of participation in sport and cultural events. The report adds that under Article 101 of the Labour Code, a temporary employment contract is concluded with persons between the ages of 14 and 16 for a period of up to two months. The Committee also notes that Article 140(1(1)) of the Labour Code states that persons between the ages of 14 and 16 may work a maximum of 24 hours per week.

The Committee notes there is no description of the types of work permitted for persons between the ages of 14 and 16. It recalls that Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration (International Commission of Jurists (CIJ) v Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31). The Committee considers that the situation is not in conformity with Article 7§1 of the Charter since the definition of light work is not sufficiently precise as there is no description of the types of work which may be considered light or a list of those which are not.

In its previous conclusion, the Committee noted that under Article 140 (1(1)) of the Labour Code, children of 14 years of age are allowed to work up to 24 hours per week and considered that the situation was not in conformity with Article 7§1 of the Charter as the daily and weekly working time for children under the age of 15 was excessive and cannot qualify as light work. The Committee takes note of the information provided in the report according to which children between the ages of 14 and 16 may work up to 8 hours per day (Article 139 (2) of the Labour Code). The Committee therefore maintains its conclusion of non-conformity on this point.

The Committee asked previously whether there are any economic sectors or forms of economic activity which are exempted from the general rules concerning minimum age of employment. The report indicates that the provisions on minimum working age provided for by the legislation refer to all fields of economic activity. The Committee notes from another source that it appears that the Labour Code and its provision relating to the minimum age of admission to employment or work, do not apply to work performed outside the framework of a formal labour relationship, such as self-employment or non-remunerated work (Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011), Minimum Age Convention,
1973 (No. 138). The Committee asks the next report to provide information on the measures taken or envisaged to ensure that children who are not bound by an employment relationship, such as children performing unpaid work, work in the informal sector or work on a self-employed basis, benefit from the protection provided by Article 7§1 of the Charter. The Committee asks what are the measures taken by the authorities (e.g., labour inspection) to detect cases of children under the age of 15 working on their own account or in the informal economy, outside the scope of an employment contract.

As regards supervision, the report indicates that in 2013 the State Hygiene and Anti-Epidemic Inspectorate of the Ministry of Health and the State Labour Inspectorate of the Ministry of Labour and Social Affairs were reorganised by way of merger as the State Health Inspectorate of the Staff of the Ministry of Health of the Republic of Armenia, which — pursuant to its Statute — exercises control and supervision over the implementation by employers of the labour legislation, including on issues concerning the employment rights and privileges of employees under eighteen years of age and the guarantees for respect thereof. The report provides information on the questionnaire used by the inspectors of the State Health Inspectorate of the Staff of the Ministry of Health during their inspections. The report does not provide any information with regard to the findings of inspections in respect of child labour (nature and number of violations detected and sanctions applied in practice).

The Committee recalls that the situation in practice should be regularly monitored. It asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed on employers for breach of the regulations regarding prohibition of employment under the age of 16.

With regard to work done at home, the report does not address the Committee’s previous question on how work done at home is monitored in practice. The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee asks whether the State authorities monitor work done at home by children under 15 and which are their findings in this respect. The Committee points out that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

Conclusion
The Committee concludes that the situation in Armenia is not in conformity with Article 7§1 of the Charter on the grounds that:

- the definition of light work is not sufficiently precise;
- daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

Historic elements

1st ground of non-conformity
The situation is not in conformity on this ground for the first time.

2nd ground of non-conformity
The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Armenia indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, § 30).
2. **RESC 7§1 CYPRUS**

The Committee takes note of the information contained in the report submitted by Cyprus.

The report indicates that the relevant legislation was amended during the reference period. Thus, the Law No. 15(I)/2012 amended the Law on Protection of Young People at Work (Law No. 48(I)/2001) so that to include provisions related to children under the age of 15 working with cultural undertakings. Furthermore, the Protection of Young Persons Regulations (Regulation No. 78/2012) laid down the application procedure for granting permits for children under the age of 15 years to participate in cultural and related activities.

The report underlines that the Law on Protection of Young Persons at Work (as amended by Law No. 15(I) of 2012), prohibits the employment of any person under the age of 15. The Regulations No. 77/2012 and No. 78/2012 specify that a person under 15 may participate in cultural, artistic, athletic, or promotional/advertising activities subject to a permit issued by the Director of the Department of Labour after consultation with representatives of the Department of Labour Inspection and the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance.

The report indicates that according to the amendments brought through by the Law No. 15(I) of 2012, the number of hours of participation in artistic or cultural activities shall not exceed: two hours a day for children up to 6 years old; three hours a day for children between the ages of 7 to 12 years; and four hours a day for children between the ages of 14 to 15 years.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with the Charter on the ground that the prohibition on the employment of under 15-year olds did not apply to children employed in occasional or short-term domestic work. The Committee notes that Section 3 of Law No. 48(I)/2001 on Protection of Young People at Work has been amended by the Law No. 15(I)/2012, thereby extending its application to occasional or short-term domestic work in private households. Therefore, the Law prohibits the employment of children under 15 even in occasional or short-term domestic work. The Committee considers that the situation is now in conformity with the Charter on this point. It asks that the next report provides information on the activity of the Labour Inspection of monitoring domestic work performed by children under 15 years of age.

As regards the implementation in practice, the report indicates that during the period March 2012 – June 2014, permits were issued in 18 cases where children under 15 years of age were allowed to perform in TV productions, theatre or similar activities, after an application was submitted to the Department of Labour. In case of children engaged in general, vocational or technical education, or in any other training institutions, in addition to the requirements defined by the Department of Labour, the employer/training institution or the director/event organiser must ensure that a suitable written risk assessment is in place to safeguard the safety and health of children involved.

The report indicates that according to the Law on Protection of Young Persons at Work, no child can participate in cultural, artistic, athletic activities for more than seven hours and 15 minutes a day or more than 36 hours per week. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee considers that 7 hours and 15 minutes a day and 36 hours per week of light work
may have negative repercussions on the education and development of children. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work on non-school days is excessive.

In its previous conclusions (Conclusions 2011 and Conclusions 2006), the Committee repeatedly asked the Government how the conditions under which work at home is performed were supervised in practice. The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Statement of interpretation on Article 7§1, Conclusions 2006). It therefore asks how work done at home is monitored.

The report does not provide information on the activity of the Labour Inspection of monitoring the prohibition of employment under the age of 15. The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspection has a decisive role to play in this respect. The Committee asks the next report to provide information on the number and nature of violations detected and sanctions imposed by the Labour Inspection in relation to the prohibition of employment under the age of 15. The Committee underlines that should the next report not provide the information requested, there would be nothing to establish that the situation is in conformity with Article 7§1 of the Charter.

Conclusion
The Committee concludes that the situation in Cyprus is not in conformity with Article 7§1 of the Charter on the ground that the duration of light work during non-school days is excessive.

Historic elements
The situation is not in conformity on this ground for the first time.

3. RESC 7§1 ESTONIA
The Committee takes note of the information contained in the report submitted by Estonia.

In its previous conclusion (Conclusions 2011), the Committee noted that Section 7(1) of the Employment Contracts Act (the ECA) prohibits employers from entering into employment contracts with or permitting children under 15 or who are obliged to attend school to work, except in cases provided by legislation where children are permitted to perform work to a limited extent and with a moderate level of effort. The Committee took note of the types of light work permitted to children and asked what is the length of working time for children performing light work.

The report indicates that according to Section 43(4) of the ECA, unless the employer and the employee have agreed on a shorter working time, reduced working time means:

- in the case of a child who is 7–12 years of age – 3 hours a day and 15 hours over a period of seven days;
- in the case of a child who is 13–14 years of age or subject to compulsory school attendance – 4 hours a day and 20 hours over a period of seven days;
- in the case of a young person who is 15 years of age and not subject to compulsory school attendance – 6 hours a day and 30 hours over a period of seven days;
in the case of a young person who is 16 years of age and not subject to compulsory school attendance, and an employee who is 17 years of age – 7 hours a day and 35 hours over a period of seven days.

The Committee recalls that Article 7§1 of the Charter allows for an exception concerning light work, namely work which does not entail any risk to the health, moral welfare, development or education of children. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. The Committee has considered that a situation in which a child under the age of 15 years works for between 20 and 25 hours per week during school term (Conclusions II, p. 32), or three hours per school day is contrary to the Charter (Conclusions IV, p. 54) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§29-31). It has also concluded that four hours light work per day during the school term for children aged 13-15 is excessive (Conclusions 2011, Cyprus).

The Committee therefore considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

The report indicates that according to Section 115 of the ECA, Labour Inspectorate conducts state supervision of the fulfilment of the requirements provided for in Sections 43(4) and (5) of the ECA. If an employer violates the working time restrictions set for minors, a labour inspector shall have the right to issue a precept as well as to initiate a misdemeanour proceeding against the employer and to apply pecuniary punishment.

The Committee previously asked what sanctions are applied in cases of violations. The report indicates that if the precept is not respected, a penalty of maximum € 3,200 may be imposed according to the Substitutive Enforcement and Penalty Payment Act. For a violation of occupational health and safety requirements, a pecuniary punishment of up to 300 fine units shall be applied (one fine unit is equal to € 4). For the same act committed by a legal person, a pecuniary punishment of up to € 2,600 shall be applied. In case of breaches of the requirements related to the employment relationship, a precept may be issued as well as a misdemeanour proceeding may be initiated against the employer and pecuniary punishment may be applied. The pecuniary punishment may be up to 100 fine units. For the same act committed by a legal person, a pecuniary punishment of up to € 1,300 shall be applied.

The report indicates that from a number of 107 applications concerning cases employing a minor (7-14 years of age) which the Labour Inspectorate received in 2013, a number of 88 applications were granted.

In its previous conclusion (Conclusions 2011), the Committee asked how the conditions under which work at home is performed are supervised in practice. The report indicates that the ECA does not differentiate on the basis of whether the minor is working at a residential household, a family enterprise, a family farmstead or any other enterprise. The Labour Inspectorate’s rights to conduct supervision also extend to residential households, family enterprises and family farmsteads. The Labour Inspectorate conducts state supervision pursuant to the Law Enforcement Act and it may for example enter without the consent of the possessor a fenced or marked immovable, building, dwelling or room in his or her possession, including open doors and gates or eliminate other obstacles.
Conclusion
The Committee concludes that the situation in Estonia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

Historic elements
The situation is not in conformity on this ground for the first time.

4. RESC 7§1 GEORGIA

The Committee takes note of the information contained in the report submitted by Georgia.

The Committee noted previously that according to Article 4 of the Labour Code, the minimum age for admission to employment is 16. The Committee asked whether the prohibition of employment below the age of 16 applies to all economic sectors and forms of economic activity in Georgia (Conclusions 2011). The report does not reply to the Committee’s question.

The Committee notes from another source that self-employment is not regulated by the legislation of Georgia and the provisions of the Labour Code apply only to employed workers (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138)). The same source indicates that the number of self-employed minors is much higher than those employed in the formal sector and many children are working on family farms or in the agricultural sector, and that child labour is widespread in various regions of Georgia during the crop period in the agriculture sector.

The Committee recalls that under Article 7§1, the prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §27). The Committee considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the prohibition of employment under the age of 15 does not apply to all economic sectors and all forms of economic activity.

The report indicates that, as an exception, Article 4(2) of the Labour Code allows the employment of children below 16 years, on the condition that such work is not against their interests, does not damage their moral, physical or mental development or limit their right and ability to obtain elementary, compulsory and basic education, and upon the consent from their legal representative, tutor or guardian. According to Article 4(3) of the Labour Code, a labour agreement can be concluded with a child below 14 years only for work related to sport, art, cultural and advertising activities. The Committee previously asked what is the allowed duration of such work. The report does not provide the requested information. The Committee notes from another source that, Article 14 of the Labour Code provides that, if parties do not agree otherwise, a working week shall not exceed 41 hours, which is also applicable to young workers. The report also indicates that the national legislation allows children between the ages of 14 and 16 years to work for eight hours a day (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138)) .

The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more
than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). Given that according to the Labour Code, children under 15 years of age are allowed to perform light work up to 8 hours per day, the Committee considers that the situation is not in conformity with the Charter on the ground that the daily and weekly working time for children under 15 is excessive and cannot qualify as light work.

The Committee takes note from another source of the comments made by the Georgian Trade Unions Confederation (GTUC) that according to UNICEF estimates, 30% of children between the ages of 5–15 years worked in Georgia and that there were reports of children between the ages of 7–12 years working on the streets of Tbilisi, in markets, carrying or loading wares, selling goods in underground carriages, railway stations, etc. Moreover, based on the information provided by the Trade Union of Agricultural Workers, the GTUC alleged that child labour is widespread in the agricultural sector at harvest time in several regions of Georgia (Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) – Georgia (Ratification:1996)). The Committee asks that the next report provide updated information and statistics on the employment of children under the age of 15, in particular children working in the streets and in the agricultural sector.

In its previous conclusion, the Committee asked information on the activity of the Labour Inspectorate concerning the supervision of the situation in practice. The report indicates that a draft bill on the State Labour Inspection is being prepared. The Committee requests updated information on any developments with regard to the draft of the bill on the State Labour Inspection. The Committee takes note of the information that the Labour Inspectorate was abolished according to the Labour Code of 2006. It had noted the comments made by the GTUC that with the abolition of the labour inspectorate, there exists no public authority to monitor the implementation of labour legislation, including child labour provisions ((Observation (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138) – Georgia (Ratification:1996)). The Committee recalls that the effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). Recalling that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. Therefore, the Committee considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that during the reference period there was no labour inspection that supervised that the restrictions/regulations on child labour were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

In its previous conclusion, the Committee asked what was the situation regarding the monitoring of work done at home. The Committee recalls that regarding work done at home, States are required to monitor the conditions under which it is performed in practice (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks whether the educational and social services have the competence to monitor how work within the family is performed by children.

Conclusion

The Committee concludes that the situation in Georgia is not in conformity with Article 7§1 of the Charter on the grounds that:

- the prohibition of employment under the age of 15 does not apply to all economic sectors and all forms of economic activity;
- the daily and weekly working time for children under 15 is excessive and therefore cannot be qualified as light work;
- during the reference period there was no labour inspection supervising that the regulations on child labour were respected in practice.

**Historic elements**

_The situation is not in conformity on these grounds for the first time._

5. **RESC 7§1 HUNGARY**

The Committee takes note of the information contained in the report submitted by Hungary.

The Committee noted previously that the Labour Code established the minimum age of admission to employment at 16 (Conclusions 2011). It asked whether the law accepted any exceptions as to certain economic sectors or economic activities. The report indicates that the provisions of the Labour Code do not allow for exceptions as to certain activities or economic sectors and they apply to the employment of young persons under 18 within a non-employment relationship as well (Article 4 of the Labour Code).

The Committee noted previously that according to the Labour Code, young people under 18 may not be employed in work which may result in detrimental effects on their physical condition or development (Article 75§1). The report indicates that any person of at least 15 years of age subject to full-time education may enter into an employment relationship during school holidays. Subject to authorisation by the guardianship authority, young persons under 16 years of age may be employed in cultural, artistic, sports or advertising activities (Article 34§3 of the Labour Code). The Committee requested that the next report provided the list of jobs considered to be light work. The Committee also asked information on the rules governing the employment of young persons aged under 16 for the purposes of performance in cultural, artistic, sports or advertising activities.

The report indicates that there is no such list of jobs considered to be light. The Committee recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those that are not (International Commission of Jurists (CIJ) v Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31). The Committee considers that the situation is not in conformity with the Charter since the definition of light work is not sufficiently precise as there is no description of the types of work which may be considered light or a list of those which are not.

The Committee notes from the report that under Article 114(2) of the Labour Code, the daily working time of young workers is of eight hours, and the number of working hours performed under different employment relationships shall be summed up. The Committee asks whether the daily limit of 8 hours applies to light work performed by young workers under 15 of age, or otherwise what is the daily and weekly duration of light work allowed to young persons under 15 of age. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). Pending receipt of the information requested, the Committee reserves its position on this point.
The Committee previously asked up-to-date information on the activities of the Labour Inspectorate (Conclusions 2011). The report provides information on the inspections and findings of the Labour Inspectorate, supported by examples from practice. The Committee notes that the labour inspectors detected violations of the rules concerning daily and weekly working time for young workers and the employment of a young person between the age of 15 and 18 without the consent of his or her legal representative. Labour inspections were carried out especially in those sectors and fields where undeclared work is typical, such as seasonal agricultural work, tourism or construction. The report states that during the reference period the following number of cases of illegal child labour were identified: 37 in 2010, 2 in 2011, 5 in 2012 and 1 in 2013. The Committee requests that the next report provide information on the number and nature of violations detected and sanctions imposed.

In its previous conclusion (Conclusions 2011), the Committee asked information on the monitoring of work done at home. The report indicates that the Labour Safety Act covers all types or organised work, irrespective of organisational or ownership structure, with the exception of the residence of the employers natural persons (other than the registered seat of a private entrepreneur).

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how the work done at home is monitored.

**Conclusion**

The Committee concludes that the situation in Hungary is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

**Historic elements**

The situation is not in conformity on this ground for the first time.

6. **RESC 7§1 LITHUANIA**

The Committee notes from the information provided in the report submitted by Lithuania that there have been no changes to the situation which it has previously found to be in conformity with Article 7§1 of the Charter.

The report provides statistics on the findings of the Labour Inspectorate regarding the illegal work of minors during the reference period. The Committee notes that the main economic sectors of illegal employment of minors were agriculture, manufacturing, construction, wholesale and retail trade and repair of motor vehicles and motorcycles. The report indicates that the amount of fines imposed by the Labour Inspectorate in cases involving illegal employment of young persons under 18 was of 72,225 Lithuanian litas (LTL, € 20,917).

The Committee recalls that the situation in practice should be regularly monitored and asks the next report to provide information on the monitoring activities and findings of the State Labour Inspectorate in relation to illegal employment of children under the age of 15.

With regard to light work during school holidays, the Committee notes from the Governmental Committee’s Report concerning Conclusions 2011 that, according to Section 36 of the Law on
Occupational Safety and Health, during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.

The Committee refers to its Statement of interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee considers that the situation is not in conformity with Article 7§1 on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

**Conclusion**

The Committee concludes that the situation in Lithuania is not in conformity with Article 7§1 of the Charter on the ground that during school holidays the daily and weekly working time for children under 15 years of age is excessive and therefore cannot be qualified as light work.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

**7. RESC 7§1 REPUBLIC OF MOLDOVA**

The Committee takes note of the information contained in the report submitted by the Republic of Moldova.

The Committee noted previously that under Article 46(2) of the Labour Code, the minimum age of admission to employment is 16. According to Article 46(3) of the Labour Code, a person can conclude an individual labour contract at the age of 15 subject to the written consent of the child’s parents or his legal representatives and provided that the respective work will not cause harm to his health, development, education and vocational training.

The Committee repeatedly asked whether the prohibition of employment under the age of 15 applied also to work carried out on farms, in family businesses and private households. It also asked whether the prohibition covered all forms of economic activity irrespective of the status of the worker (employee, self-employed, unpaid helper or other) (Conclusions 2006, 2011). The report states that the State Labour Inspectorate monitors compliance with the labour legislation by enterprises, institutions and organisations of all types of ownership and legal form of organisation, by physical persons recruiting employees as well as by public authorities. The Committee asks whether the legal provisions prohibiting the employment of children under the age of 15 apply also to family businesses and private households, domestic work as well as to self-employed.

The Committee notes that according to the National Bureau of Statistics Survey report of 2010 the majority of children working under the minimum age were working either on a self-employed basis or on an unpaid basis in a family enterprise, or in the informal economy (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999)). The Committee asks what are the measures taken by the authorities to detect cases of children under the age of
15 working on their own account or in the informal economy, outside the scope of an employment contract.

The same source mentioned above indicates that the National Steering Committee on the Elimination of Child Labour together with the Child Labour Monitoring Unit of the labour inspectorate, at its meeting held on 27 July 2012, decided that children shall not be involved in autumn agricultural work as it affects the educational process. The Committee notes, however, that according to the Children’s Activities Survey, 2010, conducted by the National Bureau of Statistics and ILO–IPEC, the majority of employed children (95.3%) work as unpaid family workers, including 76.9% of children aged between 5–11 years, 95.7% of children aged between 12–14 years and 92% of children aged between 15–17 years (Direct Request (CEACR) – adopted 2012, published 102nd ILC session (2013), Minimum Age Convention, 1973 (No. 138), Republic of Moldova (Ratification 1999)).

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28).

The Committee recalls that States are required to monitor the conditions under which work done at home is performed in practice (Conclusions 2006, General Introduction on Article 7§1). The Committee asks how work performed at home by children is monitored.

In its previous conclusion (Conclusions 2011), the Committee asked for information and detailed statistics on the Labour Inspectorate’s activities and findings in relation to the prohibition of child labour. The report indicates that in May 2007, the Child Labour Monitoring Unit has been created within the State Labour Inspectorate with the support of ILO-IPEC in order to monitor the illegal employment of children. The report provides information on the results of the inspections carried out by the labour inspection during the reference period. The labour inspectors identified problems linked to employment contracts in respect of minors (no labour contract, no record of the working hours, labour book unavailable, no medical examination at recruitment, employment of children under 15 years of age without the parents’ consent). The report states that the labour inspectors notified the employers to remedy the breaches detected.

The Committee asks the next report to provide disaggregated data on the number and nature of violations detected by the State Labour Inspectorate as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children under the age of 15.

Conclusion
The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

### 8. RESC 7§1 NORWAY

The Committee takes note of the information contained in the report submitted by Norway.

The Committee previously examined the legal framework and found the situation to be in conformity with Article 7§1 of the Charter (Conclusions 2011). It noted that children under 15 years of age or attending compulsory education shall not perform work with the exceptions of (i) cultural work or the like; (ii) light work provided the child is 13 years of age or more; (iii) work that forms part of their schooling or practical vocational guidance approved by the school authorities provided the child is 14 years of age or more.

The Committee noted that in order to involve children in light or cultural work, the employer must obtain prior approval from the Labour Inspection Authority and have the written consent from the child’s parents or legal guardian. The Committee takes note from the report of the number of applications and permits issued by the Labour Inspection Authority during the reference period. The report provides the checklist used by the Labour Inspection Authority when it conducts audits in enterprises with employees under 18 years of age.

The Committee notes from the report that under Section 11-2(1) of the Working Environment Act, children under the age of 15 or those who are subject to compulsory education, shall not work more than:

- 2 hours a day on days with teaching and 12 hours a week in weeks with teaching;
- 7 hours a day and 35 hours a week during school holidays.

The Committee notes from the report that during school holidays, children under the age of 15 are allowed to work up to 7 hours a day and 35 hours a week. It refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee therefore concludes that the situation is not in conformity with Article 7§1 of the Charter on the ground that, during school holidays, the daily and weekly duration of light work for children under the age of 15 is excessive and therefore cannot be qualified as light work.

In its previous conclusion, the Committee asked whether the conditions under which home work is performed are supervised in practice. The report indicates that the Labour Inspection Authority is not entitled to conduct audits in private residences. If illegal work by children under the age of 15 is suspected in a private home, the Labour Inspection Authority may report or make the police aware of the matter. Non-compliance with the provisions in the regulation is subject to corporate penalty pursuant to the General Civil Penal Code, either alone or in addition to personal liability under the Working Environment Act.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide statistical data on the employment of children under the age of 15, as
well as information on the number and nature of contraventions reported and sanctions imposed on employers.

**Conclusion**

The Committee concludes that the situation in Norway is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly duration of light work permitted during school holidays for children under the age of 15 is excessive and therefore cannot be qualified as light work.

**Historic elements**

The situation is not in conformity on this ground for the first time.

9. **RESC 7§1 SWEDEN**

The Committee takes note of the information contained in the report submitted by Sweden.

The Committee previously found the situation to be in conformity. It noted that the minimum age for employment in Sweden is 16 and light work is permitted as of the age of 13 (Conclusions 2004). The report indicates that according to Sections 3 and 12 of Regulation on Minors’ Work Environment 2012:3 (AFS 2012:3), children under 13 must not perform any work except in cases of simple work without any risks within enterprises run by a family member without other employees and when the Work Environment Authority has given a prior authorisation to performance in cultural, artistic, sports or advertising activities. The Committee asks how the Work Environment Authority monitors these situations.

The Committee notes from the report that children subject to compulsory education may work up to 7 hours per day and 35 hours per week during school holidays. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

In its previous conclusions (Conclusions 2011 and 2006), the Committee asked how the conditions under which home work is performed are supervised in practice. It also asked for updated information regarding the situation in practice as reported by the Labour Inspection (Work Environment Authority).

The report indicates that the Swedish Work Environment Authority conducts annual inspections where many young people work. The report provides the number of workplaces and the number of visits per economic activity for the period of 2010–2013. The report does not provide information on the sanctions applied in cases of breach. The Committee requests information on the number of inspections concerning the prohibition of employment for children and any sanctions imposed.

As regards work done at home, the report indicates that according to Section 15 of the Work Environment Ordinance (SFS 1977:1166), inspection visits are only performed at the request of the employer or employee concerned or if there is some other special reason for them. The
same shall apply concerning work done by a person carrying on business without employees or employing only a member or members of his family.

Conclusion

The Committee concludes that the situation in Sweden is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

Historic elements

The situation is not in conformity on this ground for the first time.

10. RESC 7§1 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee takes note of the information contained in the report submitted by “the former Yugoslav Republic of Macedonia”.

The report indicates that according to Section 18 (2) of the Law on Labour Relations, work of a child under the age of 15 or a child who is still subject to compulsory education is prohibited with the exception of participation in activities that do not have a harmful influence on the health, safety, development and education of children such as: cultural and artistic activities, sport events and marketing activities. The report adds that the child should receive suitable remuneration for these activities.

In reply to the Committee’s question whether the legal provisions cover all forms of economic activity, irrespective of the status of worker, the report states that the legal provisions prescribing the ban on employing children younger than 15 years of age are applicable to all forms of economic activities regardless the status of the worker.

The Committee notes from another source that the Committee on the Rights of the Child (CRC), in its concluding observations of 23 June 2010, expressed concern regarding the incidence of child labour in the informal economy, including in street vending at intersections, on street corners and in restaurants (CRC/C/MKD/CO/2, paragraph 69) (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Minimum Age Convention, 1973 (No. 138) – The former Yugoslav Republic of Macedonia (Ratification: 1991)). The Committee asks how the Labour Inspection services monitor the work performed by young persons in the informal economy, outside the scope of an employment contract.

In its previous conclusion (Conclusions 2011), the Committee noted that children under 15 may be involved in cultural, artistic, sport and marketing activities and it asked whether this is considered light work. It also asked whether there are other types of work in which children may participate, what are the rules governing employment of children in these activities, especially duration of such work. In reply to the Committee’s question, the report indicates that the activities enumerated by Section 18 (4) of the Law on Labour Relations, namely cultural and artistic activities, sport events and marketing activities, are considered to be light work which do not have a harmful influence on the health, safety, development and education of children. The report indicates that in such cases, under Section 18 (5) an approval for performing such activities by a state body competent for labour inspection is required, based on a request submitted by the organiser of activities, and following the consent of the legal representative of the child and a previous inspection of the place where the activity will be conducted by the labour inspection.

The Committee notes from the report that the duration of light work performed by children under 15 years of age cannot exceed four hours per day according to Section 18 (2) of the Law on Labour Relations. The Committee recalls that work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted
duration and the prescribed rest periods so as to allow supervision by the competent services.

Even though it has not set a general limit on the duration of permitted light work, the Committee has considered that a situation in which a child under the age of fifteen years works for between twenty and twenty-five hours per week during school term (Conclusions II, p. 32), or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter (Conclusions IV, p. 54) (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §31). The Committee considered that four hours light work per day during the school term for children aged 13-15 was excessive and therefore not in conformity with Article 7§3 of the Charter (Cyprus 2011).

Noting that children under 15 may be involved in light work for up to four hours per day, the Committee considers that the situation in the former Yugoslav Republic of Macedonia is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

The Committee takes note of the activity of the Labour Inspectorate. It notes that during its inspections the Labour Inspectorate has not found violations of prohibition of employment of children. The report indicates that the sanctions established by the Law on Labour Relations have been amended. Section 265 provides a penalty of € 2,000 to 3,000 for a legal entity and of € 1,000 to 2,000 for an employer – natural person if the employer concludes an employment agreement with a person who is under 15 years of age.

The Committee invites the Government to provide information on the activities and findings of the Labour Inspectorate of monitoring the prohibition of employment under the age of 15 and whether the conditions for involving children in light work are met. The Committee requests information on the violations detected and sanctions applied in practice by the Labour Inspection with regard to illegal employment of children.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). The Committee asks how the work done at home is monitored.

**Conclusion**

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§1 of the Charter on the ground that the daily and weekly working time for children under the age of 15 is excessive and therefore cannot be qualified as light work.

**Historic elements**

The situation is not in conformity on this ground for the first time.

11. **RESC 7§1 UKRAINE**

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee previously noted that according to Article 188 of the Labour Code, the minimum age for employment is 16 years. As an exception, under Section 188(2) of the Labour Code, children of 15 years of age may be admitted to employment with the consent of one of the parents or a guardian (Conclusions 2011).

The Committee asked whether the prohibition of employment under the age of 15 applies to all economic sectors, all places of work and all forms of economic activity, irrespective of the
status of the worker. The report does not respond to the Committee’s question. The Committee notes from another source that the Committee on the Rights of the Child in its concluding observations expressed concern at the high number of children below the age of 15 years working in the informal economy, in particular in illegal coal mines, as well as at the extent of violations of labour law regarding the employment of children (CRC/C/UKR/CO/3-4, paragraph 74, 21 April 2011). The Committee asks what are the measures taken by the authorities (e.g. labour inspection) to improve the supervision and the mechanisms of detecting cases of children under the age of 15 working in the informal economy, outside the scope of an employment contract.

The Committee previously noted that children of 14 years of age in secondary, vocational and specialised secondary schools are allowed to perform light work with the consent of one parent or a guardian. Light work is defined as work which is not harmful to health and which does not interfere with the educational process, carried out in free time from studies. The Committee concluded that the situation was not in conformity with Article 7§1 of the Charter on the ground that the definition of light work was not sufficiently precise because there was no definition of the types of work which may be considered light or a list of those which are not (Conclusions 2011).

The Government states in the report that the new draft Labour Code of Ukraine will include a definition of light work, namely that light work represents work that may not endanger health, life and mental and physical development of minors and may not prevent them to study. The list of light works shall be determined by the central executive body.

The report further indicates that the Ministry of Social Policy through an Order dated 23 April 2013 approved an expert and consulting council on the European Social Charter, which includes representatives of ministries, social partners, academia, and NGOs. A draft Cabinet of Ministers of Ukraine regulation was prepared with regard to activities aimed to implement the provisions of the European Social Charter in 2015 – 2019 envisaging a study on the issue of definition of “light work” in the national law and preparation of light works list for children. The Committee asks the Government to provide information on any developments in this regard. In the meantime, noting that the situation has not changed during the reference period, the Committee maintains its conclusion of non-conformity on this point.

The Committee notes from another source that the Government indicates that the draft Labour Code sets no restrictions on daily work for children aged up to 14 years in artistic performances, but provides that the working conditions must be agreed upon with the Service for Children’s Affairs (Observation (CEACR) – adopted 2013, published 103rd ILC session (2014), Minimum Age Convention (No.138). The Committee notes from the report that the draft of the Labour Code has not been adopted yet. It therefore asks to be fully informed of any future developments. In the meantime, the Committee wishes to know under which conditions children may be admitted to employment in the cinema, theatre and concerts and how the Labour Inspectorate monitors the involvement of children under 15 years of age in artistic performances.

As regards work done at home, the report indicates that in 2012, a Multiple Indicator Cluster Survey (MICS) of households was carried out, particularly on the situation of the work done at home by children under the age of 15. The results of the MICS show that 68% of children aged 5-14 years were involved in household chores for less than 28 hours a week, and 9.4% children of 12-14 years old were involved in such work. Not many children in both age groups did household chores for more than 28 hours a week.

The Committee recalls that work within the family (helping out at home) also comes within the scope of Article 7§1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7§1 is intended to eliminate (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the
merits of 9 September 1999, §28). The Committee asks whether authorities monitor the conditions under which such work is performed in practice.

With regard to supervision, the Committee asked what kind of measures were taken in case of violations and what measures were taken to prevent the employment of children below the permitted age (Conclusions 2011). The report provides the number of violations of Section 188 of the Labour Code identified during the reference period, namely: 19 violations in 2010, 14 violations in 2011, 11 violations in 2012 and 23 violations in 2013. The report adds that as a result of the inspections, 66 instructions to remedy the violations were issued to employers and 46 protocols were drawn up and filed with the courts against the breaching employers.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment under the age of 15.

**Conclusion**

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§1 of the Charter on the ground that the definition of light work is not sufficiently precise.

**Historic elements**

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Ukraine indicated (in writing) that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, § 67).

**Article 7§3 - Prohibition of employment of children subject to compulsory education**

12. **RESC 7§3 ARMENIA**

The Committee takes note of the information contained in the report submitted by Armenia.

In its previous conclusion, the Committee found the situation to be not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

The Committee also refers to its Statement of Interpretation on Articles 7§1 and 7§3 on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than six hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee notes from the report that the situation has not changed as children between 14 and 16 years of age are still allowed to work 24 hours per week. The Committee maintains its conclusion of non-conformity on this point.

As regards the age of completion of compulsory education, the Committee previously noted the Government statement that the legislation prescribes that a child may complete the compulsory education at the age of 15 to 16 (5th National Report of Armenia). The Committee
notes from another source that according to the UNESCO 2010 report entitled "Education for All – Global Monitoring Report", compulsory education in Armenia lasts from the age of 7 to the age of 15 (Direct Request (CEACR) – adopted 2010, published 100th ILC session (2011), Minimum Age Convention, 1973 (No. 138)). The Committee takes note that according to the information provided by the above mentioned source, the age of completion of compulsory education is one year below the specified minimum age for admission to employment or work. It notes from another source (UNICEF Study " Education for All – School Wastage Study Focusing on Student Absenteeism in Armenia", 2008) that the Government expressed its intention to revise the education system by adding an extra year of compulsory education. The Committee asks that the next report clearly indicate which is the age of completion of compulsory education and the relevant legislation. In particular the Committee asks whether the age limit for compulsory education coincides with the age of admission to employment which is 16, or otherwise whether compulsory schooling comes to an end before young persons are entitled to work.

As regards light work, the Committee notes that under Article 17 (2(1)) of the Labour Code persons between the age of 14 and 16 may be involved only in temporary works not causing harm to their health, safety, education and morality. The Committee recalls that only light work is permissible for schoolchildren under this provision. The notion of "light work" is the same as under Article 7§1(Conclusions I (1969), Statement of Interpretation on Article 7§1). The Committee refers to its Conclusion on Article 7§1 where it concluded that the situation is not in conformity with Article 7§1 of the Charter since the definition of light work is not sufficiently precise, as there is no description of the types of work which may be considered light or a list of those which are not.

The report indicates that according to Article 17 (3) of the Labour Code, persons at the age of 14 to 16 may not be involved in work on days off, non-working days — holidays and commemoration days — except for the cases of participation in sport and cultural events. The Committee asks in which conditions children subject to compulsory education participate in sport or artistic performances (for example whether the consent of the parents and the curator is required).

As regards work during school holidays, the Committee previously referred to its Statement of Interpretation on Article 7§3 (Conclusions 2011) and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. The report does not provide the information requested. The Committee reiterates its question. The Committee underlines that if the next report does not provide the information requested, there will be nothing to establish that the situation is in conformity with Article 7§3 of the Charter.

The Committee recalls that the situation in practice should be regularly monitored. It asks the next report to provide information in its next report on the number and nature of violations detected as well as on measures taken/sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education.
Conclusion
The Committee concludes that the situation in Armenia is not in conformity with Article 7§3 of the Charter on the grounds that:

- the daily and weekly working time for children subject to compulsory education is excessive;
- the definition of light work is not sufficiently precise.

Historic elements

1st ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Armenia provided written information (Detailed Report concerning Conclusions 2011, § 78).

2nd ground of non-conformity

The situation is not in conformity on this ground for the first time.

13. RESC 7§3 CYPRUS

The Committee takes note of the information contained in the report submitted by Cyprus.

In its previous conclusion (Conclusions 2011), the Committee found that the situation was not in conformity with the Charter on the ground that the prohibition of employment of children subject to compulsory education did not apply to children employed in occasional or short-term domestic work. The Committee refers to its Conclusion on Article 7§1 where it noted that the Law on Protection of Young Persons at Work was amended, thereby extending its scope to occasional or short-term domestic work in private households. The Committee considers that the situation is now in conformity with the Charter on this point.

According to the amendments brought by the Law No.15(I)/2012 to the Law on Protection of Young Persons at Work, children under the age of 15 may participate in cultural, artistic, athletic, or promotional/advertising activities for a maximum duration of:

- 2 hours per day for children up to 6 years old;
- 3 hours per day for children between the ages of 7 to 12 years;
- 4 hours per day for children between the ages of 13 to 15 years.

The report indicates that in any case, children are not allowed to participate/perform artistic activities within the hours of school.

In its previous conclusion (Conclusions 2011), the Committee considered that four hours of light work per day during the school term for children aged 13-15 was excessive, and therefore concluded that the situation was not in conformity with Article 7§3 of the Charter. Noting that the situation has not changed, the Committee maintains its conclusion of non conformity on this ground.

The report indicates that according to the Law on Protection of Young Persons at Work, no child can participate in cultural, artistic, athletic activities for more than 7 hours and 15 minutes a day or more than 36 hours per week. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare,
development or education (General Introduction, Conclusions 2015). The Committee considers that 7 hours and 15 minutes a day and 36 hours per week of light work may have negative repercussions on the education and development of children. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education on non-school days is excessive.

As regards work during school holidays, the Committee referred previously to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011. It asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays. The report does not provide the requested information. The Committee reiterates its question. The Committee points out that if the next report does not provide the requested information, there will be nothing to establish that the situation is in conformity with the Charter on this point.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised. The supervision required of states must concern not just the Labour Inspectorate but also the educational and social services (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28-32). The Committee asks the next report to provide information on the supervision exercised by the authorities with respect to employment of children subject to compulsory education, including on the violations detected and sanctions imposed in practice.

**Conclusion**

The Committee concludes that the situation in Cyprus is not in conformity with Article 7§3 of the Charter on the grounds that:

- the duration of light work during school term for children aged 13-15 is excessive;
- duration of light work for children subject to compulsory education on non-school days is excessive.

**Historic elements**

1st ground of non-conformity

*The situation is not in conformity on this ground since Conclusions 2011.*

On the previous occasion, the delegate of Cyprus provided written information (Detailed Report concerning Conclusions 2011, § 81).

2nd ground of non-conformity

*The situation is not in conformity on this ground for the first time.*

**14. RESC 7§3 ESTONIA**

The Committee takes note of the information contained in the report submitted by Estonia.

In its previous conclusion (Conclusions 2011), the Committee noted that according to Section 43(4) of the Employment Contracts Act (ECA), unless the employer and the child have not agreed on a shorter working time, the maximum working time for children subject to compulsory education is:

- in the case of children of 7-12 years of age, 3 hours per day (followed by a rest period of at least 21 consecutive hours) and 15 hours per seven days;
- in the case of children of 13-14 years of age or who are subject to the obligation to attend school, 4 hours per day (followed by a rest period of at least 20 consecutive hours) and 20 hours per seven days.
The Committee concluded that the daily and weekly working time for children subject to compulsory education was excessive and therefore the situation was not in conformity with Article 7§3 of the Charter (Conclusions 2011). The Committee considered that the above mentioned working times for children subject to compulsory education are excessive. The Committee held that 2 hours on a school day and 12 hours a week for work performed in term-time outside the hours fixed for school attendance, provided that this is not prohibited by national legislation and/or practice and that in no circumstances may the daily working time exceed seven hours, fulfil the requirements of Article 7§3 of the Charter.

The Committee recalls that during school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. The Committee notes from the report that the situation with regard to the daily and weekly working time during school term for children subject to compulsory education has not changed and it therefore maintains its conclusion of non-conformity.

In its previous conclusion (Conclusions 2011), the Committee referred to its Statement of Interpretation on Article 7§3 in the General Introduction. It asked the next report to indicate whether the situation in Estonia complies with the principles set out in that statement. It asked in particular information on the nature and duration of work that may be carried out during school holidays and on the supervision by the Labour Inspectorate of work carried out by children during school holidays. The Committee refers to its Statement on Interpretation on Article 7§3 in the General Introduction to Conclusions 2011 where it noted that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays.

In reply, the report indicates that that young people subject to compulsory school attendance may work both while fulfilling their obligation of compulsory school attendance and during school holidays, with the observance of the restrictions prescribed by law. Working during school holidays does not differ from working outside school holidays, neither by nature nor by duration of the work. The same requirements apply to working during school holidays and working while fulfilling their obligation of compulsory school attendance.

The Committee notes that according to Section 56 of the ECA, the annual holidays for a young worker are 35 calendar days, unless the employer and the employee have agreed on a longer period of annual holidays or unless otherwise provided by law. The Committee asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday and what are the rest periods during the other school holidays.

As working during school holidays does not differ from working outside school holidays, neither by nature nor by duration of the work, the Labour Inspectorate conducts state supervision over work performed by children during school holidays on the same basis and in the same way as while fulfilling their obligation of compulsory school attendance. The Labour Inspectorate may impose a pecuniary punishment of up to €1,300 on an employer if the latter has entered into an employment contract with a minor without the consent of his or her legal representative and a labour inspector (Section 119 of the ECA). The report provides some data on the activities of the Labour Inspectorate during the reference period indicating that only 2 fines amounting to €90, one fine of €50 and 4 fines amounting to €380 were imposed on the employers in 2011, respectively 2012 and 2013.

The Committee notes from another source that during the period from 2010 to 2013, investigations concerning children were conducted in 79 enterprises, of which 67 infringements were identified. Most of these violations related to working hours, rest periods and holidays, and overtime. Misdemeanour procedures were initiated in 21 cases in relation to the violation of the Employment Contracts Act, and in 14 cases, sanctions amounting to a total of €8,030 were imposed (Direct Request (CEACR) – adopted 2014, published 104th ILC session (2015), Worst Forms of Child Labour Convention, 1999, (No. 182), Estonia).
Conclusion
The Committee concludes that the situation in Estonia is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly working time for children subject to compulsory education is excessive.

Historic elements
The situation is not in conformity on this ground since Conclusions 2011.
On the previous occasion, the delegate of Estonia provided written information (Detailed Report concerning Conclusions 2011, § 83).

15. RESC 7§3 GEORGIA
The Committee takes note of the information contained in the report submitted by Georgia.

The Committee noted previously that according to Article 4 of the Labour Code, light work is permissible for children starting from the age of 14, with the agreement of a legitimate representative of the child, if such work does not conflict with the child’s interests, does not cause damage to his/her moral, physical and mental development and does not limit his/her right and ability to receive education.

The Committee refers to its conclusion on Article 7§1 where it noted that children of 14 years of age are allowed to to perform light work related to sport, art, cultural and advertising activities for up to 8 hours per day. The legislation does not provide reduced working time for children who are still subject to compulsory education so as to allow time for education and training (including the time needed for homework) for rest during the day and for leisure activities. The Committee considers that the situation is not in conformity with Article 7§3 on the ground that the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

As regards work during school holidays, the Committee refers to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011. It asks the next report to indicate whether the situation in Georgia complies with the principles set out in this statement. In particular, it asks whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. It also asks what are the rest periods during the other school holidays.

The Committee recalls that the aim and purpose of the Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3). It considers that the labour inspection has a decisive role to play in effectively implementing Article 7 of the Charter (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32). The Committee considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that during the reference period there was no labour inspection to monitor how the regulations regarding the prohibition of employment of children who are still subject to compulsory education were implemented in practice.

The Committee notes that in 2015, outside the reference period, Resolution No 249 (2005) of the Government of Georgia on Approving the Statute of the Ministry of Labour, Health and Social Affairs of Georgia was amended, introducing the Labour Inspectorate Department. The Committee wishes to be kept informed.

Conclusion
The Committee concludes that the situation in Georgia is not in conformity with Article 7§3 of the Charter on the grounds that:
the daily and weekly duration of light work permitted to children subject to compulsory education is excessive and therefore cannot be qualified as light work;

- during the reference period there was no labour inspection to monitor the conditions of work of children who are still subject to compulsory education.

**Historic elements**

*The situation is not in conformity on these grounds for the first time.*

**16. RESC 7§3 LITHUANIA**

The Committee takes note of the information contained in the report submitted by Lithuania.

In its previous conclusion, the Committee found the situation to be in breach of Article 7§3 of the Charter on the ground that the legal framework did not limit the period of work during summer holidays for children subject to compulsory education (Conclusions 2011). The report indicates that the Government Resolution No. 138 of 29 January 2003 has been amended in the sense that from 1 May 2014 children under the age of 16 shall be guaranteed 14 consecutive calendar days of rest during summer school holidays. The Committee asks that the next report provide information on how this new rule is implemented into practice and the supervision exercised by the Labour Inspectorate in this sense. Pending receipt of the information requested, the Committee reserves its position on this point.

The report indicates that children of the age of 14 are allowed to perform light work in the sphere of culture, arts, sports, advertising, trade, accommodation and food services, information and communication, financial and insurance, administration and service, household, agricultural fields, if one of the parents or another child’s legal representative has given the written consent and his/her physician has issued certificate that the child is suitable to perform such work.

With regard to working time during school holidays, the Committee notes from the Governmental Committee’s Report Concerning Conclusions 2011 that, according to Section 36 of the Law on Occupational Safety and Health, during holidays, young persons under 15 years of age may work up to 7 hours per day and 35 hours per week during holidays and young persons who have reached the age of 15 may work up to 8 hours per day and 40 hours per week.

The Committee refers to its Statement of interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee considers that the situation is not in conformity with Article 7§3 on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

The Committee recalls that the situation in practice should be regularly monitored. It therefore asks the next report to provide information on the number and nature of violations detected as well as on sanctions imposed for breach of the regulations regarding prohibition of employment of children subject to compulsory education.
Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 7§3 of the Charter on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.

Historic elements
The situation is not in conformity on this ground for the first time.

17. RESC 7§3 REPUBLIC OF MOLDOVA
The Committee takes note of the information contained in the report submitted by Republic of Moldova.

In its previous conclusion (Conclusions 2011), the Committee concluded that the situation in the Republic of Moldova was not in conformity with Article 7§3 of the Charter on the ground that it had not been established that permitted working hours during the school year were sufficiently limited so as not to affect the child’s school attendance, receptiveness and homework.

The report indicates that there were no cases detected of children working before the school begins. With regard to the permitted working hours for children, the Committee asked previously what daily working hours were permitted during the holidays and during the school year (Conclusions 2006). There is no indication of the permitted working time for children subject to compulsory education in the report.

The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011, that according to Articles 96(2) and 100(2)-(3), the reduced working time for persons between 15 and 16 years of age shall be maximum 5 hours per day and 24 hours per week. Working time for persons between 16 and 18 years of age shall be maximum 7 hours per day and 35 hours per week.

The Committee notes from another source that the maximum age of compulsory education is 18 (Education Act, Article 13(2)). The Committee recalls that during the school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework (Conclusions 2006, Albania). It refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee considers that the situation is not in conformity Article 7§3 on the ground that the daily and weekly working time for children subject to compulsory education is excessive and therefore it cannot be qualified as light work.

The Committee referred to its Statement of Interpretation on Article 7§3 in the General Introduction of Conclusions 2011 and asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday (Conclusions 2011). The report does not provide any information in this respect.

The Committee recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school
holidays which shall under no circumstances be less than two weeks during the summer holiday (Statement of Interpretation on Article 7§3, Conclusions 2011). The Committee considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that it has not been established that children subject to compulsory education are guaranteed two consecutive weeks of rest during the summer holiday.

The Committee recalls that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §28). It asks that the next report provide information on the number and nature of violations detected as well as on sanctions imposed with regard to employment of children subject to compulsory education.

**Conclusion**

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 7§3 of the Charter on the grounds that:

- the daily and weekly working time for children subject to compulsory education is excessive and therefore it cannot be qualified as light work;
- it has not been established that children who are still subject to compulsory education are guaranteed at least two consecutive weeks of rest during summer holiday.

**Historic elements**

1st ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of the Republic of Moldova provided written information (Detailed Report concerning Conclusions 2011, § 103).

2nd ground of non-conformity

The situation is not in conformity on this ground for the first time.

18. RESC 7§3 NORWAY

The Committee takes note of the information contained in the report submitted by Norway.

With regard to the working time of children who are subject to compulsory education, the report indicates that under Section 11-2(1) of the Working Environment Act, working hours for persons under 18 years of age shall be so arranged that they do not interfere with their schooling or prevent them from benefiting from their lessons. In case of children who attend compulsory education, working hours shall not exceed:

- 2 hours a day on days with teaching and 12 hours a week in weeks with teaching;
- 7 hours a day and 35 hours a week during school holidays.

The Committee notes that during school holidays, children who are subject to compulsory education are allowed to work up to 7 hours a day and 35 hours a week. The Committee refers to its Statement of Interpretation on the duration of light work. It recalls that it considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015). The Committee therefore concludes that the situation is not in conformity with Article 7§3 of the Charter on the ground that during school holidays the daily and weekly working time for children subject to compulsory education is excessive and therefore cannot be qualified as light work.
The report indicates that an employer must obtain the written consent of the child’s parents or legal guardians before employing children under the age of 15 or who are still subject to compulsory education (Section 12-4 of Regulation No. 1355 of 6 December 2011 relating to organisation, management and influence). The report states that the Labour Inspection Authority has not registered any inquiries, complaints or orders on this matter. The report adds that an employer employing 20 or more employees must keep a list of all employees aged 18 and younger where, inter alia, the employee’s address and birth date, parents’ name and address (for children under the age of 15 or who are subject to compulsory education), daily working hours and daily school hours are listed. The list shall be at the disposal of the Labour Inspection Authority and the safety delegate.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 7§3 of the Charter on the ground that it is possible for children who are still subject to compulsory education to deliver newspapers before school, from 6 a.m. for up to 2 hours per day, 5 days per week. The Committee notes from the information provided in the report that the situation has not changed. It therefore maintains its conclusion of non-conformity on this matter.

As regards rest periods during school holidays, the Committee referred previously to its Statement of Interpretation on Article 7§3, General Introduction to Conclusions 2011, and asked whether children subject to compulsory education are entitled to an uninterrupted rest period of at least two weeks during summer holidays (Conclusions 2011).

The report indicates that according to Section 11-5(4) of the Working Environment Act, persons under 18 years of age who attend school shall have at least four weeks holiday a year, of which at least two weeks shall be taken during the summer holiday. The report states that children and young persons under 18 years of age are thus obliged to take at least two of the four weeks during the summer holiday. However, the Act does not stipulate that these two holiday weeks must be consecutive. As noted in its Statement of interpretation on Article 7§3 (Conclusions 2011), the Committee considers that an uninterrupted period of rest which should under no circumstances be less than two weeks, must be provided for during summer holidays. The Committee recalls that the two weeks of holiday granted during summer to children subject to compulsory education must be consecutive. It therefore considers that the situation is not in conformity with Article 7§3 of the Charter on this point.

The Committee recalls that the situation in practice should be regularly monitored. It invites asks the next report to provide information on the number and nature of violations detected by the Labour Inspection Authority as well as on measures taken/sanctions imposed on employers for breach of the regulations regarding prohibition of employment of children subject to compulsory education.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 7§3 of the Charter on the grounds that:

- the daily and weekly working time during school holidays for children subject to compulsory education is excessive and therefore cannot be qualified as light work;
- it is possible for children who are still subject to compulsory education to deliver newspapers, before school, from 6 a.m. for up to 2 hours per day, 5 days per week;
- young persons under 18 years of age who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during summer holiday.

Historic elements

1st ground of non-conformity
The situation is not in conformity on this ground for the first time.

2\textsuperscript{nd} ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the Representative of Norway provided written information (Detailed Report concerning Conclusions 2011, § 101).

3\textsuperscript{rd} ground of non-conformity

The situation is not in conformity on this ground for the first time.

19. RESC 7§3 SLOVENIA

The Committee takes note of the information contained in the report submitted by Slovenia.

In its previous conclusion (Conclusions 2011), the Committee asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday. The report indicates that a child who has reached the age of 13 may also perform light work during school holidays but for a maximum of 30 days and in a manner, to the extent, and on condition that the work to be performed does not pose a risk to the child’s safety, health, morals, education or development. The Committee asks confirmation that children are guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holiday.

Further, the report states that the working time of children under the age of 15 who perform light work during school holidays must not exceed seven hours per day or 35 hours per week. During each 24-hour period, children must be granted a daily rest period of at least 14 consecutive hours. The Committee refers to its Statement of Interpretation on the duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than six hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

It therefore concludes that the situation in Slovenia is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education during school holidays is excessive.

According to the data provided by the Labour Inspectorate, no violations of the Rules on the Protection of the Health of Children, Adolescents and Young Persons at Work were detected in 2010, 2011 and 2013, but two violations were established in 2012. The Committee asks if these violations regarded the employment of children subject to compulsory education.

The Committee asks the next report to continue to provide information in its next report on the monitoring activities and findings of the State Labour Inspectorate, including the number and nature of violations detected and sanctions imposed with regard to the prohibition of employment of children subject to compulsory education.

\textit{Conclusion}

The Committee concludes that the situation in Slovenia is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work for children subject to compulsory education during school holidays is excessive.

\textit{Historic elements}
The situation is not in conformity on this ground for the first time.

20. RESC 7§3 SWEDEN

The Committee takes note of the information contained in the report submitted by Sweden.

In its previous conclusion (Conclusions 2011), the Committee referred to its Statement of Interpretation on Article 7§3 and asked for confirmation that the legislation effectively guarantees an uninterrupted period of at least two weeks during the summer holidays. The report indicates that according to Section 20 of the Regulation on Minors' Work Environment 2012:3 (AFS 2012:3), children who are up to 16 years of age and still in compulsory school are entitled to a period free of any work of at least 4 consecutive weeks during the school holidays.

The report indicates that Section 14 of AFS 2012:3 provides that children who have reached the age of 13 but not the age of 16 and who are still subject to compulsory school may not perform work that requires physical or mental strength. They are not allowed to sell goods that require a certain age (for example alcohol, tobacco etc).

According to Section 20 of AFS 2012:3, children who have not reached 16 and who are still subject to compulsory education are entitled to:

- a minimum rest period of 14 consecutive hours for each 24-hour period;
- at least two days off for each seven-day period. The rest period must never be less than 36 consecutive hours;
- during school weeks they are allowed to work 2 hours per school day or 7 hours per non-school day and 12 hours per school week at the most;
- during school holidays they are allowed to work 7 hours a day and 35 hours per week.

The Committee notes from the report that children subject to compulsory education may work up to 7 hours per day and 35 hours per week during school holidays. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive and therefore cannot be qualified as light work.

The Committee asks information on the activities of the authorities of monitoring and detecting cases of possible illegal employment of children subject to compulsory education. It also wishes to know what sanctions are imposed in practice against the employers for infringements of the applicable legislation.

Conclusion

The Committee concludes that the situation in Sweden is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive and therefore cannot be qualified as light work.
**Historic elements**

*The situation is not in conformity on this ground for the first time.*

21. **RESC 7§3 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

The Committee noted previously that primary education is compulsory and starts at the age of 6 and lasts 9 years. It noted that secondary education is also compulsory which brings the age of young persons subject to compulsory education up to 18 or 19 (Conclusions 2011).

The Committee took note in its previous conclusion (Conclusions 2011) that the working time of the employees younger than 18 years of age cannot be longer than 8 hours per day and 40 hours per week (Section 174 of the Law on Labour Relations). The Committee asked whether there are any restrictions during school year as to the duration of work since according to the abovementioned legal provisions, all young persons under 18 years old are subject to compulsory education.

The report indicates that the limit of 8 hours per day refers to young persons who are not subject to compulsory education. The report underlines that according to Section 187 (6) of the Law on Labour Relations young persons over 15 years of age and below 18 years of age, may conclude an employment agreement if they are not subject to compulsory education for occupations that are not harmful for their health and safety.

The Committee takes note of the information provided by the Multiple Indicator Cluster Survey of 2005–06 that 9.9 per cent of children below the age of 15 are engaged in economic activity. This survey indicated that 11.7 per cent of 13 year olds and 12.4 per cent of 14 year olds were engaged in economic activities, and that the vast majority of these children also attended school (Direct Request (CEACR) – adopted 2011, published 101st ILC session (2012), Minimum Age Convention, 1973 (No. 138) – The former Yugoslav Republic of Macedonia (Ratification: 1991)).

The Committee notes that, according to section 18 (2) of the Labour Relations Law, a person under the age of 15 who has not completed compulsory school may work for a maximum of four hours a day in activities determined by law. The Committee recalls that it has considered that four hours light work per day during the school term for children aged 13-15 is excessive and therefore not in conformity with Article 7§3 of the Charter (Cyprus 2011). The Committee concludes that the situation is not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for children who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The Committee refers to its Statement of Interpretation on Article 7§3 (Conclusions 2011) and recalls that in order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays (Statement of Interpretation on Article 7§3, Conclusions 2011). The report indicates that the summer holiday lasts from 11 of June until 1 of September. The Committee asks how the authorities ensure that children who are still in compulsory education benefit of two consecutive weeks free from any work during the summer holidays. Pending receipt of the information requested, the Committee reserves its position on this point.

As regards supervision, the Committee would like to receive information on the activities and findings of the Labour Inspection or other authorities, including on violations detected and sanctions applied, in relation to work/light work performed by children who are still subject to compulsory education.
Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 7§3 of the Charter on the ground that the duration of working time for young persons still subject to compulsory education is excessive and therefore cannot be qualified as light work.

Historic elements

The situation is not in conformity on this ground for the first time.

22. RESC 7§3 TURKEY

The Committee takes note of the information contained in the report submitted by Turkey.

The Committee notes that children who have completed the age of fourteen and their primary education may be employed in light works that will not hinder their physical, mental and moral development, and for those who continue their education, in jobs that will not prevent their school attendance (Section 71 Labour Law). Employment of children who have not completed the age of fifteen is prohibited.

The report indicates that under Section 71 of the Labour Law, the working time of children who have completed their basic education and yet who are no longer attending school shall not be more than seven hours daily and more than thirty-five hours weekly. However this working time may be increased up to forty hours weekly. The working time of school attending children during the education period must fall outside their training hours and shall not be more than two hours daily and ten hours weekly. Their working time during the periods when schools are closed shall not exceed the hours foreseen in the first paragraph above.

The Committee notes that during school term children shall be allowed to work not more than two hours daily and ten hours weekly which is in conformity with the requirements of the Charter.

It further notes that during school holidays, children may be permitted to work up to seven hours daily and thirty-five and even forty hours weekly. The Committee refers to its Statement of Interpretation on the permitted duration of light work and recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education (General Introduction, Conclusions 2015).

The Committee therefore considers that the situation is not in conformity with Article 7§3 of the Charter on the ground that the daily and weekly duration of light work for children who are still subject to compulsory education during school holidays is excessive.

The report indicates that according to the Turkish Statistical Institute, 49.8% of the working children go to school, while 50.2% do not attend school. The same source indicates that 3.2% of the children between 6-17 years of age still in school are engaged in economic activities, 50.2% of them in domestic affairs and 46.6% of them are not engaged in any activity. The Committee also takes note of the concluding observations of 20 July 2012 of the Committee on the Rights of the Child which noted that the large number of children still employed constituted a significant challenge to the rights of the child, including the right to education (CRC/C/TUR/Co/2-3, para.62). It asks the next report to provide detailed information/statistics on the number of children still subject to compulsory education who are engaged in any type of work.
The Committee takes note from the report of the measures taken by the Government to increase the rate of school attendance. It wishes to be informed on the development of relevant measures in the next report.

**Conclusion**

The Committee concludes that the situation in Turkey is not in conformity with Article 7§3 of the Charter on the ground that the duration of light work permitted to children subject to compulsory education during school holidays is excessive.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

**23. RESC 7§3 UKRAINE**

The Committee takes note of the information contained in the report submitted by Ukraine.

The Committee previously noted that children of 14 years of age in secondary, vocational and specialized secondary schools are allowed to perform light work with the consent of one parent or a guardian. Light work was defined as work which is not harmful to health and which does not interfere with the educational process, carried out in free time from studies (Conclusions 2011). The Committee refers to its findings regarding light work in its conclusion on Article 7§1, according to which the definition of light work provided for in the national legislation is not sufficiently precise. It recalls that States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. The Committee considers that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the ground that the definition of light work is not sufficiently precise.

The Committee wished to know the number of hours that may be worked per day both during the holidays and in the course of the school year. It also asked whether the rest period free of work has a duration of at least two consecutive weeks during the summer holiday (Conclusions 2011).

The report indicates that according to Article 51 of the Labour Code, young persons aged from 15 to 16 years as well as pupils aged from 14 to 15 years are allowed to work 24 hours per week during holidays. Young employees aged from 16 to 18 years may work up to 36 hours per week.

Further, the report indicates that working hours for pupils working during academic year in their free time may not exceed the half of maximum working hours prescribed above for persons of the respective age. Thus, the duration of working hours during the school year for pupils of secondary schools aged from 14 to 16 years shall be of 12 hours per week, and for pupils aged 16-18 shall be of 18 hours per week. Based on a five-day working week, the working hours for pupils from these age groups shall be 2.4 hours per day (for 14 to 16 years of age) and 3.6 hours per day (for 16 to 18 years of age).

The Committee refers to its Statement of Interpretation in the General Introduction of these Conclusions. It recalls that children under the age of 15 and those who are subject to compulsory schooling are entitled to perform only “light” work. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work. The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.
The Committee notes that young employees aged from 16 to 18 years old may work up to 36 hours per week. The Committee notes from the reply of the Government to its supplementary question that the total duration of the general secondary education is 11 years and it starts at the age of six or seven. Therefore, the Committee considers that the situation is not in conformity with the Charter as on the ground that the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

The report indicates that according to Law No. 504/1996 employees under the age of 18 benefit of 31 calendar days of leave. A person under the age of 18 is entitled to use his/her annual leave at any time or use it in parts, but not less than 14 consecutive days at once (Section 12 of the Law No. 504/1996). The Committee asks whether the Labour Inspectorate supervises if young employees under the age of 18 are granted 14 consecutive days of leave in practice and which are the measures/sanctions applied in cases of non-compliance.

As regards supervision, the Committee takes note of the information on the monitoring activity of the Labour Inspectorate provided in the report. It notes the number of violations of the regulations providing short working hours for children subject to compulsory education during the reference period, namely: 80 in 2010, 48 in 2011, 52 in 2012 and 63 in 2013. As regards the measures taken by the Labour Inspectorate, the report indicates that a total of 236 instructions to remedy the violations were issued and 179 administrative protocols were drawn up against the employers. The Committee asks whether fines were imposed on employers who did not comply with the regulations providing short working hours for children who are still subject to compulsory education.

Conclusion
The Committee concludes that the situation in Ukraine is not in conformity with Article 7§3 of the Charter on the grounds that:

- the definition of light work is not sufficiently precise;
- the duration of working time for children aged 16-18 who are still subject to compulsory education is excessive and therefore cannot be qualified as light work.

Historic elements
The situation is not in conformity on these grounds for the first time.

Article 7§5 - Fair pay
24. RESC 7§5 ARMENIA

The Committee takes note of the information contained in the report submitted by Armenia.

Young workers
The report states that the minimum hourly wage for a 40-hour week (an adult worker) is AMD 270 (€ 0.50), while for the 36-hours week (16-18 years olds) is AMD 300 (€ 0.56) and for the 24-hour week (young workers below 16 years of age) is AMD 450 (€ 0.84). The report does not specify whether this is the net hourly wage.

The Committee recalls that young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15/16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.
Since Armenia has not accepted Article 4§1 of the Charter, the Committee makes its own assessment on the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account. Thus, the Committee asked in its previous conclusion (Conclusions 2011) information on the net values of minimum wage and average wage in order to assess the situation. The report does not provide the requested information.

The Committee takes note of the data provided by other sources (National Statistical Service of Armenia) according to which the average monthly wage amounted to AMD 146,524 (€ 269) in 2013. From the data provided in the report, it results that the minimum monthly wage of an adult worker stood at AMD 43,200 (€ 79) as of 1 July 2013. The Committee notes that the monthly minimum wage corresponds to only 30% of the average wage, which is too low to secure a decent standard of living. Therefore, the Committee considers that the right to a fair pay of young workers is not guaranteed since the reference wage itself (the minimum wage of adult workers) is too low to secure a decent standard of living.

**Apprentices**

The report provides no information as to the allowances paid to apprentices. The Committee reiterates its request that the next report provide information and examples on the levels of allowances paid to apprentices at the beginning of apprenticeship and at the end. It points out that if the next report does not provide the requested information there will be nothing to establish that the situation in Armenia is in conformity with the Charter on this point.

**Conclusion**

The Committee concludes that the situation in Armenia is not in conformity with Article 7§5 of the Charter on the ground that the young workers’ wages are not fair.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

**25. RESC 7§5 AZERBAIJAN**

The Committee takes note of the information contained in the report submitted by Azerbaijan. The Committee recalls that in application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices to appropriate allowances. This right may result from statutory law, collective agreements or other means. The “fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above). In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

**Young workers**

The Committee previously concluded (Conclusions 2011) that the situation in Azerbaijan was in breach of Article 7§5 of the Charter on the ground that the minimum wage of young workers was not fair.

The report states that according to Article 253 of the Labour Code young workers under 18, who work for a reduced working time, are paid the same wage for the same kind of work as adults. The work of young workers under 18 who are engaged in piecework is paid on the basis of the piece-rate pay determined for adults. Young workers under 18 are given additional payment according to rates for the time difference between the reduced working time and the daily working time for adults.

With regard to the minimum wage of adult workers, in its Conclusions 2014, the Committee found the situation in Azerbaijan not to be in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living as it
amounted up to only 27.55% of the net average wage, in contrast with the 60% of the net average wage which is considered as a satisfactory threshold under Article 4§1.

The Committee recalls that the young worker’s wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15-16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.

The Committee notes that in the present case the young workers are paid the same wage for the same kind of work as adults and that the monthly minimum wage of adults represents only 27.55% of the net average wage. Under Article 7§5, the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers’ wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). The Committee notes that the young workers’ wage represents only 27.55% of the average net wage, which does not meet the requirements of Article 7§5 of the Charter. It therefore considers that the situation is not in conformity with the Charter on the ground that the young workers’ wages are not fair.

The Committee recalls that each report should provide information on net values of both minimum and average wages for the relevant reference period. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person.

**Apprentices**

The report indicates that the terms, procedures and duration of training and the parties’ obligation are governed by the respective agreement for training concluded upon mutual consent between the employer and the employee.

The report does not provide information on the allowances paid to apprentices. The Committee reiterates its request that the next report provide examples of allowances paid to apprentices. It points out that if the next report fails to provide the information requested there will be nothing to show that the situation in Azerbaijan is in conformity with the Charter on this point.

**Conclusion**

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 7§5 of the Charter on the ground that the young workers’ wages are not fair.

**Historic elements**

*The situation is not in conformity on this ground since Conclusions 2011.*

*On the previous occasion, the delegate of Azerbaijan provided written information (Detailed Report concerning Conclusions 2011, § 134).*

**26. RESC 7§5 ROMANIA**

The Committee takes note of the information contained in the report submitted by Romania.

**Young workers**

The Committee previously concluded (Conclusions 2011) that the situation in Romania was not in conformity with Article 7§5 of the Charter on the ground that the right of young workers and apprentices to a fair wage and other appropriate allowances was not guaranteed in practice.
The Committee notes from the Report of the Governmental Committee concerning Conclusions 2011 that according to the Labour Code, all employees enjoy the right to equal pay for equal work and the minimum wage levels are set by the applicable collective agreements.

With regard to the minimum wage of adult workers, in its Conclusions 2014, the Committee found the situation in Romania not to be in conformity with Article 4§1 of the Charter on the ground that the monthly minimum wage does not ensure a decent standard of living as it amounted up to only 34.32% of the net average wage, in contrast with the 60% of the net average wage which is considered as a satisfactory threshold under Article 4§1.

The Committee recalls that the young worker’s wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For 15-16 year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16-18 year-olds, the difference may not exceed 20%. The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.

The Committee notes that in the present case the young workers are paid the same wage for the same kind of work as adults and that the monthly minimum wage of adults represents only 34.32% of the net average wage. Under Article 7§5, the Committee examines if young workers are paid the equivalent of 80% of a minimum wage in line with the Article 4§1 fairness threshold (60% of the net average wage). Thus, if young workers’ wage amounts to 80% of the minimum threshold required for adult workers (60% of the net average wage), the situation would be in conformity with Article 7§5 (Conclusions XVII-2 (2005), Spain). The Committee notes that the young workers’ wage represents only 34.32% of the average net wage, which does not meet the requirements of Article 7§5 of the Charter. It therefore considers that the situation is not in conformity with the Charter on the ground that the young workers’ wages are not fair.

The Committee recalls that, in order to assess the situation, each report should provide information on net values of both minimum and average wages for the relevant reference period. The Committee underlines that it requests information on the net values, that is, after deduction of taxes and social security contributions. Net calculations should be made for the case of a single person.

**Apprentices**

With regard to apprentices, the report indicates that according to Law No. 279/2005 on Apprenticeship at the Workplace, an apprentice is any natural person of 16 years of age but not more than 25. The duration of the apprenticeship cannot be less than 12 months and more than 3 years.

The Law on Apprenticeship at the Workplace provides that the basic monthly wage established by the apprenticeship contract shall be at least equal to the gross minimum wage in the country for 8 working hours daily, respectively 40 h per week. The duration of working time in case of young workers under 18 years of age is 6 hours daily and 30 hours weekly. The Committee notes that according to the same Law, the time necessary for the theoretical training of the apprentices shall be included in the normal working time.

The report indicates that the non-observance of the legal provisions regarding the apprentices’ allowance is sanctioned with a fine of 10,000 Romanian Lei (RON) (€ 2,260). The Committee asks information on how the above mentioned legal provisions are implemented into practice. It also asks information on the monitoring activity and findings of the Labour Inspectorate, the number and nature of violations detected and sanctions imposed in relation to allowances paid to apprentices. Pending receipt of the information requested, the Committee reserves its position on this point.

**Conclusion**
The Committee concludes that the situation in Romania is not in conformity with Article 7§5 of the Charter on the ground that young workers' wages are not fair.

**Historic elements**

The situation is not in conformity on this ground since Conclusions 2006.

On the previous occasion, the delegate of Romania provided written information (Detailed Report concerning Conclusions 2011, § 169).

27. RESC 7§5 UKRAINE

The Committee takes note of the information contained in the report submitted by Ukraine.

**Young workers**

In its previous conclusion, the Committee asked whether young workers receive the "same hourly wage" or "same monthly wage" in comparison to adult workers (Conclusions 2011). The report indicates that young workers under 18 are paid for their reduced working hours at the same wage rate (the same salary) as the standard (normal) work time of adult employee of the same profession.

Since Ukraine has not accepted Article 4§1 of the Charter, the Committee makes its own assessment of the adequacy of young workers wage under Article 7§5. For this purpose, the ratio between net minimum wage and net average wage is taken into account. Thus, the Committee asked in its previous conclusion for the information on the net values of minimum wage and average wage in order to assess the situation (Conclusions 2011). The report indicates that in 2014 the monthly minimum wage amounted to 1,218 Ukrainian Hryvnia (UAH) (€ 49.11) and the average monthly wage was 3,537 UAH (€ 142.62).

From the information provided in the report, the Committee notes that the minimum wage corresponds to only 34.44% of the net average wage, which is too low to secure a decent standard of living for young workers. Accordingly, the situation in Ukraine is not in conformity with Article 7§5 of the Charter.

**Apprentices**

The Committee previously asked information with regard to the allowances paid to apprentices (Conclusions 2011).

The report indicates that according to the Regulation on payment for labour during apprenticeship, retraining or training to other professions approved through the Decree No. 700 dated 28 June 1997 of the Cabinet of Ministers of Ukraine, the apprentices are paid in case of individual training for worker professions with piece rate wage system as follows: for the first month of apprenticeship at the rate of 75%, for the second – 60%, for the third – 40%, for the fourth and subsequent months till the end of the apprenticeship as envisaged in the program – 20% of the first class grade rate for appropriate profession at the enterprise.

Apprentices are paid in case of individual training for worker professions with time-based wage system as follows: for the first and second months of apprenticeship at the rate of 75%, for the third and fourth months – 80%, for the subsequent months till the end of the apprenticeship as envisaged in the program – 90% of the first class grade rate for appropriate profession at the enterprise.

In the case of training immediately at production site for worker professions where monthly rate is envisaged, apprentices are paid on the basis of minimum monthly rate for the enterprise in accordance with the procedure envisaged for apprentices training for worker professions with time-based wage system (Para. 6 of the Regulation).
The Committee asks how the Labour Inspectorate monitors the actual allowances paid to apprentices in practice. Pending receipt of the information requested, the Committee reserves its position on this point.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§5 of the Charter on the ground that the young workers' wages are not fair.

Historic elements

The situation is not in conformity on this ground for the first time.

Article 7§10 - Special protection against physical and moral dangers

28. RESC 7§10 ESTONIA

The Committee takes note of the information contained in the report submitted by Estonia.

Protection against sexual exploitation

In its previous conclusion (Conclusions 2011) the Committee noted that Article 177 of the Penal Code criminalises the use of a person younger than 18 years as a model or actor in the manufacture of pornographic work and the use of a person under 14 years of age in pornographic or erotic work or erotic picture, film, writings or other works or reproductions.

The Committee recalled in this connection that all acts of sexual exploitation must be criminalised, including child prostitution (offer, use or provision of a child for sexual activities for remuneration or any other kind of consideration), child pornography (procurement, production, distribution making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct or realising images representing a child engaged in sexually explicit conduct). Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.

The Committee notes that the new Child Protection Act of 2014 (in force between 23/12/2013 and 31/12/2015) provides in its Section 178 (Manufacture of works involving child pornography or making child pornography available) that manufacture, acquisition or storing, handing over, displaying or making available to another person in any other manner of pictures, writings or other works or reproductions of works depicting a person of less than 18 years of age in a pornographic situation, or a person of less than 14 years of age in a pornographic or erotic situation, is punishable by a pecuniary punishment or up to three years’ imprisonment.

The Committee notes that the UN Committee on the Rights of the Child (UN-CRC) recommends that protection against use in the production of erotic works be extended to all persons under 18 years of age (Concluding observations on the report submitted by Estonia under Article 12(1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography).

The Committee considers that making a distinction as does Estonian law between what can be considered as ‘erotic’ and ‘pornographic’ and allowing the production of what can be referred to a erotic material depicting a child between 14 and 18 years of age, runs counter to the requirement of the States to protect children against physical hazards and thus fails to guarantee their fundamental rights and may expose them to serious impairments of the rights to life, health and psychological and physical integrity. Therefore, the Committee concludes that the situation is not in conformity with the Charter as children between 14 and 18 years of age are not effectively protected against sexual exploitation.
In reply to the Committee’s question as to whether child victims of sexual exploitation can be prosecuted for any act connected with such exploitation, the Committee notes from the report that a child victim of sexual exploitation cannot be accused or prosecuted in any legal manner as he/she is exclusively treated as a victim with all rights stemming from the civil law and the penal law.

**Protection against the misuse of information technologies**

In reply to the Committee’s question the report states that the Information Society Act was amended, transposing the E-Commerce Directive 2003/31/EC, prescribing requirements for information society service providers. Even if there are no specific guidelines for internet providers, methods are established for quick removal of inappropriate or illegal material being disseminated over the internet. Police and internet service providers have close cooperation on daily basis. A hint hotline has been established which provides the opportunity to notify about web pages displaying illegal or inappropriate content. Besides, according to the report, children are advised and trained on the subject of internet safety.

The Committee notes from ECPAT (Global monitoring status of action against commercial sexual exploitation of children, Estonia) that in June 2010, Estonia’s mobile operators signed a code of conduct on safer mobile use by younger teenagers and children. This agreement falls under the umbrella of the European Union’s European Framework for Safer Mobile Use and includes such requirements as the need to offer access control restrictions where adult content is provided.

**Protection from other forms of exploitation**

The Committee recalls that under Article 7§10 of the Charter States must prohibit the use of children in other forms of exploitation such as domestic/labour exploitation, including trafficking for the purposes of labour exploitation and begging. States must also take measures to prevent and assist street children. The Committee wishes to be informed about the measures taken, both legislative as well as in practice to combat trafficking in children as well as to assist street children.
Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 7§10 of the Charter on the ground that children between 14 and 18 years of age are not effectively protected against all forms of sexual exploitation.

Historic elements

The situation is not in conformity on this ground for the first time.

29. RESC 7§10 UKRAINE

The Committee takes note of the information contained in the report submitted by Ukraine.

Protection against sexual exploitation

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as the legislation only criminalised child prostitution when the victim was under 16 years of age, while using the sexual services of a child over 16 years of age or of a child that had reached the age of puberty was not considered a crime.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter on the ground that all children until the age of 18 were not effectively protected against child pornography. In particular, the Committee noted that Article 301 of the Criminal Code only assigned responsibility for coercing children into producing pornographic material and did not assign criminal responsibility if it could be proved that the child was paid for the services or was voluntarily involved in production of pornographic materials.

The Committee notes from the report that the Ministry of Social Policy by its Order of February 2013 established an Interagency Working Group to examine the violation of the Charter on these grounds. The Work Group includes, among others, representatives of the Ministry of Justice, International Affairs, Commissioner for Children’s Rights. This group has initiated the preparation of proposals concerning the definition of ‘child prostitution’. According to the report, the Action Plan for the Implementation of the Social Charter also envisages amending the legislation to bring it into conformity with the Charter as regards the provisions concerning sexual exploitation of children. The Committee wishes to be kept informed of these developments.

The Committee recalls that under Article 7§10 of the Charter, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children’s involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions. The following are the minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts.
- a national action plan combating the sexual exploitation of children should be adopted.

An effective policy against commercial sexual exploitation of children should cover primary and interrelated forms: child prostitution, child pornography and trafficking in children.

- child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration;
- child pornography is given an extensive definition and takes account of the fact that new technologies have changed the nature of child pornography. It includes
the procurement, production, distribution, making available and simple possession of material that visually depicts a child engaged in sexually explicit conduct.

- trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, the Committee reiterates its findings of non-conformity on the grounds that using sexual services of a child is only criminalised until the age of 16 and child pornography is not criminalised until the age of 18.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as Article 301 of the Criminal Code only criminalised the storage of pornographic material and not a simple possession of child pornography that was not intended for sale or distribution.

The Committee notes that the Law of 20 January 2010 No 1819-IV amended some legal acts in regard to child pornography. Article 7 of the Law on Protection of Public Morality No 1236/IV, as amended, provides that manufacturing, storage, advertising, distribution and purchase of products containing child pornography is prohibited.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter on this point has not changed. The Committee therefore reiterates its previous finding of non-conformity on the ground that simple possession of child pornography is not a criminal offence.

In its previous conclusion the Committee noted that the status of the victim was not well defined in the Criminal Code, and the legislation did not provide clear and sufficient sanctions for physical and psychological pressure during interrogations of child victims, and the sanctions, even where adequate, were not enforced.

It notes in this respect that the Criminal Code contains provisions that provide safeguards aimed to protect children’s rights in criminal proceedings. The so called ‘green room’ methodology has been developed to uphold children’s rights in the criminal process, keeping atmosphere of trust and mutual understanding during the interrogation.

**Protection against the misuse of information technologies**

In reply to the Committee question in the previous conclusion the report states that the Law on Telecommunications as amended, envisages that telecommunications operators may be required by the court decision to restrict access of their subscribers to the resources used for distribution of child pornography.

According to the report, on February 20, 2012 Ukrainian internet service providers signed the Code on protecting children from abuse on Internet.

The Code stipulates the principles of IT companies’ activity in various areas, such as interaction with Internet users, development of services and software, personal information and other materials posted on the web by users.

The aim of the document is to combat the spread of child pornography, as well as to promote the rules of Internet safety and parental control.

The Cybercrime Department of the Ministry of Internal Affairs has developed recommendations for parents to help them protect children from negative effects of illegal content.
Protection from other forms of exploitation

In its previous conclusion the Committee found that the measures taken address the problem of street children were insufficient and disproportionate in the circumstances.

It notes from the report that in accordance with the Law on Childhood Protection the term street children means children who have been abandoned by their parents, or have wilfully left their family or child care facility and have no fixed abode. The law distinguishes two categories in this respect – children in difficult life circumstances (whose parents fail to fulfil parental responsibilities) and children left without parental care. According to the report, more than 33,000 preventive activities were carried out in 2013 during which 13,285 street children were revealed and 2,469 were removed from streets. According to the report, the number of street children has significantly decreased since 2008. The report states that the reduction in the number of street children is also explained by the fact that the number of children in difficult life circumstances has gone down (by 65% in 2013 as compared to 2006).

The Committee takes note of measures taken to combat the phenomenon of street and neglected children, such as the State Programme to Combat Child homelessness and Neglect as well as the annual National Programmes for the implementation of the UN Convention on the Rights of the Child.

The Committee takes note of the information regarding trafficking of human beings. The Law on Combating Human Trafficking of 13 April 2012 defines the organisational and legal framework. According to Article 23 the State shall provide assistance to the child from the moment it has seemed likely that he/she has been a victim of trafficking, until rehabilitation of the child is completed. The identity of the child shall be established as well as the priority measures to help him/her. Children who acquire the status of human trafficking victim are eligible for a one-off material assistance. The Committee takes note of the statistics relating to trafficking of human beings and the numbers of identified child victims.

The Committee notes from the Report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine (2014) that GRETA urges the Ukrainian authorities to take further steps to ensure that the return of victims of trafficking is conducted with due regard for their rights, safety and dignity and the status of related legal proceedings. This implies risk assessment before a person is sent back to his/her country, protection from retaliation and re-trafficking and, in the case of children, fully respecting the principle of the best interests of the child.

GRETA further considers that the authorities should improve the identification of victims of trafficking among unaccompanied foreign minors and take steps to address the problem of disappearance of unaccompanied foreign children by providing suitable and safe accommodation and assigning adequately trained legal guardians. The Committee wishes to be informed of measures taken in this respect.

Conclusion

The Committee concludes that the situation in Ukraine is not in conformity with Article 7§10 of the Charter on the grounds that:

- child prostitution is only criminalised until the age of 16;
- child pornography is not criminalised until the age of 18.
- simple possession of child pornography is not a criminal offence.

Historic elements

The situation is not in conformity on these grounds since Conclusions 2011.

On the previous occasion, the Ukrainian delegate indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §268).
Article 8§1 – Maternity leave

30. RESC 8§1 AZERBAIJAN

The Committee takes note of the information contained in the report submitted by Azerbaijan.

Right to maternity leave

The Committee previously noted that Article 125 of the Labour Code, which applies both to the private and the public sector, provides for a paid leave of 70 days before childbirth (pregnancy leave) and 56 days afterwards (maternity leave), which can be extended to 70 days in case of multiple births or other complications. Further extensions are provided for women working in the industrial sector.

The Committee previously asked whether there is a period of compulsory postnatal leave and whether part of the leave can be relinquished at the employee’s request. It also asked whether part of the pregnancy leave could be postponed after the birth. As the report does not provide any clarifications in this respect, the Committee reiterates these questions and considers that, should the next report fail to answer them, there will be nothing to prove that the situation is in conformity with the Charter on this point.

Right to maternity benefits

Benefits corresponding to the average monthly pay during the 12 months preceding the birth are paid for the entire period of pregnancy and maternity leave, both in the private and public sector.

In order to be entitled to these benefits, the woman concerned needs to have contributed to the social scheme for at least six months. The Committee asks the next report to clarify how this period of six months is calculated, namely whether the person needs to have contributed during the last six months preceding the period of entitlement to pregnancy leave, whether she needs to have at least six months of contribution over the previous 12 months or what other reference period is considered when assessing the six-months’ requirement.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

The Committee previously found that the criteria applied in assessing the qualifying period to receive maternity benefits were not in conformity with the Charter, on grounds that the periods of unemployment were not taken into account. The report acknowledges that, although draft legislation has been proposed to solve this problem, no changes have been adopted yet. Accordingly, the situation remains not in conformity with Article 8§1 of the Charter on this point.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 8§1 of the Charter on the ground that interruptions in the employment record are not taken into account in the assessment of the qualifying period required for entitlement to maternity benefits.

Historic elements

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the Representative of Azerbaijan provided written information indicating that a Draft Law “On amendments to Law on Social Insurance” was to be elaborated and submitted to relevant state agencies to remedy the violation (Detailed Report concerning Conclusions 2011, §280).
31. **RESC 8§1 BOSNIA AND HERZEGOVINA**

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

**Right to maternity leave**

The report recalls that the Labour Law in the Institutions of Bosnia and Herzegovina (Official Gazette 26/04, 7/05, 48/05, 60/10, 32/13), Section 4, sub-paragraph a) regulates the protection of women and maternity in public institutions, public enterprises, associations and foundations, cross-entity corporations and other institutions performing additional responsibilities of Bosnia and Herzegovina; in conformity with Article 45 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina (Official Gazette 19/02, 35/03, 4/04, 17/04, 26/04, 37/04, 48/05, 2/06, 32/07, 43/09, 8/10) the same rules apply to civil servants in ministries, independent administrative organisations and administrative organisations in ministries, as well as other institutions established by special laws or entrusted with administration operations by special laws. The Committee notes from the information provided by the representative of Bosnia and Herzegovina to the Governmental Committee (Report concerning Conclusions 2011, §281) that Article 36§1 of the Law on Salaries in Bosnia and Herzegovina Institutions (Official Gazette 50/08) provides for a pregnancy, childbirth and child care leave of twelve consecutive months, including a mandatory postnatal leave of 42 days.

As regards the provisions applying to the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District, the Committee had previously noted that they all provided for an overall pregnancy, maternity and parental leave of twelve consecutive months, which can be extended to 18 months in case of multiple births and includes a compulsory postnatal leave of 42 days in Federation of Bosnia and Herzegovina and Brčko District and of 60 days in Republika Srpska (Conclusions 2011).

**Right to maternity benefits**

As regards public sector employees of State institutions, the report refers to a Decision issued in November 2010 by the Council of Ministers (Decision on the Manner and Procedure of Exercising the Right to Maternity Benefits in the Institutions of Bosnia and Herzegovina, Official Gazette 95/10) as a follow-up to a Constitutional Court's judgment of 28 September 2010, which abrogated a provision allowing for different conditions and amount of maternity benefits to be paid to state employees depending on their place of residence. In accordance with the Council of Minister's decision, as of 29 September 2010 all employees of the Bosnia and Herzegovina State Institutions, regardless of their place of residence, are entitled to maternity benefits in the amount of the average net salary earned in the last three months before the maternity leave. The Committee refers to its Statement of Interpretation on Article 8§1 in the General Introduction and asks what are the conditions for entitlement to maternity benefits and to what extent interruptions in the employment record are taken into account in this respect. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this issue.

In the Federation of Bosnia and Herzegovina, the same rules on maternity benefits apply to employees in the private as in the public sector but the conditions for entitlement and the level of the benefits are regulated at canton level. In this connection, the Committee had previously found that, contrary to the Charter's requirement, some of the cantons did not provide for maternity benefits or the benefits' level was inadequate. The report acknowledges that, while new legislation is being prepared to bring the situation in conformity with the Charter, no
change has occurred yet. As a result, two cantons do not provide yet for maternity benefits while in some others the level of benefits is below 70% of the employee's salary or is based on the average salary in the canton rather than the employee’s salary. Accordingly, the Committee reiterates its finding of non-conformity with Article 8§1 of the Charter. It asks the next report to provide updated information on this point and to specify what are the conditions for entitlement to benefits in the different cantons, on what basis they are calculated and what is their level, with regard to the employee’s previous salary and with regard to the poverty threshold (see above).

In the Republika Srpska, the same rules on maternity benefits apply to employees in the private as in the public sector. In particular, pursuant to Section 84 of the Labour Act the employee is entitled to compensation amounting to her average salary over the last three months preceding the maternity leave. If the employee has not received a salary over each of the last six months, the compensation shall be paid in accordance with the collective agreement for the months preceding the month preceding the maternity leave. Section 94§2 of the Labour Act provides that the salary compensation shall not be lower than 50% of the employee’s average salary in the reference period or the average salary which she would have earned if she had been working. The Republika Srpska laws provide that salary compensation paid during maternity leave amounts to 100% of the determined base. The Committee asks the next report to clarify what are the criteria for entitlement to maternity benefits and under what circumstances, if any, salary compensation corresponding to 50% of the employee’s average salary can be paid in respect of maternity benefits. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this point.

As regards the Brčko District, the Committee notes from the information provided by the representative of Bosnia and Herzegovina to the Governmental Committee (Report concerning Conclusions 2011, §281) that Section 45§1 of the Labour Act of Brčko District provides for a compensation of salary during maternity leave, provided that contributions were paid in pension and health care schemes. The compensation of salary shall amount to 100% of the base salary, calculated over a period of 12 months. According to Article 2, 3, 4 and 5 of the Decision on Conditions and Manner of Payment of Compensation to Employees During Maternity Leave, issued on the basis of Section 45 of the Brčko District Labour Act and Brčko District Child Care Act (consolidated text), an employee is entitled to compensation during maternity leave, for the period determined in the Labour Act. In the determination of the entitlement, the employer shall issue a decision establishing the right to maternity leave, the duration and amount of compensation for salary to be paid to the employee. During maternity leave an employee is entitled to a compensation for salary equal to the average net salary which was earned during the last three months prior to the maternity leave. The calculation of wages, payment of contributions and payment of compensation are done by the employer. The Committee notes from the report that Section 45 of the Brčko District Labour Act was amended on 23 August 2014 and a new Decision on the Conditions and Manners of Payment of Compensation of Salary during Maternity Leave (No. 34-000890/13 of 15 January 2014) entered into force on 22 January 2014, out of the reference period. The Committee recalls that under Article 8§1 of the Charter, the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment as long as these conditions are reasonable; in particular, if qualifying periods are required, they should allow for some interruptions in the employment record (Statement of Interpretation, Conclusions 2015). It accordingly asks the next report to clarify what are the conditions for entitlement to salary compensation during maternity leave, in particular what is the length of the contributory period required, whether interruptions in the employment record are taken into account and whether the salary compensation is calculated on the basis of the average salary of the employee during her last three or twelve months before the leave. It furthermore asks whether the minimum rate of compensation corresponds at least to the poverty threshold, defined as 50%
of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value. It reserves in the meantime its position on this point.

**Conclusion**

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§1 of the Charter on the ground that maternity benefits are not adequate or not provided for in certain parts of the country.

**Historic elements**

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the Representative of Bosnia and Herzegovina provided written information (Detailed Report concerning Conclusions 2011, §281).

### 32. RESC 8§1 SLOVAK REPUBLIC

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

**Right to maternity leave**

The Labour Code (Articles 166, 167, 168) provides for 34 weeks maternity leave (37 weeks in the case of a single mother, 43 weeks in the case of multiple births), of which 14 weeks are compulsory, including 6 weeks after birth. The report indicates that the same regime applies to the private and public sectors.

**Right to maternity benefits**

According to Act No. 461/2003 Coll. on Social Insurance, maternity benefits are available to employees covered by health insurance for at least 270 days in the two years preceding birth. In response to the Committee’s question, the report clarifies that periods of unemployment are taken into account when calculating the qualifying period of insurance, provided that the person concerned had voluntary social insurance.

As regards the amount of maternity benefits, the Committee previously held that their level was not adequate (Conclusions 2011). It notes from the report that during the reference period the period of time during which maternity benefits are provided was increased from 28 to 34 weeks (37 weeks in the case of a single mother, 43 weeks in the case of multiple births) and that the level of maternity benefits was increased from 55% to 65% of the worker’s salary. The same regime applies both to the private and public sectors. While taking note of the progress made, the Committee recalls that Article 8§1 of the Charter requires maternity benefits to be equal to the salary or close to its value, i.e. at least equal to 70% of the employee’s previous salary. Therefore, despite the progress made, the Committee cannot consider the situation to be in conformity in this respect.

The Committee refers to its Statement of Interpretation on Article 8§1 (Conclusions 2015) and asks whether the minimum rate of maternity benefits corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

**Conclusion**

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits is inadequate.
Historic elements

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the Representative of the Slovak Republic provided written information (Detailed Report concerning Conclusions 2011, §283).

33. RESC 8§1 TURKEY

The Committee takes note of the information contained in the report submitted by Turkey.

Right to maternity leave

The Committee previously noted (Conclusions 2011) that pursuant, to Section 74 of the Labour Act No. 4857, "In principle, female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement". A similar provision applies to women employed in the public service under Section 104 of the Civil Service Act No. 657. Under Section 16 of the Press Labour Act, female journalists are entitled to maternity leave from the seventh month of their pregnancy until the end of the second month following birth.

Under the Labour Act, the leave can be extended, on the basis of a medical certificate, in case of multiple birth or if required in view of the worker’s health condition and the working conditions. On the other hand, the law explicitly allows the prenatal leave to be shortened, with a doctor’s consent or in case of preterm delivery, in which case the days not taken before the birth can be added to the postnatal leave. In this connection, while taking note of the pecuniary sanctions provided under Sections 104 and 105 of the Labour Act against employers who would not respect the employee’s right to maternity leave, the Committee had requested clarifications as to whether there is a six-week period of compulsory postnatal leave, including for employed women coming under the Press Labour Act.

The Committee recalls that, while national law may permit women to opt for a shorter period of maternity leave, in all cases there must be a compulsory period of postnatal leave of no less than six weeks which may not be waived by the woman concerned. If no such compulsory leave is provided for, legal safeguards must exist to avoid any undue pressure on employees to shorten their maternity leave, in particular legislation against discrimination at work based on gender and family responsibilities, an agreement between social partners protecting the freedom of choice of the women concerned, or other guarantees enshrined in the general legal framework surrounding maternity, for instance a parental leave system whereby either parents can take paid leave at the end of the maternity leave.

The report refers to the possibility to prolonge the maternity leave by an additional leave of six months under Section 74 of the Labour Act, or up to 24 months for civil servants and their spouse, under Sections 104 and 108 of the Civil Service Act No. 657. In both cases, however, such leave is unpaid. The Committee reiterates its request of clarifications as to whether under the relevant laws (Labour Act, Civil Service Act, Press Labour Act) the postnatal leave provided is compulsory or can be shortened at the employee’s request. It furthermore asks the next report to provide any relevant statistical data on the average length of maternity leave effectively taken. It reserves in the meantime its position on this point.

Right to maternity benefits

In its previous conclusions (Conclusions 2011), the Committee found that, while women employed in the public sector continue receiving their wage during maternity leave, the situation of women employed in the private sector and receiving maternity benefits under the Social Insurance and Universal Health Insurance Act No. 5510 was not in conformity with Article 8§1 of the Charter on account of the inadequate level of such benefits, corresponding only to 66% of the worker’s earnings in the last three months. The Committee noted that were
entitled to this benefit the employed women who had contributed to the insurance scheme for at least 90 days over a period of one year prior to the birth.

In response to this finding, the report explains that the temporary incapacity allowance granted during the maternity leave is calculated on the basis of two thirds of the gross daily income of the employee. For the purpose of this calculation, the daily income which is taken into account cannot be less than the daily minimum wage (that is, for the first half of 2012, TRY 886.50 (€385) / 30 = TRY 29.55 (€13)) and cannot exceed 6.5 times this amount (TRY 29.55 x 6.5 = TRY 192.07 €83)). Accordingly, an employee earning the minimum wage would get as daily maternity allowance the sum of TRY 19.07 (€8) (2/3 of TRY 29.55), which would correspond to 83% of her net wage (TRY 23.37 (€10)).

The Committee takes note of this information, but asks the next report to clarify whether a woman earning more than the minimum wage is also entitled, on the basis of this regime, to an allowance corresponding at least to 70% of her previous wage. As regards the ceiling applying to the allowance, it recalls that a ceiling on the amount of compensation for high salary earners is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the benefit reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit. It accordingly asks the next report to provide data concerning the percentage of women earning a daily gross wage higher than the upper limit ceiling set by the law (i.e. 6.5 x the daily gross minimum wage), the wage bracket of this category or at least the average monthly wage for executive women. It reserves in the meantime its position on this point.

With reference to its Conclusions 2013 on Article 13, where the Committee had noted that certain provisions of Act No. 5510 only applied to foreign residents under conditions of reciprocity, the Committee asks the next report to clarify whether the provisions concerning the temporary incapacity allowance during maternity leave apply without restrictions to the nationals of States Parties to the Charter who are lawfully residing in Turkey.

In response to the Committee’s request for clarification concerning the scope of the Press Labour Act, the report confirms that this Act derogates from the general regime set by the Labour Act No. 4857 and applies to all employees of the press sector. Pursuant to this Act, employed women on maternity leave are entitled to the payment of half their salary by their employer. The Committee asks the next report to provide further information on these provisions, including the conditions of entitlement to the benefits and their level, and considers in the meantime that the level of maternity benefits provided to women employed in the press sector is not adequate.

Furthermore, with reference to its Statement of Interpretation (Statement of Interpretation on Article 8§1, Conclusions 2015), the Committee asks whether the minimum rate of maternity benefits – under the Labour Act, the Press Labour Act and the Civil Service Act – corresponds at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

**Conclusion**

The Committee concludes that the situation in Turkey is not in conformity with Article 8§1 of the Charter on the ground that the level of maternity benefits provided to women employed in the press sector is not adequate.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*
Article 8§2 - Illegality of dismissal during maternity leave

34. RESC 8§2 BOSNIA AND HERZEGOVINA

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.

Prohibition of dismissal

According to the report, the labour codes in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District expressly provide that the employer cannot terminate an employment contract or assign an employee to another job because of her pregnancy or because she is on maternity leave, unless the transferral is justified by medical grounds.

In the Federation of Bosnia and Herzegovina, the dismissal of a pregnant employee is prohibited under Section 53 of the Labour Act when the dismissal is related to the employee’s pregnancy, but it is allowed for other reasons, for example when economic, technical or organisational reasons justify such a dismissal or when the employee is responsible for serious misconduct or gross violation of obligations under the employment contract. The Committee recalls that Article 8, paragraph 2 of the Charter allows, as an exception, the dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. It asks the next report to clarify, by providing relevant examples, under what circumstances an employee who is pregnant or in maternity leave may be dismissed in the Federation of Bosnia and Herzegovina and whether the same rules apply to employees in the private and in the public sector. It considers in the meantime that the situation is not in conformity with Article 8§2 of the Charter on grounds that there is no adequate protection against dismissal of employees during pregnancy or maternity leave.

In the Republika Srpska, Section 77 of the Labour Act prohibits the dismissal of any employee, in the private as in the public sector, during pregnancy and maternity leave. Pursuant to Section 132 of the Labour Act, the employer cannot terminate an employment contract for economic, organisational or technological reasons during pregnancy, maternity leave, parental leave and part-time work in order to take care of a child.

As regards the Brčko District, the report states that employees are protected against dismissal not only during pregnancy but also until the end of maternity leave, but that there are no specific provisions governing unlawful dismissal of pregnant women and new mothers. The Committee had however previously noted (Conclusions 2011) that under Section 43 of the Labour Act of Brčko District the dismissal was prohibited for reason of pregnancy or maternity leave. It asks the next report to clarify whether the law explicitly provides for the prohibition to terminate the employment contract of an employee who is pregnant or in maternity leave and under what circumstances, if any, the dismissal of an employee during pregnancy or maternity leave is possible under Brčko District legislation. It furthermore notes from the report that, as regards employees in the public sector, Section 128 of the Civil Service Act of Brčko District prohibits the dismissal of an employee because of her pregnancy. The Committee asks the next report to specify on what grounds, not related to pregnancy, the dismissal of an employee is allowed by this Act during pregnancy or maternity leave. It reserves in the meantime its position on these issues and considers that, should the next report fail to provide information on the questions raised, there will be nothing to establish that the situation is in conformity with Article 8§2 of the Charter in respect of the Brčko District.

The Committee asks the next report to clarify whether the employees of Bosnia and Herzegovina institutions are adequately protected from dismissal during pregnancy and
maternity leave under the Labour Law in the Institutions of Bosnia and Herzegovina, the Law on Civil Service in the Institutions of Bosnia and Herzegovina, or any other relevant legislation, and what exceptions, if any, apply to this protection.

**Redress in case of unlawful dismissal**

The Committee previously noted (Conclusions 2011) that in the Federation of Bosnia and Herzegovina, pursuant to Section 103 of the Labour Act, the employee may contest her dismissal before the courts within one year. If the courts find the dismissal unlawful, the employer can be ordered to reinstate the employee and pay her compensation of salary for the period during which she did not work, as well as a compensation for damage suffered, severance pay and other benefits to which the employee is entitled by law, collective agreement, and the employment contract. The Committee underlines that domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. It therefore asks whether there is a ceiling on compensation for unlawful dismissals. If so, it asks whether this upper limit covers compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage can also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asks whether both types of compensation are awarded by the same courts, and how long it takes on average for courts to award compensation. It furthermore asks whether the same rules apply to employees in the private as in the public sector. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

In the Republika Srpska, Section 118 of the Labour Act provides for the employee’s right to bring a claim before a court within three years from the violation; in case of unlawful dismissal, the court can order the employee’s reinstatement. The same rules apply to employees in the private as in the public sector. The Committee previously asked whether an adequate compensation is also available, in particular in case the reinstatement is impossible. The report refers to the unemployment benefits available to the employee, to the fines which can be imposed on the employer and to the fact that no case law is available concerning the unlawful dismissal of employees during pregnancy or maternity leave, but it does not clarify what compensation is available in addition to reinstatement or instead of it to women unlawfully dismissed during pregnancy or maternity leave. The Committee accordingly reiterates its request for detailed information, in the light of any relevant case law, and considers in the meantime that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

In the District of Brčko, the employee can request the employer to ensure the exercise of her rights, in conformity with Section 88 of the Labour Act, but such request does not prevent the employee from filing a claim before a court (within three years) under Section 81 of the Labour Act, which governs illegal dismissal in general. If a court finds that a dismissal is unlawful, it shall order the employer to reinstate the employee to her initial post and to pay compensation for the damage suffered in respect of the loss of salary and contributions. If the employee does not wish to be reinstated, she can claim damages in the amount of up to 18 salaries that she would have received if she had worked, severance pay and other benefits in accordance with the law, collective agreement or employment contract. The amount of compensation depends on the time spent on the job, the age of the employee and the number of dependants. If the employer does not wish to have the employee reinstated, despite the finding of the court, the employee is entitled to double compensation. Women in the private and public sector are equally protected. The Committee recalls that compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the
courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Conclusions 2011, Statement of interpretation of Article 8§2). In light thereof, the Committee finds that the situation is not in conformity with the Charter because adequate compensation is not provided for in cases of unlawful dismissal during pregnancy or maternity leave.

The Committee asks the next report to clarify whether the employees of Bosnia and Herzegovina institutions have adequate means of redress in case of unlawful dismissal during pregnancy and maternity leave under the Labour Law in the Institutions of Bosnia and Herzegovina, the Law on Civil Service in the Institutions of Bosnia and Herzegovina, or any other relevant legislation. It asks in particular whether reinstatement is the rule and, if no reinstatement is possible, whether the employee can claim not only the pecuniary compensation related to the loss of salary but also a compensation for non-pecuniary damage suffered, without any upper limit. Should the next report not provide the requested information, there will be nothing to establish that the situation is conformity in this respect.

**Conclusion**

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 8§2 of the Charter on the grounds that:

- in the Federation of Bosnia and Herzegovina there is no adequate protection against dismissal of employees during pregnancy or maternity leave;
- in the Republika Srpska, it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave;
- in the District of Brčko, adequate compensation is not provided for in cases of unlawful dismissal during pregnancy or maternity leave.

**Historic elements**

The situation is not in conformity on these grounds for the first time.

35. **RESC 8§2 LITHUANIA**

The Committee takes note of the information contained in the report submitted by Lithuania.

**Prohibition of dismissal**

Pursuant to Article 132 of the Labour Code, which applies both to the private and public sector, a pregnant woman may not be dismissed from the day she notified her employer of her pregnancy and until a month after the expiry of her maternity leave, except in the following cases (Articles 136(1) and (2) of the Labour Code):

- (i) following a court sentence on the employee which prevents him or her from continuing work;
- (ii) when an employee is deprived of special rights to perform certain work in accordance with a procedure prescribed by law;
- (iii) upon request of bodies or officials authorised by law;
- (iv) when an employee is unable to perform his or her work further to a medical conclusion or conclusion of the Disability and Capacity for Work Establishment Office of the Ministry of Social Security and Labour;
- (v) when an employee under 14 to 16 years of age, one of his parents, or the child’s statutory representative, or his attending paediatrician, or the child’s school demand that the employment contract be terminated;
- (vi) upon the liquidation of an employer’s activities.

Furthermore, an employment contract will expire upon the employer’s death, if the contract was concluded for the purpose of providing services specifically to this person.
The Committee recalls that Article 8§2 of the Charter permits, as an exception, the dismissal of an employee during pregnancy and maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. According to the report, the situations referred to under (i), (ii) and (iii) are mostly related to faults by the employee. However, the report does not explain how these provisions are interpreted and applied and the Committee is therefore not in a position to assess whether the situations referred to fall under the scope of the exceptions for misconduct allowed under the Charter. In particular, the Committee notes that the dismissal of an employee upon request of bodies or officials authorised by law raises problems of compatibility with Article 8§2 of the Charter. Similarly, the employee’s inability to perform her work for reasons related to her health is not a circumstance which authorises dismissal under Article 8§2 of the Charter. Accordingly, the Committee reiterates its request for explanation, in the light of any relevant case law, on how these exceptions are interpreted and applied. In the meantime, it finds that the grounds for dismissal without notice of an employee during pregnancy or maternity leave go beyond the admissible exceptions and the situation is therefore not in conformity with Article 8§2 of the Charter.

The Committee takes note of the authorities’ engagement to submit the Committee’s conclusions to a working group dealing, inter alia, with the improvement of regulation of labour relations, with a view to bringing the situation in conformity with the Charter and asks the next report to provide updated information on any relevant amendments introduced.

**Redress in case of unlawful dismissal**

The Committee previously noted that, under Article 297 of the Labour Code, employees can contest their dismissal before a court; if the court finds that they have been dismissed without a valid reason or in violation of the procedure established by law, they can be reinstated in their post and awarded a sum corresponding to their average wage for the entire period during which they were off work. The report confirms, in the light of the relevant legislation (in particular, Article 44 of the Law on Public Service and Articles 38 of the Constitution) and decisions of the Constitutional Court (in particular, Resolution of 27 February 2012), that this also applies to women employed in the public sector.

When the competent court establishes that an employee may not be reinstated in her previous post due to economic, technological, organisational or similar reasons, or because she may be put in unfavourable work conditions, it will recognise the termination of the employment contract as unlawful and award the employee a severance pay in the amount specified in Article 140§1 of the Labour Code as well as the average wage for the period during which the employee was off work from the day of dismissal until the date at which the court decision became effective. According to Article 140§1, the severance pay depends on the length of service: (i) under 12 months – one monthly average wage; (ii) 12 to 36 months – two monthly average wages; (iii) 36 to 60 months – three monthly average wages; (iv) 60 to 120 months – four monthly average wages; (v) 120 to 240 months – five monthly average wages; (vi) over 240 months – six monthly average monthly wages.

In response to the Committee’s request for clarification about the compensation, the report clarifies that the abovementioned provisions – and the ceiling to compensation – only concern material damage and do not preclude an employee from claiming non-pecuniary damage under the relevant provisions of the Civil Code. Article 6.250(2) of the Civil Code states that the court in assessing the amount of non-pecuniary damage shall take into consideration the consequences of the damage sustained, the gravity of the fault committed by the perpetrator, his/her financial status, the amount of pecuniary damage suffered by the victim and any other circumstances which are relevant to the case, in the light of the criteria of good faith, justice and reasonableness. Accordingly, the report states that there are no upper limits to compensations and both types of compensation can be awarded by the same court if the employee includes in her request a claim for non-pecuniary damage. The report points out
that the court has the discretion to select the most appropriate remedy in each specific case (judgment by the Kaunas Regional Court in civil case No. 2A-1775-259/2014, proceedings No. 2-693-20210-2013-1). The Committee asks the next report to provide examples of case law relating to compensation claims in case of unlawful dismissal of employees during pregnancy or maternity leave.

Conclusion
The Committee concludes that the situation in Lithuania is not in conformity with Article 8§2 of the Charter on the ground that exceptions to the prohibition of dismissal of employees during pregnancy or maternity leave are excessively broad.

Historic elements
The situation is not in conformity on this ground for the first time.

36. RESC 8§2 TURKEY
The Committee takes note of the information contained in the report submitted by Turkey.

Prohibition of dismissal
The Committee previously noted that, pursuant to the Civil Service Act No. 657, women employed as permanent staff in the civil service enjoy job security except in situations which may justify dismissal. In response to its request for clarifications concerning the admissible grounds for dismissal as well as on the protection offered to women employed in the public sector on temporary contracts, the report merely refers to Section 125, paragraph E of Act No. 657 without providing, however, any information on the content of this provision. The Committee reiterates its questions and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on this point.

As regards employees in the private sector covered by the Labour Act No. 4857, the Committee recalls from its previous conclusions that pursuant to Section 18, employees with an open-ended contract working since at least six months in an enterprise employing thirty staff or more are explicitly protected against dismissal based on pregnancy and maternity leave. However, they can still be dismissed during pregnancy or maternity leave for reasons related to the capacity or conduct of the employee or the operational requirements of the enterprise. Replying to the Committee’s request for clarifications, the report explains that dismissal is possible on the one hand for reasons related to economic, technological, structural and similar requirements of the enterprise, for example in the context of reorganisation or with a view to increasing its productivity and competitiveness and, on the other hand for reasons related to the employee’s capacity or conduct, for example in case of under-performance compared to other employees, lack of skills required and failure to develop them, frequent sickness, behaviour causing or potentially causing a prejudice to the employer, etc.

The Committee recalls that Article 8, paragraph 2 of the Charter allows, as an exception, the dismissal of pregnant women and women on maternity leave in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires. Exceptions are however strictly interpreted by the Committee. In light of the information provided, it finds that the grounds for dismissal under Section 18 of the Labour Act go beyond the exceptions admissible under Article 8§2 of the Charter.

The same conclusion of non-conformity with Article 8§2 of the Charter applies with regard to employees with an open-ended contract, who have been working for less than six months in an enterprise or work in an enterprise employing less than thirty staff: this category of employees can be dismissed without referring to specific reasons for dismissal, provided that the employer complies with the notice periods prescribed by Section 17 of the Labour Act.
Accordingly, the situation is not in conformity with Article 8§2 of the Charter as there is no adequate protection in the Labour Act against unlawful dismissal during pregnancy or maternity leave.

The Committee furthermore notes that the Labour Act also provides under its Section 25 for dismissal without notice, both for employees with open-ended and fixed-term contracts, in the following circumstances:

- For reasons of health a) If the employee has contracted a disease or suffered an injury owing to his own deliberate act, loose living or drunkenness, and as a result is absent for three successive days or for more than five working days in any month; b) If the Health Committee has determined that the suffering is incurable and incompatible with the performance of the employee’s duties. In case of pregnancy or maternity leave, if the illness or accident are not attributable to the employee’s fault, the employer is entitled to terminate the contract if recovery from the illness or injury continues for more than six weeks beyond the notice periods set forth in Section 17, which shall begin at the end of the period stipulated in Article 74 (Maternity leave).
- For immoral, dishonourable or malicious conduct or other similar behaviour a) If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements; b) If the employee is guilty of any speech or action constituting an offence against the honour or dignity of the employer or a member of his family, or levels groundless accusations against the employer in matters affecting the latter’s honour or dignity; c) If the employee sexually harasses another employee of the employer; d) If the employee assaults or threatens the employer, a member of his family or a fellow employee, or if he violates the provisions of Article 84 (consumption at work of alcoholic beverages or narcotic substances); e) If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer’s trade secrets; f) If the employee commits an offence on the premises of the undertaking which is punishable with seven days’ or more imprisonment without probation; g) If, without the employer’s permission or a good reason, the employee is absent from work for two consecutive days, or twice in one month on the working day following a rest day or on three working days in any month; h) If the employee refuses, after being warned, to perform his duties; i) If either wilfully or through gross negligence the employee imperils safety or damages machinery, equipment or other articles or materials in his care, whether these are the employer’s property or not, and the damage cannot be offset by his thirty days’ pay.
- In case of "force majeure" preventing the employee from performing his duties for more than one week.
- In case of prolonged absence due to the employee’s being taken into custody or due to his arrest.

The Committee refers to the abovementioned restrictive list of exceptions admitted under Article 8§2 of the Charter and notes that the Turkish law allows for a wide list of exceptions, which seem to go beyond the notion of "misconduct which justifies the breaking of the employment relationship". In particular, it considers that the dismissal of an employee during pregnancy or maternity leave for reasons of health, even when the employee is responsible of her sickness or accident, does not comply with Article 8§2 of the Charter.

The Committee asks whether a different regime for dismissals during pregnancy or maternity leave applies to employees covered by the Press Labour Act No. 5953 or by other legislation, in derogation to the Labour Act.
Redress in case of unlawful dismissal

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with Article 8§2 of the Charter because not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

It notes from the report that this continues to be the case, at least as regards employees with an open-ended contract, who have been working for less than six months in an enterprise or work in an enterprise employing less than thirty staff: pursuant to Section 17 of the Labour Act they are entitled to be paid compensation equal to three times their wage if their employment contract is abusively terminated. If the notice period was not respected, they can be granted an additional compensation (notice pay) comprised between two and eight weeks wage, but the employer may terminate the employment contract by paying in advance the wages corresponding to the term of notice.

The report explains the lesser protection afforded to this categories of employees by referring to ILO Convention No. 158, which allows that a category of workers be left out of the coverage of whole or part of the provisions of job security in terms of private employment conditions of the workers or of the size or quality of the enterprise where there are vital problems. The Committee recalls in this respect that its task is not to judge the conformity to the Charter of other international instruments, but rather to assess whether the situation in Turkey is in conformity with Article 8§2 of the Charter. In this connection, the Committee recalls that reinstatement of employees covered by Article 8§2 who have been unlawfully dismissed should be the rule. Exceptionally, if this is impossible (e.g. where the enterprises closes down) or the employee concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal. Accordingly, the Committee reiterates its finding of non conformity with Article 8§2 of the Charter because in Turkey not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave.

Reinstatement is on the other hand explicitly provided in respect of dismissals covered by Section 18 of the Labour Act No. 4857, for employees recruited on open-ended contracts and working since at least six months in an enterprise employing thirty staff or more. Pursuant to Section 20 of the Labour Act, they can contest the reasons for their dismissal before a labour court or, in some cases, to private arbitration, within one month. "The burden of proof that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if he claims that the termination was based on a reason different from the one presented by the employer. The court must apply fast-track procedures and conclude the case within two months. In the case the decision is appealed, the Court of Cassation must issue its definitive verdict within one month".

Pursuant to Section 21 of the Labour Act, "if the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation to be not less than the employee’s four months’ wages and not more than his eight months’ wages shall be paid to him by the employer. In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work. The employee shall be paid up to four months’ total of his wages and other entitlements for the time he is not re-engaged in work until the finalization of the court’s verdict. If advance notice pay or severance pay has already been paid to the reinstated employee, it shall be deducted from the compensation computed in accordance with the above-stated subsections. If term of notice has not been given nor advance notice pay paid, the wages corresponding to term of notice shall also be paid to the employee not re-engaged in work. For re-engagement in work, the employee must make an application to the employer within ten working days of the date on which the finalized court verdict was communicated to
him. If the employee does not apply within the said period of time, termination shall be deemed valid, in which case the employer shall be held liable only for the legal consequences of that termination".

The report does not provide the information requested in the previous conclusion about the remedies available to employees on fixed-term contract, as well as to civil servants (including those on fixed-term contracts), in case of unlawful dismissal during pregnancy or maternity leave. The Committee accordingly reiterates its request for information and considers that, should the next report fail to provide the information requested, there will be nothing to establish that the situation is in conformity with the Charter on these points. The Committee furthermore asks the next report to provide information on remedies available in case of unlawful dismissal without notice based on Section 25 of the Labour Act, occurring during the employee’s pregnancy or maternity leave, as well as on the remedies available against unlawful dismissals during pregnancy or maternity leave under the Press Labour Act No. 5953.

In its previous conclusion, the Committee also asked whether the ceilings to compensation provided for in the Labour Act (Sections 17 and 21) covered compensation for both pecuniary and non-pecuniary damage or whether unlimited compensation for non-pecuniary damage could also be sought by the victim through other legal avenues (e.g. anti-discrimination legislation). It also asked whether both types of compensation were awarded by the same courts, and how long it took on average for courts to award compensation. It considered that, in the absence of this information, there would be nothing to establish that the situation is conformity in this respect. As the report does not contain any reply to these questions, the Committee reiterates them and holds in the meantime that the situation is not in conformity with Article 8§2, on ground that it has not been established that adequate compensation is provided for in cases of unlawful dismissal during pregnancy or maternity leave.

**Conclusion**

The Committee concludes that the situation in Turkey is not in conformity with Article 8§2 of the Charter on the grounds that:

- there is no adequate protection in the Labour Act against unlawful dismissals during pregnancy or maternity leave;
- not all employed women are entitled to reinstatement in case of unlawful dismissal during pregnancy or maternity leave;

**Historic elements**

1st ground of non-conformity

The situation is not in conformity on this ground for the first time.

2nd ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the Representative of Turkey provided written information (Detailed Report concerning Conclusions 2011, §307).

**Article 16 - Right of the family to social, legal and economic protection**

37. RESC 16 AUSTRIA

The Committee takes note of the information contained in the report submitted by Austria.

Social protection of families

Housing for families
The report explains that the Länder are responsible for the legislation and enforcement in the field of direct support of housing construction and refurbishment through subsidised loans, annuity and interest subsidies, housing allowances, etc. In addition, various "accompanying" indirect subsidies, such as tax benefits, are granted by the Federal Government. The report indicates that in 2009 38,063 dwellings, not counting Vienna, were completed.

The Committee recalls that under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24). In this respect, the Committee wishes the next report to indicate the steps taken to promote the provision of an adequate supply of housing for families.

As regards legal protection, the Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeals procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; FEANTSA v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). The Committee asks the next report to provide information on the legal protection of the right to adequate housing.

As to protection against eviction, the report provides the following information:

- an eviction order must be issued by a court;
- parties lacking the required means are entitled to legal aid, i.e. legal counsel provided by a lawyer during the proceedings;
- the courts have the remit to work towards achieving an amicable resolution or settlement of the dispute;
- the parties can lodge an appeal against the rulings rendered in the proceedings before superior courts. The request for a legal remedy normally suspends the legal effect and enforceability of a ruling;
- if the eviction order rendered by a judicial body is in breach of the law, the injured party is entitled to assert public liability claims against the State. Parties lacking the required means can also obtain legal aid;
- in legal cases involving eviction, the court may set a longer period for vacating the premises than is specified by the law if the tenant puts forward substantial grounds and if delaying the eviction does not cause any disproportionate disadvantage to the landlord. Such extension may not be more than nine months;
- the landlord is to indemnify the tenant for the damage incurred through the loss of the rented property if he/she does not subsequently use the property for the purpose stated as the reason for terminating the agreement and circumstances have not changed in the meantime.

The Committee notes that in some provinces subsidies for housing construction and refurbishment and housing allowance are restricted to Austrian nationals or EU/EEA nationals (Carinthia, Styria) or they are subject to length of residence’s conditions (Upper Austria, Salzburg, Tyrol, Vienna). The Committee recalls that discrimination (based on nationality or length of residence requirements) is not in conformity with the Charter. The Committee considers that the situation is not in conformity with Article 16 of the Charter on the ground
that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements).

As regards Roma families, the report mentions the National Roma Integration Strategy up to 2020 and several measures taken to implement it: creation of a website within the website of the Federal Chancellery focusing on "Roma Strategy"; national monitoring performed by a dialogue platform that includes representatives of the Federation and the states, civil society (Roma) associations and experts from the fields of science and research; a study on the situation of Roma in housing presented in 2014; continuous dialogue with the Roma minority advisory council which meets with representatives from the Department for National Minorities at least once a year to discuss inclusion policies and subsidizing. The Committee wishes the next report to provide information on the outcome of these measures, including some figures.

Concerning refugees, the Committee notes from a study on Refugee Integration in Austria published by UNHCR in 2013 that refugees struggle with accessing suitable, affordable, secure, independent housing. It therefore asks the next report to indicate the measures that are being taken in order to overcome this issue.

**Childcare facilities**

The Committee notes that as Austria has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

**Family counselling services**

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) and all the information at its disposal leads it to consider that the situation remains in conformity with the Charter in this respect.

**Participation of associations representing families**

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)), which it considered to be in conformity with the Charter.

**Legal protection of families**

**Rights and obligations of spouses**

Pursuant to the Act to Reform the Law of Parent and Child 2001, both spouses have the option of retaining full custody of the child upon divorce as during their marriage, if they submit to the custody court an agreement stipulating the parent with whom the child will mainly reside. By this arrangement, both parents receive equal treatment even after separating. Under the Act to Reform the Law of Parent and Child and Name Law 2013, the courts can entrust parents with joint custody even against one of the parents’ will, where it is ruled that this would be more in the interest of the child’s well-being than if one parent were to have sole custody.

In cases of divorce by mutual consent, which represent 90% of all divorces, the spouses are required to reach an agreement regulating: care of their children, custody, the exercise of the right to personal contact, maintenance obligations towards their common children as well as the relationships arising from laws governing maintenance and any legal claims based on property rights. In cases of non-mutual divorce, the items listed above can be clarified in separate proceedings, following the divorce proceedings and once the divorce has been pronounced. The report stresses that the court is required to respond to any risks to the child’s well-being that become known during divorce proceedings.

The Committee asks the next report to provide information on the rights and obligations of spouses in respect of reciprocal responsibility, ownership, administration and use of property.

**Mediation services**

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for a description of mediation services.
The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee notes that part of the cost of mediation is met by the couple, on the basis of their combined income and the number of children. The average subsidy is €1,000, with the couple contributing €200. It asks the next report to indicate what assistance is available for families in case of need.

**Domestic violence against women**

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of the issue of domestic violence against women. In addition, it takes note of the latest developments in this respect. First, since 1 August 2013, if a minor under the age of 14 years is threatened, the law requires that the endangering person be prohibited from entering (or coming within 50 metres of) a childcare facility, school or after school care facility attended by the minor. Second, where protection from the endangering person is needed for a longer period, the endangered person may petition the courts to issue an interim injunction, which can be imposed irrespective of any prohibition to return order issued by the police and vice versa. Third, a shelter for young women who are threatened with or the victims of forced marriage opened in Vienna as of 1 August 2013. Fourth, in 2013 the funding available for violence protection centres amounted to €6.7 million. Fifth, the report mentions a series of important publicised action during the reference period, such as the two-year project co-financed by the EU called "Progress – Living non-violently" focusing on information, prevention and raising awareness. Sixth, the Committee takes note of the information provided by different Länder.

**Economic protection of families**

**Family benefits**

According to Eurostat data, the monthly median equivalised income in 2013 was €1,839. The report indicates that the following amounts of child benefits are applicable per child and month (status as of 1 January 2013):

- 0-3 years: €105.40;
- 3-9 years: €112.70;
- 10-18 years: €130.90;
- 19 years and older: €152.70.

In addition, the following amounts are added to the total family allowance per month:

- with two children €6.40 per child;
- with three children €15.94 per child;
- with four children €24.45 per child; etc.

Child benefits represented a percentage of that income as follows: 5.7% for the first child 0-3 years of age; 6.1% for the first child 3-9 years of age; 7.1% for the first child 10-18 years of age; 8.3% for the first child 19 years and older, etc. The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equalised income. On the basis of the figures indicated, the Committee considers that the amount of benefits is compatible with the Charter.

**Vulnerable families**
Despite the Committee’s request, the report provides no information on the steps taken to ensure that vulnerable families, such as Roma families receive financial protection. It therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The report stresses that there are no minimum residence requirements applied to foreign nationals, who thus enjoy equal treatment with regard to family benefits.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Austria is not in conformity with Article 16 of the Charter on the ground that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements).

Historic elements

The situation is not in conformity on this ground for the first time.

38. RESC 16 AZERBAIJAN

The Committee takes note of the information contained in the report submitted by Azerbaijan.

Social protection of families

Housing for families

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies (administrative review, etc.). Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls
that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asked in its previous conclusion (Conclusions 2011) for information on all the aforementioned points.

Despite the Committee’s request the report provides no information. The Committee therefore reiterates its request. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on these points.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that “as a result of their history, the Roma have become a specific group of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community” Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

Despite the Committee’s request the report provides no information on access to housing for Roma families. The Committee therefore reiterates its request. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on this point.
**Childcare facilities**

The Committee notes that as Azerbaijan has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

**Family counselling services**

The report indicates that the State Committee for Family, Women and Children Affairs performs counselling services. The Committee wishes the next report to indicate how such services are distributed across the country (geographical coverage).

**Participation of associations representing families**

The Committee recalls that to ensure that families’ views are catered for when family policies are framed, the authorities must consult associations representing families.

Despite the Committee’s request the report provides no information on the participation of associations representing families in the framing of family policies. The Committee therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on this point.

**Legal protection of families**

**Rights and obligations of spouses**

The Committee recalls that in cases of irreparable deterioration in family relations, Article 16 of the Charter requires the provision of legal arrangements to settle marital conflicts and in particular conflicts pertaining to children (care and maintenance, deprivation and limitation of parental rights, custody and access to children when the family breaks up).

Despite the Committee’s request the report provides no information on the rights and obligations of spouses in cases of irreparable deterioration in family relations. The Committee therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on this point.

**Mediation services**

The Committee understands that Centres for Supporting Children and Families perform mediation services. It asks for confirmation of that understanding. These centres operate in 11 regions, are financed by the State and provide services free of charge. The report also indicates that in 2013 the centres received 2,222 appeals related mostly to family conflicts, family violence and children in need of special care.

**Domestic violence against women**

The Law on Prevention of Domestic Violence of 22 June 2010 identified mechanisms for taking necessary legal, social and other actions for the prevention of domestic violence. Along with the duties related to the prosecution of crimes defined in the relevant legislation, the above-mentioned Law provides that the relevant state entity shall take several actions such as: providing immediate medical care, temporary shelter, psychological rehabilitation, security for the aggrieved person during the examination, issuing a protective order for the aggrieved person, etc. In this regard, 3,500 police officers received special trainings.

In addition, the report mentions activity projects realised in cooperation with the Baku Office of the OSCE, call centre systems, the drafting of the National Strategy for Prevention of Domestic Violence, the organisation of conferences and round tables. It also points out that for the period 2010-2013 a decrease has been observed in the number of crimes involving violence against women and that overall 24% of crimes occur within the family.
Economic protection of families

Family benefits

The Committee recalls that in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income.

The Committee takes note of the data in the report and in MISSCEO concerning the various amounts of the basic family benefits. In order to assess whether child benefit represents an adequate income supplement the Committee asked in its previous conclusion (Conclusions 2011) the median equivalised income. Given that the report provides no such information, the Committee asks the next report to indicate similar indicators, such as the national subsistence level, average income or the national poverty threshold, etc.

Vulnerable families

The Committee recalls that States’ positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, including Roma families.

Despite the Committee’s request the report provides no information on the economic protection of Roma families. The Committee therefore reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter on this point.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The Committee notes that foreigners and stateless persons residing permanently in Azerbaijan are entitled to family benefits on an equal footing with Azerbaijani nationals. In its previous conclusion (Conclusions 2011) the Committee asked to be informed on the requirements to acquire permanent resident status. The report indicates that pursuant to the Migration Code, foreigners and stateless persons temporarily residing at least 2 years in Azerbaijan can submit an application to obtain the permit for permanent residence. The Committee recalls that the period of 1 year before benefiting from family benefits is manifestly excessive (Conclusions XVIII-1 (2006), Denmark). It therefore concludes that the situation is not in conformity with the Charter.

The Committee asks the next report to indicate whether refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Azerbaijan is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

Historic elements

The situation is not in conformity on this ground for the first time.

39. RESC 16 BOSNIA AND HERZEGOVINA

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.
Social protection of families

Housing for families

In its previous conclusion (Conclusions 2011) the Committee recalled that under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity).

As regards the provision of an adequate supply of housing for families, the Committee notes that in the Republica Srpska the Ministry of Family, Youth and Sports has implemented a project on interest rate subsidies in respect of housing loans for young people and young couples, where the Ministry subsidises 1% of the interest. According to the report, in the period 2010-2013 1,343 young people and couples were supported through this project. Moreover, by Government Decision No. 04/1-012/754/08 BAM 8.5 (€4.3 million) were allocated for the provision of housing to families with five or more children to improve their living conditions. The project was implemented in 29 municipalities and provided housing to 97 families and 512 children.

The Committee notes from the report that housing policies, housing needs of the population and thereby ensuring funds for and allocation of social housing, especially for persons with low income and marginalised groups is the responsibilities of entities. The Committee wishes therefore, to be informed of the measures taken in all entities to promote the provision of an adequate supply of housing for families.

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy, Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France). As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden).

The Committee notes from the report that Bosnia and Herzegovina has no specific law which would define the legal protection of occupants and tenants. The legal protection is regulated in the Law of Obligations of the Federation of Bosnia and Herzegovina and the Republica Srpska.

The Law of Obligations determines that a contract of lease shall be concluded between the owner of an apartment as a lessor and an occupant/tenant of the apartment as a lessee. Cancellation of a contract of lease shall be made in writing with an indication of notice period, which may not be less than 30 days. The Committee notes that disputes regarding the cancellation of lease are decided by the competent court.

The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include an obligation to consult the parties affected, an obligation to fix a reasonable notice period before eviction and accessibility to legal remedies and legal aid, as well as compensation in case of unlawful eviction.

The Committee asks the next report to provide information on these points and holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity.

The Committee has previously considered that it had not been established that the living conditions of Roma families in housing were adequate.
It notes from the report in this regard that Bosnia and Herzegovina has continued to make progress in solving the housing problems of Roma in the period 2010-2014. The Ministry for Human Rights and Refugees has allocated €1.5 million each year for Roma issues, of which €1 million is assigned to housing. According to the report, a number of housing projects proposals have been financed in the period of 2010-2014, with municipalities, cities, entities, local and international organisations and donors participating as implementing entities. A total of €8.2 million has been spent on projects in the period of 2009-2013, consisting of budgetary allocations as well as co-funding. A total of 600 housing units were constructed, with additional 100 housing units to be completed in 2015. More than 400 Roma families were the beneficiaries of infrastructure projects.

The Committee notes from the report of the Governmental Committee of 2012 that bearing in mind that Bosnia and Herzegovina is a country in transition facing even a large number of unsolved housing problems of internally displaced people accommodated in collective centres, the country has made considerable progress in solving the housing problems of Roma, and thus improving the overall socio-economic situation of the Roma population.

The Committee notes from Third Opinion on Bosnia and Herzegovina adopted on 7 March 2013 by the Advisory Committee on the Framework Convention for the Protection of National Minorities that flaws in the design and operation of the measures foreseen as part of Bosnia and Herzegovina’s participation in the Decade of Roma Inclusion reduce their effectiveness, and Roma continue to experience marginalisation and discrimination in the fields of access to employment, health and housing. Roma living in informal settlements in particular face substandard living conditions and remain vulnerable to forced evictions.

The Committee wishes to be informed of measures taken to improve living conditions of Roma families and limit forced evictions. In the meantime, it reserves its position on this point.

**Childcare facilities**

In its previous conclusion the Committee asked for a detailed list of the number of places in crèches and day nurseries, by age group, and the number of applications for places turned down. It also asked what measures are planned to monitor the quality of such services.

The Committee notes that in 2012/2013 there was a total of 243 preschool educational institutions. Out of a total of 18,817 children 2,403 were not accepted because of lack of places (around 12%). Monitoring of the services is carried out by the Parents’ Council who gives their suggestions and comments and prepares regular analysis of services.

**Family counselling services**

According to the report, as provided for in the Law on Social Protection, Protection of Civilian War Victims and Families with Children of the Federation of Bosnia and Herzegovina in addition to the centres for social work family counselling can be provided by non-governmental organisations. In the Federation of Bosnia and Herzegovina there are 79 centres for social work. In the Republika Srpska the Law on Social Protection defines the right to counselling, which, among others means helping families as a whole to develop, maintain and improve their own social well-being.

**Participation of associations representing families**

The Committee asks for information in the next report on the participation of relevant associations representing families in the framing of family policies.

The Committee notes that in the Federation of Bosnia and Herzegovina when making public policies relating to social protection and protection of families with children, the Federation Ministry of Labour and Social Policy seeks to include representatives of civil society (NGOs, citizens’ associations etc.) by appointing their members in working groups.
In the Republika Srpska, the Ministry of Family, Youth and Sports announces invitations to tender for support to be provided in projects of associations and organisations in their work to improve the position of family in the Republika Srpska.

In the Brčko District, associations representing families are citizens' associations engaged in addressing the needs of its members with a view to improving their situation. The associations attach great importance to the issue of improving the attitude of authorities and institutions towards the problem for which they were founded.

**Legal protection of families**

**Rights and obligations of spouses**

The Committee notes that there have been no changes to the situation which it has previously considered to be in conformity with the Charter.

**Mediation services**

In its previous conclusion the Committee asked for information in the next report on access to such services, whether they are free of charge, how they are distributed across the country and how effective they are. It notes from the report that there are 12 individuals and legal entities selected and authorised to mediate between marital partners before initiating divorce proceedings which operate in the territory of 10 cantons in the Federation of Bosnia and Herzegovina. In the Republika Srpska mediation services for families are free.

The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee asks the next report to indicate what assistance is available for families in the Federation of Bosnia and Herzegovina and the Brčko District in case of need.

**Domestic violence against women**

In its previous conclusion the Committee took note of the legislative framework protecting women against violence. It asked the next report to provide information on the application of this framework as well as on the measures taken to combat domestic violence against women (measures in law and practice, data, judicial decisions).

The Committee notes from the report that Bosnia and Herzegovina institutions and entities have adopted a series of policies in the form of strategic documents which are focused exclusively or indirectly on the prevention of violence against women, such as the Strategy for the Implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Entity Strategy for the Prevention and Combating of Domestic Violence of Federation of Bosnia and Herzegovina and the Strategy for Combating Domestic Violence of the Republika Srpska, which define the course of action to prevent violence and protect victims and prosecute perpetrators.

According to the report, the Judicial and Prosecutorial Training Centres conducted training in gender equality, non-discrimination and combating violence against women and domestic violence for judges and prosecutors as part topics related to criminal law, family rights and human rights.

The Committee notes from the report that the Government is working on the establishment of referral mechanisms for providing protection to victims of domestic violence. The multidisciplinary approach involves joint interventions of different institutions and professions in solving the problem of domestic violence.

In the territory of Bosnia and Herzegovina there are nine safe houses with 173 available places. In the territory of the Federation of Bosnia and Herzegovina there are six shelters with
126 places available to accommodate victims of domestic violence operated by non-
-governmental organisations.

The statistics submitted to the Agency for Gender Equality indicate that domestic violence is
the most common offense of all criminal acts of violence against women prosecuted by courts
in 2012.

The Manual for the Review of Domestic Violence Cases was made in 2014 by a judicial panel
of nine judges. The recommendations of the panel of judges were later revised by legal experts
and practitioners, as well as the institutions responsible for providing continuing training for
judges and prosecutors. The Manual on domestic violence was developed.

In the Federation of Bosnia and Herzegovina the new Law on Protection against Domestic
Violence (“FBiH Official Gazette” 20/13) was adopted to introduce some novelties regarding
the precise definition of domestic violence, prescribing emergency procedure in the imposition
of protection orders in view of their purpose to protect victims of violence, prescribing other
forms of protection of victims of violence.

The Federation Ministry of Labour and Social Policy has taken a series of activities aimed at
improving and enhancing the social and child protection, i.e. the protection of victims of
domestic violence in the Federation, as well as activities related to the implementation of the
Council of Europe Convention on Preventing and Combating Violence against Women and
Domestic Violence and Strategies for Prevention and Combating Domestic Violence 2013-
2017.

In the Republika Srpska the General Protocol for Procedures in Domestic Violence Cases was
signed. The Law on Protection from Domestic Violence afford more efficient, faster and more
complete protection of victims.

In 2012, a survey of the prevalence of violence against women, with particular emphasis on
domestic violence, was carried out and it was coordinated by the Gender Centre of the
Republica Srpska and the Republican Institute of Statistics. The survey was carried out in
cooperation with the Gender Agency of Bosnia and Herzegovina, the Gender Centre of the
Federation of Bosnia and Herzegovina and Statistical Institutes (Entity Statistical Institutes
and the Agency for Statistics).

According to the report, good practices show that better effects have been brought about
through the co-operation of authorities from the Ministry of the Interior, judiciary, social welfare
and health institutions, educational institutions and non-governmental organisations and other
relevant institutions and social partners.

By the end of 2013, protocol for procedures in domestic violence cases and multisectoral
cooperation at the local level was signed in 36 municipalities in the Republika Srpska.

Economic protection of families

Family benefits

In its previous conclusion the Committee asked the next report to contain sufficient information
regarding the amounts of child allowances in the entities as well as the amount of the median
equivalised income.

The Committee notes from the report that the family benefit in the Federation of Bosnia and
Herzegovina is income-tested and provided to families whose total income is below the
subsistence level. The amount ranges between BAM 10.85 to 50 per month (€5.5 – €25). As
regards the coverage of the child benefit, the Committee notes that in the Federation of Bosnia
and Herzegovina benefit is only granted to families whose total income is below the
subsistence level. The Committee finds that the situation is not in conformity with the Charter
as child benefit is not granted to a significant number of families and therefore, its coverage is
not sufficient.
In the Republika Srpska the Child Protection Public Fund provides child allowance for the second, third and fourth child on the basis of a means test. The Committee notes that the amount of allowance has gone down from BAM 45 (€ 23) for the second child and BAM 100 (€51) for the third child in 2010 to BAM 35 (€17) for the second child and BAM 70 (€35) for the third child in 2013. The Committee notes that there is no entitlement to benefit for the first child. It asks whether, like in the case of the Federation of Bosnia and Herzegovina, child benefit is also paid to families whose total income is below the subsistence level. As regards the Republika Srpska, the Committee reserves its position as to the adequacy of coverage.

In the Brčko District the universal system is financed by the Budget of the Brčko District providing a flat rate benefit to all residents whose children reside in the Brčko District and whose total monthly income per family member is no higher than 15% of average earnings in the Brčko District. As regards the amount of child benefit, it corresponds to 10% of the average earnings. According to MISSCEO, the average earnings were equal to BAM 683,33 (€350) per month in 2012, so the amount of benefit was fixed at BAM 68,33 (€34) per month. The Committee asks what is the percentage of families that receive benefits.

The Committee recalls that under Article 16 the States of required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test. Child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of median equivalised income, for a significant number of families (Conclusions 2006, Statement of Interpretation on Article 16).

As regards the amount of child benefit, the Committee notes that it represents 10% of the average earnings in the Brčko District which it considers to be adequate. However, as regards the Federation of Bosnia and Herzegovina and the Republika Srpska, in the absence of information on the median equivalised income, the Committee finds that it has not been established that child benefit constitutes an adequate income supplement and therefore, the situation is not in conformity with the Charter. The Committee asks the next report to provide information on the amounts of benefit as well as on the median income in all entities.

**Vulnerable families**

In its previous conclusion the Committee asked what measures were taken to ensure the economic protection of Roma families and other vulnerable families, such as single parent families. The Committee reiterates this question.

**Equal treatment of foreign nationals and stateless persons with regard to family benefits**

In its previous conclusion the Committee noted that in the three entities a permanent residence requirement applied for the granting of family benefits. The Committee wished to know the conditions for awarding permanent residence. It notes that the report does not provide this information.

The Committee notes that Section 51, paragraph 5 of the Law on Movement and Stay of Aliens and Asylum provides that permanent residence is the right of stay of aliens in Bosnia and Herzegovina for an indefinite period of time. Article 59, paragraph 1 of the Law provides that a permanent residence permit shall be issued to an alien who has resided in the territory on the basis of a temporary residence permit for at least five years uninterruptedly.

The Committee recalls that the proportionality of length of residence requirement is examined on case-by-case basis. The Committee has held that the period of one year is acceptable but that 3-5 years is manifestly excessive and therefore, in violation of Article 16 (Conclusions XVIII-1 (2006), Denmark). Therefore, the Committee considers that the situation is not in conformity with the Charter on this ground.

The Committee asks the next report to indicate whether stateless persons are treated equally with regard to family benefits.
**Conclusion**

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 16 of the Charter on the grounds that:

- family benefits do not cover a significant number of families in the Federation of Bosnia and Herzegovina;
- it has not been established that the child benefit in the Federation of Bosnia and Herzegovina and the Republika Srpska constitutes an adequate income supplement;
- equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working with respect to family benefits is not ensured.

**Historic elements**

The situation is not in conformity since Conclusions 2011.

**40. RESC 16 HUNGARY**

Le Committee takes note of the information contained in the report submitted by Hungary as well as the comments by Non-Governmental Organisations on the national report (MINDENKIE, CFCF Chance for Children Foundation, Habitat for Humanity, GYERE, MENHELY ALAPITVANY and the Metropolitan Research Institute).

**Social protection of families**

**Housing for families**

The Committee takes note of several measures to help families gain access to housing, particularly subsidized-interest on housing loans for young people and families and on modernisation loans for the elderly, home-building allowance, home-making subsidised-interest, etc.

In its previous conclusion (Conclusions 2011) the Committee found the situation not to be in conformity with the Charter on the ground that evictions from premises occupied without rights or entitlement could take place without alternative accommodation and in the winter. In this regard, the report confirms that in case of unlawful occupation the situation remains the same. The Committee notes once again that families evicted under this procedure become, as a consequence, homeless families (save for children left alone). The Committee also notes from the comments of the Non-Governmental Organisations on the national report that families evicted are usually forced to leave their homes without alternative housing opportunity having been offered to them and are often excluded from accessing social housing. The Committee therefore reiterates its conclusion of non-conformity (see, in particular, International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, §§ 164 and 165).

In addition, on the issue of eviction, the report indicates that there exists a reasonable time prior to eviction, i.e. several weeks from the day of the court’s decision, there are legal remedies against both the court’s decision and executor’s measures, there is legal assistance even in case of unlawful occupation and there is compensation in case of illegal eviction.

In its previous conclusion (Conclusions 2011) the Committee asked to be provided with information on the situation with regard to social housing, particularly for the poorest people. The report provides no information in this respect. The Committee, however, notes from the Report of the Commissioner for Human Rights of the Council of Europe, dated of December 2014, that there is an urgent need to adopt a national social housing strategy for the full realisation of the right to adequate housing, which goes beyond providing emergency and individual solutions. The Committee also notes from the comments of the Non-Governmental
Organisations on the national report that the number of social housing units is significantly inadequate and has been decreasing and families struggling with poverty and/or housing problems do not receive adequate help. In view of the foregoing, it therefore concludes that the situation is not in conformity with the Charter on the ground that it has not been established that there is an adequate supply of housing for vulnerable families.

On the housing situation of Roma families, the Committee takes note of some measures concerning the housing of Roma families. However, it notes from the Report of the Commissioner for Human Rights of the Council of Europe, dated December 2014, that Roma, who make up 7.5% of the population in Hungary, are still confronted with "pervasive discrimination", notably in accessing social housing. According to the estimates mentioned in the Commissioner’s Report around 130,000 Roma live in segregated settlements and several hundreds of these settlements lack basic infrastructure. The Committee further notes from the European Commission against Racism and Intolerance’s (ECRI) Fifth Report adopted in June 2015 that local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly or indirectly discriminatory rules in respect of housing. The Committee finally notes from the comments of the Non-Governmental Organisations on the national report that Roma families usually live in segregated areas without adequate access to basic services.

In view of the foregoing, the Committee considers that the situation is not in conformity with the Charter on the ground that Roma families do not have access to adequate housing.

**Childcare facilities**

On nursery care for children below the age of 3, the report indicates that the number of nurseries and their capacities have continuously increased each year. During the reference period the number of nursery places increased by 5,240. In 2013, the fee that may be charged for nursery care was introduced in 309 institutions out of the 724 active nurseries, i.e. in 42% of the institutions. Nursery care is organised by the actors of the public or the private sectors as well as the church.

In addition, the report mentions the establishment of family daytime care services, which provide an alternative solution to nursery care services. It indicates that during the reference period the capacity of family daytime care services increased by almost 2,600 places and the number of new such services went up by 460. In 2013, there were 1,108 family daytime care facilities for 7,991 places. These services are generally operated by civil organisations, but the number of services organised by municipalities is also increasing. In some cases the facilities are run by the church.

Concerning kindergarten services for children 3-6 years, the report indicates that these are organised as a public education duty and therefore are free of charge. Following the Public Education Act, that entered into force in 2012, the mandatory attendance age will be reduced from 5 to 3 years of age from September 2015. Kindergarten services are financed by the central budget and EU funds.

**Family counselling services**

In its previous conclusion (Conclusions 2011) the Committee asked what family counselling services are available to families regardless of their composition or social circumstances. In reply, the report provides a list of services, which include notably lifestyle, mental hygiene issues, access to the service for those struggling with financial difficulties, the resolution of conflicts in the family, family therapy, the strengthening of family relations, facilitation of social integration, etc.

**Participation of associations representing families**

The Committee notes that the National Association of Large Families “NOE” continues to play a central role in the Government’s family and demographic policy given that it has the longest history (established in 1987), the largest number of members and it is an association that is
well organised at the territorial level. It also notes that the Government consults civil and church family organisations, such as those representing the interest of families with young children or children with disabilities.

**Legal protection of families**

**Rights and obligations of spouses**

The report indicates that pursuant to the Family Law Book of the Civil Code the rights and obligations of spouses are equal in terms of their personal and property relations as well as parental custody.

In case of a dispute between the spouses on the exercise of their rights and obligations in their relations and to their child the forum for legal remedy is often the guardianship authority, whose decision may be contested in court. However, the issues concerning which parent should exercise parental custody and where the child should be accommodated in his/her best interest are directly decided by the court.

**Mediation services**

The report indicates that the Mediation Act of 2002 sets up a framework to settle family legal disputes. This service is available nationwide and according to the data reported by the mediators 70% of the mediation procedures end with an agreement.

The Mediation Act was amended in June 2013 in order to introduce court mediation. There are currently 56 such court mediators (court secretaries or judges). Court mediation is free of charge.

The Committee also notes the existence of child protection mediation proceedings which are organised by child welfare centres. Such centres are to be found in municipalities with a population over 40,000 and cities of county rank, regardless of the population. The mediation provided is free of charge.

**Domestic violence against women**

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the legislative and practical framework for combating domestic violence against women. In this conclusion, the Committee will only take into account the latest developments in this respect.

The Committee notes that the Criminal Code, that entered into force on 1 July 2013, introduced the crime of "domestic violence".

The report indicates that in 2011 the system put in place by the Regional Crisis Management Network was reformed and modernised, notably through the amendment of the Child Protection Act. Moreover, the Government started providing funding to the operation of crisis centres and half-way/transitional houses on a three-year contract basis.

The report also indicates that 4 new crisis management centres were established with state support in 2011-2012, thereby increasing the number of places available to the victims of domestic violence, notably in the so-called Secret Shelter. At present, there are 14 crisis centres.

On prevention, the Committee notes that in 2012 a pilot project was launched with the support of the Ministry of Human Capacities and aimed at preventing victimisation in the age group 14-18 years. In Phase I, the project consisted in awareness-raising classes and sensitivity training sessions held by teachers at school. Phase II of the project (2013-2014) is still to help avoid becoming a victim but the classes and sessions focus on technical schools and vocational secondary schools.

On the issue of protection of victims, the Committee however notes from the comments of the Non-Governmental Organisations on the national report that victims of domestic violence do not receive adequate protection and there are not enough places in shelters for them. The
Committee therefore asks the next report to indicate the measures that are being taken to remedy this situation.

Hungary signed on 14 March 2014 (outside the reference period) the Council of Europe Convention on preventing and combating violence against women and domestic violence but has not yet ratified it.

**Economic protection of families**

**Family benefits**

According to Eurostat data, the monthly median equivalised income in 2014 was €380. According to MISSOC, the monthly amounts of child benefit was €39 for the first child, €48 for the 2nd child and per child, €55 for the 3rd child or more and per child. Child benefit represented a percentage of that income as follows: 10.2% for the first child, 12.6% for the 2nd child, 14.47% for the 3rd child.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the amount of the benefit is compatible with the Charter.

**Vulnerable families**

The Committee asked in its previous conclusion (Conclusions 2011) what measures were taken to ensure the economic protection of Roma families. The report states that the agreement between the National Roma Nationality Self-Government and the Government lists quantified objectives for the employment of Roma people thus improving their income position. In this regard, it mentions the decrease of housing costs, the extension of housing subsidies as well as making social benefits more targeted. It finally refers to the so-called subsistence support allocated to unemployed Roma people during their studies.

The Committee takes note of these measures, but asks the next report to continue to provide information on measures implemented, including statistics, to ensure the economic protection of Roma families.

**Equal treatment of foreign nationals and stateless persons with regard to family benefits**

The Committee found in its previous conclusion (Conclusions 2011) that the situation was not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties to the 1961 Charter or the Charter with regard to family benefits was not ensured because the length of residence requirement was excessive (3 years).

The Committee takes note of the changes that intervened outside the reference period, namely that following this conclusion of non-conformity the personal scope of the Family Support Act was modified on 1 January 2014. Thus pursuant to the Family Support Act, third country nationals are also entitled to family benefits, even in the absence of a residence permit or an EU Blue Card, if they stay in Hungary in possession of a single permit, provided that employment was permitted for them for a period exceeding 6 months.

The situation having remained unchanged during the reference period, the Committee considers that it remains in breach of the Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

**Conclusion**

The Committee concludes that the situation in Hungary is not in conformity with Article 16 of the Charter on the grounds that:

- evicted families can be left homeless;
it has not been established that there is an adequate supply of housing for vulnerable families;
Roma families do not have access to adequate housing;
equal treatment of nationals of other States Parties with regard to family benefits is not ensured because the length of residence requirement is excessive.

**Historic elements**

*The situation is not in conformity since Conclusions 2011 for the first, third and fourth ground. It is the first time of non-conformity for the second ground*

**41. RESC 16 LATVIA**

The Committee takes note of the information contained in the report submitted by Latvia.

**Social protection of families**

**Housing for families**

Latvia has accepted Article 31§1 of the Charter on the right to access to adequate housing. As this aspect of housing of families covered by Article 16 is also covered by Article 31§1, for states that have accepted both articles, the Committee refers to Article 31§1 on matters relating to access to adequate housing of families.

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

On alternative solutions to eviction, the report states that:

- if a low-income tenant is evicted due to the failure to pay the rent on a residential space or a fee for general services and if the tenant lives with at least one minor child, the execution of the court order regarding eviction from the residential space is suspended until the municipality provides the tenant with another residential space fit for living;
- if the tenant is evicted as a result of the demolition of the residential house or in the event of transforming the residential house into a non-residential house, the owner of the house has the duty to provide the tenant and his/her family members with another equivalent residential space.

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards protection against unlawful eviction, the Committee asks for the second time for information on all the other aforementioned points. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity with the Charter in this respect.

**Childcare facilities**
The Committee recalls that as Latvia has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

**Family counselling services**

The Committee recalls that families must be able to consult appropriate social services, particularly when they are in difficulty. States are required in particular to set up family counselling services and services providing psychological support for children’s education.

In its previous conclusion (Conclusions XIX-4 (2011)), the Committee asked for information on family counselling services. In view of the lack of response, the Committee reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

**Participation of associations representing families**

The report indicates that many NGOs representing families are represented in the Council of Demographic Affairs established in April 2011. The Council is an advisory state institution, which evaluates and coordinates the implementation of family policies.

**Legal protection of families**

**Rights and obligations of spouses**

The Committee refers to its previous conclusion (Conclusions XIX-4 (2011)) for an overall description of rights and obligation of spouses. It considered the situation to be in conformity with the Charter.

The report indicates that since 1 February 2011 marriage can also be dissolved by a sworn notary when a joint submission of both spouses regarding the divorce is received.

**Mediation services**

The report indicates that the Law on Mediation entered into force on 18 June 2014 (outside the reference period).

The Committee recalls that States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided. The Committee asks the next report to provide information on all these points.

**Domestic violence against women**

The Committee takes note of the introduction of the following legislations:

- in May 2009 the Parliament approved amendments to the Law on Social Services and Social Assistance, which provides for the introduction of state funded social rehabilitation services for both victims of domestic violence and persons who have committed an act of domestic violence. The report indicates that because of limited financial resources such services will be available from 1st January 2015;
- since 2011, Criminal Procedure Code ensures legal protection for victims of domestic violence via private prosecution outside the frame of marriage;
- amendments to the Law on Police expand police powers in domestic violence cases;
in 2011 a new aggravating circumstance was introduced in criminal law in case of violent crimes, crimes against moral and sexual crimes committed against a relative, intimate partner or former intimate partner;

in 2013 amendments to Civil Procedure Code introduced the right for a person suffering from domestic violence to request the court to issue a restraining order against the perpetrator on her own initiative. In case of violation of this restraining order, the perpetrator incurs criminal liability.

It also notes the following measures:

in 2009 and 2010, state financed support groups for women who have suffered from domestic violence were organised;

in 2011, a pilot project developing a model providing support to persons who have committed violence against a spouse or a partner was initiated;

since 2005, annual state financed trainings on domestic violence have been provided to different kinds of professionals, including police, judges, social workers, etc.;

since 2003, the Law on Social Services and Social Assistance establishes crisis center in case of domestic violence.

In view of the foregoing, the Committee considers that the situation has been brought into conformity with the Charter. The Committee however wishes the next report to indicate the measures of prevention against domestic violence and continues to provide information on the objectives already stated.

Economic protection of families

Family benefits

According to Eurostat, the monthly median equivalised income in 2013 was €388. MISSOC indicates that the amount of child benefit per month was €11.38. The Committee notes that the child benefit is 2.9% of the monthly median equivalised income in 2013.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of the median equivalised income. It considers therefore that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

Vulnerable families

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee asked what concrete measures were taken to ensure the economic protection of Roma families.

The report indicates that there were 66 projects aimed at Roma social inclusion in the framework of the State programme “Roma in Latvia” (2007-2009) supported by the State budget. It stresses that the most significant achievement is the preparation and involvement of teacher assistants with Roma background into the mainstream education system. It also mentions other activities related to the level of education. The Committee asks the next report to indicate the objectives that are being set in this field as well as the results that are achieved.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

In its previous conclusion (Conclusions XIX-4 (2011)) the Committee considered that the situation was not in conformity with the 1961 Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits was not ensured because the length of residence requirement of five years was excessive.
The report does not provide information in this respect. The Committee however notes from the Governmental Committee’s report of 2013 (Report concerning Conclusions XIX-4 (2011)) that no modification to the existing legislation is foreseen. It therefore considers that the situation remains in non-conformity with the Charter.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

**Conclusion and historic elements**

The Committee concludes that the situation in Latvia is not in conformity with Article 16 of the Charter on the grounds that:

- family benefits are not of an adequate level for a significant number of families;
- equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured because the length of residence requirement is excessive.

**Historic elements**

*This is the first time of non-conformity on Art.16 of the Charter.*

**42. RESC 16 LITHUANIA**

The Committee takes note of the information contained in the report submitted by Lithuania.

**Social protection of families**

**Housing for families**

Lithuania has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

**Childcare facilities**

The Committee notes that as Lithuania has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

**Family counselling services**

The report indicates that non-governmental organisations provide complex services to families, including individual psychological, social and legal consultations, psychological education group sessions for spouses, formation on parental skills, etc. In this regard, in 2012, the Ministry of Social Security and Labour implemented the measure "Financing of the Projects of Non-Governmental Organisations Working in the Area of Family Welfare", which aimed at promoting the establishment of an independent and viable family based on mutual assistance and responsibility of family members and providing assistance in overcoming divorce crises. In 2013, 21 project implementers organised 5,603 different events for families, engaged couples and individual persons.

**Participation of associations representing families**

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of the situation, which it found to be in conformity with the Charter.

It notes that for the period 2010-2013, the Communities Affairs Division of the Family and Communities Department of the Ministry of Social Security and Labour organised annual open grant competitions for NGOs mostly working in the area of local communities.
Legal protection of families

Rights and obligations of spouses

The Committee notes that the report provides no information on this issue. The latest information at its disposal dates back to 2006. It therefore asks the next report to provide a full and up-to-date description of the rights and obligations of spouses.

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

Mediation services

In its previous conclusion (Conclusions 2011) the Committee asked for information on access to mediation services, whether they are free of charge, how they are distributed across the country and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The report provides no reply. The Committee therefore reiterates its request. Should the next report fail to provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

Domestic violence against women

On the legislative framework, the Committee notes the adoption on 26 May 2011 of the Law on Protection against Domestic Violence, which defines the concept of domestic violence, establishes the rights and liabilities of subjects of domestic violence, implements preventive and protective measures and provides for assistance in the event of domestic violence. The Law lays out that violence shall incur criminal liability. It also provides that a police officer, who records a case of domestic violence, is obliged to take immediate measures to protect the abused person and to initiate an investigation without submission of an official complaint. Thus, perpetrators can be subject by court decision to immediate measures, such as removal from home as well as prohibition to approach the victim.

In practice, the Committee notes the operation since 2012 of the network of specialised assistance centres "SAC", which are administered by NGOs. Such centres operate in all municipalities and provide complex assistance to victims of violence. The centres receive a report from police officers then contact the victim. The report indicates that in 2013 SACs provided assistance to more than 5,000 victims of domestic violence. The Committee takes also note of the drafting of the National Programme for the Prevention of Domestic Violence and Provision of Assistance to Victims 2014-2020. It asks the next report to indicate the outcomes of this Programme. Finally, it takes note of public awareness raising activities.

Economic protection of families

Family benefits

According to Eurostat data, the monthly median equivalised income in 2013 was €391. According to MISSOC, in 2013, the monthly amounts of child benefit were:

- €28 for each child raised in a family and who is between 0 and 2 years old, if the monthly income per family member is less than 1.5 times the amount of the State Supported Income ("SSI"), i.e. €152;
• €15 for each child raised in a family and who is between 2 and 7 years old (or between 2 and 18 years old in families raising three or more children), if the monthly income per family member is less than 1.5 times the amount of the SSI, i.e. €152.

Child benefit represented a percentage of the monthly median equivalised income as follows: 7.15% for a child between 0 and 2 years old; 3.8% for each child raised in a family and who is between 2 and 7 years old (or between 2 and 18 years old in families raising three or more children).

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents an adequate percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the situation is not in conformity on the ground that family benefits are not of an adequate level for a significant number of families.

Vulnerable families

The Committee asked in its previous conclusion (Conclusions 2011) what measures are taken to ensure the economic protection of Roma families. The report provides no information in this respect. The Committee reiterates its request. Should the next report fail to provide the requested information there will be nothing to show that the situation is in conformity with the Charter.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The Committee found in its previous conclusion (Conclusions 2011) that the situation was not in conformity with the Charter on the ground that, with regard to the payment of family benefits, equal treatment of nationals of other States Parties to the 1961 Charter or the Charter was not ensured due to an excessive length of residence requirement.

The report indicates that the personal scope of the Law on Child Benefit was amended in 2013. It now applies as follows:

• persons who reside permanently in Lithuania;
• aliens who reside in Lithuania and who, have been appointed guardians of a child who is a citizen of Lithuania, and alien children who reside in Lithuania and who, have been placed under guardianship in Lithuania;
• aliens who have been issued a temporary residence permit for the purpose of highly qualified employment;
• persons to whom the Law on Child Benefit must apply under the EU regulations on the coordination of social security systems.

The Committee notes that outside the reference period, the personal scope of the Law on Child Benefit was enlarged to include third-country nationals with temporary permit to reside and who have been authorised to work, who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed, except for third-country nationals who have been admitted for study purposes.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Lithuania is not in conformity with Article 16 of the Charter on the grounds that:

• family benefits are not of an adequate level for a significant number of families;
equal treatment of nationals of other States Parties with regard to the payment of family benefits is not ensured due to an excessive length of residence requirement.

Historic elements

The situation is not in conformity on the second ground since Conclusions 2004. The first ground was a case of non-conformity in Conclusions 2004, 2011 and 2015 (but not in 2006 Conclusion).

43. RESC 16 NORWAY

The Committee takes note of the information contained in the report submitted by Norway.

Social protection of families

Housing for families

Norway has accepted Article 31 of the Charter on the right to housing. As all aspects of housing of families covered by Article 16 are also covered by Article 31, for states that have accepted both articles, the Committee refers to Article 31 on matters relating to the housing of families.

Childcare facilities

The Committee recalls that as Norway has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

Family counselling services

The Family Counselling Offices Act constitutes the legal framework for family counselling services, which include counselling, guidance and therapy for couples, families or individuals who experience difficulties, conflicts or crises within the family. All services are given on a voluntary basis. There is at least one Family Counselling Office in each county (49 agencies in 19 counties). The staff is composed of psychologists and social workers specialised in family therapeutic skills. Offices are owned and run either by the State or by the Church.

Participation of associations representing families

The Committee refers to its previous conclusion (Conclusions 2011), in which it found the situation to be in conformity with the Charter.

Legal protection of families

Rights and obligations of spouses

The report indicates that pursuant to the Marriage Act, spouses have a mutual obligation to support each other. If a spouse does not fulfil the obligation to make necessary funds available to the other, the court can order him or her to pay certain amounts. As to children, the report states that under the Children Act, parents are obliged to support their children. Both parents shall contribute to this support and education according to their financial capacity. The support obligation applies regardless of whether or not the parents live with the children.

The report provides no information on legal means of settling disputes between spouses. The Committee therefore asks the next report to provide information in this respect.

On legal means of settling disputes concerning children, the report indicates that parents decide and agree how to organise themselves after a separation. When the parents cannot agree, the courts can settle the issues if one of the parties brings the case before the court. It is a basic principle in both the Children Act and the Convention on the Rights of the Child that decisive emphasis shall be placed on the child’s best interests when settling issues linked to
children following a separation. This applies both when the parents themselves make decisions, and when the courts hand down rulings.

**Mediation services**

The Committee refers to its previous conclusion (Conclusions 2011), in which it found the situation to be in conformity with the Charter.

**Domestic violence against women**

The Crisis Centre Act, which came into force on 1 January 2010, makes it obligatory for local authorities to provide shelter and assistance for victims of violence. In view of this new Act, the report indicates that in 2013 there was a total of 46 crisis centres, where 2,028 people, mostly women, lived. The number of daytime users was 2,302.

The Committee notes that in August 2013, the Government launched a fifth Action Plan on Domestic Violence for the period 2014-2017, which underlines that the issue of domestic violence calls for a broad range of measures making use of policy instruments in the fields of justice, gender equality, social welfare, health and education. A cross-ministerial working group has been set up to ensure implementation of the measures. The Action Plan wishes to help ensure that the police and support services are better trained, better coordinated and more capable of detecting, preventing and dealing with the many complex issues raised by domestic violence. The measures in the action plan include a five-year research programme on domestic violence, a new grant scheme for voluntary organisations for work with domestic violence and several measures directed at preventing such violence. Among these are electronic monitoring of the offender (reverse domestic violence alarms) and improved domestic violence alarms.

The report highlights that there has been a sharp rise in the number of reported cases of domestic violence in recent years. 2,829 cases were reported in 2013, and there was an increase of 32% from 2009 to 2013. According to the report, this increase is due to the increased efforts of the police in combating domestic violence in recent years.

**Economic protection of families**

**Family benefits**

According to Eurostat data, the monthly median equivalised income in 2013 was €3,578.

According to MISSOC, in January 2015, the monthly amount of child benefit was €107 for each child. The child benefit is not means-tested and is not subject to taxation.

Thus, child benefit represents a percentage of that income as follows: 3% for each child. The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when it represents a significant percentage of the monthly median equivalised income.

The Committee considers that the amount of child benefit of 3% of the monthly median equivalised income is too low to represent a significant percentage. The Committee takes note of the information on tax relief and special deductions, but in order to assess whether benefits and tax relief for families with children taken together represent an adequate income supplement it needs to know whether they apply to all families and their actual amount for different family types. Meanwhile, the Committee reserves its position.

**Vulnerable families**

In its previous conclusion (Conclusions 2011), the Committee asked what measures were taken to ensure the economic protection of Roma families. The report indicates that an Action Plan was presented in 2009 to improve the living conditions for Roma, most of whom live in Oslo. The Action Plan provides that Roma who face difficulties in the housing market can, just as other disadvantaged people, apply for loans and subsidies from the Norwegian State Housing Bank, for municipal rental housing and for other social housing services. In addition,
an advisory service for Roma in Oslo has been established in Oslo with a view to providing information and guidance about education, housing, work and health. The Committee takes note of these measures and asks the next report to continue to provide information in relation to the economic protection of Roma families.

**Equal treatment of foreign nationals and stateless persons with regard to family benefits**

The Committee notes that pursuant to the Child Benefit Act, child benefit is granted to all children living in Norway regardless of nationality. A child is considered as living in Norway if he or she has resided/has been domiciled for more than 12 months. The Committee has held a period of 6 months to be reasonable and therefore in conformity with Article 16 (Conclusions XIV-1 (1998), Sweden). On the other hand it has held periods of 1 year, and a fortiori, 3-5 years to be manifestly excessive and therefore in violation of Article 16 (Conclusions XVIII-1 (2006), Denmark). The Committee therefore considers that the situation is not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of child benefit is not ensured because the length of residence requirement is excessive.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

**Conclusion**

The Committee concludes that the situation in Norway is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of child benefit is not ensured because the length of residence requirement is excessive.

**Historic elements**

_The situation is a first case of non-conformity on Art.16 of the Charter._

44. **RESC 16 SERBIA**

The Committee takes note of the information contained in the report submitted by Serbia.

**Social protection of families**

**Housing for families**

The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European
Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

The Committee notes the adoption in 2009 of the Law on Social Housing, which created a general legal framework for the development of social housing. Further to this Law, in 2012, the Government adopted the National Strategy for Social Housing, which defines actions to be taken in the housing sector, develops the concept of social housing, increases housing availability for households with low income, etc. In view of the implementation of this Strategy, an Action Plan was adopted. In the same vein, in March 2013, the Government adopted the Decree on Standards and Norms for Planning, Designing and Construction and Terms for Use and Maintenance of Social Housing Apartments.

The report, however, indicates that the existing system of social housing for leasing apartments is still not sufficiently affordable to low income households, which are facing difficulties when paying the rent or utility bills. It also stresses that there are more and more situations where competent authorities initiate eviction proceedings due to unpaid bills or rent. It further points out that in 2011 there were 19,000 homeless people.

The report states that a unified measure according to which vulnerable households may be granted a right to a discount for monthly bills for electricity, natural gas and heat energy has been introduced at the national level. However, it also indicates that subsidies for housing costs provided by certain local government units have not yet been systematised.

While taking note of this measure, the Committee asks the next report to provide information on its implementation and on any other measures taken to ensure adequate housing for the families. In the meantime, it reserves its position on this issue.

As regards access to housing for vulnerable families and Roma in particular, the Committee has held that as a result of their history, the Roma have become a specific group of disadvantaged and vulnerable minority. They therefore require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40).

The Committee notes from the European Commission against Racism and Intolerance’s (ECRI) fourth report, adopted in 2011, that there are poor living conditions of Roma living in settlements and that there have been many forcible evictions of Roma in and around the city of Belgrade.
To remedy this situation, the report indicates that the implementation of the National Strategy for Improvement of the Status of Roma through the adoption of the Action Plan has begun in 2009. This Action Plan aims at improving the housing conditions of Roma families by relocating them and setting the foundation for the sustainable improvement of their status. The Committee takes note of these measures, but asks the next report to continue to provide information on the measures taken to improve the housing conditions of Roma families, including statistics.

Concerning refugees, the Committee notes the adoption of the National Strategy for Resolving the Issues of Refugees and Internally Displaced Persons 2011-2014, which notably deals with housing issues. It also notes from the report that the number of collective centres for accommodation of refugees and IDPs was reduced significantly and numerous housing solutions were provided, but that informal settlements are still present. It further takes note of the Regional Housing Programme (RHP), which aims at providing permanent housing solutions for 400 families living in collective centres and 16,780 refugee families. RHP is to be completed in 2017, the Committee asks the next report to provide information on its outcomes.

**Childcare facilities**

The Committee points out that states must ensure that affordable, good quality childcare facilities are available to its citizens (where quality is defined in terms of the number of children under the age of six covered, staff to child ratios, staff qualifications, suitability of the premises and the size of the financial contribution parents are asked to make).

The Committee asks the next report to provide information on childcare facilities in the light of its above-mentioned case law.

**Family counselling services**

The Committee recalls that families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on childrearing.

The report indicates that support and assistance to families and children are provided by the guardianship authority and the centres for social work. The guardianship authority provides psycho-social counselling services, but it mainly supervises the exercise of parental rights, decides on protective measures and initiates judicial proceedings. The centres for social work are the primary providers of social services in a community. There are currently 140 such centres, which cover the whole territory. Within these centres 17 specialised family counselling services are provided.

**Participation of associations representing families**

The Committee recalls that in order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities (Conclusions 2006, Statement of Interpretation on Article 16).

The Committee asks the next report to provide information on the participation of associations representing families in the light of its above-mentioned case law.

**Legal protection of families**

**Rights and obligations of spouses**

The Committee recalls that spouses must be equal, particularly in respect of rights and duties within the couple (reciprocal responsibility, ownership, administration and use of property, etc.) (Conclusions XVI-1 (2002), United Kingdom) and children (parental authority, management of children's property). It also states that in cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.
In light of its above mentioned case-law, the Committee wishes the next report to provide detailed information on the rights and duties within the couple and the legal arrangements to settle marital conflicts.

In respect of children, the report indicates that pursuant to the Family Code spouses are equal. The issues that are of major relevance to the child are decided by both parents, such as upbringing, education, management of child’s property, etc. The parents are obliged to support the child financially.

In cases of conflicts relating to children, pursuant to the Family Code it is the guardianship authority that shall make decisions. The Family Code also provides that a child can be separated from the parents, when it is in the best interest of the child and only by a court decision. During a divorce procedure, the guardianship authority proposes solutions as to the manner in which the child will maintain personal relations with the parent he/she is not living with, but the final decision shall be made by the Court. In case of a dispute concerning financial support, the Family Code establishes the criteria for the Court to consider when making a decision.

**Mediation services**

Section 40 of the Law on Social Protection provides for mediation to support families in crisis. The Committee recalls that States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

The Committee asks the next report to provide information on mediation services in the light of these points.

**Domestic violence against women**

The Committee recalls that Article 16 requires that protection for women exists both in law (through appropriate measures and punishments for perpetrators, including restraining orders, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (through the collection and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims) (Conclusions 2006, Statement of Interpretation on Article 16).

The report indicates that protective measures against the perpetrator of domestic violence are to be found in the Family Code, such as the eviction order from the household, the prohibition of approaching the victim, the prohibition of approaching or entering the living and working place of the victim, etc. These measures are taken during civil proceedings and may last for one year at the most, with a possibility of extension. During the proceedings, the guardianship authority may either have the status of a legitimised entity or of an expert. The court may require this authority to assist in obtaining evidence as well as to provide its opinion on the requested measure.

The Committee takes note of these protective measures and, in light of its above-mentioned case law, asks the next report to provide information on other measures that exist in law and practice.

**Economic protection of families**
Family benefits

The Committee considers that, in order to comply with Article 16, child allowances must constitute an adequate income supplement, which is the case when they represent a significant percentage of median equivalised income. The Committee notes from MISSCEO that the monthly amount of child benefit is €21.3 per child (paid for maximum 4 children per family) for a family whose monthly net income per family member (including children) must be lower than €66.5.

The Committee takes note of these statistics but asks that the next report indicate the level of median equivalised income or most similar indicator, such as the national subsistence level, the average income or the national poverty threshold, etc. so that it can determine whether child benefit constitutes an adequate income supplement for a significant number of families. In the meantime, it reserves its position on this point.

Vulnerable families

States’ positive obligations under Article 16 include implementing means to ensure the economic protection of various categories of vulnerable families, such as Roma families and single-parent families.

Concerning single-parent families, the Committee notes they are entitled to an increased financial social assistance, established by increasing the stipulated amount of social assistance for an individual or a family by 20%.

The Committee asks the next report to provide information on the measures taken to ensure the economic protection of Roma families.

Equal treatment of foreign nationals and stateless persons with regard to family benefits

The Committee recalls that States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory and stateless persons with respect to family benefits.

The Committee notes from MISSCEO that family benefits are only granted to nationals. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to family benefits.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 16 of the Charter on the ground that equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured.

Historic elements

The situation is a first case of non-conformity on Art.16 of the Charter.

45. RESC 16 SLOVAK REPUBLIC

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

Social protection of families

Housing for families
The Committee has constantly interpreted the right to economic, legal and social protection of family life provided for in Article 16 as guaranteeing the right to adequate housing for families, which encompasses secure tenure supported by law (Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint 52/2010, decision on the merits of 22 June 2010, § 54).

Under Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and size considering the composition of the family in question, and include essential services (such as heating and electricity). Furthermore, the obligation to promote and provide housing extends to ensuring enjoyment of security of tenure, which is necessary to ensure the meaningful enjoyment of family life in a stable environment. The Committee recalls that this obligation extends to ensuring protection against unlawful eviction (European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 24).

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers and tenants must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective (Conclusions 2003 France, Italy, Slovenia and Sweden; Conclusions 2005 Lithuania and Norway; European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81). Public authorities must also guard against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

As to protection against unlawful eviction, States must set up procedures to limit the risk of eviction (Conclusions 2005, Lithuania, Norway, Slovenia and Sweden). The Committee recalls that in order to comply with the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction

To enable it to assess whether the situation is in conformity with Article 16 of the Charter as regards access to adequate housing for the families, the Committee asks for information in the next report on all the aforementioned points.

With regard to Roma families, the report indicates that on 11 January 2012 the Government approved the Strategy for the integration of Roma up to 2020 aiming at improving access to housing with special emphasis on social housing and the need to support abolishing segregation in housing. In addition, the report states that funds are being used in the context of the European Regional Development Fund to bridge the gap between the majority of the population and the Roma minority in access to housing and utilities (such as water, electricity and gas). The problem of inadequate housing for Roma families has also been partially addressed by the Program for Housing Development adopted by the Government. In the frame of this program the Ministry of Transport, Construction and Regional Development subsidizes the construction of rental housing, infrastructure as well as the elimination of system failures in residential homes. This program is governed by Act No. 443/2010 on Subsidies for Housing Development and on Social Housing. Based on this program there were 2,900 apartments built and made available for members of the Roma minority to ensure that they are living in much better conditions and among the rest of the population.
According to the European Commission against Racism and Intolerance (ECRI), (5th report on Slovakia, 16 September 2014, §§ 98-101), housing situation of Roma has worsened with the erection of some 14 walls segregating predominantly Roma neighbourhoods; the latest was erected in Kosice, the second largest city, in June 2013. The walls resulted in deepening the segregation between the poorer Roma communities from better-off neighbours. In addition, a number of anti-Roma protest marches (11 between 2010 and 2012) were organised to oppose the inclusion of Roma settlements in "urban areas" populated by non-Roma. ECRI also witnessed in situ the Roma very poor housing and health conditions of a Roma settlement near the village of Moldova nad Bodvou. Moreover, according to the report of the Commissioner for Human Rights on his visit to the Slovak Republic (CommDH(2011)42, §§ 57-67) approximately half of the Roma population live in marginalised communities, including segregated settlements, majority conditions in most of these settlements are seriously sub-standard, segregation is enhanced by the building of walls to separate Roma from non-Roma areas and the lack of secure tenure of land, housing and property increases their vulnerability to forced evictions.

While taking note of the measures taken, the Committee considers in view of the foregoing that the situation is not in conformity with the Charter on the ground that the right to housing of Roma families is not effectively guaranteed. It asks for information in the next report on the outcomes of the measures taken to improve the housing situation of Roma families.

**Childcare facilities**

The Committee notes that as Slovak Republic has accepted Article 27 of the Charter, measures taken to develop and promote child day care structures are examined under that provision.

**Family counselling services**

The Committee refers to its previous conclusion (Conclusions 2011) where it found the situation to be in conformity with the Charter.

**Participation of associations representing families**

The Committee already asked twice (Conclusions 2006 and 2011) if associations representing families were consulted when family policies were drawn up. In view of the lack of information, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that associations representing families are consulted when family policies are drawn up.

**Legal protection of families**

**Rights and obligations of spouses**

The Committee asks for the second time for up-to-date information in the next report on the system governing the rights and obligations of spouses in respect of one another and their children. It also wishes to be informed about the legal means of settling disputes between spouses and disputes concerning children. Should the next report not provide the necessary information, there will be nothing to show that the situation is in conformity with Article 16 of the Charter on this ground.

**Mediation services**

The report provides no information on mediation services despite the fact that the Committee already asked twice to be informed on such services. The Committee reiterates its request concerning the functioning of mediation services, particularly whether they are free of charge, how they are distributed across the country and how effective they are. The Committee considers that under Article 16 of the Charter, the legal protection of the family includes the provision of mediation services whose object should be to avoid the further deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from seeking such services for
financial reasons. Providing these services free of charge constitutes an adequate measure to this end. Otherwise, in case of need, a possibility of access for families should be provided.

In the meantime, it finds that the situation is not in conformity with the Charter on the ground that it has not been established that mediation services exist.

**Domestic violence against women**

In its previous conclusion (Conclusions 2011) the Committee asked information on the implementation of the legislation on domestic violence. The report provides no information in this respect therefore the Committee reiterates its question. Should the next report not provide the requested information there will be nothing to show that the situation is in conformity with the Charter in this respect.

**Economic protection of families**

**Family benefits**

According to Eurostat data, the monthly median equivalised income in 2013 was €561. According to MISSOC, the monthly amounts of child benefit was €23.52, that is 4.1% of the monthly median equivalised income.

The Committee considers that, in order to comply with Article 16, child benefit must constitute an adequate income supplement, which is the case when they represent a significant percentage of the monthly median equivalised income. On the basis of the figures indicated, the Committee considers that the situation is not in conformity with the Charter on the ground that the level of child benefit does not constitute an adequate income supplement.

**Vulnerable families**

The Committee reiterates its question concerning the measures taken to ensure the economic protection of Roma families. Should the next report not provide the requested information, there will be nothing to show that the situation is in conformity on this ground.

**Equal treatment of foreign nationals and stateless persons with regard to family benefits**

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the ground that entitlement to childbirth allowance and childminding allowance was subject to an excessive length of residence requirement.

As regards childminding allowance, the report indicates that the situation has changed, in that permanent residence permit is no longer required to apply for the allowance. The applicant to this allowance may reside in the country on the basis of a temporary residence permit. The situation has therefore been brought into conformity in this respect.

The Committee asks the next report to indicate whether stateless persons and refugees are treated equally with regard to childminding allowance.

However, concerning childbirth allowance, the report states that to be able to apply for it without a permanent residence permit the applicant must fulfil one of these conditions:

- be a citizen of a state that is member of the European Union, European Economic Area or the Swiss Confederation; or
- be a citizen of a state which has a bilateral agreement on social security with the Slovak Republic; or
- be granted refugee status.

In view of these specific conditions, the Committee considers that not all foreign nationals of States Parties are treated equally with regard to childbirth allowance. It therefore finds that the situation is not in conformity with the Charter.
The Committee asks the next report to indicate whether stateless persons are treated equally with regard to childbirth allowance.

**Conclusion**

The Committee concludes that the situation in Slovak Republic is not in conformity with Article 16 of the Charter on the grounds that:

- the right to housing of Roma families is not effectively guaranteed;
- it has not been established that associations representing families are consulted when family policies are drawn up;
- it has not been established that mediation services exist;
- the level of child benefits does not constitute an adequate income supplement;
- equal treatment of nationals of States Parties regarding the payment of childbirth allowance is not ensured.

**Historic elements**

The situation is not in conformity on the first ground since Conclusion 2011. It is a first time case of non-conformity for the second, third, fourth and fifth grounds.

### Article 17§1 - Assistance, education and training

**46. RESC 17§1 ARMENIA**

The Committee takes note of the information contained in the report submitted by Armenia.

**The legal status of the child**

In its previous conclusion the Committee asked whether there were any restrictions to the right of adopted children to know their origins. It notes from the report that the confidentiality of adoption is provided for by Article 128 of the Family Code. The Committee recalls in this regard that Article 17 guarantees the right of a child to know, in principle, his or her origins. The Committee asks whether the Family Code establishes any restrictions to this right.

In its previous conclusion the Committee reiterated its question whether the law permitted discrimination between children born within and outside the marriage e.g. in respect of maintenance obligations and inheritance rights. It notes that the report does not provide this information. Therefore, the Committee considers that it has not been established that there is no discrimination between children born within and outside the marriage.

**Protection from ill-treatment and abuse**

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as corporal punishment was not explicitly prohibited in the home.

The Committee notes from the Global Initiative to End Corporal Punishment of Children that prohibition is still to be achieved in the home, alternative care settings and schools. There is no defence for the use of corporal punishment enshrined in legislation but there is no explicit prohibition. In theory, the prohibition of cruelty, violence and humiliation in childrearing in Article 53 of the Family Code would prohibit corporal punishment by parents, which invariably violates a child's dignity, but the law is not interpreted in this way – and the potential for such an interpretation is undermined by the near universal social acceptance and use of corporal punishment in childrearing.

The Committee notes from the report of the Governmental Committee to the Committee of Ministers (TS-G (2011)1, §377) that in accordance with Section 9 of the Law on the Protection
of the Rights of the Child, each child had a right to protection against any type of violence and any person including the child’s legal representative were forbidden to exercise any violence against the child or any punishment humiliating the child’s dignity. An express prohibition of corporal punishment has been included in the new draft Law on Domestic Violence.

The Committee notes from the report that for the purpose of ensuring the compliance of the legislation with the Revised European Social Charter, as well as having regard to the priority of protection of interests of a child, a provision has been introduced to the Family Code on excluding beating as a means of child upbringing.

In this connection, the Committee notes from the Global Initiative to End Corporal Punishment of Children that in 2015, the Government accepted a recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of Armenia and confirmed that prohibition would be included in draft amendments to the Family Code. The Committee asks the next report to provide the information on the provision in the Family Code which explicitly prohibits all forms of corporal punishment of children in the home.

The Committee notes that during the reference period the situation which it has previously found not to be in conformity with the Charter has not changed. The Committee reiterates its previous finding of non-conformity on the ground that corporal punishment is not prohibited in the home.

**Rights of children in public care**

In its previous conclusion the Committee asked for information on measures taken to decrease institutionalisation of children, including their direct impact i.e. the number of children in foster care as opposed to that in long-term care institutions.

According to the report, the policy adopted by the Government mainly aims at ensuring child care and upbringing in a family by means of reducing the number of children in orphanages and boarding institutions for child care and preventing the flow of children to such institutions.

Decision N 1273-N of 13 November 2014 introduced amendments to the 2013-2016 Strategy Plan for the Protection of Rights of Children, the main purpose of which is to establish various institutions in the country providing alternative services of care and protection for children left without parental care and to reduce the number of children placed in centralised large institutions.

As of 2014, the number of children under care in state orphanages stood at 730. As a result of reforms that have been implemented since 2009, the number of children in state and charitable orphanages has reduced by 117.

The Committee wishes to receive more details regarding the development of foster care, including the number of children placed in foster families as well as the trend in de-institutionalisation of childcare.

As regards restriction of parental rights, the Committee asks whether the financial situation of the family can become the sole ground of placement of children.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

In its previous conclusion the Committee found that the maximum length of pre-trial detention of minors was excessive.

According to the report, detention may be imposed on a minor who is accused of a minor or medium-gravity criminal offence only in cases where he or she has breached the conditions of the alternative measure of restraint imposed on him or her. In any case detention as a
measure of restraint may be imposed on an accused who is a minor in extreme cases and for the shortest period of time.

The duration of detention or home arrest imposed on a minor during pre-trial proceedings may not exceed one month. The overall duration of detention imposed on a minor during pre-trial proceedings may not exceed two months, when being accused of a minor or medium-gravity crime; six months, when being accused of a grave or particularly grave crime. In the latter case, detention imposed on a minor may, in exceptional cases, be prolonged for two months at most.

The Committee notes that according to Article 89 of the Criminal Code the maximum sentence that can be imposed on a minor is 10 years.

The Committee also asks whether young offenders in pre-trial detention and when serving a prison sentence are always separated from adults.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in Armenia is not in conformity with Article 17§1 of the Charter on the grounds that:

- it has not been established that there is no discrimination between children born within and outside the marriage;
- not all forms of corporal punishment of children are prohibited in the home.

**Historic elements**

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

*On the previous occasion, the Armenian delegate indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §377).*

**47. RESC 17§1 BOSNIA AND HERZEGOVINA**

The Committee takes note of the information contained in the report submitted by Bosnia and Herzegovina.

It notes from the report that different provisions apply at state level and to the sub-state levels of governance, namely the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District.
The legal status of the child

The Committee notes that according to the Family Law of the Federation of Bosnia and Herzegovina a child has the right to know that he/she was adopted and he/she shall be allowed to review the adoption file when he/she reaches the age of majority. The inheritance and maintenance rights of children are the same for children born in or outside the marriage.

As regards the Republika Srpska, according to the report the Family Law does not specifically provide for the child’s right to know his/her origin, so the cases when it can be restricted are not provided for either. According to Article 8 the rights and obligation of the parents and other relatives towards their children are equal regardless of whether children are born within marriage or outside the marriage.

In the Brčko District Section 77 of the Family Law provides that a child has the right to know that he/she was adopted. The Family Law provides for cohabitation (Article 5), and considers it to be equal to marriage as regards rights to mutual maintenance and other property issues. Therefore, according to the report, the rights of children born within marriage and outside marriage are fully equal.

Protection from ill-treatment and abuse

In its previous conclusion (Conclusions 2011) the Committee considered that there is no explicit prohibition of corporal punishment in the home in the Federation of Bosnia and Herzegovina and the Brčko District.

The Committee notes from the Global Initiative to End Corporal Punishment that the law reform has not yet fully prohibited corporal punishment in the home throughout Bosnia and Herzegovina. Corporal punishment is unlawful in schools.

The Committee takes note of the legislation in all entities prohibiting domestic violence against children. Nevertheless, the Committee notes that the Family Law of the Federation of Bosnia and Herzegovina and the Brčko District do not prohibits all forms of corporal punishment.

As regards the Republika Srpska, the Law on Protection against Domestic Violence in RS prohibits different forms of violence, such as physical, emotional or psychological violence. Physical violence is interpreted as behaviour involving physical force intended to cause certain, even smallest pain and/or discomfort, which leads to real or potential harm to the child.

The Committee considers that corporal punishment is not explicitly prohibited in the Federation of Bosnia and Herzegovina and the Brčko District in the home. Therefore, the situation is not in conformity with the Charter.

The Committee asks whether corporal punishment is prohibited in all entities in childcare institutions.

Rights of children in public care

In its previous conclusion the Committee asked what were the criteria for the restriction of custody or parental rights. It also asked what were the procedural safeguards to ensure that children are removed from their families only in exceptional circumstances.

The Committee notes from the report that according to the Family Law of the Federation of Bosnia and Herzegovina at the request of both or one parent the guardianship authority may decide on the placement of the child in an institution if it is necessary for the protection of the best interests of a child. The law provides for the circumstances in which a parent can be deprived of the right to live with a child, i.e. of parental care. The parents may file a request the ‘cessation of fostering’ and if it is not satisfied, they may initiate a law suit in order to decide on the further care of the child. The Court shall restore the right of a parent to live with the child when it is in the interest of the child.

The Law on Social Welfare of the Republica Srbska provides for the conditions under which a child is entitled to be placed in an institution or foster family. Any limitation or restriction upon
the rights of parents to have custody of child is based on the criteria set forth in legislation and does not go beyond the limits necessary to protect the best interests of the child and family rehabilitation.

In the Brčko District the restriction and deprivation of parental custody may be ordered by the competent authority for the reason and in the manner as prescribed by the Family Law. At request of the parent who was deprived of this right the court shall decide whether to reinstate the right of parents to live with the child. The procedure shall be urgent.

In its previous conclusion the Committee noted that the Government was developing its policies with regard to measures to be taken to transform institutional care, develop alternative services, strengthen the capacity of centres for social work and develop legal framework for protection of families and children. The Committee asked what is the maximum number of children that can be accommodated in a single institution.

The Committee notes from the report in this respect that the Rulebook on general, technical and professional requirements for the establishment and operation of social care institutions in the Federation of Bosnia and Herzegovina of 2013 defines the minimum standards of services in social care institutions which may be further expanded by cantonal regulations. This Rulebook defines that the capacity of an institution for children without parental care shall be up to 40 children.

The Committee recalls that a unit in a child welfare institution must resemble the home environment and not be larger than 10 children (Conclusions 2011, Hungary). The Committee asks what is the maximum size of a single institution.

The Committee notes from the report that in 2014, the Government of the Federation of Bosnia and Herzegovina adopted a Strategy on De-Institutionalisation and Transformation of Social Care Institutions (2014-2020). The Strategy represents the commitment by the Government to continue, with the support of cantonal governments, its engagement to improve quality of the life of children

According to the report, in 2013 1,670 children were placed in institutions of whom 587 were in foster families.

The Committee notes from the Concluding observations on the consolidated second to fourth periodic reports of Bosnia and Herzegovina, adopted by the Committee at its sixty-first session (17 September–5 October 2012) that children may be placed in institutions on the sole basis of family economic hardship.

In this connection, the Committee recalls that that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 of the European Convention on Human Rights (Wallova and Walla v. the Czech Republic, No. 23848/04).

The Committee asks whether children may be removed from their families on the basis of poor material circumstances of the family.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

According to the report, following the latest trends and international legal standards in the field of juvenile justice, the Federation of Bosnia and Herzegovina adopted the Law on Protection
and Treatment of Children and Juveniles in Criminal Procedure in January 2014 (outside the reference period). The Committee wishes to be informed of the implementation of this law.

In its previous conclusion the Committee asked whether juvenile offenders serving sentences have the legal right to education. It notes in this respect that that Article 151 of the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure provides that a juvenile serving a custodial measure is entitled to attend school outside the establishment if the establishment does not organise certain type of school or courses and if justified by previous achievements and performance of the juvenile, provided that this does not harm the execution of correctional measure.

As regards the Brčko District, the Committee notes that the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings was enacted in 2011, which defines the requirements governing the conditions, manner and duration of detention of juveniles as well as the execution of institutional correctional measures and juvenile imprisonment.

In its previous conclusion the Committee asked what was the maximum length of pre-trial detention and prison sentence. It notes that according to Article 100 of the above mentioned law following the decision of the judge custody may not exceed thirty days from the day of arrest, and may be extended to up to two months.

According to Article 103 a juvenile in custody is separated from adults. During the execution of criminal sanctions a juvenile should be treated in a manner appropriate to his age, level of maturity and other characteristics of personality.

The term of imprisonment that can be imposed on a juvenile offender cannot be longer than five years. For a criminal offense for which a punishment of long term imprisonment or for concurrence of at least two offenses for which a punishment of imprisonment is longer than 10 years, juvenile imprisonment may last up to 10 years.

The Committee asks whether the maximum pre-trial detention of two months and the maximum prison sentence of 10 years also applies in other entities.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in an irregular situation to protect them against negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in Bosnia and Herzegovina is not in conformity with Article 17§1 of the Charter on the ground that all forms of corporal punishment are not prohibited in the home in the Federation of Bosnia and Herzegovina and the Brčko District.

Historic elements

The situation is not in conformity on this ground since Conclusions 2011.
On the previous occasion, the delegate of Bosnia and Herzegovina indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §391).

48. RESC 17§1 REPUBLIC OF MOLDOVA

The Committee takes note of the information contained in the report submitted by the Republic of Moldova.

**The legal status of the child**

In its previous conclusion (Conclusions 2011) the Committee asked whether the adopted children had a right to know their origins. In this regard it notes from the report that the legislation does not contain any restrictions to the right to know one’s origins. According to the Law on the Legal Status of Adoption, an adopted child after having reached the age of majority has the right to request the information concerning his/her biological parents.

**Protection from ill-treatment and abuse**

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as there was no explicit prohibition of corporal punishment of children in the home.

The Committee notes from another source (Global Initiative to End Corporal Punishment of Children) that corporal punishment is prohibited in the home. In 2008, the Family Code (2001) was amended to establish the right of the child “to be protected against abuse, including corporal punishment by his parents or persons who replace them” (Article 53). Article 62 of the Code states that the methods chosen by parents in educating their children will exclude abusive behaviour, insults and ill-treatments of all types, discrimination, psychological and physical violence, corporal punishments.

The Committee also notes that corporal punishment is prohibited in schools and in institutions.

**Rights of children in public care**

In its previous conclusion the Committee asked what was the criteria for restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

In reply, the Committee notes that the Government approved the Strategy for Child Protection for the years 2014-2020. The document sets out a series of priorities and long-term measures. The Strategy was developed as a response to major social problems of the families and children, such as, inter alia, separation of the child from his/her family.

According to the report, there is a positive trend in de-institutionalisation of children. At the end of 2013 the residential system consisted of 41 residential institutions (3808 children in care), of which 39 (3271 children in care) were subordinated to the Ministry of Education, while in 2007 more 11,000 children were placed in 65 residential institutions for children.

The Committee notes from the report that the reason for placement, according to the parents, was the precarious financial situation of the family. At the end of 2013 temporary centres housed 128 children under the age of 3 years.

In this connection, the Committee recalls that placement must be an exceptional measure and is only justified when it is based on the needs of the child. The financial conditions or material circumstances of the family should not be the sole reason for placement (Conclusions 2011, Statement of Interpretation on Articles 16 and 17). The Committee also refers to the judgements of the European Court of Human Rights where the latter held that separating the family completely on the sole grounds of their material difficulties has been an unduly drastic measure and amounted to a violation of Article 8 (Wallová and Walla v. Czech Republic, application No. 23848/04, judgment of 26 October 2006, final on 26 March 2007).
The Committee considers that the situation of the Republic of Moldova is not in conformity with the Charter as children can be taken into residential care due to the material circumstances of the family.

In its previous conclusion the Committee held that it had not been established that children in public care received a sufficient degree of protection and assistance. The report states in this regard that with a view to developing the system of protection of children in difficulty in each region or municipality a commission is set up to prevent unjustified placement of children in residential care. In 2013 these commissions have examined 4,454 cases of children in 3,406 families. The Commissions gave their opinion to reintegrate 520 children into their biological families and 124 children in extended families. 399 children were institutionalised, 575 children were placed in temporary placement centres for children in situations of risk and in case of 283 children other protection measures were applied.

The Committee takes note of the community social services as well as specialised social services which help children in situations of difficulty. It also notes the family-type children homes which can place children left without parental care under the age of 14. There are also guardianship / curatorship which is a form of protection that is established for children left without parental care for their education and care, as well as the defence of their legitimate rights.

The Committee asks the next report to provide information on the development of foster care or similar type of family environment and the number of children placed in foster care as opposed to institutions.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as young offenders could be held in adult detention facilities.

It notes from the report that according to Article 252 of the Execution Code, convicts under the age of 18 years are placed in penitentiaries for juveniles under the conditions laid down in the Code. They can also serve their the sentence in separate areas of penitentiaries for adults, but under the same conditions as in penitentiaries for minors. Convicted juveniles are held separately from adult convicts.

Concerning the maximum length of prison sentence that can be imposed on a juvenile, according to Article 70 of the Criminal Code it is reduced by half in relation to the same sentence that would be imposed on an adult. Thus the maximum prison sentence of 25 years for an adult becomes the maximum of 12 years and 6 months for a juvenile. Juveniles cannot receive a life sentence.

According to the report, since 2008 the situation with regard to education of juvenile detainees has improved. All classes for juvenile detainees have been renovated and furnished appropriately with teaching material. Since 2013 minors are placed in appropriate classes on the basis of evaluation of their abilities.

The Committee notes that the situation is in conformity with the Charter on this issue.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.
States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect that against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§1 of the Charter on the ground that children can be taken into residential care due to material circumstances of the family.

**Historic elements**

The situation is not in conformity on this ground for the first time.
49. RESC 17§1 MONTENEGRO

The Committee takes note of the information contained in the report submitted by Montenegro. The Council on Children’s Rights monitors the implementation of the National Action Plan for Children. The Law on Social and Child Protection is the legal act that specifically defines the term 'child' as a person under the age of 18.

The legal status of the child

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions on this right and under what circumstances.

Protection from ill-treatment and abuse

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland , decision on the merits of 2 December 2014, §§45-47).

The Committee notes from the Global Initiative to End Corporal Punishment of Children that corporal punishment in Montenegro is lawful in the home. There is no legal defence for its use enshrined in law and provisions against violence and abuse in the Criminal Code 2004, the Family Act 2007, the Charter on Human and Minority Rights and Civil Liberties 2003 and the Law on Family Violence Protection 2010 do not include explicit prohibition of all corporal punishment in childrearing.

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.

Corporal punishment is prohibited in schools according to Section 111 of the General Law on Education. The Law on Primary Education (art. 66) and the Law on High School (art. 49) do not include corporal punishment among permitted disciplinary measures.

The Committee considers that the situation is not in conformity with the Charter as corporal punishment of children is not explicitly prohibited in the home and in institutions.
**Rights of children in public care**

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well-being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children’s growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.

According to the report, the Law on Social and Child Protection defines the duty of all who work on child protection to make every effort to assist the child to remain in the family by providing family support and if this is not possible, through the provision of family placement-foster care. A child under three years of age shall not be placed in an institution and the placement is provided only when all other options are exhausted and it is reviewed at least every six months. The Ministry of Labour and Social Welfare aims at reducing the total number of children in institutional care by 30% by the end of 2017 and the children aged 0-3 will be the priority.

The Committee takes note of the draft plan for transformation of the Institution ‘Komanski Most’ prepared in 2011 with the assistance of UNDP and UNICEF. Children’s pavilion at the institution ‘Komanski’ was closed in mid-2014 and all children were relocated. Children who have attained the majority have been moved to adult pavilions in the absence of alternative services. Another draft plan for transformation of the public institution children’s home ‘Mladost’ was prepared as well with the support of the UNICEF. The plan seeks to provide transformation of residential institutions for children and support services that are aligned with the needs of children and families in the community, to develop and further strengthen foster care.

The Social Protection Reform Strategy aims at development of various services which support the natural family and family environment, as least restrictive environment for a child. It also emphasises the importance of encouraging the development of less restrictive forms of social protection – foster care, adoption services, day centres, home assistance etc.

The aim of the reform is primarily to reduce the number of children in institutions and develop a range of new services in order to bring the conditions in the institution closer to the standards of living in the family.

The expectations of the reform are to prevent separation of children from their families, improved developmental outcomes, protection from neglect and abuse. Reduction of residential capacities will free up resources which can be channelled towards offering services in the community for children who live with their families as well as establishment of new centre to support foster families.

The Committee wishes to be informed about the implementation of the Social Protection Reform Strategy. In the meantime it notes that there were six children up to the age of three and 91 children aged 3-18 in institutions.

The Committee recalls (Conclusions XV-2, Statement of Interpretation on Article 17§1, p.29) that any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The Committee has held that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. The Committee asks what are the criteria for the restriction of custody or parental rights and what is the extent of such restrictions. It also asks what are the procedural safeguards to ensure
that children are removed from their families only in exceptional circumstances. It further asks whether the national law provides for a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child’s closest family.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

The Committee notes from the report that the Law on the Treatment of Juveniles in Criminal Proceedings contains the basic principles of juvenile justice. The measure of detention as a measure of deprivation of liberty may be ordered only exceptionally under legally prescribed terms. This law explicitly stipulates the obligation of the juvenile judge or the presiding judge for juveniles who rendered the criminal sanction to supervise and control its execution. A juvenile judge who handed down the institutional measure is under an obligation to visit juveniles placed in juvenile ward or in an institution every six months.

The Committee asks what is the age of criminal responsibility and the maximum length of pre-trial detention and prison sentence that can be imposed on a minor. It also asks whether young offenders are always separated from adults.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in Montenegro is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment of children is not prohibited in the home and in institutions.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*
The Committee takes note of the information contained in the report submitted by the Russian Federation.

The Committee notes that the National Strategy of Action on Children was approved for the period of 2012-2017. It is the main policy document in the field of the rights of children and young persons to social, legal and economic protection. The Coordinating Council on the implementation of the National Strategy for Action in favour of children was created under the President of the Russian Federation.

The legal status of the child

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. The Committee wishes to be informed about the applicable legislation in this regard.

According to Article 13 of the Family Code the unified age of marriage is established at 18. However, local authorities may decide to marry a couple at 16 if there are valid reasons. The Committee asks what may constitute a valid reason.

According to the report, paternity is established (when parents are not married) by submitting the joint statement of the child’s father and mother. In the absence of such a statement, paternity is established by the courts at the request of a parent, tutor (guardian) of the child.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions on this right and under what circumstances.

Protection from ill-treatment and abuse

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):

“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland, decision on the merits of 2 December 2014, §§45-47).

The Committee notes from the another source (Global Initiative to End Corporal Punishment, Russia) that Article 54 of the Family Code of 1995 provides for the protection of children’s human dignity by their parents and protection from abuse by parents (Articles 56 and 69). It states that parents have a right and duty to educate their children and must care for their children’s “health, physical, mental, spiritual and moral development” (Article 63) and that
“methods of parenting should not include neglectful, cruel or degrading treatment, abuse or exploitation of children” (Article 65). The Criminal Code 1996 punishes intentional serious, less serious and minor harm to health (Articles 111 to 115) and beating or other violent acts which cause physical pain.

According to the same source, in 2010, the Ministry of Justice stated that these provisions in the Family and Criminal Codes amount to prohibition of corporal punishment of children. However, in the absence of an explicit prohibition it is not clear that they effectively prohibit all forms of physical punishment in childrearing.

As regards children in institutions, according to the same source there is no explicit prohibition of corporal punishment (foster care, institutions, places of safety, emergency care, etc). Children are legally protected from some but not all physical punishment under the Family Code 1995 and Criminal Code 1996.

As regards schools, section 34 of the Law on Education 2012 states that students have the right to respect for human dignity, protection from all forms of physical or mental violence, injury personality, the protection of life and health. Section 43(3) states that discipline in educational activities is provided on the basis of respect for human dignity of students and teachers and application of physical and mental violence to students is not allowed.

The Committee considers that not all forms of corporal punishment are explicitly prohibited in the home and in institutions. Therefore, the situation is not in conformity with the Charter.

Rights of children in public care

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children’s growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children. Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.

According to the report, Article 54 of the Family Code of the Russian Federation provides that children have the right to live and grow up in a family. Article 69 of the Family Code lists the grounds on which parental rights may be restricted. These include, among others, abuse of parental rights, abuse of children, including physical or mental violence, alcohol or drug addiction.

The Decree of the Government on the activities of establishments for orphans and children deprived of parental care was adopted on May 24 2014. Paragraph 35 of the Decree provides that the number of children in one unit should not exceed 8 persons.

The Committee notes that the decree was adopted outside the reference period. It asks about the implementation of the decree and the average number of children in children institutions in practice.

The Committee notes from the report that in the course of 2009-2012 the number of children deprived of parental care has decreased from 72,012 children in 2009 to 52,206 children in 2012. However, the number of cases where parental rights were restricted was on an upward trend from 7,857 cases in 2009 to 8,827 cases in 2012.

The Committee notes from the report that the share of children placed in family-type settings as opposed to institutions has increased from 71% in 2008 to more than 80% in 2012.

The Committee recalls that any restrictions or limitations of custodial rights of parents’ should be based on adequate and reasonable criteria laid down in legislation and should not go
beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2, Statement of interpretation on Article 17§1).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child’s re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

According to Article 73 of the Family Code, the court has the right to limit parental rights without deprivation. This happens when leaving a child with parents can be dangerous for the child. Immediate removal of the child is carried out by the guardianship. Child left without parental care will be transferred to foster care, to a foster home or, temporarily, for the period prior to their transfer to a family, to the organisation for orphans and children without parental care.

According to the report, termination of parental rights does no relieve parents from the obligation to maintain the child. When it is impossible to transfer the child to the other parent, or in the case of termination of parental rights of both parents, the child is transferred to the care of the guardianship authority.

According to Article 72 restoration of parental rights is carried out judicially at the request of a parent. They are considered with the participation of the guardianship authority and the public prosecutor.

The Committee notes that the UN-CRC Observations of the UN Committee on the Rights of the Child (UN-CRC, 2011) that the UN-CRC Committee is seriously concerned about the widespread practice of children being forcibly separated from their parents in application of Articles 69 and 73 of the Family Code, and the lack of support and assistance to reunite families. The Committee is also concerned that Roma mothers are often separated from their children immediately upon discharge from the hospital after the birth because they lack the necessary documentation and that the children are returned only for a large sum of money that most Roma cannot afford. Furthermore, children who are forcibly separated from their parents are then placed in care institutions and/or put up for adoption.

The Committee notes that the factual information contained in these observations may be of relevance for the conclusion of the Committee. Therefore, it asks the next report to provide up-to-date information concerning the factual situation indicated in these observations.

It asks whether the financial conditions and material circumstances of the family can become a ground for placement of children in alternative care.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low. The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time and should
in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.

The Committee notes from the report that a minor, for the purposes of criminal prosecution is defined as a person older than 14 and under 18. The age of criminal responsibility is 16. However, in respect of selected offenses, persons who have reached the age of 14 may be held liable. Article 20 of the Criminal Code contains an exhaustive list of such offenses.

According to Article 108 of the Criminal Procedure Code detention in custody may be imposed in the case of a minor suspected or accused of a grave crime. Article 108 however permits detention of a minor pending trial in the case of a crime of medium gravity. Detention in this case may be applied as the only possible measure of restrain. In such cases the courts should take into account the provisions of Article 88 of the Criminal Code which stipulates that the detention as a preventive measures may not be applied in respect of a minor under 16 years of age. The Committee asks what is the maximum length of the pre-trial detention.

The maximum length of a prison sentence is 6 years and 10 years for very serious crimes to be served in juvenile correctional facilities. Imprisonment may not be imposed on a minor who has committed a crime of limited or average gravity under the age of 16 for the first time. In determining the length of a prison sentence, the lower limit of the duration of the sentence is reduced by half in comparisons with the adult offenders.

According to the report in the framework of the National Strategy of Action for Children for 2012-2017 the Ministry of Justice, together with the Ministry of Internal Affairs and a number of other ministries will prepare the concept of codification of the legislation in respect of juvenile justice. In the National Strategy child-friendly justice means a system of civil, administrative and criminal proceedings which guarantees respect of the rights of the child, in response to the Council of Europe recommendations on justice for children. The Committee takes note of the measures envisaged by the National Action Plan in this regard. It wishes to be informed of their implementation.

The Committee notes from the Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the Russian Federation, from 3 to 13 April 2013 that Chapter 50 of the Criminal Procedure Code of the Russian Federation provides for a special procedure in criminal cases against minors. In 2009, a working group on the development and implementation of the mechanisms for juvenile justice was established under the auspices of the Council of Judges of the Russian Federation. In February 2011, the Supreme Court of the Russian Federation adopted the Decision on the practice of courts in applying legislation in relation to the criminal responsibility and punishment in cases involving minors.

According to the Commissioner, in the criminal justice system, there is a positive tendency towards using alternative sanctions rather than deprivation of liberty in cases involving minors. In 2002, 10,950 minors were serving sentences in penitentiary institutions, whereas the figure for 2012 was 2,289 persons.

The Committee notes that the UN-CRC (2014) that there was a significant drop in the number of children sentenced to deprivation of liberty in the past several years. It urges the authorities to expedite the adoption of the laws establishing a juvenile justice system, including juvenile courts with specialised staff and a restorative justice approach, to follow up on the positive decrease in the number of children sentenced to deprivation of liberty.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.
States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in Russian Federation is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in the home and in institutions.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

**51. RESC 17§1 SERBIA**

The Committee takes note of the information contained in the report submitted by Serbia.

According to the report, the National Action Plan for Children (NAP) is one of the first strategic documents of the Government and was developed by the Council for Child Rights. It was adopted by the Government in 2004 as an expression of strategic commitment of the country in public policy for children until 2015. The NAP represents a milestone in the relation of society towards children. Its priorities are, inter alia, the reduction of children poverty, protection of rights of children without parental care and protection of children from abuse, neglect, exploitation and violence.

**The legal status of the child**

The Committee recalls that under Article 17 of the Charter there should be no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations. It notes from the report that according to the Family Law, relations between parents and children are legally equal, regardless of whether the children were born in wedlock or out of it. The basic principle of relation between parents and children is the parental right of the mother and the father. Parental right is exercised by parents together and by mutual agreement, and in case of their disagreement, the guardianship authority shall make decisions.

The Committee recalls that under Article 17 there must be a right for an adopted child to know his or her origins. It asks whether there are restrictions to this right and under what circumstances.

**Protection from ill-treatment and abuse**

The Committee recalls that under Article 17 of the Charter, the prohibition of any form of corporal punishment of children is an important measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not (General Introduction to Conclusions XV-2 (2001)). The Committee recalls its interpretation of Article 17 of the Charter as regards the corporal punishment of children laid down most recently in its decision in World Organisation against Torture (OMCT) v. Portugal (Complaint No. 34/2006, decision on the merits of 5 December 2006; §§19-21):
“To comply with Article 17, states’ domestic law must prohibit and penalize all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”

The Committee has noted that there is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comments Nos. 8 and 13 of the Committee on the Rights of the Child (Complaint No 93/2013 Association for the Protection of All Children (APPROACH) v. Ireland, decision on the merits of 2 December 2014, §§45-47).

The Committee notes from the Global Initiative to End Corporal Punishment of Children that prohibition is still to be achieved in the home and in institutions.

Corporal punishment is lawful in the home. Provisions against violence and abuse in the Criminal Code 2005, the Misdemeanours Act 2007 and the Constitution 2006 are not interpreted as prohibiting all corporal punishment in childrearing. Section 72 of the Family Law 2005 states that parents may not subject the child to humiliating actions and punishments which insult the child’s human dignity and have the duty to protect the child from such actions taken by other persons. However, there is no explicit prohibition of all corporal punishment.

There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents.


The Committee considers that the situation is not in conformity with the Charter as corporal punishment is not prohibited in the home and in institutions.

Rights of children in public care

The Committee recalls that under Article 17 the long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions (Conclusions XV-2 (2001), Statement of interpretation on Article 17§1). Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children’s growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children (Conclusions 2005, Moldova). Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved (Conclusions 2005, Lithuania).

The Committee furthermore holds that when placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child’s re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

According to the report, over the past several years a great progress in the development of foster care has been made, as the number of children in foster care and foster families has
significantly increased, and the number of children without parental care in the social protection institutions has been reduced.

Three centres for family accommodation and adoption were founded in 2011. Their tasks include preparation, evaluation and training of future foster and adoptive parents as well as supporting them.

Individuals are encouraged to become foster parents in various other ways, among others through different types of material compensations. Funds allocated for this purpose are also spent for improvement of living conditions of a child in foster care. Contributions for compulsory health insurance shall be paid to foster parents, based on the agreement on foster care, from the moment the child is placed into their home.

According to the report in 2013 there were 5,125 children in family accommodations. There are about 700 children in homes for children, most of whom are children with developmental disabilities whom foster families are not ready to accommodate. Increase in the number of families for specialised foster care is one of the priorities for the future.

The Committee recalls that any restrictions or limitations of custodial rights of parents’ should be based on adequate and reasonable criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of child and the rehabilitation of the family (Conclusions XV-2 (2001), Statement of interpretation on Article 17§1).

The Committee underlines that placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, it considers that the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

Decisions on guardianship, foster care, adoption and placement of a child into the social protection institution are made by the competent guardianship authority, considering the best interest of the child in each specific case. The Committee asks about the criteria for restriction of custody or parental rights and about the procedural safeguards that existed to ensure that children were removed from their families only in exceptional circumstances.

The Committee further notes from the report that the number of families with children using the financial social assistance increased by 12% in 2013 compared to 2012.

According to the report, The Novak Djokovic Foundation, UNICEF and the Ministry of Labour, Employment and Social Policy are developing innovative services to reduce the risk of unnecessary separation of a family and institutionalisation of children in 2013. The Committee wishes to be kept informed.

The Committee asks whether the financial conditions and material circumstances of the family can become a ground for placement of children in alternative care.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

The Committee recalls that under Article 17 the age of criminal responsibility must not be too low (Conclusions XIX-4 (2011), United Kingdom). The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short period of time (Conclusions 2005, France) and should in such cases be separated from adults. Young offenders should not serve their sentence together with adult prisoners.
Prisons sentences should only exceptionally be imposed on young offenders and they should only be for a short duration (Conclusions 2011, Norway).

The Committee asks what is the age of criminal responsibility. It also asks what is the maximum length of pre-trial detention and a prison sentence that can be imposed on a juvenile and whether while serving these, juveniles are always separated from adult prisoners.

The Committee also asks whether young offenders in prisons have a statutory right to education.

Right to assistance

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

Conclusion

The Committee concludes that the situation in Serbia is not in conformity with Article 17§1 of the Charter on the ground that corporal punishment is not prohibited in the home and in institutions.

Historic elements

The situation is not in conformity on this ground for the first time.
52. RESC 17§1 SLOVAK REPUBLIC

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

The legal status of the child

The Committee notes that there have been no changes to the situation. It wishes to be informed of any developments in the legislation and the case law regarding the establishment of paternity as well as the right of an adopted child to know his/her origin.

Protection from ill-treatment and abuse

In its previous conclusion (Conclusions 2011) the Committee held that the situation was not in conformity with the Charter as all forms of corporal punishment were not explicitly prohibited in the home.

The Committee notes from the report that the Ministerial Committee for Children stated that a cooperation between the Ministry of Labour, Social Affairs and Family and the Ministry of Justice was established to prepare an amendment of the Civil Code and the Penal Code to explicitly prohibit all forms of corporal punishment of children in the home.

The Re-codification Commission has been invited by the Minister of Labour, Social Affairs and Family to prepare a draft amendment of the Civil Code and the Penal Code in this respect.

The Committee further notes from the Global Initiative to End Corporal Punishment that the Family Act 1963 (amended 2002) does not explicitly prohibit corporal punishment. Rather, it authorises the use of “adequate” childrearing methods, stating in Article 31(2) that in exercising their parental rights and duties, parents “must rigorously protect the child’s interests, manage his or her behaviour and exercise a surveillance over him or her in accordance with the level of his or her development” and that they “may use adequate upbringing measures so that the child’s dignity is not violated and his or her health, emotional, intellectual and moral development are not endangered”.

The Committee also notes from the National report submitted to the UN Human Rights Council Working Group on the Universal Periodic Review (Eighteenth session 27 January – 7 February 2014) that since 2009, the so-called zero tolerance of physical punishment of children has been introduced into legislation. It means that according to the Act on Social and Legal Protection of Children and on Social Care, it is prohibited to use any forms of physical punishment against children and other gross or degrading forms of treatment or punishment which cause or may cause physical or mental injury. Everybody has the obligation to report violations of children’s rights to the socio-legal protection authority. The ban of physical punishment in exercising parental rights and obligations is proposed to be included in the new Civil Code, which is under preparation.

The Committee wishes to be informed of the follow up given to this legislative initiative.

In the meantime, it considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, it reiterates its previous finding of non-conformity on the ground that not all forms of corporal punishment are prohibited in the home.

Rights of children in public care

In its previous conclusion the Committee noted that the number of children in institutional care remained high and asked what measures were taken to reduce that number. The Committee also asked what were the criteria for the restriction of custody or parental rights and what procedural safeguards existed to ensure that children were removed from their families only in exceptional circumstances.

The Committee notes that the report does not provide this information. It holds that if this information is not provided in the next report, including the number children in institutions (and
the maximum number in a single institution) and in foster care, there will be nothing to establish that the situation is in conformity with the Charter.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

In its previous conclusion the Committee held that the situation was not in conformity with the Charter as the maximum length of pre-trial detention of minors could go up to two years, which was excessive.

The Committee notes from the report that juveniles may be held on remand only for as long as it is absolutely necessary. The court may extend the custody of juveniles who have committed a particularly serious crime beyond one year, but the total length of custody may not exceed two years.

According to the report, the Ministry of Justice does not plan to lower the maximum length of pre-trial detention of minors due to the very low number of juveniles who have committed a serious crime and were actually held on remand in the previous years. In 2009 only four young persons were accused of having committed a particularly serious crime, in 2010 only two persons and then only one person in 2011, 2012 and 2013.

The Committee recalls that under Article 17§1 of the Charter juveniles should be remanded in custody only in exceptional circumstances and for a short period of time. It considers that the fact that there are very few cases in practice of juveniles held on remand pending trial does not exempt the State Party from this obligation. Therefore, the situation is not in conformity with the Charter.

In reply to the Committee’s question, the report states that young offenders have a statutory right to education. This is governed by Act 245/2008 (School Act), §24, 2 (c) which states that when a pupil has been taken into custody or is serving a sentence, an individual education will be granted to him/her to ensure that the education is not interrupted.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.

States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17§1 of the Charter on the grounds that:

- all forms of corporal punishment are not prohibited in the home;
- juveniles may be held in pre-trial detention for up to two years.
Historic elements

1st ground of non-conformity

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

On the previous occasion the representative of the Slovak Republic provided further information and stated that more detailed information would be provided in the next report.

2nd ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of the Slovak Republic indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §452).

53. RESC 17§1 SLOVENIA

The Committee takes note of the information contained in the report submitted by Slovenia.

The legal status of the child

The Committee notes that there have been no changes to the situation which it has previously found to be in conformity with the Charter.

Protection from ill-treatment and abuse

In its decision on the merits of 5 December 2014 of the Complaint No. 95/2013 Association for the Protection of All Children (APPROACH) Ltd v. Slovenia, §51, the Committee noted that the provisions of the Family Violence Prevention Act and the Criminal Code prohibited serious acts of violence against children, and that national courts sanctioned corporal punishment provided it reaches a specific threshold of gravity. However, none of the legislation referred to by the Government set out an express and comprehensive prohibition on all forms of corporal punishment of children that is likely to affect their physical integrity, dignity, development or psychological well-being. Furthermore, there was nothing to establish that a clear prohibition of all corporal punishment of children had been set out in the case-law of national courts.

The Committee notes in this regard from the report that the Slovenian Government is convinced that the national legislation in force protects children against violence, negligence or exploitation, as stipulated by Article 17 of the Charter. Corporal punishment of children is, according to the case law, one of the modes of committing the criminal offence of domestic violence.

According to the report, the Government also believes that the explicit prohibition of corporal punishment in the national legislation alone does not and cannot provide children with adequate protection against violence. The system-wide regulation of the prevention of violence against children in Slovenia represents a much broader spectrum of the prohibition of violence against children, including a ban on corporal punishment, irrespective of the motive.

The Committee further notes that at the request of international organisations (the United Nations, the Council of Europe), the Slovenian Government inserted an explicit ban on the corporal punishment of children in the proposed Family Code, which was adopted by the National Assembly on 16 June 2011. However, the Family Code was rejected at a referendum on 25 March 2012.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. Therefore, the Committee reiterates the previous
finding of non-conformity on the ground that not all forms of corporal punishment are prohibited in the home.

**Rights of children in public care**

According to the report, the number of children in public care decreased until 2012 and then slightly increased in 2013. The number of children with special needs who live in centres for training, work and care has been slowly but continuously decreasing. The number of children living in residential facilities of institutions or primary schools with adapted programmes had decreased until 2012 and then slightly increased in 2013. The number of children in institutions for children with emotional and behavioural disorders has remained more or less stable.

As regards placement of children, according to the report, parents participate in the placement procedure, which is based on the findings of an expert commission for the placement according to the child’s individual needs. Parents can also appeal against the first-instance decision. This appeal is decided on by a second-instance commission for the placement of children with special needs established within the ministry responsible for education. The first and second instance commissions draw up an expert opinion with a proposal for the placement of the child in a suitable education programme.

The Committee asks whether poor financial situation of the family can become the sole ground of placement of children.

The Committee recalls that children in institutions should be entitled to the best quality of care. The Committee reiterates its question about the average size of an institution. It wishes to be informed of the number of children in institutions as opposed to foster families and other types of family-type care. It holds that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

**Right to education**

As regards the right to accessible and effective education, the Committee refers to its conclusion under Article 17§2.

**Young offenders**

According to the report, adolescents of both genders are sent to the juvenile correction facility by the court as an educational measure imposed in the criminal procedure against juveniles. The difference between educational measures of committal to an educational institution and committal to a juvenile correctional facility is such that the latter is imposed on juveniles in need of more efficient correctional measures. Juveniles aged between 14 and 21 years are sent to correctional facilities and can stay until their 23rd birthday. They have the right to education. Education of juveniles within correctional facility is taking place in the correctional facility (Radeče). Primary and vocational education is organised in accordance with rules on primary education and rules on education and schooling.

Juveniles committed to juvenile prison (the only one in Celje) are enrolled in educational courses. The prison organises educational courses for completing primary school and acquiring profession. When choosing educational courses for juveniles, prison is taking into account their personal characteristics and abilities, interests for certain profession and possibilities for organising education.

**Right to assistance**

The Committee recalls that Article 17 guarantees the right of children, including unaccompanied minors to care and assistance, including medical assistance (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of September 2004, § 36). In fact, Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance.
States must take the necessary and appropriate measures to guarantee for the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity (Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82).

The Committee asks what assistance is given to children in irregular situation to protect them against negligence, violence or exploitation.

**Conclusion**

The Committee concludes that the situation in Slovenia is not in conformity with Article 17§1 of the Charter on the ground that not all forms of corporal punishment are prohibited in the home.

**Historic elements**

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Slovenia indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §459).

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**Article 17§2 - Free primary and secondary education - regular attendance at school**

**54. RESC 17§2 HUNGARY**

The Committee takes note of the information contained in the report submitted by Hungary as well as the comments by Non-Governmental Organisations on the national report (MINDENKIE, CFCF Chance for Children Foundation, Habitat for Humnanity, GYERE, MENHELY ALAPITVANY and the Metropolitan Research Institute).

The Committee takes note of the reforms in the area of public education. The Public Education Act came into force in September 2012. The key objective of the reform was to improve the quality of public education and access to it and to reduce the early school leaving rate. Three main elements of the reform were the improvement in the statutory provisions related to fundamental rights and discrimination, systemic reform of the educational system as a whole and targeted measures and programmes of strategic nature to support vulnerable groups, including Roma children.

Pursuant to Section 45 of the Public Education Act, children are subject to compulsory institutional education.

In its previous conclusion the Committee asked for details concerning the situation of school absenteeism and measures taken to counter this phenomenon and their results.

According to Section 51 of Decree 20/2012 on the operation of public education institutions, as the executive decree of the Public Education Act, requires that the reason of unjustified absenteeism should be determined as soon as possible and, to this end, requires the school to contact the parent in the case of the first unjustified absence.

The school is obliged to inform the parent and on the first unjustified absence of a school-age child, as well as when the number of unjustified absences of a school-age child amounts to 10 lessons. The public education institution also informs the parent, the child welfare service, the child protection specialist service and the guardianship authority when the number of unjustified absences reaches 10, 30 or 50 lessons. The causes of the absence shall be determined and the institutions shall co-operate with each other in order to terminate the endangering circumstances.
The child welfare service, with the involvement of the public education institution, shall make an action plan, which, based on cause of the absence determined, defines the tasks aimed to cease the circumstances causing unjustified absence that endanger the child or student. The Committee wishes to be kept informed of the absenteeism and drop out rates in compulsory education.

In its previous conclusion the Committee asked whether children from vulnerable families received any assistance to guarantee their effective access to free compulsory education.

The Committee takes note of the programmes developed to promote access to education for vulnerable groups. Such programmes provide extra-curricular activities for disadvantaged pupils. The Committee takes note of For the Road-Macika Programme, launched in 2011, which aims at enhancing the chances of disadvantage students to enrol with secondary schools and successfully finish them and acquire a profession. Altogether, according to the report, more than 14,000 students receive a scholarship within the programme. The Committee also takes note of other programmes, financed by the European Union funds, aiming at mitigation of inequalities and segregation in education.

As regards financial assistance to cover hidden costs of education, according to the report the parents of multiple disadvantaged children who are eligible for regular child protection allowance receive financial support from the guardianship authority. The key objective of this support is to ensure that the most vulnerable children are also enrolled in kindergartens. The Committee asks what assistance exists to cover ‘hidden’ costs (schoolbooks, transport to school) of primary and secondary education for vulnerable families.

In its previous conclusion (Conclusions 2011) the Committee found that Roma children were subject to segregation in the education field and therefore, the situation was not in conformity with the Charter.

The Committee notes that one of the priorities of the National Social Inclusion Strategy and the intention of the Government is not only to prohibit segregated education, but also to take effective measures in order to eliminate spontaneous and deliberately enforced segregation.

The Antisegregation Roundtable was founded with the specific aim of preparing a joint document of the Government and non-governmental professionals, to formulate joint recommendations in order to eliminate educational segregation. In addition to determining the immediate tasks, the document also defines the directions of interventions necessary in the short, medium and long terms. The Roundtable also examines the possibilities of recognising, assessing and preventing educational segregation. The Committee wishes to be kept informed of measures taken in the framework of the Roundtable.

The Committee notes that according to the Institute for Educational Research, around 770 homogeneous Roma primary school classes were in Hungary in 2000. By 2010, the number of schools of Roma majority had increased by 34%.

As regards legislative provisions and measures with regard to the prohibition and prevention of unlawful segregation in the field of public education, the report states that the equal treatment requirement is among the principles of the Public Education Act of 2012. Besides, Section 24 of the Decree 20/2012 on the operation of public education institutions serves to eliminate and prevent schools segregation by regulating the primary school admission districts. Schools responsible for mandatory admission shall not segregate students on the basis of their origin and social situation. This provision clarifies the conditions for defining the district limits and prevents unlawful segregation. The Government monitors the situation to identify irregularities with respect to the requirement of equal treatment. In the course of 2011-2013, 20 settlements were inspected.

The Committee further notes that to promote the educational achievement of socially disadvantaged children and to compensate the disadvantages derived from their social status, kindergarten development programmes as well as other integration measures are supported
from national sources and the pedagogues participating in the programme receive a salary supplement.

The Committee further notes from the Report of the Commissioner for Human Rights of the Council of Europe, following his visit to Hungary (2014) that Roma pupils remain strongly disadvantaged in education across Hungary. One of the problems is the lack of access to early pre-school services and kindergarten. Despite a positive legislative change making attendance in kindergarten obligatory as of 1 September 2013 for all children from the age of 3, there are not enough kindergarten places for Roma children who live in segregated areas. On the other hand, early drop-out remains a problem, which the recent lowering of the age of compulsory education from 18 to 16 is said to exacerbate.

As concerns desegregation of Roma pupils, according to the Commissioner, the Hungarian authorities have long started to take measures to that aim and have until recently made numerous declarations in favour of desegregation. Nonetheless, the Commissioner is deeply concerned at reports indicating that the problem of segregation of Roma children in education is far from being tackled and has even been on the rise in the last 15 years.

As concerns segregation due to placement in schools for special needs, in the 2013 **Horváth and Kiss v. Hungary** (11146/11) judgment, the European Court of Human Rights concluded that the placement in a special school for children with mental disabilities during primary education amounted to discrimination against the applicants on grounds of their Roma origin.

The Committee takes note of the status of execution of the above mentioned judgment. It notes in particular that on the basis of the National Development Plan, programmes promoting the inclusive education of special education need pupils and the training of professionals engaged in education were carried out. The main aim was to create a receptive school system and pedagogical environment in which children with different backgrounds are educated together in the same group and where the school and the educators adjust themselves to the diversity of the pupils’ social and cultural backgrounds, skills, abilities and educational needs. 1,753 teachers and 350 school related personnel participated in these programmes.

As regards the legislative measures taken, the Committee notes that legislative amendments were adopted in order to ensure that the diagnosis of mental handicap of children, preceding the decision on their placement in special schools, is based on strict criteria and accompanied with special safeguards.

The Committee further notes from the Report of the Commissioner that Roma pupils are confronted with other forms of segregation in Hungary such as the existence of Roma-only schools reflecting housing segregation. There have also been cases of segregated Roma and non- Roma classes within the same school building, and of segregated buildings within the same school institution. In some specific cases, segregation resulted from what turned out to be an artificial distinction between private and public schools with all the Roma pupils attending classes in the public school. In other cases, it appears that segregation took place under the pretext of education in the minority language. In all such cases, in addition to the problem of ethnic separation, the schools or classes for Roma are generally of a lower standard in terms of teaching quality and material conditions.

The Committee notes from the comments of the Non-Governmental Organisations on the national report of Hungary that long term plans of the Government on public education fail to address segregation and desegregation. The public education equality opportunity plans made by municipalities have not been an effective means to tackle segregation. No monitoring or evaluation by public authorities were in place to assess whether measures to desegregate were actually implemented. It further notes from the comments that the segregation of Roma children in mainstream education is increasing and the over representation of Roma children in special classes remains an unsolved problem. The Committee observes that according to the case law of the Supreme Court, in each case where the final judgement established segregation of Roma children, the impugned schools still operate unlawfully.
The Committee considers that certain measures have been taken to improve access to mainstream education for Roma children. The Committee wishes to be informed of the concrete results of such measures, especially as regards the numbers of Roma children in mainstream schools as well as the enrolment and drop out rates for this group. In the meantime, the Committee considers that integration of Roma children in mainstream schools still remains weak and therefore, the situation is not in conformity with the Charter.

**Conclusion**

The Committee concludes that the situation in Hungary is not in conformity with Article 17§2 of the Charter on the ground that Roma children are subject to segregation in the educational field.

**Historic elements**

*The situation is not in conformity on this ground since Conclusions 2011.*

*On the previous occasion, the delegate of Hungary indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §475).*

55. **RESC 17§2 REPUBLIC OF MOLDOVA**

The Committee takes note of the information contained in the report submitted by the Republic of Moldova.

In its previous conclusion (Conclusions 2011) the Committee found that it has not been established that measures taken to increase the enrolment rate were sufficient and measures taken to increase enrolment rate of vulnerable groups were sufficient.

As regards drop out from compulsory education, the Committee notes that mixed commissions composed of teaching staff, educational institution and police have been set up with a view to enrolling children in general education and to prevent drop out. The Committee takes note of the enrolment rates and notes that in has gone down from 89,3% in 2008-2009 to 87% in 2013-2014 in gymnasium. It stood at 93,1% in primary schools. The Committee considers that the enrolment rate remains too low and therefore, the situation is not in conformity with the Charter. The Committee asks the next report to provide information about the drop-out rate.

According to the report there are 1,374 schools, gymnasiums and high schools, of which 98,7% are public. In the school year 2013-2014 there were 353,100 pupils in primary and secondary schools.

The Committee further recalls that under Article 17§2 all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued (European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31).

The Committee asks what assistance is provided to vulnerable families to cover such costs.

As regards access to education for Roma children, a study was conducted which showed that 185 children were studying in the high schools in 2014 (137 Roma children were in high schools in the 2012-2013 school year). Among the positive developments the report names the abolishing of the segregation of Roma children in education, the opening of the preparatory classes for Roma children. The Committee also notes that the Roma culture and traditions is included in the curriculum. A round table was organised on promoting the education of Roma children. All discussions were attended by all the heads of directorates of education, youth and sport and managers of educational institutions from regions where there is a large Roma population.
The Committee recalls that under Article 17§2 States have positive obligations to ensure equal access to education for all children. In this respect particular attention should be paid to vulnerable groups, such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage months, children deprived of their liberty, etc.

Under Article 17§2 as regards education of children of Roma origin, even though educational policies for Roma children may be accompanied by flexible structures to meet the diversity of the group and may take into account the fact some groups lead an itinerant or semi-itinerant lifestyle, there should be no separate schools for Roma children. Special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group (Conclusions 2011, Slovak Republic).

The Committee wishes to be informed in detail about the measures taken to end segregation of Roma children in education. It asks in particular whether there are Roma-only schools.

The Committee notes from the European Commission against Racism and Intolerance (ECRI) Report on the Republic of Moldova (2013) that considerable efforts have been made by the national and local authorities and by Roma communities to increase the number of Roma children attending school. However, there are still a large number of Roma children who do not attend pre-school and school education: according to a recent survey, the proportion of Roma children enrolled in pre-school education (age 3-6) is only 21% and the gross enrolment rate of children aged 6–15 in compulsory education is only 54% (as compared with 90% in the population as a whole). 76% of Roma have only three or four years of school education.

The Committee considers that certain measures have been taken to improve access to education for Roma children. However, there is still a large number of children who do not complete compulsory education. Therefore, the measures taken in this respect cannot be regarded sufficient and the situation is not in conformity with the Charter.

The Committee recalls that access to education is crucial for every child’s life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that States Parties are required, under Article 17§2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17§2 , Conclusions 2011).

In view of the above, the Committee asks whether unlawfully present children have a right to education.

**Conclusion**

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 17§2 of the Charter on the grounds that:

- the net enrolment rate in compulsory education remains too low;
- measures taken to ensure that Roma children complete compulsory education are not sufficient.

**Historic elements**

**1st ground of non-conformity**

The situation is not in conformity on this ground since Conclusions 2005.

On the previous occasion, the delegate of Moldova indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §485).

**2nd ground of non-conformity**
The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Moldova indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §492).

56. RESC 17§2 SLOVAK REPUBLIC

The Committee takes note of the information contained in the report submitted by the Slovak Republic.

In its previous conclusion (Conclusions 2011) the Committee found that the situation was not in conformity with the Charter on the ground that Roma children were disproportionately represented in special classes.

The Committee notes from the Concluding observations of the UN Committee on the Elimination of Racial Discrimination on the ninth to the tenth periodic reports of Slovak Republic, (11 February–1 March 2013) that de facto segregation in the education system has continued, with the practice of 'Roma-only' schools or classes. Despite some measures taken, including the 2008 Schools Act and the December 2011 ruling of the District Court in Prešov, there is information that Roma children are dramatically overrepresented in special classes and special schools for children with intellectual disabilities.

The Committee notes from the report that in the case of children from socially disadvantaged and vulnerable groups, access to education is secured systematically. Children belonging to vulnerable and socially disadvantaged groups are not enrolled in special schools, based on their social background. All children are enrolled in ordinary schools and follow approved school curriculum, even though there are a lot of cases when parents of children from the disadvantaged groups want their children to be specifically placed in special schools.

According to the report, another important institution is the so called "zero year". The minimum number of students per class in a zero year is 8, while maximum is 16. For each child enrolled in the zero year the school will receive 200% of the regular allowance. For many teachers this is an important and meaningful tool when working with children from disadvantaged groups to help them catch up socially and cognitively with children who are raised in a normal environment so that they could eventually move into the education mainstream.

The Strategy of the Slovak Republic for the integration of Roma up to 2020 aims to improve the situation of Roma children by:

- increasing the participation of Roma children in pre-primary education from approximately 18% (in 2010) to 50% by 2020;
- creating diverse educational programs focused on supporting the individualised needs of the student; increasing the inclusiveness of the educational system, increase the effectiveness of the system of social support of education, reevaluation of the system of funding the students from socially disadvantaged groups, establishing a permanent funding mechanism for supporting all-day educational and caretaking system in elementary schools with the proportion of socially disadvantaged students of more than 20%;
- improving the care of pedagogical staff and specialists and increase the proportion of teachers and specialists fluent in Romani;
- exercising the right to education in a Romani language or to learning the Romani language, and supporting further development of identity using support for the use of Romani language at all levels of education;

The Committee notes from the European Commission against Racism and Intolerance (ECRI) report on Slovak Republic (adopted on 19 June 2014) that despite the ban on ethnic segregation guaranteed by the Anti-Discrimination Act and the School Act, de facto
segregation still exists. For example, in August 2013 the Ombudsman expressed concerns over the on-going existence of Roma-only classes in Slovak schools. Moreover, according to ECRI, the authorities have admitted that 30% of Roma pupils attend special schools for children with mental disabilities.

Roma pupils are also overrepresented in special schools for pupils with physical disabilities (between 60% and 85%). This is often due to an incorrect diagnosis as well as state subsidies which create incentives for school managers and Roma parents to enrol children in special schools. To counter this situation, Roma pupils are often placed in "zero-year classes" in primary schools to support their educational needs before being enrolled in regular classes. However, in most cases the class composition remains the same until the end of the education cycle, resulting in segregation.

ECRI considers that given the differences in quality between mainstream education and education provided in special schools or classrooms, unjustified placement in such schools seriously affects Roma children’s future education and employment opportunities. It considers that one of the best ways to counter segregation of Roma in primary education and avoid their placement in special schools is to ensure that pre-school education is readily available to Roma children aged between three and six.

The Committee considers that despite the measures taken, the situation which it has previously found not to be in conformity has not changed. Roma children are still disproportionately represented in special classes. Therefore, the situation is not in conformity with the Charter.

The Committee further recalls that access to education is crucial for every child’s life and development. The denial of access to education will exacerbate the vulnerability of an unlawfully present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17 §2. Furthermore, the Committee considers that a child, from whom access to education has been denied, sustains consequences thereof in his or her life. The Committee, therefore, holds that States Parties are required, under Article 17 §2 of the Charter, to ensure that children unlawfully present in their territory have effective access to education in keeping with any other child (Statement of interpretation on Article 17 §2, Conclusions 2011).

The Committee asks whether unlawfully present children have a right to education.

Conclusion

The Committee concludes that the situation in the Slovak Republic is not in conformity with Article 17 §2 of the Charter on the ground that Roma children are disproportionately represented in special classes.

Historic elements

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of the Slovak Republic indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §493).

57. RESC 17 §2 TURKEY

The Committee takes note of the information contained in the report submitted by Turkey.

In its previous conclusion the Committee found that the situation was not in conformity with the Charter as children unlawfully present in Turkey did not have effective access to education (Circular No 2010/48 of 16 August 2010 and the Private Education Institutions Act No 5580).
The report states in this regard that migrants in an irregular situation reside in violation of the national laws and cannot be granted residence permits. However, in some situations foreigners who have arrived legally but whose term of stay has expired are granted residence permits in order to enable them to continue their education.

The report further explains that children of irregular migrants do not have the right to education. Unaccompanied minors are placed in hostels. Their situation as regards education and training are followed by the hostel management.

The Committee considers that in the meaning of the Charter no child of compulsory education age should be turned away from educational institutions on the basis of his/her residence status. The Committee notes that in some cases the situation of irregularly present child may be regularised in order for them to continue their education. However, the Committee takes the view that limiting access to education to only the holders of residence permits amounts to the denial of the right to education to children who do not have a residence permit for whatever reason. Therefore, the Committee considers that the situation is not in conformity with the Charter.

The Committee takes note of measures taken to ensure effective access to education for vulnerable groups as well as to increase enrolment rate and reduce drop-out, with a particular emphasis on girls. It notes that course books are given to the students and the teachers in a pack (course book, student work book and teacher’s guide book) as of the 2003-2004 school year. Moreover, students at private schools will also benefit from the distribution of free course books during the 2014-2015 school year.

In line with the paper of the Directorate General of Basic Education of the Ministry No 493985 of 2013, regarding children not enrolled in school, measures will be taken by school managements such as visiting their homes. Sanctions shall be imposed on parents who do not send their children to school.

As regards access of children of vulnerable groups to education, the Committee takes note of measures implemented, such as the Conditional Educational Aid, the social benefit programme aimed at children of families under the risk of poverty, which, according to the report, had a significant impact on increasing the level of attendance and reducing absenteeism, of female students in particular. It also helped raise awareness of families. The rate of absenteeism has been reduced by 50% and even higher in rural areas.

The Committee notes from the UNESCO institute of statistics that the gross enrolment rate for both sexes in secondary education stood at 86% in 2012 and 102% in 2013.

The Committee also takes note of other financial support measures, such as training material aid, lunch aid, as well as accommodation, transport and food aid for pupils.
Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 17§2 of the Charter on the ground that irregularly present children do not have effective access to education.

Historic elements

The situation is not in conformity on this ground since Conclusions 2011.

On the previous occasion, the delegate of Turkey indicated that steps would be taken to remedy the violation (Detailed Report concerning Conclusions 2011, §495).

Article 19§4 - Equality regarding employment, right to organise and accommodation

58. RESC 19§4 CYPRUS

The Committee takes note of the information contained in the report submitted by Cyprus.

Remuneration and other employment and working conditions

The Ministry of Labour and Social Insurance (MLSI) safeguards equal treatment of non-EU national workers as regards terms and conditions of employment (hours of work, salary and other benefits, holidays, overtime pay, duties etc.) through written contracts signed by the employer and the foreign employee. Terms and conditions of employment are in accordance with the terms of the relevant collective agreements signed by employers’ and workers’ organisations.

The report states that complaint resolution procedures have been established by the MLSI for the protection of workers’ rights. A mechanism for resolving complaints is established at each District Labour Relations Office especially for migrant workers, where complaints regarding violations of their employment contract are examined. Each complaint is examined within three weeks from the date that it was received. The employee can also complain to the Labour Disputes Court.

An inspection mechanism has also been set up to safeguard the enforcement of Equality Laws. The inspections fall under the umbrella of the inspection units for undeclared and illegal work. The Committee notes from the fourth report of the European Commission against Racism and Intolerance (ECRI) (2011) that migrant agricultural workers “are particularly vulnerable as there is little effective monitoring of employment in this sector.” The Committee asks for further data concerning the activities of the monitoring and inspection bodies.

The Committee further notes that it has been “generally admitted by all interested parties that there is exploitation of foreign labour force in Cyprus and especially on subjects such as pay, labour/industrial relations, and working conditions.” (Presentation of Preliminary Results of a Research, 2006: European Mobility Year in an Enlarged Europe, on behalf of the Labour Department of the Ministry of Labour, Lefkosia, 2006). The Committee asks what remedies, such as compensation, are available for migrant workers in such situations, and what sanctions may be imposed on employers by the inspectors or other competent bodies.

The Committee notes from the third report of ECRI (2005) that “the close link still existing between employment with a specific employer and the residence permit” continues to be an important factor and as a result “domestic and other foreign workers are still reported to endure serious situations of exploitation and abuse in order to avoid deportation.” The Committee asks for further information and statistics concerning complaints of mistreatment submitted to the competent bodies.
The report states that in July 2012, the Private Employment Agency Law 126(I)/2012, regulating the establishment and operation of private employment agencies, came into force. The new law sets the conditions and the qualifications that need to be fulfilled in relation to such agencies. The criminal record of the applicant is examined, and offences such as sexual exploitation, trafficking in human beings, or any other serious criminal offence are grounds for refusal of an operating licence.

The Committee notes the criticisms of the Migration and Integration Policy Index (MIPEX) in its 2011 report, where it is stated that Cyprus has the least favourable rights for migrant workers of all 31 MIPEX countries, with Cyprus alone denying migrants both equal working conditions and social security. The Committee further notes that in its 2015 report MIPEX still finds that "Cyprus denies non-EU workers equal working conditions and social security", and "hardly any working-age non-EU citizens in Cyprus can benefit from training". The Committee notes from the response to a Eurofound study on the occupational promotion of migrant workers (2009) that "as regards training, education and retraining of employees by the employer and trade union organisations in work-related subjects, participation by migrants has been practically non-existent, since educational programmes are offered only in the Greek language". It also notes that "as regards opportunities for career development, according to the Cyprus Labour Institute (INEK) study on the employment conditions of migrants, the opportunities for education and further education, or even for learning the Greek language, are contingent upon acquisition of Cypriot nationality."

In this respect, the Committee recalls that States are obliged to take proactive steps to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether vocational training with a view to improving the skills of workers and their opportunities is available in Cyprus on the same basis for migrants and nationals.

The Committee notes from the report to Eurofound concerning Employment and Working Conditions of Migrants (2009) that "Non-EU migrants, for example, who are graduates of higher education, face direct but mainly indirect forms of discrimination, since they have fewer opportunities for promotion and success than Cypriots, whereas their qualifications, achievements and abilities are not given the proper recognition." The Committee notes the introduction of the Recognition of Professional Qualifications Act 2008 and asks for further information on how non-EU migrants can have their qualifications recognised.

The Committee considers that in general, despite the applicable legal framework, there is considerable evidence of exploitation of migrant workers in Cyprus, who also have little access to training and promotional opportunities and do not enjoy the guarantee of equal rights in practice – as noted in particular in the MIPEX, Eurofound and ECRI reports referenced above. The Committee therefore concludes that the situation is not in conformity with Article 19§4 of the Charter.

Membership of trade unions and enjoyment of the benefits of collective bargaining

The report states that Trade Union Laws of 1968 to 1996 apply to all workers who work in Cyprus irrespective of their nationality. Consequently, migrant workers and their families have the same right with respect to trade union membership and collective bargaining like Cypriot nationals. No special measures, programmes and action plans are being taken for migrant workers and their families since they have the same rights like Cypriots. The Committee asks for any available statistics concerning the number of migrants who are members of trade unions or other employment organisations.

The Committee notes from the abovementioned report ‘Labour Integration of Migrant Workers in Cyprus: A Critical Appraisal’, that there are no formal prohibitions of membership in parties and organizations, self-organization, participation in public rallies, etc. although there have been cases where the contract of employment of migrants in certain sectors prohibited
involvement in political activity. The Committee asks what redress migrants may seek if they are prevented from exercising their rights to trade union membership. In the meantime, it reserves its position on this issue.

The Committee refers to its Statement of Interpretation (General Introduction, Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

**Accommodation**

The Committee found in its previous conclusion (Conclusions 2011) that it had not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to access to housing.

According to the information provided to the Governmental Committee (Report concerning Conclusions 2011), the employer is obliged to offer suitable accommodation to the foreign worker who is a third country national, and in this case the employer is allowed to deduct up to 10% from the employee’s wages. The report specifies that the foreign worker has the option of staying at a place of his own choosing instead of the housing provided by the employer. The Committee also notes that the Government provides Housing Schemes to Cypriot Citizens and EU nationals, which are not extended to third country nationals legally residing in Cyprus.

The Committee recalls that "the undertaking of States under this sub-heading is to eliminate all legal and *de facto* discrimination concerning access to public and private housing (European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113; Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§145-147). There must be no legal or *de facto* restrictions on home–buying access to subsidised housing or housing aids, such as loans or other allowances" (Conclusions IV (1975), Norway – Conclusions III (1973), Italy).

The Committee considers that the fact that the Government provides Housing Schemes to Cypriot Citizens and EU nationals, which are not extended to third country nationals legally residing in Cyprus shows that the situation is not in conformity with Article 19§4 c) of the Charter on the ground that migrant workers do not enjoy treatment which is not less favourable than that of nationals with respect to housing assistance.

**Conclusion**

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§4 of the Charter on the grounds that treatment not less favourable than that of nationals is not ensured for migrant workers with respect to:

- remuneration and working conditions;
- housing assistance.

**Historic elements**

*The situation is not in conformity on these two grounds since Conclusions 2011. On the previous occasion Cyprus provided written information.*
59. RESC 19§4 NORWAY

The Committee takes note of the information contained in the report submitted by Norway.

**Remuneration and other employment and working conditions**

Pursuant to the Act of 4 June 1993 No. 58 relating to general application of wage agreements, etc. (The General Application Act), a public board, the Tariff Board, is authorized to impose extension of a collective agreement in certain cases. If the Tariff Board makes such a decision in a regulation, the regulations on wages and other working conditions in question in the agreement will apply to all persons performing work within the scope of the agreement, both Norwegian organised and non-organised workers and foreign workers.

In its previous conclusion (Conclusions 2011), the Committee asked that the next report provide detailed information on the implementation of measures aimed at reinforcing the regulation and monitoring of working conditions, also in order to prevent exploitation of migrant workers, their irregular employment and to reduce unfair competition with national workers, and their impact on the problem of discrimination of migrant workers.

The report states that in the white paper Meld. St. 29 (2010-2011) “Joint responsibility for a good and decent working life”, the Government proposed additional measures to improve conditions for all employees in exposed industries.

Regulations relating to general application of collective agreements for cleaning companies entered into force on 23 May 2013. The regulations contain, inter alia, a generally applicable minimum wage of 161.17 NOK (€ 16.89) per hour for over 18s and 121.01 NOK (€ 12.68) per hour for under 18s, as well as a supplement for unsociable hours. A separate Regulation (No. 408 of 8 May 2012) provides for registration of employers, and a system of ID cards for all employees.

As regards work assignments on construction sites, in the shipping and shipyard industries and within cleaning, where accommodation outside the home is necessary, the employer shall, according to agreement, cover necessary travel expenses at the start and end of the work assignment, and provide food and accommodation, but a fixed per diem payment can be arranged.

Furthermore, Regulations relating to general application of collective agreements for fishing industry companies were adopted in 2014. According to the report, Regulations relating to partial general application of the National Agreement Regarding Electrical Work will be adopted in 2015.

Pursuant to Section 11 of the General Application Act, the Labour Inspection Authority conducts audits to ensure that wages and working conditions that follow from the general application resolution are adhered to. If the rules are broken, the Labour Inspection Authority can issue a business order, compulsory fines, charges, stop work, or report the matter to the Police.

On 1 January 2013, Norway introduced new rules in the Working Environment Act and the Civil Service Act concerning equal treatment of temporary agency workers, as well as several measures to ensure compliance. The rules concerning the equal treatment principle, etc. are in compliance with and satisfy the requirements in EU Directive 2008/104/EC on Temporary Agency Work. One of the purposes of the Working Environment Act is to prevent social dumping. Temporary agency workers must therefore be given the same terms and conditions as would have been guaranteed had the employer directly hired the worker. In order to police this, the Act provides that the agencies and employers involved must make available the information enabling the worker, or the enterprises or agencies, to determine whether the terms and conditions are equal.

As of January 2014, the Labour Inspection Authority is able to issue administrative fines for breaches of the Working Environment Act and other staffing enterprise rules.
The Committee asks that the next report provide statistical data and other evidence concerning the work of the Labour Inspection Authority, in particular in relation to the number of violations concerning the employment of migrant workers.

**Membership of trade unions and enjoyment of the benefits of collective bargaining**

The report states that wages in Norway are negotiated by the social partners. They are not determined by law, and no legal minimum wage applies, with the exception of areas covered by the regulations of general application. Migrant workers have the same rights as other workers to join trade unions and to enjoy the benefits of collective bargaining. The Committee asks how this right is ensured in practice.

The Committee recalls from the 8th report of the government that with regard to posted workers, the Posted Workers Directive is implemented in the Working Environment Act (WEA), section 1-7 and the regulation 16 December 2005 No. 1566 concerning posted workers.

The Committee refers to the Statement of Interpretation on Article 19§4 in the General Introduction (Conclusions 2015) and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

**Accommodation**

The report states that an overriding objective of Norwegian housing policy is that everyone shall live well and safe.

From 2007 till 2013 the Equality and Anti-discrimination Ombud received a total of 14 complaints concerning discrimination on the grounds of ethnicity (11) or religion (3) in the housing market. In the same period, the Ombud provided counselling in 48 cases regarding discrimination on grounds of ethnicity and four cases regarding religion in the housing market.

Start-up loans are given by municipalities to persons with long-term housing and financing problems. The target group for the scheme was made clear in the new regulations that came into force on 1 April 2014. People in the target group might be low-paid, single parents, refugees and handicapped.

An action plan was presented in 2009 to improve living conditions for Roma in Oslo. The target group for the action plan is people who belong to the Roma national minority who are registered in Norway’s National Population Register and who define themselves as Roma. Roma who have problems in the housing market can, just as others who are disadvantaged, apply for loans and subsidies from the Norwegian State Housing Bank, for municipal rental housing and for other social housing services. An advisory service for Roma in Oslo has been established as a result of the action plan.

Imigrants who are registered in the National Population Register and have legal residence in Norway, are qualified for housing allowances and have the right, on equal terms with others, to be considered for the other financial housing instruments.

However, the Committee notes from the report that there are no general guidelines established at central level, that in practice municipalities are free to decide about the length of the residence, and that most municipalities require two years of residence in order to be assigned municipal housing. The Committee recalls that there must be no legal or de facto restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances (Conclusions IV (1975), Norway and Conclusions III (1973), Italy). The Committee considers that the requirement of two years’ residence prior to assignation of municipal housing is discriminatory as it prejudices migrants who recently arrived in Norway and require the same assistance as Norwegians. The Committee considers that a two-year residence requirement is excessive and therefore not in conformity with Article 19§4 of the Charter.

The report notes that on average, it takes longer for migrant workers to establish themselves in the housing market than is the case for Norwegians.
The report states that a number of information measures aimed at refugees/immigrants have been developed within the subject of housing. Together with Migranorsk AS, the Norwegian State Housing Bank has developed "Å bo" (Living), an online education tool on various aspects of acquiring a home and living in Norway. The tool is available in seven languages. Moreover a website, www.nyinorge.no, has been established with information in several languages about subjects including the purchase and rental of housing and other housing-related topics. Together with the Norwegian Inclusion and Diversity Directorate (IMDi), the Norwegian State Housing Bank has prepared an information brochure about housing subsidies for refugees and immigrants.

According to the report, studies have shown that there are selection and discrimination mechanisms in the rental market that cause individuals to face particularly poor and expensive rent offers, and that disadvantaged and ethnic minority groups consistently pay higher rents than others and that they experience arbitrary lay-offs and rent increases. However, the government avers that discrimination is difficult to prove, as discrimination is legitimised or explained through other causes. The Committee therefore asks what other steps have been taken to reduce the incidence of discrimination in the housing market, for example, awareness campaigns.

Conclusion

The Committee concludes that the situation in Norway is not in conformity with Article 19§4 of the Charter on the ground that a two-year residence requirement for eligibility for municipal housing, as applied by some municipalities, is excessive and constitutes a discrimination against migrant workers and their families.

Historic elements

The situation is not in conformity on these two grounds since Conclusions 2011. On the previous occasion Norway provided written information.

60. RESC 19§4 SLOVENIA

The Committee takes note of the information contained in the report submitted by Slovenia.

Remuneration and other employment and working conditions

The report states that Article 7 of the Employment and Work of Aliens Act (Uradni list No. 26/11) states that foreign workers employed in the Republic of Slovenia have the same position in the labour market as Slovenian Citizens. This means that the provisions of the Employment Relationship Act apply equally to them.

Under the Employment Relationship Act employers must ensure that both candidates for jobs and employed workers are afforded equal treatment, irrespective of their nationality, race or ethnic origin. In particular, they must be given equal access to employment, promotion, training, salaries, and all working conditions. Furthermore, in the event of the termination of the employment contract, they must also be accorded equal treatment.

The report states that in the event of a violation of the prohibition of discrimination, the employer is liable to compensate the victim under the general civil law. The employer is also liable for non-pecuniary damage caused. The amount of compensation must be proportionate to the damage suffered, and must be sufficient to discourage the employer from repeating the violation. Furthermore, Article 217 provides for an additional fine for discriminatory action, ranging from €450 to €20,000 dependent upon the size of the employer.

In its previous conclusion, the Committee recalled that States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training (Conclusions VII (1981), United-Kingdom). The Committee asks whether
vocational training with a view to improving the skills of workers and their opportunities is available in Slovenia in practice on the same basis for migrants and nationals.

While the Committee notes the information provided in the report concerning the legal framework applicable to prevent and punish discrimination in the workplace in relation to remuneration and working conditions, including training, it observes that no information regarding the methods of implementation and monitoring is provided. It therefore considers that the information contained within the report is still not sufficient to establish that the situation is in conformity.

The Committee asks that the next report provide up-to-date and detailed information regarding the implementation of anti-discrimination legislation, for example through a labour inspectorate, or other complaints mechanisms.

The Committee notes from the 2010 report of the European Union’s Fundamental Rights Agency (FRA) on the impact of the Racial Equality Directive, that people in Slovenia are not sufficiently informed of their rights and of their options in cases of discrimination, although it is also clear that the labour law provisions provide remedies as well. It asks whether any action has been taken to promote the rights of those who might suffer discrimination.

It also asks for any available statistics on complaints and legal cases concerning discrimination in the workplace. In the meantime, it retains its conclusion of non-conformity on the basis that it has not been established that sufficient steps have been taken to ensure that the treatment of migrant workers concerning remuneration, employment and other working conditions is not less favourable than that of nationals.

**Membership of trade unions and enjoyment of the benefits of collective bargaining**

The Committee notes from the report that pursuant to Article 76 of the Constitution of the Republic of Slovenia, the freedom to join trade unions is guaranteed to all persons in Slovenia, regardless of their nationality. Trade unions are free to conclude collective agreements in accordance with the Collective Agreements Act.

In accordance with the abovementioned Employment Relationships Act, Article 6, migrant workers may access administrative and managerial positions of trade unions, and must not be discriminated against by those unions.

The Committee notes that the legal framework promotes equality and provides no obstacles to the access of migrant workers to trade unions. It asks that the next report provide information concerning the implementation in practice of the anti-discrimination laws, pertaining to trade union activities. It also requests any relevant statistics concerning membership of trade unions, and of any initiatives which encourage migrants to participate in syndicated activity for their benefit.

The Committee concludes that the law provides equal treatment with nationals to migrant workers with respect to membership of trade unions and enjoyment of the benefits of collective bargaining.

The Committee refers to the Statement of Interpretation in the General Introduction and asks for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining.

**Accommodation**

According to the report, EU citizens and citizens of countries with which Slovenia has concluded appropriate agreements may purchase their own dwellings on the same legal basis as Slovenian citizens. The Committee asks whether there are any European States party to the Charter with which no such agreements exist. It also asks what the situation is regarding nationals of States which do not have such agreements with Slovenia.
The Committee recalls that there must be no legal or de facto restrictions on home-buying (Conclusions IV (1975), Norway), access to subsidised housing or housing aids, such as loans or other allowances (Conclusions III (1973), Italy).

In its previous conclusion (Conclusions 2011), the Committee noted that Slovenian citizens and citizens of EU countries were eligible to receive non-profit rental housing, which is administered by the municipalities and ensures low-rents for those in need of housing. It notes that the situation in this regard has not changed. Furthermore, the report details that amendments to the Housing Act now provide that persons who are unable to secure non-profit rental housing are entitled to receive a subsidy for the market rent of an alternative property. The Committee notes from the National report for Slovenia on "Tenancy Law and Housing Policy in Multi-level Europe" that these subsidies are available only for those who have applied and are eligible for non-profit rental housing, but to whom it has not been allocated during the oversubscribed tender process. Due to the fact that non-EU citizens are not eligible for social housing, the Committee understands that they are also not entitled to receive the subsidy payments.

According to the report, there remains a serious undersupply of socially assisted housing; in 2012, 8,040 housing units were required, and while around 400 more have been able to be purchased each year by the municipalities, waiting times continue to be between 3 and 5 years, and up to 7 years in Ljubljana. Be this as it may, the Committee reiterates its finding that the lack of access to such schemes for citizens of countries outside the EU is discriminatory, particularly as they are liable to be more vulnerable, and are also ineligible for the same rent subsidies for market-rent properties. The economic obstacles to achieving full provision of social housing to those eligible do not provide a valid reason to discriminate against nationals of non-EU states.

The report also details the continuing scheme of temporary living units, which the Committee considered in its previous conclusion (Conclusions 2011), and which are available equally to migrant workers and citizens, provided they meet the criteria of social disadvantage. Even so, the Committee notes from the report that another 589 further units are required. Therefore, a significant number of people have no access to publicly supported housing, and if they are migrants, they will not be eligible to receive a subsidy for market-rent properties, even though there are a large number of such properties available.

The Committee therefore reiterates its conclusion that equal treatment for migrant workers has not been secured with respect to access to housing.

**Conclusion**

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§4 of the Charter on the grounds that:

- it has not been established that sufficient measures have been taken to ensure that the treatment of migrant workers concerning remuneration, employment and other working conditions is not less favourable than that of nationals;
- equal treatment is not secured for migrant workers with respect to access to housing, and in particular to assisted rental schemes and subsidies.
Historic elements

1st ground of non-conformity

The situation is not in conformity on the first ground since Conclusions 2011. On the previous occasion, Slovenia provided written information.

2nd ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2002.

In 2007, the Governmental Committee voted on a warning, which was not adopted (5 votes in favour, 13 against and 11 abstentions).

Article 19§6 - Family reunion

61. RESC 19§6 ARMENIA

Armenia has submitted no information on this provision in its report.

The Committee previously asked for a full description of the relevant legal framework and the measures taken to implement it (administrative arrangements, programmes, action plans, projects, etc.) (Conclusions 2011).

Scope

The Committee recalls that the definition of family includes the minor children of migrant workers, and their spouses. It considers that the maximum age limit permissible under Article 19§6 for the family reunion of spouses is the age at which marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The Committee requests that the next report provide a description of the scope of family reunion in Armenia, including whether there are any age limits imposed for children or spouses.

Conditions governing family reunion

The Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece).

States may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6).

The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions XVII-1 (2004), the Netherlands).

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.
The Committee notes from the 2010 report of the Migration and Integration Policy Index on that reunited family members obtain equal rights as their sponsor, autonomous residence permits, and can apply for permanent residence after a few years. However, the report also states that a major area of weakness is the authorities’ wide discretion in the procedure. Applicants can be rejected without due account taken of their personal and family circumstances and without the right to representation before an independent administrative court.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. It considers that the lack of an independent mechanism for review of decisions on family reunion applications is not in conformity with the Charter.

The Committee asks that the next report provide a full and up-to-date description of the legal framework for family reunion, including any restrictions or requirements, and the measures taken to implement it. It also asks for statistical information concerning the number of family reunions.

**Conclusion**

The Committee concludes that the situation in Armenia is not in conformity with Article 19§6 of the Charter on the ground that there is no right of review of a decision rejecting an application for family reunion before an independent body.

**Historic elements**

The situation is a first time case of non-conformity. In 2011, the Conclusion was deferred.

## 62. RESC 19§6 AUSTRIA

The Committee takes note of the information contained in the report submitted by Austria.

The Committee notes that the Aliens’ Law Reform Act 2009 clarified the status of family members holding a settlement permit, by amending Section 27 of the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz – NAG) to specify that such family members are independently entitled to settlement, so that they no longer derive entitlement during the first five years.

**Scope**

Austria ratified the Revised Social Charter on 20 May 2011 and it entered into force on 1 July 2011. The Committee will therefore examine Austria’s conformity with the Revised Charter for the reference period under consideration during this cycle. The Appendix of the Revised Charter reads:

"For the purpose of applying this provision (Article 19§6), the term “family of a foreign worker” is understood to mean at least the worker’s spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker."

Austria was previously found to be in violation of the European Social Charter of 1961 on the ground that Austrian law and practice did not provide for family reunion up to the age of twenty-one for the children of all migrant workers. It remains the case that the age limit for family reunion of children in Austria is 18. However, this does not constitute grounds of violation of Article 19§6 of the Revised Charter, as it coincides with the age of majority in Austria.

The Committee notes from the report that the minimum age of spouses who wish to apply for family reunion and are not EU or EEA nationals has been raised from 18 to 21. The Committee notes that for some couples this could therefore entail a wait of greater than one year. It
considers that the maximum period of one year laid down in its case-law (Conclusions I, II, Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Migrant Integration Policy Index (MIPEX) states that “2009’s 21-year age limits may further discourage sponsors and delay spouses’ integration. Waiting another 3 years abroad is supposed to fight arranged and forced marriages, even if the measure affects all marriages.” The Committee considers that raising the age threshold above the age at which a marriage may be legally recognised in the host state does not allow for sufficient consideration of the individual merits of an application, and is an undue hindrance to family reunion. Therefore, the Committee considers that the situation with regards to the scope of family reunion in Austria is not in conformity with Article 19§6 of the Charter.

**Conditions governing family reunion**

The Committee notes that the quota system continues to apply to certain categories of application for family reunion. The information provided to the Governmental Committee (Governmental Committee, Report concerning Conclusions 2011) states that the vast majority of applications are not subject to the quota system.

The report states that “a residence title has to be awarded notwithstanding any otherwise applicable quota regulations if family reunion is based on grounds laid down in Article 8 of the Human Rights Convention. Children born in the time period between the mother’s application for and the granting of the right to stay in Austria are also exempt from the quota system (Section 12 para. 8 of the Settlement and Residence Act – NAG).”

The information provided to the Governmental Committee highlights the rule that either the quota of the year when the application is filed or the quota of the following year can be referred to when granting a residence title connected with quota-based family reunion. This means that a waiting period of three years is not generally applicable, but after expiry of three years at the latest the quota requirement ceases to apply.

The Committee asks for specific information on the circumstances in which the quota system continues to apply, or other information pertaining to those families who are required to wait for a period exceeding one year until a quota place becomes available for family reunion, or reach the three year limit. The Committee repeats its conclusion (Conclusions XIX-4, 2011) that the situation in Austria is not in conformity with Article 19§6 of the Charter because families may still be required to wait in excess of the one year residence requirement allowed under the Charter.

With regard to language requirements, the Committee notes from the report that there is a general requirement under Section 21a of the NAG for family members to prove their knowledge of the German language at level A1 in order to qualify for entry. A number of family members are exempt from this requirement, due to the nature of the residence permit they apply for, which is based upon the permit which the sponsoring resident possesses. Exceptions from the requirement to provide evidence of proficiency in German prior to arrival include individuals not yet 14 years of age when the application is made and third-country nationals who because of their state of physical or mental health cannot be reasonably expected to provide such evidence. The requirement can also be waived if the applicant is an unaccompanied minor (to protect the child’s well-being) or if necessary in order to respect private and family life as specified in Article 8 ECHR. Nevertheless, the general requirement to demonstrate level A1 competence in the German language is still applied to family members who do not come within the scope of this exception. The Government’s migration website states that family members are required to prove their language proficiency, unless they are family members of the following: holders of a residence title “Red-White-Red Card” for Very Highly Qualified Workers; holders of a residence title “EU Blue Card”; or holders of a residence title “Long-term Resident – EC”.

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The Committee recalls that the requirement that members of the migrant worker’s family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain discourages applications for family reunion and therefore constitutes a condition likely to prevent family reunion rather than facilitate it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is not in conformity with the Charter (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee considers that the situation in Austria, where applicants may be required to prove that they have proficiency in German at level A1 on the Common European Framework, is thus not in conformity with the Charter.

Furthermore, in relation to language requirements, according to the information provided in the report and communicated to the Governmental Committee, an Integration Agreement applies to migrants intending to settle in Austria.

There are two modules, 12 months (extendable for 1 year for personal reasons), then within 5 years for module 2. Only module 1 is mandatory. It comprises a test in German proficiency. Applicants are required to pass at level A2 in the Common European Framework. Courses are available from accredited institutions, and the OIF will refund 50% of the costs up to €750. Migrants who also need assistance with basic literacy may be given another voucher which entitles them to recoup 100% of the cost of basic literacy courses, and then proceed to the Integration module and recoup 50% of the costs up to €750.

The test involved in the Integration Agreement is not a pre-requisite for entry or granting of a residence permit, though it may be taken into consideration upon application for renewal or permanent residency. The Committee asks whether an application for leave to remain may be rejected on the basis that the Integration agreement test has not been passed. The Committee notes the possible cost to migrants: for example, the OIF charges €130 for each test, and accredited course providers can charge as much as €1800 for intensive courses up to level A2.

The Committee recalls that it has held that states are required to provide classes in the national language for migrants and members of their families free of charge under Article 19§11 (Conclusions 2011, Norway). It refers to its conclusion in that context that a requirement to pay substantial fees is not in conformity with the Charter, and considers that this also applies to the conditions for family reunion under Article 19§6, where language courses and tests are part of the process. While it acknowledges that the language test does not bar initial grant of a permit, it notes that migrants are required to sign an integration agreement which entails such a test in most cases. The Committee therefore asks whether further assistance is available to migrants who are in financial difficulty, and asks that the next report provide any statistics on the percentage of migrants who pass and receive reimbursement of costs. In the meantime, the Committee reserves its position on this issue.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee asks whether a means requirement applies in Austria, and if so, what the criteria are and how it is calculated.

With regard to housing conditions, Austrian law requires the sponsor to prove that the family, upon reunion, has a residence which is equivalent to normal local accommodation. This requirement is based on Directive 2003/86/EC.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the
obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes that Article 8 of the European Convention on Human Rights is systematically considered prior to determination of whether a migrant meets this requirement. It also notes that no rejections made on this basis are known to the Federal Ministry of the Interior, the appellate authority in settlement and residence matters. Due to the systematic nature of consideration, the Committee considers that the requirement is applied in a way which sufficiently takes into account the importance of the right to family reunion. Therefore it concludes that the situation in this regard is in conformity with the Charter.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

The Committee notes that there is no longer a health examination required prior to immigration. Austrian law requires that the family member who will move to Austria be covered by adequate health insurance.

The Committee notes that statistics were not available for rejected applications during the reference period. The Committee asks for any statistics which become available to be furnished in the next report, including raw numbers of applications for family reunion and grants or rejections, any disaggregated data, and information on any appeals to the Federal Ministry of the Interior based upon rejections.

**Conclusion**

The Committee concludes that the situation in Austria is not in conformity with Article 19§6 of the Charter on the grounds that:

- the age limit of 21 for family reunion of married couples who are not nationals of an EEA member state does not facilitate family reunion;
- under the quota system which limits the number of requests which may be accepted during any given year, families may be required to wait for up to three years before being granted reunion, a delay which is excessive;
- the fact that certain categories of sponsored family member need to prove knowledge of the German language at level A1 on the Common European Framework hinders the right to family reunion.

**Historic elements**

**1st ground of non-conformity**

The situation is not in conformity on this ground since Conclusions XIII-2 (1994). On the previous occasion, the Representative of Austria indicated that the issue would be settled once the Revised Charter had been ratified.

**2nd ground of non-conformity**

The situation is not in conformity on this ground since 2011. On the previous occasion, Austria provided written information.

**3rd ground of non-conformity**

The situation is not in conformity on this ground for the first time.
63. RESC 19§6 CYPRUS

The Committee takes note of the information contained in the report submitted by Cyprus.

Scope

According to the report, pursuant to the Aliens and Immigration Act, Cap 105 as revised until 2014, entry and residence for family reunification purposes is allowed, subject to a number of preconditions, for the following family members:

- The sponsor’s spouse, provided that the marriage took place at least one year before the submission of the application for family reunification;
- Minor children (i.e. unmarried and under 18 years of age) of the sponsor and of his/her spouse, including the sponsor’s or the spouse’s adopted children, as well as adopted children of the sponsor who are exclusively dependent on him or her;
- Minor children including adopted children of the sponsor and the children of the spouse, where the spouse has custody and the children are exclusively dependent on him or her.

The Committee notes that under Section 18LV of the Immigration Act, the sponsor must have remained legally in the government-controlled areas of the Republic for a period of at least two years. The Committee recalls that states may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusion 2011, Statement of interpretation on Article 19§6). Thus a period of two years is not in conformity with this provision of the Charter (Conclusions 2011, Cyprus).

The report states that the legislation concerning the right of third country nationals working in Cyprus to family reunification is in line with Article 8 of Directive 2003/86/EC. With respect to the Community Law, the Committee recalls that the EU Directive 2003/86/EC is without prejudice to more favourable provisions of instruments, including the 1961 Charter (Art. 3§4(b) of the above-mentioned directive), and that this principle was upheld by the European Court of Justice in its judgment of the Court of 27 June 2006, Case C-540/03, Parliament v. Council (2006) ECR, I-576.

The Committee also notes that under 18L(5) the Director shall not permit entry into the Republic to the spouse for family reunification purposes, if he/she has not attained the age of twenty-one years. The Committee notes that for some couples this could entail a wait of greater than one year. It considers that the maximum period of one year laid down in its case-law (Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Committee considers that such an age threshold does not allow for sufficient consideration of the individual merits of an application, and is an undue hindrance to family reunion. The Committee considers that the maximum generally applicable age limit permissible under Article 19§6 for the family reunion of spouses is the age at which a marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The legislation provides for more favourable provisions on family reunification, for foreign family sponsors who are employed by foreign companies or who are holders of a long term permit in the Republic. These categories have either already obtained permanent residency or have the prospect of obtaining the right of permanent residency, since there is no restriction on the maximum duration of their stay in the Republic of Cyprus. In these cases, family members have the right to arrive in Cyprus either at the same time as the third country national, or at any time after his/her arrival.
Children who have come of age and the spouse of the sponsor who have completed five years residence in the Republic have the right to an autonomous residence permit which will be independent from the sponsor.

**Conditions governing family reunion**

The report states that for the family members of EU nationals, the provisions of the Law on the right of citizens of the Union and their family members to move and reside freely within the territory of the Republic, as amended until 2013, with which directive 2004/38/EC was transposed into the national legislation, apply.

With regard to non-EU nationals, the Committee notes that under Section 18LZ the Director “may reject an application for entry and stay or revoke or not renew a residence permit for family members on grounds of public policy, public security or public health” and therefore has considerable discretion in the decision making process. The Committee asks for more information on the procedure and what may count as a public policy ground for refusal.

With respect to means and accommodation requirements, the report states that all cases are examined on their own merit and efforts are always made to overcome such obstacles, especially in cases where minors are involved. These situations are very limited and, in almost all cases, solutions were found and the right to family reunification was exercised.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. The Committee asks for further details on the accommodation requirement applied in Cyprus.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The report specifies that unemployment benefits can be counted towards the income means of the sponsor; however in practice this is very limited in application. The Committee asks what level of means is required in order to exercise the right to family reunion.

With respect to health requirements, health may provide a ground for refusal of entry and therefore of family reunion under Article 18LZ(1). The Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). These are the diseases requiring quarantine which are stipulated in the World Health Organisation’s International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security (Conclusions XV-1 (2000), Finland). The Committee asks whether the scope of health requirements which can lead to refusal is restricted to the conditions permissible under the Charter. In the meantime, it defers its conclusion on this matter.

However, the Committee notes that under Section 18LZ(3) the Director shall not refuse to renew the residence permit or ordering the expulsion of a family member on the sole ground
that the family member is suffering from sickness or disability that arose after the issuing of
the first residence permit.

The Migration and Integration Policy Index (MIPEX) 2011 states that since 2009, migrants
must pass a new language test (level A2) for permanent residence. They must also
demonstrate knowledge of the current political and social situation in Cyprus. With little support
provided, these integration measures are more of a barrier than an incentive. However
migrants working in international companies need not fulfil the integration requirements when
they apply for the status (and then, just for the first renewal). The Committee acknowledges
that States may take measures to encourage the integration of migrant workers and their
family members. It notes the importance of such measures in promoting economic and social
cohesion. However, the Committee considers that requirements that family members pass
language and/or integration tests or complete compulsory courses, whether imposed prior to
or after entry to the State, may impede rather than facilitate family reunion and therefore are
contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or
the right to remain to family members of a migrant worker, or otherwise deprive the right
guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by
failing to consider specific individual circumstances such as age, level of education or family
or work commitments (Statement of interpretation on Article 19§6, General introduction to
Conclusions 2015).

It asks whether a migrant or their family member who fails to pass the test for permanent
residence may remain in the country, for example with a temporary residence permit. In the
meantime, it defers its conclusion on this matter.

MIPEX 2015 identifies the fact that “no other country keeps as many transnational families
separated as Cyprus”. On average in Europe, 5-7% of non-EU citizen adults were not living
with their spouse or partner. In Cyprus, over one in three (34%) non-EU citizen adult residents
were separated from their spouse. The Committee asks the next report to explain these
figures, in light of Cyprus’ obligation under Article 19§6 to facilitate as far as possible the
reunion of the family of a foreign worker permitted to establish himself in the territory.

MIPEX 2015 also identifies that reunited family members have limited access to employment
and social benefits. It also states that passing the hurdles to become eligible for reunification
does not bring full security, as permits can be lost on wide grounds, including where original
conditions no longer apply. The Committee notes that under Section 18LST(1) the Director
may reject an application, withdraw or refuse to renew the residence permit of a family
member, where the conditions for exercising the right to family reunification of Articles 18LV,
18LG and 18LZ are no longer met. Pursuant to Section 18LST(3) the Director may revoke or
refuse to renew the residence permit of a family member of the sponsor where the sponsor’s
residence permit is terminated and the family member does not yet have an independent right
of residence under Article 18LE. The Committee notes that family members often face serious
delays (5 years) and obstacles to becoming autonomous residents in Cyprus. Before satisfying
those conditions, vulnerable families in need of protection (e.g. death, domestic/sexual
violence) can only rely on discretionary access to autonomous permits. The Committee recalls
that migrant worker’s family members, who have joined him or her through family reunion,
may not be expelled as a consequence of his or her own expulsion, since these family
members must have an independent right to stay in the territory (Conclusions XVI-1 (2002),
Netherlands). Accordingly, the possibility in Cyprus of revoking or refusing the residence
permit of a family member where the sponsor no longer retains a permit is not in conformity
with the Charter.

The Committee considers that restrictions on the exercise of the right to family reunion should
be subject to an effective mechanism of appeal or review, which provides an opportunity for
consideration of the individual merits of the case consistent with the principles of
proportionality and reasonableness. The Committee notes that pursuant to section 18Lzdis
there is an appeal process to the Minister of the Interior. Such an appeal renders the decision
unenforceable until the resolution of the appeal. Furthermore, under section 18LI, any Director’s decision to reject the application, revocation or non-renewal of the residence permit for family members may be challenged in proceedings before the Supreme Court under Article 146 of the Constitution.

Conclusion

The Committee concludes that the situation in Cyprus is not in conformity with Article 19§6 of the Charter on the grounds that:

- sponsors must be resident in the host State for a minimum of two years prior to being granted family reunio
- spouses must be over the age of 21 years prior to being eligible for family reunio
- the residence permit of a family member of the sponsor may be revoked where the sponsor’s residence permit is terminated and the family member does not yet have an independent right of residence.

Historic elements

1st ground of non-conformity

The situation is not in conformity on this ground since Conclusions 2011. On the previous occasion, Cyprus provided written information.

2nd and 3rd ground of non-conformity

The situation is not in conformity on this ground for the first time.

64. RESC 19§6 ESTONIA

The Committee takes note of the information contained in the report submitted by Estonia.

Scope

Admission for the purposes of family reunion is available to spouses and other close relatives. Close relative includes, inter alia, minor children and adult children needing specific care due to health reasons or a disability.

The Committee considers that in this regard the situation in Estonia is in conformity with the Charter.

Conditions governing family reunion

There are no residence requirements for EU nationals holding Blue Cards or citizens of states within the European Economic Area.

With respect to non-EU nationals, the report states that if a person has been legally residing in Estonia for two years, he or she can apply to reunite with his or her spouse. If a person resides in Estonia permanently, he or she can apply to reunite with other family members. If the person does not meet the residence requirement, reunion is contingent on the granting of an independent residence permit to the relative, for the purposes of work or other economic activity, or for study. The Committee recalls that States may require a certain length of residence of migrant workers before their family can join them. The report refers to EU Directive 2003/86/EC, and states that Estonian law is in compliance with the requirements imposed therein. The Committee points out that the directive expressly states in Article 3§4 that it is without prejudice to the Charter, and that it shall not affect the possibility for the Member States to adopt or maintain more favourable provisions than those required by the Directive (Article 3§5). The Committee considers that a period of one year is acceptable under the Charter, but a longer period is considered excessive (Conclusions 2011, Statement of
interpretation on Article 19§6). The Committee therefore reiterates that the situation is not in conformity with the Charter.

The Committee notes that other conditions applying to family reunion include a permanent legal income, independently or jointly with the spouse, to ensure that the family is maintained in Estonia. The Committee notes the indication in the report that no family member has been declined a residence permit because he or she did not have sufficient legal income. Nevertheless it considers that such requirements if too restrictive may deter migrants from applying for family reunion and thus present and obstacle to the enjoyment of their rights under Article 19§8 of the Charter. The Committee asks on what basis the determination of whether the applicant satisfies this criterion is made, and whether there are any thresholds applied. It recalls that social benefits should not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). It asks what constitutes “legal income” relevant to the determination, and whether social assistance to which the applicant or their family members are lawfully entitled are excluded from the calculation.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee notes the requirement in the Aliens Act that the family must have a residence in Estonia, and asks whether there are any restrictions on what size or type of accommodation is considered sufficient for the purposes of family reunion.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

**Conclusion**

The Committee concludes that the situation in Estonia is not in conformity with Article 19§6 of the Charter on the ground that the two years residence requirement, imposed on migrant workers who are not citizens of Member States of the European Union nor citizens of states within the European Economic Area, is excessive.

**Historic elements**

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

*On the previous occasions, the Estonian delegate indicated that the two years residence requirement was in accordance with Directive 2003/86/CE on the right to family reunification.*

**65. RESC 19§6 LATVIA**

The Committee takes note of the information contained in the report submitted by Latvia.

The Committee notes from the Migration Integration Policy Index 2011 (MIPEX III) that family members in Latvia are critically insecure about their application and status. Authorities have wide grounds for discretion for rejection and withdrawal. In procedures the decision maker is
not required to consider families’ personal circumstances, nor is there provision for judicial oversight.

The Committee asks for further details on the decision making process and what factors must be taken into account. It considers that all the circumstances of the application must be considered on a case by case basis, with particular regard to importance of the fundamental right to family reunion. The Committee considers that it is important that in practice the authorities in charge of issuing residence permits following applications for family reunion take account of the fact that “the principle of family reunion is but an aspect of the recognition in the Charter (Article 16) of the obligation of states to ensure social, legal and economic protection of the family (…) Consequently, the application of Article 19, paragraph 6, should in any case take account of the need to fulfil this obligation” (Statement of interpretation – Conclusions VIII (1984)). The Committee further asks for information regarding any right of family members to appeal the decision or to have it reviewed.

Scope

Family members of foreigners may request temporary residence permits pursuant to the Immigration Law, as amended. Under Section 24, family members include minor children of either partner, spouses, and parents. Family members may initially apply for a one year permit, followed by renewal for four years, and then they may apply for permanent residence permits. Under Section 23(4), family members of foreigners with temporary residence permits may also request family reunion for the duration of the permit issued to the migrant.

The Committee also recalls that migrant worker’s family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory (Conclusions XVI-1 (2002), Netherlands). It asks whether family members retain their right to stay in Latvia upon deportation of the migrant worker who sponsored them.

The Committee notes that under Section 25(2) of the Immigration Law, the temporary permit of the spouse of a Latvian citizen or non-citizen shall be annulled if the marriage has ended in divorce, unless there is a child to the marriage who is left to the spouse by a court. In such a case, the spouse shall receive a permanent residence permit. The permits of former spouses of foreigners with permanent residence permits shall be annulled upon divorce (Section 26). The Committee finds that the denial of a continuing right to remain on the basis that the marriage has ended in divorce, particularly where this may occur even if there is a child whose interests may be affected, is not in conformity with the Charter. Furthermore, if the sponsor (Latvian citizen, non-citizen or foreigner) of a spouse holding a temporary residence permit should die, a new temporary permit will not be issued and the current one will not be registered, except in cases where there is a child to the marriage of a Latvian citizen or non-citizen. The Committee finds that the situation is not in conformity on the grounds that the family members of migrant workers who have benefitted from family reunion in Latvia are not granted an independent right to remain.

Conditions governing family reunion

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of interpretation on Article 19§6, Conclusions 2015).
Section 24(5) of the Immigration Law provides that a family member has the right to receive a permanent residence permit if he or she has acquired the official language. The level of knowledge of the official language, the procedures for the testing of knowledge of the official language and the exemptions in the completion of testing of knowledge of the official language (…) shall be determined by the Cabinet. The Committee asks what level of language is necessary in order to receive a permanent residence permit. Section 24(5) states that a foreigner shall pay a State fee in the amount and according to the procedures stipulated by the Cabinet. The Committee asks what the level of this fee is.

Under Section 34 of the Immigration Law, the issue or registration of a residence permit shall be refused if a foreigner does not have the necessary financial resources for residence in the Republic of Latvia. The Committee asks what the necessary financial means are for the purposes of family reunion. It recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied to sponsor a relative for the purposes of family reunion (Conclusions 2011, Statement of interpretation on Article 19§6).

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

Another ground for refusal under Section 34(5) is where a foreigner has such a health disorder or disease that endangers the safety of the public and the health of the members thereof, or there is a reason to believe that the foreigner may cause a threat to public health, except in the case where the foreigner with the consent of the Ministry of Health enters for medical treatment of the relevant health disorder or disease. The Cabinet shall determine a health disorder and disease list. The Committee recalls that a State may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). These are the diseases requiring quarantine which are stipulated in the World Health Organisation’s International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis (Conclusions XV-1 (2000), Finland). The Committee asks for details of the illnesses included on the list drawn up by the cabinet. In the meantime it reserves its position on this issue.

Finally, the Committee notes that Section 34(12) states that a foreigner who has joined a foreign military service will be refused a residence permit. The Committee asks under what circumstances this ground for refusal would apply, and whether family members who have previously served in a foreign military service remain eligible for family reunion.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. The Committee asks what appeal mechanisms exist to challenge decisions against the grant of family reunion.

Conclusion
The Committee concludes that the situation in Latvia is not in conformity with Article 19§6 of the Charter on the ground that family members are not granted an independent right to remain.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

### 66. RESC 19§6 THE NETHERLANDS

The Committee takes note of the information contained in the report submitted by the Netherlands.

**Scope**

Migrant workers from both the EU and outside, including self-employed workers, are eligible to apply for family reunification. The Committee notes that the Netherlands recognises two types of family-related migration, namely ‘family reunification’ and ‘family formation’. It notes from the report of the Governmental Committee (Report concerning Conclusions 2011) that from 2004-2010 there were differing age limits and means requirements for the two types, but that in 2010 these were equalised following the decision of the CJEU in Case C-578/08 Chakroun v the Netherlands.

The Committee notes that the minimum age of spouses to be eligible for family reunion is 21. It considers that the maximum period of one year laid down in its case-law (Conclusions I (1969), II (1971), Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Committee considers that the maximum generally applicable age limit permissible under Article 19§6 for the family reunion of spouses is the age at which a marriage may be legally recognised in the host state, as any higher age requirement hinders rather than facilitates family reunion.

The Committee recalls that once a migrant worker’s family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Netherlands, Article 19§8). The Committee notes from the report of the Governmental Committee (Report concerning Conclusions 2011) that family members who come to the Netherlands derive their right to stay from the migrant worker, and their right to stay may be terminated if the sponsor loses their work. The Committee notes that the family member may apply for an independent residence permit after a period of three years, and that this had been introduced to avoid any misuse of the system through arranged marriages.

The Committee considers that an independent right to stay must be granted save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. It recalls that it is not inconceivable that there should be a distinction on the basis of the length of stay on the nature of the rights of family members (Conclusions 2011, Netherlands Article 19§8). However, it considers that situations must be capable of consideration on their own merit, and that three years to acquire an independent right must be regarded as excessive and a disproportionate intervention which cannot be justified under Article G of the Charter. The Netherlands has taken no steps to rectify the situation of non-conformity during the reference period, and accordingly the Committee holds that the situation is not in conformity with the Charter on the basis that family members of a migrant worker lose their right to remain in the Netherlands and may be expelled automatically following the expulsion of the migrant worker.

**Conditions governing family reunion**

The Committee notes from the report that there is no requirement for the migrant worker applying for family reunification to have had legal residence status in the Netherlands for a year prior to submitting an application.
With regard to means requirements, the Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), Netherlands).

The Committee notes from the report that the income of the national must amount at least to the national minimum wage. The gross minimum wage in July 2013 was €1477.80 per month (€17,733.60 per annum). The median net wage in 2013 for those educated to lower secondary level was €19,124 per annum. Therefore it appears that most people in the Netherlands earn more than the gross minimum wage, as such, the Committee finds that the income threshold is not too high. However, the Committee notes from the report that the migrant worker “may not rely on public funds”, and their income must be “independent”. The Committee considers that migrant workers who have sufficient income to provide for the members of their families should not be denied the right to family reunion because of the origin of such income, where its origin is not unlawful or immoral and where they have a right to the granted benefit. The Committee recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee understands from the information provided to the Governmental Committee (Report concerning Conclusions 2011) that reception of social assistance as such is not a reason for refusal of family reunification, and that applications from persons in receipt of social benefit will be examined on a case by case basis, in the light of the criteria set by the case-law of the European Court of Human Rights concerning family reunion. The Committee asks for confirmation that this understanding of the national situation is correct. The Committee notes that data is not collected on the reasons for rejection of application, and therefore it is not possible to provide further information on the operation of the means requirement. The Committee asks whether any concrete examples, such as appeals cases, are available to demonstrate the application in practice of the "case-by-case consideration", and whether any grounds other than unfitness for work can exempt the migrant from the exclusion of social welfare benefits. Pending receipt of this information, it defers its conclusion on this point.

The Committee further recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. The Committee asks whether an accommodation requirement applies in the Netherlands, and if so, it requests further details of the criteria and its application.

With regard to language requirements, the Committee notes that family members of migrant workers are exempt from taking the compulsory civic integration examination normally required to obtain authorisation for temporary stay, for the purpose of applying for a temporary residence permit. If they wish to obtain a permanent residence permit, however, they must sit this exam. The Committee requests that the next report provide information on the content of the civic integration examination. It notes from a Migration Policy Group report "Impact of new family reunion tests and requirements on the integration process" (published 2011) that the cost of their pre-entry test was €350 and the training package was €41 in 2011. People’s total costs vary significantly depending on their circumstances. €719 was the average total cost estimated by Ernst & Young. The Committee asks whether financial assistance is available for applicants without sufficient means.

The Committee asks whether family members of migrants or nationals with a permanent residence permit must sit the examination prior to coming to the Netherlands, or whether they can apply for a temporary residence permit before requesting a permanent right of residence.
Furthermore, it asks whether family members who have failed the exam and are therefore ineligible for a permanent residence permit may remain in the Netherlands with a temporary residence permit. The Committee notes that family members retain their right of residence for the term of the migrant worker’s employment contract and right of residence.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. It requests that the next report provide information on the process of administrative or judicial appeals in the Netherlands.

**Conclusion**

The Committee concludes that the situation in the Netherlands is not in conformity with Article 19§6 of the Charter on the grounds that:

- the minimum age of 21 for spouses to be eligible for reunification is an undue restriction on family reunion;
- family members of a migrant worker who have settled in the Netherlands as a result of family reunion may be expelled automatically when the migrant worker loses his or her right of residence.

**Historic elements**

Both grounds of non-conformity are 1st cases of non-conformity.

**67. RESC 19§6 SERBIA**

The Committee takes note of the information contained in the report submitted by Serbia.

**Scope**

The Law on Movement and Stay of Foreigners governs the conditions of entry and stay in Serbia.

The Committee notes from the official Serbian government website (http://www.mup.gov.rs) that family members of foreigners entitled to temporary residence may join them in Serbia, pursuant to Section 26(3) of the Law on Foreigners. Family members include children and spouses, and parents in certain circumstances. The Committee asks whether there are age, dependency or other requirements for eligibility of children, and what these are.

Freedom of movement and settlement and the right to leave the territory of Serbia, for either domestic nationals, refugees, stateless persons or foreigners, is subject to statutory limitations only (Article 31 paragraph 2 of the Chapter on Human and Minority Rights and Civil Freedoms and Article 17 of Constitution of the Republic of Serbia.) These rights may be limited only if it is necessary: for conduct of criminal proceedings, protection of public order and peace, prevention of spreading of diseases or for protection of the country.

The Committee notes from the Migration Integration Policy Index report “Regional MIPEX Assessment of FYROM, Croatia, Serbia and Bosnia and Herzegovina” that “immigrants in these countries have limited access to autonomous residence permits in case of widowhood, divorce or violence, and in Serbia they are not even entitled to an independent status.” Permanent stay may be granted to someone having lived in Serbia for 5 years on the basis of a temporary stay permit; someone having been married for 3 years to a Serbian citizen or a foreigner having the right to permanent stay in Serbia; or to a juvenile child of a Serbian citizen or a foreigner having the right to permanent stay in Serbia. The Committee recalls that once a migrant worker’s family members have exercised the right to family reunion and have joined him or her in the territory of a State, they should have an independent right to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee understands
that this is not the situation in Serbia, as family members' permits remain contingent upon the right to stay of the migrant worker, and therefore it considers that the situation in Serbia is not in conformity with the Charter.

**Conditions governing family reunion**

The Committee notes from the government's abovementioned website that applicants for a temporary residence permit (including on grounds of family reunification) must prove that they have health insurance, and that they have sufficient means to support themselves (pursuant to Section 28 of the Law on Foreigners).

The Committee recalls that a state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health (Conclusions XVI-1 (2002), Greece). These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. The Committee notes that Section 11(5) of the Law on Foreigners authorises the refusal of entry or cancellation of a visa where the entrant does not have a certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases. The Committee asks for confirmation of which diseases might lead to refusal of entry for a family member pursuant to Section 11(5).

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of interpretation on Article 19§6). The Committee asks what threshold is required to demonstrate that the applicant for a temporary residence can support themselves. It asks whether the income of family members can be considered, and if so, whether the income of a family member which derives from social benefits is excluded.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.

The Committee requests that the next report contain a full and up-to-date description of the legal framework for family reunion, including any requirements, and a description of the administrative process of consideration and appeal, insofar as such procedures exist.

**Conclusion**

The Committee concludes that the situation in Serbia is not in conformity with Article 19§6 of the Charter on the ground that family members of a migrant worker are not granted an independent right to stay after exercising their right to family reunion.

**Historic elements**
The situation is not in conformity on this ground for the first time.

68. RESC 19§6 “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

The Committee takes note of the information contained in the report submitted by "the former Yugoslav Republic of Macedonia".

Scope

The report states that Articles 71, 72 and 73 of the Law on Foreigners regulate family reunion in "the former Yugoslav Republic of Macedonia".

A foreigner who has a permit for residence in "the former Yugoslav Republic of Macedonia", issued for employment or self-employment, which is issued for a period of 1 year, under the conditions in accordance with the Law on Foreigners, shall be granted the right to family reunion.

Members of the family eligible for reunion are spouses, the minor children of the foreigner or his/her spouse, including adopted children. The minors must be younger than 18 years and unmarried. As an exception, the following groups may also be admitted through family reunion: relatives of the foreigner or the spouse in an ascending line when they are dependent upon them and do not have family support in the country in which they live; and children of the foreigner or the spouse who are over 18 years old, and due to their health condition are dependent; the parents of a minor, if that is in the best interest of the child.

The members of the immediate family of the foreigner to whom a permit for temporary residence is issued have the right to education, professional qualification and self-employment. According to the statistical data for family reunion of foreigners, in 2012, 560 persons got the right to family reunion, while in 2013, 545 foreigners availed themselves of this right.

Conditions governing family reunion

The Committee acknowledges that States may take measures to encourage the integration of migrant workers and their family members. It notes the importance of such measures in promoting economic and social cohesion. However, the Committee considers that requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they have the potential effect of denying entry or the right to remain to family members of a migrant worker, or otherwise deprive the right guaranteed under Article 19§6 of its substance, such as by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments (Statement of Interpretation on Article 19§6, Conclusions 2015). It asks whether there are any language requirements imposed on applicants or family members in order to be able to exercise the right to family reunion.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion (Conclusions XVII-1 (2004), the Netherlands). Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6). The Committee asks whether a means requirement applies in "the former Yugoslav Republic of Macedonia", and if so, what the criteria are and how is it calculated.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive
as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness.

The Committee recalls that once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI–1 (2002), Article 19§8, Netherlands). The Committee notes from the report that there shall be ongoing changes of the Law on foreigners by which the members of the family shall have an independent right to stay on the territory, or they shall be issued with an autonomous permit for residing, not depending on the sponsor. Committee asks for up to date information on these changes in the next cycle. However, it notes therefore that during the reporting cycle, foreigners who had joined migrant workers did not retain an independent right of residence and could accordingly be expelled when their sponsor was removed. It thus considers that the situation is not in conformity with Article 19§6 of the Charter.

Conclusion

The Committee concludes that the situation in "the former Yugoslav Republic of Macedonia" is not in conformity with Article 19§6 of the Charter on the ground that family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion.

Historic elements

The situation is not in conformity on this ground for the first time.

69. RESC 19§6 TURKEY

The Committee takes note of the information contained in the report submitted by Turkey.

Scope

The Committee notes the introduction of Law No. 6458 on Foreigners and International Protection.

Section 3 defines family members as the spouse, the minor child and the dependent adult child of the applicant or the beneficiary of international protection.

Section 34 provides for the grant of a family residence permit. The permit may be granted for the maximum duration of 2 years, to the family members of Turkish citizens, foreigners holding a residence permit, and refugees or recipients of subsidiary protection. The duration of the permit shall not exceed the duration of the residence permit of the sponsor.

The Sponsor can apply for family reunion after one year of residence. The Committee considers that the maximum period of one year of residence laid down in its case-law (Conclusions I, II, (1969-1970) Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of marriages of convenience and fraudulent abuse of immigration rules. The Committee asks for details of the application procedure, and how long it can take to be granted a permit.
Minor children who receive a family reunion permit have the right to education until the age of 18, after which they must request a student permit if required.

Furthermore, pursuant to Section 34, in the event of divorce, a short-term residence permit may be issued to a foreign spouse of a Turkish citizen, provided that he or she resided on a family residence permit for at least three years. However, in cases where it is established by the relevant court that the foreign spouse has been a victim of domestic violence, the condition for three years residence shall not be sought.

In the event of the death of the sponsor, a short-term residence permit may be issued without any minimum residence condition attached to those who have resided on a family residence permit in connection with the sponsor.

The Committee recalls that once a migrant worker’s family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right under the Charter to stay in that territory (Conclusions XVI-1 (2002), Article 19§8, Netherlands). The Committee notes that Section 34 paragraph 5 of the aforementioned Law No. 6458 provides that upon request, family members over the age of 18 may replace their family residence permits with short-term residence permits, provided that such foreigners stay in Turkey for at least three years holding a family residence permit. Therefore, the Committee understands that family members whose permits are dependent upon the stay of the migrant worker, and who have been in Turkey for less than 3 years, have no independent right of residence and will lose all right to remain in Turkey if the sponsoring migrant worker is expelled. The Committee considers that an independent right to stay must be granted to family members, save for legitimate intervention in cases of marriage of convenience and fraudulent abuse of immigration rules. It recalls that it is acceptable for states to impose a minimum period of residence before such an independent right of residence is granted (Conclusions 2011, Netherlands Article 19§8). However, it considers that the imposition of a three year time limit in this regard is disproportionate, and cannot be justified under Article G of the Charter. Therefore, the Committee finds that the situation is not in conformity with the Charter.

**Conditions governing family reunion**

The Committee recalls that a refusal of entry on this ground may only be admitted for specific illnesses which are so serious as to endanger public health, stipulated in the World Health Organisation’s International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis (Conclusions XVI-1 (2002), Greece). With regard to health requirements under the Law on Foreigners, the Committee notes that the relevant authorities, where necessary and upon consultation with the relevant government departments and institutions, may impose an entry ban against foreigners and refuse a visa to those whose entry into Turkey is objectionable for public health reasons. The Committee asks what health risks may qualify to justify refusal of family reunion, and what controls there are on the exercise of this decision.

The Committee recalls that restrictions on family reunion which take the form of requirements for sufficient or suitable accommodation to house family members should not be so restrictive as to prevent any family reunion (Conclusions IV (1975), Norway). The Committee considers that states are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances. Under Article 35(1)(b)sponsors must have accommodation appropriate to general health and safety standards corresponding to the number of family members. The Committee asks how this requirement is applied in practice.

The Committee recalls that the level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion.
(Conclusions XVII-1 (2004), the Netherlands). Section 35(1)(d) requires the sponsor to have a monthly income not less than the minimum wage in total, and corresponding to not less than one third of the minimum wage per dependent family member. The Committee notes that the minimum wage in July 2013 was 415 €. It asks how the minimum wage is calculated, and whether it has a legal basis. It recalls that social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion (Conclusions 2011, Statement of Interpretation on Article 19§6), and asks whether the calculation of a sponsor’s means takes account of any income based on entitlement to social benefits.

According to the Migration and Integration Policy Index (MIPEX), authorities possess several grounds for rejecting applications for family reunion, without being subject to time limits, a requirement to consider individual situations, or procedures providing sponsors with an opportunity to seek legal redress. The Committee asks for further information on the procedure for considering applications for family reunion.

The Committee also notes from MIPEX that there are no language requirements for family reunion, and language ability is only considered when applying for naturalisation.

The Committee notes that the law requires the sponsor to submit proof of not having been convicted of any crime against the family during the five years preceding the application with a criminal record certificate. It asks how migrants can obtain such a certificate.

The Committee considers that restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness. The Committee notes from the MIPEX report that foreigners can go to court to challenge decisions against the grant of family reunion, but will only be informed of the reason for refusal of their application after filing their appeal. The Committee requests more information concerning the procedure for appealing, and in particular, at what stage the authorities are obliged to notify the applicant of the reason for refusal of their request for family reunion.

Conclusion

The Committee concludes that the situation in Turkey is not in conformity with Article 19§6 of the Charter on the ground that the requirement that family members of a migrant worker reside for Turkey for three years before acquiring an independent right of residence is excessive.

Historic elements

The situation is not in conformity on this ground for the first time.
Article 19§8 - Guarantees concerning deportation

70. RESC 19§8 REPUBLIC OF MOLDOVA

The Committee takes note of the information contained in the report submitted by the Republic of Moldova.

Pursuant to Section 62 of the Law No. 200/2010 on Foreigners, a migrant may only be expelled where there is a judicial decision which finds the migrant to have committed an infraction of the Criminal Code or the Contravention Code.

The Contravention Code allows expulsion under Article 40, where the rules of stay have been violated, or as a complementary sanction to certain infractions of the Code (Article 40(2)). Under Article 333 of the Contravention Code, foreigners whose stay in the country is or has become illegal may be fined and expelled. The Committee understands that expulsion is not an automatic consequence of infraction, and that Article 41 requires the court to consider the circumstances of the case and the circumstances of the offender in choosing the appropriate punishment. Article 105 of the Criminal Code similarly provides for the possibility of expulsion following conviction, but again all the circumstances of the case must be taken into account pursuant to Article 75. Article 105(3) also explicitly requires the court to take into account the private and family life of the defendant. The Committee asks for information on the application of these rules in practice, including figures on the number of expulsions.

The Committee has previously interpreted Article 19§8 as obliging ‘States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality’ (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual’s connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee also recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany).

The report states that in 2012 the Law No. 23-XVI concerning HIV/AIDS was amended by Law No. 76/2012, which now excludes liability under the Contravention Code for failure to undergo medical examination for HIV.

The Committee notes that a number of the provisions of the Contravention Code which can lead to a complementary punishment of expulsion under Article 40 are not directly related to the commissioning of a serious criminal offence, or involvement in activities which constitute a substantive threat to national security, the public interest or public morality – for example, Article 81 (employing staff who do not possess the required hygiene training), Article 326 (failing to meet the deadline for registering immovable property) and Article 339 (failing to meet the deadline for declaring a birth). The Committee considers that these offences are not sufficiently related to public order and do not constitute acceptable grounds for expulsion. Accordingly, it finds that the grounds for expulsion are not in conformity with the Charter.
The Committee asked previously (Conclusions 2011) whether foreign nationals served with an expulsion order have a right of appeal. In reply to this question the report states that Article 465 of the Contravention Code provides an appeal against condemnation for any contravention of that Code. The Criminal Procedure Code also provides an appeal against conviction under Chapter IV.

Furthermore, the Committee notes that Section 54 of the Law No. 200/2010 on Foreigners provides for an appeal against decisions to return a migrant to their own country. The Committee asks for confirmation of whether this applies to migrants who have been convicted of a criminal offence or an infraction of the Contravention Code, who might thus appeal the decision to return them home, independently of appealing the decision of their condemnation. In the meantime, it reserves its position on this issue.

**Conclusion**

The Committee concludes that the situation in the Republic of Moldova is not in conformity with Article 19§8 of the Charter on the ground that the legislation permits the expulsion of migrant workers in situations where they do not pose a threat to national security, or offend against public interest or morality.

**Historic elements**

The situation is not in conformity on this ground since 2011.

On the previous occasion, the Republic of Moldova provided written information.

### 71. RESC 19§8 SERBIA

The Committee takes note of the information contained in the report submitted by Serbia.

The Committee notes that Section 35 of the Law on Foreigners stipulates that “the competent authority shall cancel the permissions issued to a foreigner in the Republic of Serbia who has been granted the permission for a short stay of up to 90 days and a foreigner who has been granted the permission for temporary residence in the Republic of Serbia if any of the obstacles referred to in Section 11 of this Law occur, or are detected at a later stage.”

Section 11(6) provides for refusal of a permit for reasons related to protection of the public order or the safety of the Republic of Serbia and its citizens.

The Committee has previously interpreted Article 19§8 as obliging ‘States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality’ (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals’ behaviour as well as the circumstances and the length of time of his/her presence in the territory of the State. The individual’s connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether Serbian law is applied in compliance with the requirements of the Charter in this regard. In particular, it asks whether all aspects of the non-nationals’ behaviour as well as the circumstances and the length of time of his/her presence in the
territory of the state will be taken into account in determining whether a migrant should be expelled.

Section 11(2) of the Law on Foreigners provides for refusal or rescission of a permit where the foreigner does not have sufficient financial means to sustain him/her during the stay in the Republic of Serbia, to return to his/her country of origin or transit into the third country, and if he/she is not provided with means of livelihood in any other way during his/her stay in the Republic of Serbia. The Committee recalls that the fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion (Conclusions V (1977), Italy). The Committee asks whether recourse to social assistance may form a ground of expulsion under Serbian law or practice.

Section 11(5) provides for refusal or rescission of a permit where the foreigner does not have the certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases. The Committee recalls that risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment (Conclusions V (1977), Germany). The Committee asks whether this requirement of the Charter is complied with in practice.

Section 11(8) provides for refusal or rescission of a permit where there is reasonable doubt that the migrant will take advantage of the stay for purposes other than those declared. The Committee considers that reasonable doubt does not constitute a sufficient legal basis for expulsion, and that taking advantage of the stay for other purposes is not a ground for expulsion which is in conformity with the requirements of the Charter.

The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). The Committee asks for a full and up-to-date description of the procedures for determining whether to expel a migrant worker, and of avenues available to the migrant to subsequently appeal this decision.

**Conclusion**

The Committee concludes that the situation in Serbia is not in conformity with Article 19§8 of the Charter on the ground that a migrant worker may be expelled where there exists reasonable doubt that he/she will take advantage of the stay for purposes other than those declared.

**Historic elements**

The situation is not in conformity on this ground for the first time.

72. **RESC 19§8 SLOVENIA**

The Committee takes note of the information contained in the report submitted by Slovenia.

The report states that the Aliens Act was amended in 2014 (outside the reference period), and is applied to all foreigners in Slovenia.

The Committee has previously interpreted Article 19§8 as obliging ‘States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality’ (Conclusions VI (1979), Cyprus). Where expulsion measures are taken, they cannot be in conformity with the Charter unless they are ordered, in accordance with the law, by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Such expulsion orders must be proportionate, taking into account all aspects of the non-nationals’ behaviour as well as the
circumstances and the length of time of his/her presence in the territory of the State. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate. All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body (Statement of interpretation on Article 19§8, Conclusions 2015).

The Committee asks whether the provisions of the Aliens Act, as amended in 2014, are applied in compliance with the Charter in this regard. In particular, it asks whether all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her presence in the territory of the state will be taken into account in determining whether a migrant should be expelled.

Article 61 of the Aliens Act as amended in 2014 determines that residence may be revoked if the foreigner concerned is left without any means of subsistence or has no guaranteed access to means of subsistence. In such cases the authority deciding on the termination of residence must take into account the length of stay of the foreigner in the country, their personal, family, economic and other ties linking them to the Republic of Slovenia, and the effect that the termination of residence would have on them and their family. The Committee notes that this was also the position in law prior to the 2014 amendment of the Act (cf. Conclusions 2011).

In this respect, the Committee considers that the fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion (Conclusions V (1977), Italy).

The revocation of a residence permit (as distinct from the initial issue of a residence permit, or its extension) is an administrative act which serves as a precursor of the expulsion of a migrant whom, save for the act of revocation, was lawfully upon the territory. Therefore, the revocation of a residence permit must conform to the same conditions as an expulsion order, namely that the migrant worker is a threat to national security, or offends against public interest or morality.

Thus, the possibility of revocation of a residence permit for reasons other than the fact that the migrant worker is a threat to national security, or offends against public interest or morality is contrary to the Charter.

The Committee notes from the report that the foreigner may lodge an appeal against the decision to enforce their expulsion (the return decision); the appeal is decided on by the Ministry of the Interior. The report states that there is no appeal from this decision, but judicial review (“administrative dispute”) is available. The Committee recalls that it has previously noted that judicial review is a very specific type of remedy and cannot be considered as an appeal or review of the merits of any decision. Where this is the only type of challenge available, this is not in conformity with the Charter (Conclusions XIII-2 (1994), Ireland). The Committee recalls that States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake (Conclusions V (1977), United Kingdom). Therefore, the Committee considers that the situation is not in conformity with the Charter.

**Conclusion**

The Committee concludes that the situation in Slovenia is not in conformity with Article 19§8 of the Charter on the grounds that:

- migrant workers may be expelled in situations where they do not endanger national security or offend against public interest or morality;
- migrant workers have no independent right of appeal against a deportation order.

**Historic elements**
Both situations are 1st cases of non-conformity.

Article 31§1 – Housing of and adequate standard

73. RESC 31§1LITHUANIA

The Committee takes note of the information contained in the report submitted by Lithuania.

Criteria for adequate housing

The Committee notes from its previous conclusion (Conclusions 2011) that "adequate housing" in Lithuania means a dwelling that is suitable for living for a person or a family, complies with the requirements of construction and special norms (sanitary, fire protection, etc.) and useful floor space per family member (i.e. more than 14 m², with the exception of subsidised housing where the useful floor space is set at 10 m²). In this regard, the Committee asked in which legislative act this definition was laid down. It notes from information provided to the Governmental Committee (Report concerning Conclusions 2011) that housing related requirements and standards are set forth in the Act on Construction (No. I-1240, 19 March 1996) as well as operational technical construction regulations.

As regards health and safety, the Committee notes from the Governmental Committee’s report that the rules concerning the control of exposure to lead and asbestos are regulated by orders of the Minister of Health in the form of hygiene standards, which include requirements in relation to allowed minimum concentration of hazardous substances.

On statistics with respect to adequacy of dwellings, the report indicates that, in 2011, 70.8% of all conventional dwellings had all conveniences (hot water, bath or shower, flush toilet, piped water, sewerage) and they were inhabited by 74.3% of all persons living in conventional dwellings. The Committee asks the next report to continue to provide statistics with respect to adequacy of dwellings and also indicate what measures have been taken and are planned to improve the situation of inadequately housed persons. Meanwhile, it reserves its position on this issue.

Responsibility for adequate housing

The Committee refers to its previous conclusion for a description of the State Territorial Planning and Construction Inspectorate under the Ministry of Environment in charge of enforcing housing standards.

In its previous conclusion, the Committee asked for the number of structures restored to comply with the necessary adequacy of housing requirements following inspections finding shortcomings. The report provides no information. The Committee therefore reiterates its question. Should the next report fail to provide the requested information, there will be nothing to show that the situation is in conformity with the Charter in this respect.

The Committee recalls that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone (Conclusions 2003, France).

Legal protection

The Committee recalls that the effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies (administrative review, etc.) (Conclusions 2003, France). Any appeal procedure must be effective (European Federation of National

The report stresses that any individual considering that his/her rights have been infringed may defend these rights before courts. The Committee asks in which legislative act this right is laid down. The Committee also asks whether such judicial remedies are affordable. It further wishes to know whether there are other remedies, such as administrative review. Finally, it requests information on appeal procedures.

**Measures in favour of vulnerable groups**

The report stresses that Roma people are treated equally to nationals when it comes to accessing social housing. It also indicates that the Subsidised Housing Division of the Department of Social Affairs and Health of the Municipal Government Administration of Vilnius City notified that 85 families living in Roma encampments in Kirtimai were included in the list for subsidised housing rent. Moreover, it states that between 2005-2012 Vilnius City Municipality rented 33 apartments to Roma families. The Committee asks the next report to indicate the number of Roma families living in Lithuania.

While taking note of these measures, the Committee notes from the fourth Report of the European Commission against Racism and Intolerance (ECRI), adopted in 2011, that the problem of housing of Roma families is a matter of priority. ECRI recommends that a number of viable housing options, including social housing and subsidies for the rental of dwellings should be laid out and discussed with the Roma community.

In view of the low figures provided by the report and ECRI's recommendation the Committee considers that the situation remains in breach of the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma are insufficient.

Concerning refugees, the Committee notes from UNHCR Report on integration of refugees in Lithuania of 2013, that refugees encounter difficulties in accessing suitable and affordable housing, preventing them from becoming homeless. As a remedy to this situation, UNHCR, for example, suggests the introduction of a system whereby a state agency or an NGO is assigned the responsibility for assisting refugees to find affordable housing and for facilitating the signing of the contract. In view of this, the Committee asks the next report to provide information on the steps taken to improve the housing situation of refugees.

**Conclusion**

The Committee concludes that the situation in Lithuania is not in conformity with Article 31§1 of the Charter on the ground that measures taken by public authorities to improve the substandard housing conditions of most Roma are insufficient.

**Historic elements**

*The situation is not in conformity since Conclusions 2011.*
The Committee takes note of the information contained in the report submitted by Slovenia.

**Criteria for adequate housing**

In its previous conclusion (Conclusions 2011) the Committee requested figures and statistics on the adequacy of dwellings. The report indicates that generally speaking dwellings with no water distribution and sewage systems, electricity, bathroom or toilet are deemed substandard housing. In this regard, it underlines that only few housing units lack such basic facilities. The Committee notes that 99% of housing facilities have water distribution, sewage systems and electricity, and, that approximately 7% of units lack a bathroom and toilet.

The report states that the criteria of adequate housing are defined in various laws and regulations that are applicable to all residential buildings, including emergency accommodation. The main Act in this regard is the Housing Act, which is implemented by various regulations such as the Rules on Minimum Technical Requirements for the Construction of Residential Buildings and Dwellings. The report confirms that the legislation defines the criteria for adequate housing in terms of construction, technical, health and sanitary features as well as housing size.

Concerning minimum standards applying to buildings and apartments intended for a temporary solution of housing needs of socially deprived persons, the report mentions the Rules on Minimum Technical Requirements for Living Units Intended as Temporary Solution to Housing Needs of Economically Deprived People.

In its previous conclusion the Committee concluded that the situation was not in conformity with the Charter on the ground that the criteria for adequate housing concerning size did not apply to housing available for rent on the free market resulting in substandard housing conditions for some migrant workers.

In this regard, the Committee notes from the Governmental Committee’s report (Report concerning Conclusions 2011) the entry into force on 1 January 2012 of the Rules on Setting Minimum Standards for the accommodation of Aliens who are employed or work in Slovenia. These Rules lay down the minimum living and hygiene standards for the accommodation of aliens who are employed or work in the Republic of Slovenia. The Rules also determine the spatial standards. With regard to the number of people living in a facility, each person must have at least 6 m² for sleeping, 1 m² for the kitchen and 1 m² for daily activities, excluding sanitary facilities.

In view of the adoption of these rules, the Committee considers that the situation has been brought into conformity with the Charter.

**Responsibility for adequate housing**

In its previous conclusion (Conclusions 2011) the Committee asked detailed statistics, including the number of inspections carried out following a complaint. The report indicates that in 2013 the Housing Inspection Service dealt with 775 complaints, of which 9.4% were filed by tenants.

The report states that inspection services consider all complaints and decide on each in accordance with the General Administrative Procedure Act. Pursuant to this Act, the owners or managers are afforded an opportunity to appeal. The appeal may first be submitted to the Ministry of Infrastructure and Spatial Planning and then to the Administrative Court.

The report provides no information on the number of structures restored following inspections finding shortcomings. It also fails to provide detailed information on procedures in place to verify that buildings comply with security norms.

In view of the lack of information on the number of sanctions imposed, structures restored following inspections and additional information on procedures in place to verify that buildings
comply with security norms, the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that the supervision of housing standards is adequate.

**Legal protection**

In reply to the Committee’s request, pursuant to the housing legislation, different options are available to the users of the dwellings:

- an administrative appeal against a decision concerning a non-profit dwelling allocation, a living unit allocation, a rent amount review, etc.;
- a report to the housing inspection in case of inappropriate maintenance of rented housing and shared parts, improper use of shared parts, unauthorised interventions on shared parts, a dwelling rented without a legal basis, etc.;
- a judicial proceeding in case of termination of a tenancy agreement in a dispute, tenancy relationship following a divorce or a death, etc.

The Committee notes from the report that there are no specific legal remedies in case of long waiting periods to access housing. It consequently asks the next report to indicate how the issue of long waiting periods to access housing is dealt with. It however notes that every applicant who meets the requirements to rent a non-profit dwelling has the right to rent one at the market rate. In this case, the tenant is entitled to a subsidy for market rent in accordance with the Housing Act. Funds for subsidies are ensured by the municipalities and the State.

**Measures in favour of vulnerable groups**

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with the Charter on the ground that insufficient measures were taken by public authorities to improve the substandard housing conditions of a considerable number of Roma in Slovenia.

The report indicates that spatial planning falls within the exclusive competence of municipalities. Therefore a precondition for legalising Roma settlements is to include these settlements in the municipal spatial plans, which, in most cases, have not been finalised. The majority of municipalities, including those with a Roma population, are currently conducting relevant drafting and adoption procedures. Within the drafting of the municipal spatial plans, all municipalities have engaged in improving Roma settlements; the responsible ministry monitors their work and offers technical assistance. In 2006-2011, the Expert Group for Resolving the Spatial Issues of Roma Settlements drafted an analysis of the status of Roma settlements and based thereon proposed further measures to improve the situation. The state cooperated with local and Roma communities. Basic public utility infrastructure projects in Roma settlements are co-funded by the state through public tenders (between 2008 and 2013, subsidies in the amount of approximately €8,891,000.00 were available).

The report also mentions the National Programme of Measures for the Roma 2010-2015, which aims at improving the living conditions of the Roma community. In this regard, the report identifies three relevant measures:

- setting up a comprehensive strategic framework as the basis for specific programmes and projects for the arrangement of Roma settlements;
- implementing solutions, goals and tasks to deal with spatial issues related to Roma settlements identified by the Expert Group in the process of drafting detailed municipal spatial plans for individual Roma settlements;
- implementing financial measures aimed at the development of areas with Roma communities.

The Committee notes from the report that some of these measures have already or partially been implemented.
However, the Committee notes from the European Commission against Racism and Intolerance’s (ECRI) fourth report adopted on 17 June 2014 that there is still a lack of access to a safe water supply in or near some settlements and that most Roma continue to live in settlements isolated from the rest of society in conditions that are well below the minimum standard of living. The Committee asks the next report to comment on this report.

While taking note of the measures that are being taken, the Committee considers in view of the information above that the situation is still not in conformity with the Charter.

The Committee asks the next report to continue to provide information on the measures taken to improve the housing conditions of Roma.

Slovenia has accepted Article 19§4c) of the Charter on the right of migrant workers and their families to a treatment not less favourable than that of nationals in respect of accommodation. For States that have accepted both Article 19§4c) and 31§1 of the Charter, the Committee refers to its conclusion on Article 19§4c) in respect of this matter.

As regards the complaint European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, No. 53/2008, decision on the merits of 8 September 2009, the Committee recalls that the follow-up will be made in Conclusions 2016.

**Conclusion**

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§1 of the Charter on the grounds that:

- it has not been established that the supervision of housing standards is adequate;
- measures taken by public authorities to improve the substandard housing conditions of a considerable number of Roma are not sufficient.

**Historic elements**

The situation is not in conformity since Conclusions 2011.

**Article 31§2 - Reduction of homelessness**

75. **RESC 31§2 THE NETHERLANDS**

The Committee takes note of the information contained in the report submitted by the Netherlands.

**Preventing homelessness**

The report indicates that the implementation and results of the action plan mentioned in the previous conclusion of the Committee (Conclusions 2011) were monitored by the Trimbos Institute. A study published by this Institute in 2013 found that the current system did not guarantee adequate national access to community shelter services. It suggested improvement in several areas, such as the documentation of policy and objection procedures, the agreements reached between municipalities and shelters, and staff training. In response to the study, the report indicates that responsible members of the municipal authorities have committed themselves to guaranteeing national access to community shelter services in practice. In addition, the Ministry of Health, Welfare and Sport is funding a project to improve access to community shelter services, which is being carried out by the Association of Municipalities and the shelters’ umbrella organisation.

Concerning the results achieved through the measures taken, the Trimbos Institute provides the following figures:
15,764 individual projects were started in the four largest cities (Amsterdam, Rotterdam, The Hague and Utrecht) to make housing, income, care and support as stable as possible;

- in total there were, in 2012, 70 rough sleepers on average per night in the four largest cities compared to 10,000 in 2006;
- in the other 39 municipalities that provide community shelter services there were 7,900 rough sleepers in 2011-2012, in comparison with 9,700 in 2009-2010.

The Committee asks the next report to indicate whether there are other measures planned to improve the situation. In this respect, it also refers to its remarks below on follow-up to decisions in collective complaints.

**Forced eviction**

The Committee refers to its previous conclusion (Conclusions 2011) for an overall description of legal protection for persons threatened by eviction. It notes here the answers to the questions asked previously.

Concerning legal aid offered to those who are in need of seeking redress from the courts, the report refers to the Legal Aid Act that provides a solid basis for access to justice for those who cannot pay legal fees themselves.

As regards compensation for illegal evictions, according to Article 6:162 of the Civil Code compensation can be claimed for a wrongful act. The victim can be awarded material and immaterial compensation by showing that actual and potential damage is due to illegal eviction.

As to the obligation to fix a reasonable notice period before eviction, the report indicates that the period before eviction of at least two weeks is considered reasonable. The Committee considers that a notice period of 2 months before eviction is reasonable (European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §§ 86-87; International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 78-79). It therefore finds that the situation is not in conformity with the Charter on the ground that a minimum notice period before eviction of two weeks is too short.

The report indicates that in 2013 out of 23,100 judicial decisions sought by housing associations, 6,980 led to evictions, representing 30% of all judicial decisions on eviction. The Committee wishes the next report to provide information on the implementation of judicial decisions.

**Right to shelter**

In its previous conclusion (Conclusions 2011) the Committee asked whether shelters/emergency accommodation satisfy security requirements and health and hygiene standards. Pursuant to the Social Support Act, certain municipalities are responsible for providing community shelter services. The report indicates that their policy plans must state the quality measures applicable to shelters in the community. Moreover shelters must be decent and safe with access to water, heating and sufficient lighting.

The Committee recalls that eviction from shelter should be banned as it can place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited. The Committee wished in its previous conclusion to know whether the law prohibits eviction from shelters or emergency accommodation. The report states that the law does not prohibit eviction from
shelters/emergency accommodation. The Committee therefore considers that the situation is not in conformity with the Charter.

As regards the complaints Defence for Children International (DCI) v. Netherlands, No. 47/2008, decision on the merits of 20 October 2009, Conference of European Churches (CEC) v. The Netherlands No. 90/2013 decision on the merits of 1 July 2014, and European Federation of National Organisations working with the Homeless (FEANTSA) v. The Netherlands, No. 86/2012, decision on the merits of 2 July 2014, the Committee recalls that the follow-up will be made in Conclusions 2016.

**Conclusion**

The Committee concludes that the situation in the Netherlands is not in conformity with Article 31§2 of the Charter on the grounds that:

- the minimum notice period before eviction of two weeks is too short;
- the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

**Historic elements**

The situations on these grounds are first time cases of non-conformity.

**76. RESC 31§2 SLOVENIA**

The Committee takes note of the information contained in the report submitted by Slovenia.

**Preventing homelessness**

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with the Charter on the ground that measures in place to reduce the number of homeless persons were inadequate in quantitative terms.

The report indicates that in 2013 there were 1,600 homeless persons and that shelters for homeless offered 252 beds. It further states that in 2013 two programmes for homeless drug users offered 31 beds. While taking note of these figures, the Committee considers once again that the number of beds available is insufficient in view of the demand. It therefore reiterates its conclusion that the situation is not in conformity with the Charter.

The Committee in its previous conclusion requested information on the conditions of accommodation. It notes from the Governmental Committee's report (Report concerning Conclusions 2011) that voluntary organisations estimate the conditions in these shelters to be adequate with regard to access to water, heating and lighting. It also notes that the majority of shelters and reception centres offer not only overnight stays but also basic food and personal hygiene facilities.

The report states that in 2013 the Ministry of Labour, Family and Social Affairs allocated €917,496 to programmes provided by NGOs and social work centres. The funding covered primarily the costs of professional staff. The Committee notes that, in 2013, total expenditure on these programmes amounted to €2,072,819. Funds were granted by the above mentioned Ministry but also the local communities, the Foundation for Financing Disability and Humanitarian Organisations and other providers. The report underlines that shelter programmes offer accommodation, personal assistance and advocacy, counselling, individual planning, personal relationships management, clothing, etc.

**Forced eviction**

In its previous conclusion, the Committee asked whether NGOs and associations protecting the rights of homeless persons or any specific category of the population which is at risk of
becoming homeless are entitled to free legal aid. The report provides no answer in this respect, the Committee therefore reiterates its request.

Following the amendments to the rules on eviction, the Committee noted in its previous conclusion two issues:

- no law provides for the postponement of an eviction in case a tenant has no possibility to access alternative accommodation. This has been confirmed by the national judicial practice;
- prior to any expulsion there are no non-formal and informative procedures enabling the individuals to really understand and take into account the aim of the eviction.

The Committee asked for clarifications on these issues. The report however provides no such information. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that there are adequate legal protection for persons threatened by eviction.

The report provides detailed information on eviction in case of a non-profit housing tenancy agreement. Article 104 of the Housing Act provides that a non-profit housing tenancy agreement may not be terminated if a tenant is faced with exceptional circumstances (death in the family, loss of employment, etc.) and which led to a failure to settle the full rent and other costs paid in addition to the rent, provided that not later than 30 days after the occurrence of the circumstances the tenant initiates a procedure for obtaining subsidised rent and the procedure for claiming assistance in the use of housing and informs the owner within the said time-limit. It also provides that the municipal authority responsible for housing matters may grant temporary extraordinary assistance if the tenant is not entitled to subsidised rent or cannot settle rent despite a subsidy. Finally, if the circumstances indicate long-term inability to pay the rent and other related costs, a municipality may move a tenant to another suitable non-profit dwelling or one which is smaller in size or to a residential building intended for temporary solution.

In its previous conclusion, the Committee asked for clarifications on the relocation policy affecting Roma, especially whether evictions:

- are carried out under conditions which respect the dignity of the persons concerned;
- are governed by rules of procedure sufficiently protective of the rights of the persons concerned.

The report provides no information on these issues. The Committee notes from the European Commission against Racism and Intolerance’s (ECRI) fourth report adopted on 17 June 2014 that no procedures have been put in place to ensure that a consultation is undertaken with the affected communities. The said report state that it appears that Roma are often unaware that they will be relocated and are not informed as to where or when they will be moved, which equates according to ECRI to a situation of insecurity that is unacceptable. In view of the lack of information and having regard to ECRI’s report the Committee considers that the situation is not in conformity with the Charter on the ground that it has not been established that sufficient procedures have been put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned.

**Right to shelter**

In its previous conclusion (Conclusions 2011) the Committee asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- shelter/emergency accommodation is provided regardless of residence status;
• the law prohibits eviction from shelters or emergency accommodation.

On security requirements, the Committee notes, as mentioned above, that according to an assessment made by voluntary organisations the conditions in these shelters are adequate with regard to access to water, heating and lighting.

As to whether shelter/emergency accommodation is provided regardless of residence status, the report provides no information. The Committee therefore reiterates its question.

The report indicates that the law does not prohibit eviction from shelters/emergency accommodation. The Committee recalls that eviction from shelter should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

In view of the fact that the legislation fails to prohibit eviction from emergency accommodation/shelters, the Committee considers that the situation is not in conformity with the Charter on the ground that the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

Conclusion
The Committee concludes that the situation in Slovenia is not in conformity with Article 31§2 of the Charter on the grounds that:

• measures in place to reduce the number of homeless persons were inadequate in quantitative terms;
• it has not been established that there is adequate legal protection for persons threatened by eviction;
• it has not been established that sufficient procedures have been put into place ensuring that evictions of Roma are carried out in conditions respecting the dignity of the persons concerned;
• the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

Historic elements
1st ground of non-conformity
The situation on this ground is not in conformity since Conclusions 2011.

2nd, 3rd and 4th ground of non-conformity
These situations are first cases of non-conformity.
The Committee takes note of the information contained in the report submitted by Sweden. It is recalled that in its previous conclusion (Conclusions 2011), the Committee found the situation to be in conformity with Article 31§2 pending receipt of more detailed information concerning various aspects of the provision (see below). This conclusion will therefore only consider recent developments and the additional information provided in reply to the Committee’s questions.

**Preventing homelessness**

In reply to the Committee’s question on the results of the strategy called “Homelessness – multiple faces, multiple responsibilities”. The report indicates that the strategy was evaluated by the University of Lund in 2011. The evaluation showed a positive development mainly for the decrease in the number of evictions and the non-eviction of children. Moreover, the National Board of Health and Welfare’s experiences showed that there was a strong commitment on these issues among local authorities. However, the report stresses that according to this National Board structural changes seem to be difficult to implement.

The report indicates that a new mapping of homelessness has been carried out by the National Board of Health and Welfare in 2011. This mapping shed light on the fact that homelessness had increased since 2005, but also, that fewer people were sleeping rough. The report states that this could be seen as a sign that the objective of the Government that everyone shall be guaranteed a roof over his/her head was being met. Moreover, in January 2012 the Government commissioned a Homelessness Coordinator with a view to implementing research results and knowledge generated by the Homelessness Strategy 2007-2009. The Coordinator’s task was to support local authorities and municipalities in combatting homelessness and exclusion from the housing market with a special focus on creating long-term, sustainable structures and working methods. The Coordinator presented his final report in June 2014. The Committee asks the next report to provide information on the follow-up to this report. The County Administrative Boards have also been commissioned by the Government to support the municipalities to enhance their housing planning processes and to support them with their work to combat homelessness.

**Forced eviction**

The Committee refers to its previous conclusion (Conclusions 2005) for a description of the rules governing the procedures of eviction and the legal protection persons threatened by eviction are entitled to. It wishes the next report to provide a full and up-to-date description of the situation in this respect.

The report indicates that the Swedish Enforcement Authority has been commissioned to develop and improve the statistics on evictions. Thus, from January 2013 it is now possible to show the number of evictions where children are concerned, whether a child lives on a permanent basis in the apartment concerned by the eviction, and if the family (including the child) was present during the eviction. The report indicates that 504 children were concerned by evictions in 2013.

In its previous conclusion (Conclusions 2011) the Committee asked for the number of appeals against eviction orders. The report indicates that in 2013 there were 2,532 evictions and 639 appeals against eviction orders from the Enforcement Authority to the District courts.

As regards legal aid, the Committee refers to its conclusion under Article 31§1 of the Charter.

Concerning the number of evictions of Roma families, the report explains that no information can be provided because the Enforcement Authority does not keep statistics concerning ethnicity pursuant to Section 13 of the Personal Data.
In view of the lack of information as to the number of cases brought concerning lack of alternative accommodation offered or compensation awarded, the Committee reiterates its requests in relation to these matters.

**Right to shelter**

In reply to the question in its previous conclusion (Conclusions 2011) the report states that shelters/emergency accommodation is offered almost exclusively according to the Social Security Act, which means that both security requirements and health and hygiene standards are fulfilled.

The Committee also asked whether shelters/emergency accommodation is provided regardless of residence status. The report indicates that the individual must be residing in the municipality and have recourse to public funds, i.e. access to the social welfare system and/or the social security system. However, in emergency situations as well as for families with children exceptions can occur. The Committee understands that in emergency situations and families with children can have access to shelters/emergency accommodation regardless of residence status. It asks the next report to confirm its understanding.

Finally, the Committee wished to know whether the law prohibits eviction from emergency accommodation/shelters. The report states that the law does not prohibit eviction from shelters/emergency accommodation. The Committee recalls that eviction from shelter should be banned as it would place the persons concerned in a situation of extreme helplessness which is contrary to the respect for their human dignity (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009). Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited. The Committee therefore considers that the situation is not in conformity with the Charter.

**Conclusion**

The Committee concludes that the situation in Sweden is not in conformity with Article 31§2 of the Charter on the ground that the law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

**Historic elements**

*The situation is not in conformity on this ground for the first time.*

### 78. RESC 31§2 TURKEY

The Committee takes note of the information contained in the report submitted by Turkey.

**Preventing homelessness**

The report states that, although, no quantitative study or comprehensive research on homelessness in Turkey is available, on the basis of data of Şefkat-Der, a NGO, there would be 7-10 thousand homeless citizens in Istanbul and more than 70 thousand in the whole country. As regards the emergency solutions available and their adequacy to the demand, the report states that although no precise data is available, service is provided by some municipalities in coordination with NGOs, such as Şefkat-Der and the Association of Umut Cocuklari.

The Committee recalls that, in addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3), States must take action to prevent categories of vulnerable people from becoming homeless. To this effect, States Parties must (see Conclusions 2011, Italy):
• adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
• maintain meaningful statistics on needs, resources and results;
• undertake regular reviews of the impact of the strategies adopted;
• establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
• pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

The Committee asks the next report to provide comprehensive and updated information on the measures implemented by Turkey to respect the abovementioned obligations and considers in the meantime that the situation is not in conformity with the Charter on the ground that there are no effective measures to reduce and prevent homelessness.

Forced eviction

The Committee refers to its previous conclusion (Conclusions 2011), where it noted cases of forced evictions of Roma which had been carried out under conditions which did not respect the dignity of the persons concerned and had therefore breached Article 31§2.

In this connection, the authorities provide information on the housing and other services available to Turkish citizens of Roma origins as well as on affirmative action measures taken to support them. According to the report, the evictions at issue were carried out with the aim inter alia to increase the security of the area, including in respect of seismic risks, and taking into account the needs of the inhabitants. The Committee takes note of the detailed explanations contained in the report. It notes that a preliminary study was carried out to identify the people concerned, with a view to providing a suitable number of houses and working places and that, according to a survey, 91% of the people concerned were aware of the project. It also notes the information provided on the measures taken to ensure the re-housing of the evicted people.

It is acknowledged in the report that, in the framework of the abovementioned major urban renewal projects, evictions have been carried out in breach of the right to housing; the authorities contest however that Roma citizens have been discriminated in that respect, although they admit that the areas concerned happened to be mainly inhabited by Roma people.

While taking note of the information provided in response to the finding of non-conformity on the specific case of the evictions of the Sulukule area, the Committee notes that the report does not provide any of the other information requested concerning the legal framework applicable to evictions in Turkey, i.e. the legal protection of persons threatened by eviction and the rules governing the procedures of eviction, in the light of Article 31§2 requirements (obligation to consult the parties affected in order to find alternative solutions to eviction and to fix a reasonable notice period before eviction; prohibition to carry out evictions at night or during winter; accessibility to legal remedies and legal aid; compensation in case of illegal eviction; obligation to carry out evictions under conditions which respect the dignity of the persons concerned and with rules of procedure sufficiently protective of the rights of the persons; obligation to adopt measures to re-house or financially assist the persons concerned by evictions carried out in the public interest). Neither does the report contain any figures concerning evictions in Turkey, rehousing or financial assistance provided following eviction. Accordingly, the Committee finds that it has not been established that Turkey has adequate eviction procedures.

Right to shelter

The report does not contain any of the information requested as to whether:
• shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);

• shelter/emergency accommodation is provided regardless of residence status;

• the law prohibits eviction from shelters or emergency accommodation.

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

In view of the lack of information, the Committee reiterates its questions and considers in the meantime that it has not been established that the right to shelter is guaranteed.

**Conclusion and historic elements**

The Committee concludes that the situation in Turkey is not in conformity with Article 31§2 of the Charter on the grounds that:

• there are no effective measures to reduce and prevent homelessness;

• it has not been established that adequate eviction procedures exist;

• it has not been established that the right to shelter is guaranteed.

**Historic elements**

*On these specific grounds, the situation is not in conformity for the first time.*

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**79. RESC 31§2 UKRAINE**

The Committee takes note of the information contained in the report submitted by Ukraine.

**Preventing homelessness**

The report indicates that Guidelines for Preventing Homelessness till 2017 have been approved by the Cabinet of Ministers’ Decree No. 162 on 13 March 2013. This Decree contains a list of measures on homelessness prevention and reintegration of homeless persons. The coordination of the actions of central executive authorities and other shareholders involved in resolving the issue of homelessness is performed by a permanent advisory body of the Government – the Council on Social Protection of homeless persons and persons released from prison – which was established in 2010. In order to improve the operation of facilities for homeless persons and increase the quality and accessibility of social services for these persons, the Ministry of Social Policy’s Order No. 135 of 19 April 2011 approved the Typical Statute of a Registration Center for Homeless Persons. This Center is notably in charge of identifying and registering homeless persons, issuing a registration certificate, organising temporary shelters, delivering legal services, etc. The homeless person, including the one with children, foreigner and stateless person lawfully residing in Ukraine, in need of the services provided by the Center has to submit a written application and be over 18 years old. The network of facilities for homeless persons increased by 12% as compared with 2010, and as of 2014 consists of 102 facilities, including 92 facilities being in municipal ownership. It serviced about 24,000 persons in 2013 (17,000 persons in 2010; 21,000 in 2012).

The Committee takes note of all these measures. It asks the next report to indicate the number of homeless persons and whether the demand for emergency solutions corresponds to the offer.

On the issue of street children, the Committee refers to its conclusion under Article 7§10.
Condemning dormitory residents, the report indicates that on 21 June 2014 (outside the reference period) the National Targeted Program to transfer dormitories into ownership of local communities for 2012-2015 was approved. The Program will be funded out of the state and local budgets and other sources envisaged by law. The Committee asks the next report to provide information on the implementation of the National Targeted Programme.

**Forced eviction**

Forced eviction is the deprivation of housing which a person occupied due to insolvency or wrongful occupation (Conclusions 2003, France). Under Article 31§2 States Parties must set up procedures to limit the risk of eviction (Conclusions 2005, Sweden).

In view of the importance of the right to housing, which is an aspect of individuals’ personal security and well-being, the Committee attaches great importance to the relevant procedural safeguards (see Conclusions 2005, Sweden; see mutatis mutandis Eur. Court HR, Connors v. United Kingdom, judgment of 27 May 2004, §92). The Committee recalls that in order to comply with Article 31§2 of the Charter, legal protection for persons threatened by eviction must include:

- an obligation to consult the parties affected in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- accessibility to legal remedies;
- accessibility to legal aid;
- compensation in case of illegal eviction.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure sufficiently protective of the rights of the persons.

The Committee also recalls that when an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 51).

Furthermore, the Committee observes that a person or a group of persons, who cannot effectively benefit from the rights provided by the legislation, may be forced to adopt reprehensible behaviour in order to satisfy their needs. However, this circumstance can neither be held to justify any sanction or measure towards these persons, nor be held to continue depriving them of benefiting from their rights (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18/10/2006, § 53).

The report states that according to part 3 of Article 47 of the Constitution a person may be evicted from his/her housing only on the basis of a court decision and in accordance with the law. Article 109 of the Housing Code provides that eviction from residential premises is permitted on grounds established by law. Eviction may be carried out voluntarily or by judicial procedure. Evictions by administrative procedure with the prosecutor’s authorization is possible only with regard to squatters or persons living in homes with threat of collapse.

The Committee notes that in case of eviction due to insolvency or wrongful occupation, the person has the obligation of leaving the premises within the month when he/she receives a written request from the owner. If the person refuses to leave the premises during this period,
compulsory eviction is carried out by judicial procedure. Eviction does not give rise to an alternative solution.

In view of the information provided, the Committee considers that the notice period before eviction of a month is not reasonable and the obligation to find alternative solutions to eviction is not fulfilled. It further notes that there is a lack of information on the other points relating to the legal protection of persons threatened by eviction. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that the legal protection for persons threatened by eviction is not adequate.

**Right to shelter**

In its previous conclusion (Conclusions 2011) the Committee concluded that the right to shelter was not guaranteed to persons unlawfully present in Ukraine, including children, for as long as they are in its jurisdiction.

The report indicates that the Decree of the Cabinet of Ministers No.1 110 of 17 July 2003 approved the Typical statutes of temporary shelter for foreigners and stateless persons who illegally reside in Ukraine. A temporary shelter for foreigners and stateless persons who illegally reside in Ukraine (hereinafter – temporary shelter) is a state-owned institution that is designed for temporary detention of foreigners and stateless persons. The temporary shelter aims at providing individual beds, 3 meals a day, utility services and health care. The Committee asks about the situation of those unlawfully present foreigners who are outside these detention centers.

In its previous conclusion (Conclusions 2011) the Committee asked clarifications on whether:

- shelters/emergency accommodation satisfy security requirements (including in the immediate surroundings) and health and hygiene standards (in particular whether they are equipped with basic amenities such as access to water and heating and sufficient lighting);
- the law prohibits eviction from shelters or emergency accommodation.

Furthermore, the Committee refers to its Statement of Interpretation on Article 31§2 (Conclusions 2015) and recalls that eviction from shelters without the provision of alternative accommodation is prohibited.

The report provides no information on the points mentioned above. The Committee therefore considers that the situation is not in conformity with the Charter on the ground that it has not been established that the right to shelter is adequately guaranteed.

**Conclusion**

The Committee concludes that the situation in Ukraine is not in conformity with Article 31§2 of the Charter on the grounds that:

- the legal protection for persons threatened by eviction is not adequate;
- it has not been established that the right to shelter is adequately guaranteed.

**Historic elements**

1st ground of non-conformity

The situation is a first case of non-conformity.

2nd ground of non-conformity

The situation is not in conformity since Conclusions 2011.

**Article 31§3 - Affordable housing**
80. RESC 31§3 SLOVENIA

The Committee takes note of the information contained in the report submitted by Slovenia.

Social housing

In its previous conclusion (Conclusions 2011) the Committee concluded that the situation was not in conformity with Article 31§3 of the Charter on the ground that nationals of other States Parties to the Charter and to the 1961 Charter lawfully residing or working regularly were not entitled to equal treatment regarding eligibility for non-profit housing. The Committee notes from the Governmental Committee’s report (Report concerning Conclusions 2011) that the new National Housing Programme planned to be adopted in December 2012 was supposed to eliminate the condition of citizenship when applying to non-profit housing. The report however does not mention whether this change has taken place. The Committee considers that the situation is still not in conformity with the Charter.

In its previous conclusion, the Committee considered that the supply of non-profit rental housing was inadequate. The report does not provide any information as to the improvement of this situation. The Committee therefore reiterates its conclusion.

As to the length of waiting period for non-profit housing, the Committee notes from the report that the average waiting period is 2 years and 8 months. The Committee however considered in International Movement ATD Fourth World v. France, collective complaint No. 33/2006, decision on the merits of 5 December 2007, §129, that an average waiting-time of 2 years and 4 months for allocation of social housing was too long. The average waiting period for allocation of non-profit rental housing is therefore too long.

In addition, the report provides still no information on the remedies available in case of excessive length of waiting period. The Committee therefore reiterates its conclusion of non-conformity.

Housing benefits

The report indicates that following the entry into force on 1 January 2012 of the Exercise of Rights to Public Funds Act, the power to decide on subsidised rent was transferred to social work centres. According to the new procedure, the more precise material situation of a tenant and relevant persons is determined by a single procedure. The report underlines that legal conditions for obtaining subsidised rent and the income threshold have not been amended. The Act introduced a new provision according to which tenants renting dwellings at market prices are entitled to a “non-profit part” of the subsidy, i.e. nearly the entire market rent payment can be subsidised.

As regards the complaint European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, No. 53/2008, decision on the merits of 8 September 2009, the Committee recalls that the follow-up will be made in Conclusions 2016.

Conclusion

The Committee concludes that the situation in Slovenia is not in conformity with Article 31§3 of the Charter on the grounds that:

- nationals of other States Parties lawfully residing or working regularly are not entitled to equal treatment regarding eligibility for non-profit housing;
- the supply of non-profit housing is inadequate;
- the average waiting period for allocation of non-profit rental housing is too long;
- the remedies in case of excessive length of waiting period are not effective.

Historic elements
1st ground of non-conformity
The situation is not in conformity since Conclusions 2005.

2nd ground of non-conformity
The situation is not in conformity since Conclusions 2011.

3rd ground of non-conformity
The situation is a first time case of non-conformity.

4th ground of non-conformity
The situation is not in conformity since Conclusions 2011.