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PART V: THE EUROPEAN SOCIAL CHARTER

A) Introduction to the European Social Charter

The European Social Charter[1]

The European Social Charter was opened for signature by the members of the Council of Europe, in Turin, on 18 October 1961 and entered into force 26 February 1965. Since that time there have been several amending Protocols to the Charter.

The Revised Social Charter was opened for signature, in Strasbourg, on 3 May 1996, and entered into force 1 July 1999. It incorporates all of the rights in the original Charter and its Protocols, and adds several new rights.

1. Summary of the Treaty

The European Social Charter provides for a systematic monitoring of the undertakings accepted by States Parties, at regular intervals (from two to four years depending on the provision).

The Charter stipulates that any State wishing to become a Party must undertake to be bound by at least 10 Articles out of 19 (16 in the Revised Charter) or 45 numbered paragraphs of Part II of the Charter. However, each Party must accept at least five of the seven Articles regarded as particularly significant, namely:

- the right to work (Article 1)
- the right to organize (Article 5)
- the right to bargain collectively (Article 6)
- the right to social security (Article 12)
- the right to social and medical assistance (Article 13)
- the right to the social, legal and economic protection of the family (Article 16)
- and the right to protection and assistance for migrant workers and their families (Article 19).

Thus, the provisions of the Charter do not have to be accepted at once, subject however to the acceptance of a majority of the provisions of the "hard core" and the minimum total of 10 Articles (16 under the revised Charter), which allows States to extend their acceptance within a certain time span in accordance with the development of their social and economic situation.

2. Summary of the Revised Social Charter

The new Charter is designated to enforce an international guarantee of fundamental social and economic rights. It takes account of the evolution which has occurred since the Charter was adopted in 1961.

The revised Charter is an international treaty which embodies in one instrument all rights guaranteed by the first Charter of 1961, its additional Protocol of 1988, and adds the following new rights :

- right to protection against poverty and social exclusion; right to housing; right to protection in cases of termination of employment;
- right to protection against sexual harassment in the workplace and other forms of harassment;
- rights of workers' representatives in undertakings;
- rights of workers with family responsibilities to equal opportunities and equal treatment;

[1] Information for this introduction was obtained from the Council of Europe website at: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm and the European Social Charter website at: http://www.humanrights.coe.int/cseweb/GB/index.htm.

Amendments from the previous Charter include:

- reinforcement of principle of non-discrimination; improvement of gender equality in all fields covered by the treaty;
- better protection of maternity and social protection of mothers; better social, legal and economic protection of employed children; better protection of handicapped people.

The enforcement of the new Charter is submitted to the same system of control as the Charter of 1961 as developed by the Protocol of 1991 and by the Protocol of 1995, providing a system of collective complaints.

The rights under the Revised Charter which are particularly relevant to reproductive and sexual health include, but are not limited to:

Right to maternity protection: Articles 8, 11, 12, 13
Right to highest attainable standard of health: Articles 3, 11, 12, 13 & 14
Right to marry and found a family: Article 12
Right to private and family life: Article 16, 19 & 27
Right to education: 7(3), 15(1), 17

3. Procedure for Submitting State Party Reports

The Charter contains provisions designed to ensure respect for the obligations undertaken. The States Parties undertake to send to the Secretary-General, at regular intervals, a report on the application of the provisions of the Charter which they have accepted. A new Contracting Party to the Charter is requested to submit a first report covering all the provisions of the Charter. A second full report is to be submitted two years after the first report. The states will subsequently follow the normal cycle for submission of reports which is: a report every two years on the hard core provisions (Articles 1, 5, 6, 12, 13, 16 and 19), and a report every four years on the provisions outside the hard core.

Contracting Parties may also submit a report every year or merge their reports on the hard core and on the other provisions for presentations every second year.

Article 20 of the European Social Charter makes clear that Contracting Parties are not obliged to accept the totality of its provisions as long as they accept a minimum number of commitments from both the hard core and non-hard core Articles. Pursuant to Article 22 of the Charter however, the Committee of Ministers may request states report on Charter provisions which they have not yet accepted. These reports are transmitted to the European Committee of Social Rights, which examines the reasons given by States for not accepting the provisions in question. A short report is then published containing the Committee's observations.

4. Supervision of the Application of the European Social Charter

Firstly, states must submit reports to the Council of Europe on how they have applied the Charter. These reports are public and the social partners may make observations on them.

The European Committee of Social Rights (ECSR) assesses whether the states have respected their undertakings. This committee is composed of nine independent and impartial experts.

The conclusions of the ECSR are transmitted to the Governmental Committee, composed of representatives of the states. In this committee the states represented ensure that each one of them takes the necessary measures to bring the situation into conformity with the Charter.

In the most serious cases, the Committee of Ministers, the decision-making body of the Council of Europe, makes recommendations to states that they change the legislation, regulations or practice not in conformity with the Charter's obligations.

5. Collective Complaints

The Additional Protocol to the Charter which allows for a system of collective complaints came into force on 1 July 1998. The Revised Charter incorporates this system.

The purpose of this system is to allow for greater efficiency in the supervisory mechanisms of the Charter by allowing them to deal with collective complaints alleging violations of the Charter, in addition to examining government reports.

International non-governmental organizations (NGOs) with consultative status with the Council of Europe may submit complaints. A list of those NGOs may be found at: http://www.humanrights.coe.int/cseweb/GB/GB3/GB31.htm.

In addition, it is sometimes possible for national NGOs to submit collective complaints. In order for an NGO to be able to submit a complaint however, a Member State must make a declaration to the Secretary-General authorizing this power.

Due to space constraints, only the revised Social Charter has been included in these materials in the Basic Texts (Section 2) section that follows.

In Section 3, a partial form for the submission of a national report under the revised Social Charter is included.

Selected excerpts from the conclusions of the European Committee of Social Rights (formerly the Committee of Independent Experts) may be found in Section 4. The conclusions of the ECSR are lengthy, and as a result, much of this information has been omitted. To view the conclusions in their entirety, according to supervision cycle and country, see: http://www.humanrights.coe.int/cseweb/GB/index.htm

Finally, Section 5 contains excerpts from two Social Charter Monographs. Social Charter Monographs describe the case-law of the European Committee of Social Rights by looking at the various supervision cycles. Included in this section are Social Charter Monograph No. 2 – Women in the working world, and Social Charter Monograph No. 2 – Equality between Women and Men in the European Social Charter.

B) Basic Text

COUNCIL OF EUROPE
European Treaties

ETS No. 163

EUROPEAN SOCIAL CHARTER (Revised)

Strasbourg, 3.V.1996

Preamble

The governments signatory hereto, being members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950, and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the civil and political rights and freedoms therein specified;

Considering that in the European Social Charter opened for signature in Turin on 18 October 1961 and the Protocols thereto, the member States of the Council of Europe agreed to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being;

Recalling that the Ministerial Conference on Human Rights held in Rome on 5 November 1990 stressed the need, on the one hand, to preserve the indivisible nature of all human rights, be they civil, political, economic, social or cultural and, on the other hand, to give the European Social Charter fresh impetus;

Resolved, as was decided during the Ministerial Conference held in Turin on 21 and 22 October 1991, to update and adapt the substantive contents of the Charter in order to take account in particular of the fundamental social changes which have occurred since the text was adopted;

Recognising the advantage of embodying in a Revised Charter, designed progressively to take the place of the European Social Charter, the rights guaranteed by the Charter as amended, the rights guaranteed by the Additional Protocol of 1988 and to add new rights,

Have agreed as follows:

Part I

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have the right to a special protection against the physical

and moral hazards to which they are exposed.

8. Employed women, in case of maternity, have the right to a special protection.
9. Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
12. All workers and their dependents have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to independence, social integration and participation in the life of the community.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.
17. Children and young persons have the right to appropriate social, legal and economic protection.
18. The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.
19. Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.
20. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
21. Workers have the right to be informed and to be consulted within the undertaking.
22. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
23. Every elderly person has the right to social protection.
24. All workers have the right to protection in cases of termination of employment.
25. All workers have the right to protection of their claims in the event of the insolvency of their employer.
26. All workers have the right to dignity at work.
27. All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.
28. Workers' representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions.
29. All workers have the right to be informed and consulted in collective redundancy procedures.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.

Article 1 - The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.

Article 2 - The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 3 - The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties
undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety,
occupational health and the working environment. The primary aim of this policy shall be to improve
occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent
standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to
exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Article 5 - The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6 - The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 7 - The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 - The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;
3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. to regulate the employment in night work of pregnant women, women who have

recently given birth and women nursing their infants;

5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 9 - The right to vocational guidance

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

Article 10 - The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:

   a) adequate and readily available training facilities for adult workers;
   b) special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;
5. to encourage the full utilisation of the facilities provided by appropriate measures such as:

   a) reducing or abolishing any fees or charges;
   b) granting financial assistance in appropriate cases;
   c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
   d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

Article 11 - The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 12 - The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject

to the conditions laid down in such agreements, in order to ensure:

a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

Article 13 - The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Article 14 - The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Article 15 - The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocationa training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers

to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

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

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 - The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an
environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
   b) to protect children and young persons against negligence, violence or exploitation;
   c) to provide protection and special aid from the state for children and young persons temporarily or
   definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 18 - The right to engage in a gainful occupation in the territory of other Parties

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;

and recognise:

4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

Article 19 - The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such
   workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and
   reception of such workers and their families, and to provide, within their own jurisdiction, appropriate
   services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
   a) remuneration and other employment and working conditions;

b) membership of trade unions and enjoyment of the benefits of collective bargaining;
c) accommodation;

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;
8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

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

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

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

Article 21 - The right to information and consultation

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Article 22 - The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a) to the determination and the improvement of the working conditions, work organisation and working environment;
b) to the protection of health and safety within the undertaking;

c) to the organisation of social and socio-cultural services and facilities within the undertaking;
d) to the supervision of the observance of regulations on these matters.

Article 23 - The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties
undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

to enable elderly persons to remain full members of society for as long as possible, by means of:
a) adequate resources enabling them to lead a decent life and play an active part in public, social and
cultural life;
b) provision of information about services and facilities available for elderly persons and their
opportunities to make use of them;
to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar
surroundings for as long as they wish and are able, by means of:
a) provision of housing suited to their needs and their state of health or of adequate support for
adapting their housing;
b) the health care and the services necessitated by their state;

to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and
participation in decisions concerning living conditions in the institution.

Article 24 - The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of
employment, the Parties undertake to recognise:
a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Article 25 - The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Article 26 - The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 27 - The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women
workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
   a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
   b) to take account of their needs in terms of conditions of employment and social security;
   c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 28 - The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Article 29 - The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Article 30 - The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
b) to review these measures with a view to their adaptation if necessary.

Article 31 - The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources.

Part III

Article A - Undertakings

1. Subject to the provisions of Article B below, each of the Parties undertakes:

   a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

b) to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

c) to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

2. The articles or paragraphs selected in accordance with sub-paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

4. Each Party shall maintain a system of labour inspection appropriate to national conditions.

Article B - Links with the European Social Charter and the 1988 Additional Protocol

No Contracting Party to the European Social Charter or Party to the Additional Protocol of 5 May 1988 may
ratify, accept or approve this Charter without considering itself bound by at least the provisions corresponding to the provisions of the European Social Charter and, where appropriate, of the Additional Protocol, to which it was bound.

Acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those
obligations for the Party concerned, result in the corresponding provision of the European Social Charter and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments.

Part IV

Article C - Supervision of the implementation of the undertakings contained in this Charter

The implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter.

Article D - Collective complaints

1. The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.

2. Any State which is not bound by the Additional Protocol to the European Social Charter providing for a system of collective complaints may when depositing its instrument of ratification, acceptance or approval of this Charter or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that it accepts the supervision of its obligations under this Charter following the procedure provided for in the said Protocol.

Part V

Article E - Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Article F - Derogations in time of war or public emergency

1. In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are

not inconsistent with its other obligations under international law.

2. Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

Article G - Restrictions

1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article H - Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article I - Implementation of the undertakings given

1. Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:
   a) laws or regulations;
   b) agreements between employers or employers' organisations and workers' organisations;
   c) a combination of those two methods;
   d) other appropriate means.
2. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.

Article J - Amendments

1. Any amendment to Parts I and II of this Charter with the purpose of extending the rights guaranteed in this Charter as well as any amendment to Parts III to VI, proposed by a Party or by the Governmental Committee, shall be communicated to the Secretary General of the Council of Europe and forwarded by the Secretary General to the Parties to this Charter.
2. Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Governmental Committee which shall submit the text adopted to the Committee of Ministers for approval after consultation with the Parliamentary Assembly. After its approval by the Committee of Ministers this text shall be forwarded to the Parties for acceptance.
3. Any amendment to Part I and to Part II of this Charter shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which three Parties have informed the Secretary General that they have accepted it. In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.
4. Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Part VI

Article K - Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Charter in accordance with the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by this Charter, it shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article L - Territorial application

1. This Charter shall apply to the metropolitan territory of each Party. Each signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, specify, by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.
2. Any signatory may, at the time of signature or of the deposit of its instrument of ratification, acceptance or approval, or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the articles or paragraphs of Part II of the Charter which it accepts as binding in respect of the territories named in the declaration.
3. The Charter shall extend its application to the territory or territories named in the aforesaid declaration as from the first day of the month following the expiration of a period of one month after the date of receipt of the notification of such declaration by the Secretary General.
4. Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe that, in respect of one or more of the territories to which the Charter has been applied in accordance with paragraph 2 of this article, it accepts as binding any articles or any numbered paragraphs which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of receipt of such notification by the Secretary General.

Article M - Denunciation

1. Any Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force for it, or at the end of any subsequent period of two years, and in either case after giving six months' notice to the Secretary General of the Council of Europe who shall inform the other Parties accordingly.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article or paragraph of Part II of the Charter accepted by it provided that the number of articles or paragraphs by which this Party is bound shall never be less than sixteen in the former case and sixty-three in the latter and that this number of articles or paragraphs shall continue to include the articles selected by the Party among those to which special reference is made in Article A, paragraph 1, sub-paragraph b.
3. Any Party may denounce the present Charter or any of the articles or paragraphs of Part II of the Charter under the conditions specified in paragraph 1 of this

article in respect of any territory to which the said Charter is applicable, by virtue of a declaration made in accordance with paragraph 2 of Article L.

Article N - Appendix

The appendix to this Charter shall form an integral part of it.

Article O - Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

a) any signature;
b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Charter in accordance with Article K;
d) any declaration made in application of Articles A, paragraphs 2 and 3, D, paragraphs 1 and 2, F, paragraph 2, L, paragraphs 1, 2, 3 and 4;
e) any amendment in accordance with Article J;
f) any denunciation in accordance with Article M;
g) any other act, notification or communication relating to this Charter.

In witness whereof, the undersigned, being duly authorised thereto, have signed this revised Charter.

Done at Strasbourg, this 3rd day of May 1996, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the Director General of the International Labour Office.

APPENDIX TO THE REVISED EUROPEAN SOCIAL CHARTER

Scope of the Revised European Social Charter in terms of persons protected

1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.
2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.
3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

a) to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b) where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

a) if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
b) if the undertaking concerned ceases to operate;
c) if the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 19, paragraph 6

For the purpose of applying this provision, 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.

Article 20

1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.
2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.
3. This article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.
4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly
person's physical, psychological and intellectual capacities.

Article 24

1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.
2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
   a) workers engaged under a contract of employment for a specified period of time or a specified task;
   b) workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
   c) workers engaged on a casual basis for a short period.
3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
   a) trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
   b) seeking office as, acting or having acted in the capacity of a workers' representative;
   c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
   d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
   e) maternity or parental leave;
   f) temporary absence from work due to illness or injury.
4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.
2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.
3. The workers' claims covered by this provision shall include at least:
   a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;
   b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;
   c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.
4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing

for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are
recognised as such under national legislation or practice.

Part III
It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

a) Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;

b) Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;

c) Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the
Charter;

d) Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the threat of
war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term "amendment" shall be extended so as to cover also the addition of new articles to the Charter.

C) (Partial) Form for the submission of reports under the European Social Charter

FORM[2]

for the reports to be submitted in pursuance of the

European Social Charter

Adopted by the Committee of Ministers on 24 November 1999
and amended by the Committee of Ministers on 17 January 2001

FORM FOR REPORTS

(To be completed in English or in French)

For the period..... to .....

made by the Government of..... in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter, the instrument of ratification or approval of which was deposited on .....

This report also covers the application of such provisions in the following non-metropolitan territories to which, in conformity with Article 34, they have been declared applicable: .....

In accordance with Article 23 of the Charter, copies of this report have been communicated to

[2] Due to space constraints only part of the form is printed here. A complete version of the form may be found at:

.....[3]

The reports drawn up on the basis of this Form should give, for each accepted provision of the European Social Charter, any useful information on measures adopted to ensure its application, mentioning in particular:

1.any laws or regulations, collective agreements or other provisions that contribute to such application;

2.....any judicial decisions on questions of principle relating to these provisions;

3.any factual information enabling an evaluation of the extent to which these ..... provisions are applied; this concerns particularly questions specified in this Form.

The Contracting Parties' reports should be accompanied by the principal laws and regulations on which the application of the accepted provisions of the Charter is based. These may be sent in their original language and translation in one of the official languages of the Council of Europe may be asked for in exceptional circumstances.

The replies of the governments should, wherever appropriate, specify explicitly:

a. whether they are only concerned with the situation of nationals or whether they apply equally to the nationals of the other Contracting Parties (see Appendix to the Charter, points 1 and 2);

b. whether they are valid for the national territory in its entirety, including the non-metropolitan territories if any to which the Charter applies by virtue of Article 34;

c. whether they apply to all categories of persons included in the scope of the provision.

The Form indicates for each Article and paragraph those cases in which a state bound by obligations under certain International Labour Conventions may find it sufficient to supply a copy of the relevant reports submitted to the ILO on the application of these conventions in so far as the latter cover the same field of application as the relevant provision of the Charter.

The information required, especially statistics, should, unless otherwise stated, be supplied for the period covered by the report.

Where statistics are requested for any provision, it is understood that, if complete statistics are lacking, governments may supply data or estimates based on *ad hoc* studies, specialised or sample

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www.

[3] Please state whether you have received any observations from these national organisations of employers and workers, and supply those they have asked you to transmit. The information provided would be usefully supplemented by your communicating a summary of all other observations, to which you might add any comments that you consider useful.

surveys, or other scientifically valid methods, whenever they consider the information so collected to be useful.

The report should as far as possible be submitted by E-mail to the address *social.charter@coe.int* and a diskette *in Word format* should be appended. If this is not possible, the Contracting Parties are requested to submit their reports in five copies and the appendices in two copies.

CONTRACTING PARTIES ARE REQUESTED:

..... as far as first reports are concerned:

..... to reply to all questions appearing in this Form;

..... as far as subsequent reports are concerned:

..... to update the information given in the previous report.

The Secretariat is invited to distribute with this Form a working document - that will be regularly updated - indicating the provisions of the United Nations, the ILO, the WHO, the European Union and the Council of Europe corresponding to the different articles of the Charter and a summary presentation of the different control mechanisms.

ARTICLE 3: THE RIGHT TO SAFE AND HEALTHY WORKING CONDITIONS

ARTICLE 3 PARA. 1

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

to issue safety and health regulations;"

Question A

Please list the principal legislative or administrative provisions issued in order to protect the physical and mental health and the safety of workers, indicating clearly:

their material scope of application (risks covered and the preventive and protective measures provided for), and
their personal scope of application (whatever their legal status – employees or not – and whatever their sector of activity, including home workers and domestic staff).

Please specify the rules adopted to ensure that workers under atypical employment contracts enjoy the same level of protection as other workers in an enterprise.

Question B

Please indicate the special measures taken to protect the health and safety of workers engaged in dangerous or unhealthy work.

ARTICLE 3 PARA. 2

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

to provide for the enforcement of such regulations by measures of supervision;"

Question A

Please indicate the methods applied by the Labour Inspection to enforce health and safety regulations and please also give information, *inter alia*, statistical, on:

a. the places of work, including the home, subjected to the control of the Labour Inspection, indicating the categories of enterprises exempted from this control;
b. the number of control visits carried out;
c. the proportion of workers covered by these visits.

Question B

Please describe the system of civil and penal sanctions guaranteeing the application of health and safety regulations and also provide information on violations committed:

the number of violations;
the sectors in which they have been identified;
the action, including judicial, taken in this respect.

Question C

Please provide statistical information on occupational accidents, including fatal accidents, and on occupational diseases by sectors of activity specifying what proportion of the labour force is covered by the statistics. Please describe also the preventive measures taken in each sector.

ARTICLE 3 PARA. 3

"With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health."

Please indicate if consultations with workers' and employers' organisations are provided for in this connection by law, if they take place in practice and at what level (national, regional, at the sectoral or enterprise level).

ARTICLE 4: THE RIGHT TO A FAIR REMUNERATION

ARTICLE 4 PARA. 1

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living."

"...The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions;"

Question A

Please state what methods are provided and what measures are taken to provide workers with a fair wage, having regard to national living standards and particularly to the changes in the cost of living index and in national income.[4]

Question B

Please specify if these include methods for fixing minimum wage standards by law or collective agreements.

Question C

Please indicate what proportion of wage-earners are without protection in respect of wages, either by law or collective agreement.

Question D:

Please provide information on:

— national net average wage[5] (ie. after deduction of social security contributions and taxes[6]);
— national net minimum wage if applicable or the net lowest wages actually paid (ie. after deduction of social security contributions and taxes).[7]

Please provide information, where possible, on:

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[4] If your country has accepted Article 16, there is no need to give information here concerning family allowances, etc.

[5] In principle the net average wage should be the overall average for all sectors of economic activity. The average wage may be calculated on an annual, monthly, weekly, daily or hourly basis. Wages cover remuneration in cash paid directly and regularly by the employer at the time of each wage payment. This includes normal working hours, overtime and hours not worked but paid, when the pay for these latter are included in the returned earnings. Payments for leave, public holidays and other paid individual absences may be included insofar as the corresponding days or hours are also taken into account to calculate wages per unit of time.

[6] The net wage (average and minimum) should be calculated for the standard case of a single worker. Family allowances and social welfare benefits should not be taken into account. Social security contributions should be calculated on the basis of the employee contribution rates laid down by law or collective agreements etc. and withheld by the employer. Taxes are all taxes on earned income. They should be calculated on the assumption that gross earnings represent the only source of income and that there are no special grounds for tax relief other than those associated with the situation of a single worker receiving either the average wage or the minimum wage. Indirect taxes are thus not taken into account.

[7] The net minimum wage should be given in units of time comparable to those used for the average wage.

— the proportion of workers receiving the minimum wage or the lowest wage actually paid (after deduction of social security contributions and taxes);
— the trend in the level of the minimum net wage and/or the lowest wage actually paid compared to national net average wage and any available studies on this subject.

ARTICLE 8: THE RIGHT OF EMPLOYED WOMEN TO PROTECTION

ARTICLE 8 PARA. 1

"With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

to provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;"

Question A

Please indicate the length of maternity leave, showing, where appropriate, its division before and after confinement.

Question B

Please indicate whether in some cases the total duration of leave before and after confinement is less than twelve weeks.

Question C

Please indicate whether the benefits during maternity leave are provided in the form of paid leave (if normal pay is reduced, please indicate the amount), under a social security system or from public funds, stating whether the payment of benefits is subject to conditions and if so, which.

Question D

Please indicate, in circumstances where part or all of benefits payable during maternity leave are not covered by paid leave, the amount of social security benefits or benefits from public funds in monetary terms and, as appropriate, as a percentage of the wages previously paid to the worker.

Question E

Please indicate any sanctions that may be imposed on an employer failing to observe this provision, and state whether the employed woman has the option of voluntarily giving up all or part of her maternity leave.

Question F

Please indicate the protection to which women employed on fixed-term contracts in your country are entitled, including nationals of the other Contracting Parties to the Charter.

ARTICLE 8 PARA. 2

"With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;"

Question A

Please indicate what arrangements exist to give effect to this provision.

Question B

Please also indicate the sanctions provided for dismissals in breach of this provision.

Question C

Please indicate if reinstatement is ensured in cases of dismissal in breach of this provision and, in the exceptional cases where this is not possible, the amounts of compensation awarded.

Question D

Please indicate the protection to which women employed on fixed-term contracts in your country are entitled, including nationals of the other Contracting Parties to the Charter.

ARTICLE 8 PARA. 3

"With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;"

Please indicate the rules which apply in this respect, stating whether time off for breastfeeding is considered as working hours and paid as such.

ARTICLE 8 PARA. 4

"With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

a. to regulate the employment of women workers on night work in industrial employment;

b. to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature."

Question A

Please give details of regulations on the employment of women on night work in industry, in particular as regards the content of regulations on night work of women who are pregnant, have just given birth or are breastfeeding their children, and stating in particular the hours to which the term "night work" applies.

Question B

Please give details of measures to prohibit the employment of women workers in underground mining.

Question C

Please indicate what other occupations of the kind referred to in sub-paragraph *b* of this paragraph are prohibited and the measures taken to give effect to such extension.

Question D

Please give particulars of any authorised exceptions.

ARTICLE 11: THE RIGHT TO PROTECTION OF HEALTH

General aspects[8]

Question A

Please indicate the forms of ill-health which at present raise the greatest public health problems in your country by reason of their frequency, gravity and any sequels.

Please indicate what illnesses were the main causes of death.

Question B

Please describe the measures aimed at ensuring universal access to health care. Please also indicate on what conditions the various health services are made available to the whole of your country, describing the geographical distribution of these services.

Question C[9]

Please indicate how public health services are organised in your country and state, if possible:

a. the number of private or public preventative and screening clinics (if possible distinguishing between general or specialised, particularly in the fields of tuberculosis, sexually transmitted diseases, AIDS, mental health, mother and child welfare, etc.) and the annual attendance of them making special mention of services for schoolchildren;

b. the regular health examinations arranged for the population in general or for a part thereof, and their intervals;

the number of general hospitals and public or private establishments for specialised treatment (especially for tuberculosis, psychiatry – including day hospital –, cancer, after-care, functional and occupational rehabilitation). Give the respective proportions of public and private establishments. Please indicate the number of beds available (or of places in case of day hospitals or rehabilitation clinics accepting out-patients);

the number per 1 000 persons of doctors, dentists, midwives and nurses, indicating, if possible, the situation in urban and rural areas;

the number of pharmacies per 1 000 persons and if possible their geographical distribution;

f. Please indicate the percentage of GDP allocated to health expenditure.

[8] States having accepted one or more paragraphs of Article 11 are invited to respond to the questions under this heading.

[9] If the statistical information requested under this provision is available from publications of Eurostat, WHO or OECD you are invited to refer to the relevant publication.

ARTICLE 11 PARA. 1

"With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

to remove as far as possible the causes of ill-health."

Question A

Please indicate infant and perinatal mortality rates for the reference period concerned.

Please indicate the life expectancy at birth in your country.

Question B

Please describe any special measures taken to protect the health of:

a. pregnant women, mothers and babies;
b. children and adolescents;[10]
c. the elderly;
d. Disadvantaged persons or groups (for example the homeless, families with many children, drug addicts and the unemployed, etc.).

Please supply information on all measures taken to protect the reproductive health of all persons, in particular adolescents.

ARTICLE 11 PARA. 2

"With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;"

Question A

Please indicate what advisory and screening services exist:

a. for schools;
b. for other groups.

Question B

Please describe any measures taken to further health education, including information campaigns.

[10] If your country has accepted paragraphs 9 and 10 of Article 7, it is not necessary to repeat here the information given thereon.

ARTICLE 11 PARA. 3

"With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

to prevent as far as possible epidemic, endemic and other diseases."

Question A

Please indicate what measures other than those mentioned above are taken to prevent epidemic, endemic and other diseases (compulsory or optional vaccination, disinfection, epidemics policy).

Question B

Please indicate what general measures are taken in the public health field, such as:

a. - prevention of air pollution,
   - prevention of water pollution,
   - prevention of soil pollution;
b. protection against radioactive contamination;
c. protection against noise pollution;
d. food hygiene inspection;
e. minimum housing standards;
f. measures taken to combat smoking, alcohol and drug abuse, including multiple addiction, as well as against sexually transmitted diseases.

ARTICLE 13: THE RIGHT TO SOCIAL AND MEDICAL ASSISTANCE

ARTICLE 13 PARA. 1

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition."

Question A

Please describe the general organisation of the current public social and medical assistance schemes.

Question B

Please provide detailed information on the different types of social and medical assistance, specifying for each one:

— its form (benefits in cash and/or in kind);
— the categories of persons covered and the number of persons who were in receipt of assistance during the reference period;
— the conditions for the granting of assistance, the criteria used to assess need, the procedure for determining whether a person is without adequate resources, and the body which decides when assistance is to be granted;
— as far as possible, information demonstrating the adequacy of the assistance with respect to the cost of living.

Question C

Please indicate the means by which the right to assistance is secured, indicating whether individuals may uphold their right before an independent body.

Question D

Please give the amount of public funds (central government or local authorities) allocated to social and medical assistance as well as the percentage of GDP this represents, and, if possible, give an estimation of the amount of private funds devoted to assistance.

ARTICLE 13 PARA. 2

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights."

Please indicate briefly how this Article is implemented and what measures are used to ensure in particular, the absence of any direct or indirect diminution of political or social rights.

ARTICLE 13 PARA. 3

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want."

Please describe the main services covered by this provision, especially the manner in which they are organised and operate, including their geographic distribution.

Please give as far as possible information about:

— the staff responsible for providing advice and personal help, as well as an indication of their qualifications and duties;
— measures aimed to ensure an adequate response to the needs of individuals and families.

ARTICLE 13 PARA. 4

"With a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties undertake:

to apply the provisions referred to in paragraphs 1, 2 and 3 of this Article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953."

[The Appendix to the Charter stipulates that Governments not parties to the European Convention on Social and Medical Assistance may ratify the Social Charter in respect of this paragraph provided that they grant to national of other Contracting parties a treatment which is in conformity with the provisions of the said Convention.]

Please indicate the guarantees which ensure conformity with this provision. Please describe more specifically the provisions which ensure that any repatriation of nationals of other Contracting Parties who are legally within the territory on the sole ground that they are in need of assistance is carried out according to the conditions laid down in Article 6 to 10 of the European Convention on Social and Medical Assistance 1953.

ARTICLE 16: THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION

"With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means."

Question A

Please mention if the legislation in your country provides specifically for the legal protection of the family, bearing in particular on equality in law between spouses, on family relationships and on marital conflict, and also any special measures to facilitate solutions other than divorce to such conflicts.

Please describe the marital property regimes existing in your country.

Question B

Please describe the economic measures taken on behalf of the welfare of the family in your country:

— by the award of benefits in cash[11] (eg. family allowances) which ensure, permanently, financial compensation, at least in part for family expenses, indicating the manner and the levels in which such benefits are given (with relevant statistical data) as well as the number of persons concerned (percentage of the population);

— by the award of occasional benefits in cash or in kind other than social and medical assistance benefits, intended to give material assistance to families in certain specific circumstances (eg. marriage, setting up or tenancy of housing appropriate to the size of the family, etc.), giving wherever possible, statistical information on the above;

— by alleviating certain expenses (eg. tax relief for family and children, special transport rates for families). In so far as tax relief is concerned, please specify whether tax concessions vary according to the number of children, and if so, how and to what extent;

— by measures of aid to the newly married.

Question C

Please indicate whether in your country there exists social and/or cultural services of particular interest to the family, such as advice to families (either to the whole family or to its members, eg. to mothers, pregnant women, children of various ages), home-help services, family holiday homes, etc.

Please indicate the childminding services available to families, in particular crèches, nurseries and after-school and holiday schemes for children.

Please give a general description of the organisation and facilities of these services. In your answer please distinguish between public and private services and between services available free or against payment. Please give relevant statistical data.

[11] If your country has accepted Article 12 para. 4 it is not necessary to describe here the measures taken to ensure equal treatment in respect of allocation of family benefits forming part of social security.

Question D

Please indicate if the legislation in your country provides for family representation on advisory or administrative bodies with a view to defending family interests.

Question E

Please indicate what measures have been taken to promote the construction of family housing, and supply full statistics of the work accomplished.

Question F

Please indicate the measures taken in the field of family planning information.

Question G

If your country publishes official statistics concerning the composition of the family and its economic and social position, please provide a summary of the latest available statistics. In so far as the socio-economic position is concerned, describe the manner in which socio-economic categories are classified in your country.

D) Conclusions of the European Committee of Social Rights

Supervision Cycles

1) COMMITTEE OF INDEPENDENT EXPERTS, CONCLUSIONS XIII-1, 1992-93

Between December 1992 and December 1993, the Committee of Independent Experts carried out Supervision Cycle XIII-1 to monitor compliance with the European Social Charter. In this cycle, the Committee presented its conclusions concerning Articles 1 to 6, and conclusions concerning Articles 7 to 19 in respect of which a negative or adjourned conclusion was adopted during the cycle XII-1.

Conclusions with regard to the following countries were presented: *Austria, Cyprus, Denmark, France, Greece, Iceland, Ireland, Italy, The Netherlands, Norway, Spain, Sweden, Turkey*, and the *United Kingdom*.

Here, we have included only those comments by the Committee that relate to reproductive and sexual health. The following Articles are mentioned: Article 4 of the Charter - The right to a fair remuneration; Article 8 - The right of employed women to protection; Article 11 - The right to protection of health; and Article 17 - The right of mothers and children to social and economic protection.

General Comments by the Committee with regards to Article 8

The Committee asked all states which have accepted Article 8(1) to indicate in their next report under this provision if the payment of maternity benefits is subject to conditions as to the length of affiliation to a social security insurance scheme, a specified period of occupational activity or of employment with one or more employers (indicating whether periods of unemployment are counted as working time for this purpose) and/or a specified salary level.

Denmark

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

As no change had occurred in Denmark during the reference period with regard to maternity leave, the Committee was obliged to reiterate its negative conclusion, owing to the entirely optional nature of this leave and the corresponding lack of a minimum requirement of six weeks' post-natal leave.

The Committee took note of the Government's intention to amend Danish legislation in order to make it conform to the European Community Directive of 19 October 1992, which concerns, inter alia, maternity leave and it expressed the hope that the Government, when amending the legislation. would ensure that Danish legislation was brought into line also with all of the undertakings deriving from Article 8 para. I of the Charter as interpreted by the Committee (Conclusions VIII, page 123).

As far as maternity benefits were concerned, the Committee noted from the report's reply to the question put in its previous conclusion (Conclusions XII-1, page 147), that they were no longer equal to 90% of pay, but that under Act No. 852 of 20 December 1989, Daily Cash Benefit (Sickness or Maternity), they could not exceed a maximum weekly amount laid down by the Act (DKr 2,397 - or DKr 10,347 a month - Article 9(2)), divided by the number of hours normally worked per week and that this amount was adjusted annually. Having noted under Article 4 para. 1 that, in 1990, the average monthly wage of women working in the private sector was equal to DKr 15,030, the Committee took note of the fact that the legal maximum amount of benefits represented only 69% of this average wage.

The Committee also took note of the fact that any supplements (paid by employers or out of public funds) to offset the difference between maternity benefits and previous wages were governed by collective agreements. It wished to know if and how collective agreements made provision for this and whether all female wage-earners received such supplements.

Pending receipt of this information, the Committee deferred its conclusion as regards the questions of maternity benefits.

Greece

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted with interest the information contained in the Greek report. It noted that the situation of women civil servants who gave birth to a stillborn child had been brought into line with this provision of the Charter under Act No. 208511992, which prescribes the same leave for such civil servants as for those giving birth to a living child (two months before and two months after the confinement).

The Committee also noted that no distinction was made between Greek salaried female workers and foreign salaried female workers from other Contracting Parties, in respect of either maternity leave or maternity benefits. It took note of the repeal, under Act No. 190211990, of Section 4 (1) of Emergency Law No. 184611951. which excluded foreigners working temporarily in Greece from the Social Insurance Institute (IKA); this measure has removed the discrimination against salaried foreign temporary female workers.

The Committee noted with satisfaction that the duration of maternity leave had been increased from fourteen to fifteen weeks under the National General Labour Collective Agreement of 1989, which was applicable to all private-sector employees irrespective of their nationality. The Committee wished to know whether all categories of employees from all economic sectors were entitled to such leave.

Conversely, the Committee noted that IKA maternity benefits did not seem to be payable to all female employees: firstly. such employees had to have worked a minimum of two hundred days in the two years preceding the expected date of confinement and, secondly, the report indicates that not all activities are covered by the IKA.

The Committee wished to know what activities were not covered by the IKA and what maternity benefits were payable to female employees not in receipt of IKA benefits.

Lastly, the Committee took note of the fact that female agricultural salaried employees received exactly the same maternity benefits as other female salaried employees. It asked which body(ies) ensured payment of maternity benefits to women in agricultural work, and whether the conditions for such payment were the same as those for other salaried women. It also requested information on the regulations governing maternity leave, regretting that the report had not answered the question as. to whether, in all cases, even where childbirth occurred later than expected, women in agricultural work were granted six weeks of post-natal leave.

The importance of these outstanding questions was such that the Committee was unable to evaluate the overall situation. Since the situation as regards women civil servants who give birth to a stillborn child was brought into line with this provision outside the reference period, the Committee had to renew its negative conclusion for the current supervision cycle.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted the information in the Greek report concerning the personal scope of Act No. 1483184 on protection for workers with family responsibilities, Section 15 of which prohibited a woman's dismissal during pregnancy or the year following childbirth. The information confirmed that salaried women working at home and domestic servants did indeed benefit from the protection provided by the Act, as did employed women in senior positions.

The Committee noted both the very general definition, in Article 672 of the Civil Code, of the "serious reasons" for which a woman could be dismissed during maternity leave, and the clarification provided by Judgement No.

105111988 of the Supreme Court, which stated that by "serious reasons" was meant "non-conformity to the instructions of the employer", "neglected performance of duties" and "repeated unauthorised absence from work".

The Committee considered that those grounds of dismissal, as illustrated by the two judgements appended to the report, were equivalent to serious misconduct, which it had recognised as a valid ground of dismissal during the period protected by Article 8 para. 2. It requested, however, that examples from recent practice or case-law be submitted for each supervision period.

It regretted that the report did not state, as had been requested (Conclusions XII-1, p. 153), whether the reference in Section 15 para. 2 of the 1984 Act to Act 1302/82 ratifying ILO Convention No. 103 (Protection of Maternity) meant that, in accordance with Convention No. 103, no woman could be dismissed during maternity leave, even for a serious reason. It insisted that the next report answer this question.

The Committee appreciated receiving the English translation of Presidential Decree No. 193/88 (1988) from the Greek Government, which Decree brought public sector employees within the scope of the 1984 Act. Noting that the definition of public sector employees in the decree protecting them was not identical to that of Section I para. 2(a) of the 1984 Act excluding them from protection, the Committee asked whether all women employees in the public sector were protected under Section 15 of the 1984 Act.

It noted the Government's explanations according to which the provisions of the 1988 Presidential Decree took precedence over all previous contradictory legislation, particularly Section 257 of the Civil Service Code which allowed for more and wider grounds of dismissal.

The Committee also noted that it was planned to abolish the contradictions in legislative texts when reforming the Civil Service Code. It wished to be informed of the progress of this reform and in the meantime it asked to be informed of any cases of dismissal of public servants during matemity leave, and the grounds therefore, for each reference period.

The Committee noted that there was no provision prohibiting the dismissal of women seafarers which was contrary to Article 8 para. 2 of the Charter, though the report contended that they had the protection of ILO Convention No. 103 (ratified in 1982), Article 28 para. I of the Constitution providing that lawfully ratified international treaties were incorporated into domestic law and prevailed over any legal provision contrary to them.

The Committee noted, however, that after the ratification of ILO Convention No. 103, the Greek authorities had adopted, in application of this Convention, new provisions which appear in Act No. 1483/84, which provisions were extended by Presidential Decree in 1988 to include the public sector. As it had done in similar cases, the Committee asked that explicit provisions be introduced which secured to women seafarers the protection required by Article 8 para. 2.

In the meantime, as not all employed women without exception had that protection, the Committee again had to reiterate its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted from the Greek report the information concerning the regulations on night work by women in industry. It noted that permits were issued only after verification of the work to be performed and its duration which should not exceed the period of the "night" as defined by law (in accordance with Article 2 of ILO Convention No 89 (Night Work - Women, 1948), the "night" in Greece is defined as "a period of at least eleven consecutive hours, including an interval of at least seven hours and falling between ten o'clock in the evening and seven o'clock in the morning").

The Committee did not consider this information adequate from the standpoint of its case-law which it reiterated: "Such regulations must specify the conditions governing night work, such as the need to secure permission from the Labour Inspectorate (if necessary), the laying down of working hours, breaks, days of rest following periods of night

work, etc. These regulations are designed in particular to limit the adverse effects of night work on the worker's health and family life and to prevent abuses." (Conclusions X-2, p. 97). The Committee therefore wished the next report to give more detailed information on the content of the applicable regulations, notably with regard to the conditions laid down in its case law.

Having taken note of Greece's denunciation of ILO Convention No. 89 from February 1993 (outside the reference period), the Committee requested information on any new regulations concerning night work which might be adopted, with an indication as to whether the particular situation of pregnant women and women who had recently given birth or women who were breastfeeding was taken into account for the purposes of this provision.

With regard to dangerous, unhealthy or arduous occupations for women workers, other than underground mining which is forbidden to women, the Committee noted that almost all other provisions relating to protection against dangerous activities applied to workers of both sexes and that, according to the Greek authorities, these standards did not afford adequate protection to women of child- bearing age.

The Committee expressed concern at this situation which appeared to imply that, even in occupations as dangerous to motherhood and future children as those which involved exposure to ionising radiation, benzene or lead, for example, the standards are inadequate. In this connection, the Committee repeated that: "As regards the second part of sub-paragraph b, prohibiting employment of women "as appropriate", on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature", the expression "as appropriate" permits states bound by this provision of the Charter to limit the prohibition of employment of women in the above mentioned occupations to the sole cases where this is necessary, in particular to protect motherhood, notably pregnancy, confinement and the post-natal period, as well as future children" (Conclusions X-2, p. 98). Nevertheless, in such cases the prohibition provided for in the Charter still has to be put into effect.

The Committee was therefore obliged to conclude that, with regard to this aspect of Article 8(4), the situation was not in conformity with the requirements of the Charter. It hoped that measures would be taken rapidly to remedy the situation and it asked to be informed of any developments in the situation.

Iceland

[With regards to Article 4 - The right to a fair remuneration; Paragraph 3 - Non-discrimination between men and women workers with respect to remuneration].

The Committee noted that in Iceland a new Act on the Equal Status and Equal Rights of Women and Men (No. 28 of 1991) had been introduced during the reference period. It noted that a separate Complaints Committee had been established to investigate alleged breaches of the Act and to make recommendations to the parties concerned on the basis of its findings. It noted that although the conclusions of the Complaints Committee were not binding on the parties, the Committee could take legal action in order to establish formal recognition of the legal rights of the complainant.

The Committee noted that the burden of proof had been reversed in cases brought before the Complaints Committee alleging sexual discrimination. The burden now lay on the employer to prove that the treatment complained of was not based on the sex of the complainant. The Committee noted this improvement and wished to know in this respect whether the burden had also been reversed for cases taken directly by an individual before the courts rather than to the Complaints Committee.

The Committee took note of the answer to its previous questions regarding the remedies available to an individual taking an action alleging sex discrimination s independently of the Complaints Committee. An individual can seek a declaration that the impugned measure, treatment or provision is null and void in addition to seeking compensation, while the Complaints Committee can only seek compensation and demand recognition of all of the complainant's legal rights.

Ireland

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted the information supplied by the Irish report in respect of this provision, including the fact that only female employees who satisfied certain contribution conditions received a maternity allowance equal to 70% of their wages; it understood that other female employees received only a maternity allowance amounting to £50 per week (in July 1991). The Committee requested confirmation that such was the case and it wished to know who paid these various allowances and what conditions were attached to the payment of the allowance equal to 70% of wages.

The Committee noted with interest that the 70% allowance related to gross earnings and that, in view of taxation procedures (which do not take the maternity allowance into account in respect of assessable income, but do take it into account in respect of the tax-free allowance), the income of female workers on maternity leave was close to 100% of their net wage, which was satisfactory. Having noted that this allowance was subject to a ceiling of £154 per week, the Committee asked whether and how the allowance was supplemented for female employees whose wages were higher than the ceiling.

On the other hand, the Committee considered that the maternity allowance amounting to £50 was too low, in relation to the previous income of the female employee (according to the report the average female industrial wage is £132 per week), to be considered adequate.

Moreover, the Committee noted with satisfaction the extension of the scope of the 1981 Maternity Protection of Employees Act: the Social Welfare (Employment of Inconsiderable Extent) (No. 2) Regulations, 1991. which guarantee the full range of benefits, including maternity allowances, for employees whose weekly earnings are £25 or more. The Committee observed, however, that a number of female employees continued to be denied access to maternity benefits.

As not all female employees receive maternity benefits and, of those who do, some do not receive benefits of an adequate amount, the Committee was obliged to conclude that, in this connection, the situation was not in conformity with the requirements of the Charter.

As regards maternity leave, from which some female workers, are also excluded, the Committee noted that the Worker Protection (Regular Part-Time Employees) Act, 1991, had extended the scope of the 1981 Act to all regular part-time female employees who have worked at least eight hours per week (previously eighteen hours) over a period of not less than thirteen weeks with the same employer. While appreciating the progress thus achieved, the Committee was obliged to note that the benefit of maternity leave was still not enjoyed by all female employees, which is an unsatisfactory situation.

The Committee also took note of the information concerning the duration of leave, which is fourteen weeks, of which four weeks must be taken before confinement and four weeks afterwards. It noted that most women took ten weeks of post-natal leave, to which four weeks without benefits could be added. However, given the fact that only four weeks' compulsory leave had to be taken after confinement whereas, according to the case-law of the Committee (Conclusions VIII, p. 123), the minimum duration of compulsory post-natal leave should be six weeks, the Committee was unable to consider that the situation was satisfactory.

It was therefore obliged to conclude that with regard to maternity leave, the situation was still not in compliance with the requirements of the Charter.

The Netherlands

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted that the Netherlands' Act of 22 February 1990 amending the 1913 Sickness Insurance Act had come into force during the reference period, increasing from twelve to sixteen the number of weeks' payment of maternity benefits and thus ensuring sixteen weeks' maternity leave, whether or not the birth was on the expected date. This remedied the matter to which the Committee had objected (the fact that the period of maternity leave was less than twelve weeks if a birth was premature) and the view was expressed that the position now complied with Charter requirements. The Committee nevertheless hoped to receive the text of the 1990 Act or the relevant provisions in one of the Council of Europe's official languages.

The Committee also noted that maternity benefit was equal to 100% of the daily wage. As, however, an upper limit applied (286.4 florins - 124 ecus or 850 FF - at 1 January 1992), the Committee asked whether and how earners above the limit were compensated.

The report's replies concerning the non-entitlement of some employed women to maternity benefit - and, therefore, maternity leave, since Section 11 of the 1919 Labour Act (1977 version) provided only for six weeks' compulsory postnatal leave and it was through the 1913 Sickness Insurance Act as amended that sixteen weeks' maternity leave were guaranteed - were noted. In particular it was noted that under Section 3(4) of the 1913 Act there were three categories which could be excluded from the welfare scheme (i. foreigners, ii. persons belonging to a disability-insurance scheme of the Netherlands Antilles or Aruba, of another state or of an international organisation; iii. persons residing temporarily or working temporarily in the Netherlands), but that in practice, exclusions applied only to persons with little or no interest in Netherlands welfare cover, and who tended to be covered by their own (foreign) social-security schemes.

The Committee hoped that the next report provide more details of the categories which could be excluded (stating in particular whether all foreigners could be excluded and if not which, and whether persons belonging to a disability-insurance scheme of the types specified had to be entitled, under those schemes, to maternity benefit) and of the requirements governing exclusion. The Committee also asked whether, in practice, persons thus excluded had other maternity-benefit entitlement and what arrangements there were for them to have maternity leave.

The Committee also noted that Section 44(1)(b) of the 1913 Act, which allowed for maternity benefit to be refused if pregnancy had begun before the insurance scheme was joined or if the confinement was during the six months following joining, had been amended by an Act of 1 March 1992, so that maternity benefit could no longer be withheld on the aforementioned grounds.

Lastly. the Committee noted that in ratifying ILO Convention No. 103 (Protection of Maternity), the Netherlands Government had excepted occupations carried on in agricultural undertaking other than plantations and domestic work for wages in private households. The Committee asked what protection was afforded to women employed in those types of work with regard both to maternity leave and maternity benefit.

Pending receipt of all the information requested. the Committee deferred its conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted the clarification provided in the Netherlands report.

With regard to paragraph 4 of Section 1639h of the Netherlands Civil Code, which provides that "an employer shall not give a woman employee who is able to carry out the stipulated work notice of termination of her employment relationship during her pregnancy and on account of her confinement", the report indicated that pregnancy was not treated as illness, but that pregnant women who were working were protected - by virtue of their being pregnant - against dismissal during pregnancy and up until twelve weeks after confinement, and that those who were not

working because of illness, whether related to the pregnancy or not, were protected against dismissal in the same way as other sick workers.

The Committee was concerned about the situation of pregnant employees who, although not ill, were no longer able to do the stipulated work, for instance because it was too strenuous or dangerous for pregnant women. The explanations supplied led the Committee to believe that, in practice, such women were considered to be ill and, as such, were protected against dismissal. It wished to know who was competent to take such a decision and if it was certain that all cases were thus covered.

With regard to Section 1639o of the Civil Code, which provides for termination of employment without notice for "urgent reasons" and Section 1639p which lists a certain number of "urgent reasons", including the fact that "[the worker] is largely lacking in ability or suitability for the work for which he or she was engaged", the report indicated, firstly, that such dismissal only took place in extremely serious situations and, secondly, that it was immediate in effect, which meant that it did not apply to women on maternity leave who, in principle, were not present at work.

The Committee was not convinced as to the impossibility to dismiss with immediate effect a worker only because she was absent from work and it further noted that according to the repeated explanations to both the Council of Europe and the ILO that the dismissal on urgent grounds of workers on maternity leave could only take place in exceptional circumstances, thus implying that it was not impossible. It took note, nevertheless, of the report's statement that dismissal of a pregnant worker for "urgent reasons" had never occurred.

The Committee also noted, as under Article 8 para. 1, that the Government had made exceptions in respect of "occupations carried on in agricultural undertakings, other than plantations" and "domestic work for wages in private households" when it ratified ILO Convention No. 103 (maternity protection). It asked what protection was provided for female workers in these cases as regards Article 8 para. 2.

Given the questions pending, the Committee decided that its positive conclusion should be provisional in nature.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted the Netherlands' Government's explanations that general legislation guaranteed women's right to time off for breast-feeding and that the obligation to act as "good employer[s]" contained in the Civil Code ensured that employers paid women for such time off.

The Committee was not convinced by these arguments because the legislation that provides for time off for breast-feeding (Section 11 para. 2, of the 1919 Labour Act) does not state that such time should be regarded as working time nor that it should be paid. Moreover, since the ninth supervision cycle, the Committee has been informed of the repeated comments by the Netherlands Trade Union Confederation (FNV) to the ILO that, in practice, many employers require women to make up for any time taken off for breast-feeding or refuse to pay them for this time.

In its previous conclusion (Conclusions XII-1, p. 155), the Committee had asked to be kept informed of the results obtained with the information measures concerning the right to time off for breast-feeding and of developments as regards the proposed changes to the 1919 Labour Act, particularly in respect of such time off. It profoundly regretted that the report did not answer these questions and asked for answers to be given in the next report.

Lastly, having noted, as under Article 8 paras. 1 and 2, that the Netherlands Government had made exceptions in respect of "occupations carried on in agricultural undertakings, other than plantations" and "domestic work for wages in private households" when it ratified ILO Convention No. 103, the Committee asked how the right to time off for breast-feeding was guaranteed for women in these occupations.

Pending receipt of all the information requested, the Committee could only reiterate its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee found in the Netherlands report no information concerning regulations governing the employment of women workers on night work in industrial employment. It inferred from this that the situation, previously deemed satisfactory in this respect, had not changed, but it requested that the next and all subsequent reports should expressly state whether or not there had been any changes in this field.

Where the prohibition of the employment of women workers in underground mining was concerned, it noted that such employment no longer existed in the Netherlands; it therefore considered that this provision was not applicable in this case.

As far as the prohibition of other work dangerous, unhealthy or arduous for women workers was concerned, particularly in respect of maternity, the Committee took note of the very general information given in the report. It noted that the decree on radiation protection (Nuclear Power Act) provided that steps had to be taken to ensure that pregnant workers were exposed to the lowest reasonably possible doses of radiation. It also noted that in pursuance of Article 3 (f) of the Working Conditions Act, employers had to take account, when organising and allocating tasks, of pregnancy and breast-feeding, among other things, and that an examination had to be made in every case of how this provision could be implemented. Among the aspects which might play a role in this respect, the report lists various sources of arduousness or danger, such as vibration, contact with infectious germs or exposure to toxic substances, particularly those potentially having effects on reproduction and/or offspring.

The report also refers to an information leaflet on pregnancy and work (P-blad Nr. 179). As the leaflet (which was appended to the report) was in Dutch, the Committee requested a summary in one of the Council of Europe's official languages, or information about its content.

As the information provided was very general, the Committee asked for the next report to give more substantial and detailed information and to state, inter alia, how Article 3 (f) of the aforementioned Working Conditions Act was applied, whether - and if so how - its implementation in every case was monitored, and how the different arduous or dangerous aspects mentioned in the report were taken into account in this context. It also asked whether. in accordance with its case-law (Conclusions X-2, p. 98), there were not some dangerous activities, such as those involving contact with benzene, prohibited to women in order to protect motherhood, particularly pregnancy, child-birth and the postnatal period, as well as unborn children.

Pending receipt of all the information requested, the Committee deferred its conclusion as regards Article 8 para. 4b.

Sweden

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted that in Sweden six weeks' post-natal leave was still not compulsory, contrary to its case-law (Conclusions VIII, p. 125). It therefore had to renew its negative conclusion on this point.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted in the Swedish report that time off for breast-feeding was little used because maternity leave lasted one year and was accompanied by benefits equal to 90% of pay, and that there was therefore no established practice in the matter.

The Committee also noted that employers were not legally bound to allow female workers time off for breast-feeding during paid working hours. The Committee did not know how to reconcile this information with that supplied on Section 4 (2) of the Act on leave for child care, which grants working women the right to time off for breastfeeding

their children. It asked the next report to clarify this point and explain how far working women could avail themselves of this right if there was no corresponding obligation on the part of employers and how compliance with the undertaking given under Article 8 para. 3 was secured.

The Committee also took note of the fact that it was possible to work part-time (halftime or three-quarter time) for one year after childbirth, was compensated financially by the parental allowance.

In order to be able to assess whether this possibility could constitute a solution to the question of time off for breast-feeding, the Committee wished to know whether and how working time could be adjusted so as to allow for breast-feeding of a baby, and what was the level of the parental allowance compared with the woman's pay. The Committee also asked up to what age, on average, children are breast-fed in Sweden.

The Committee deferred its conclusion, pending receipt of the various information it had requested.

Turkey

[With regards to Article 11- The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted the detailed report submitted by Turkey concerning the public health situation. In particular it noted the Government's efforts to educate the general public by creating media awareness, and the establishment of enlightenment programmes designed to promote public health and reduce the causes of respiratory, parasitic and enteritis related diseases.

The Committee observed that while there was provision for mother and infant care up to the age of five, thereafter there appeared to be no national provision for children to receive systematic medical examinations during their period of education, although young persons in employment were required to attend regular medical examinations up to the age of eighteen. The Committee asked that the Government provide more information on this point in the next report. It also asked whether provision was made for health education in the educational curriculum and whether facilities were available for students to receive nutrition in the form of school meals.

The Committee noted with interest the various Government initiatives and legislative enactments designed to protect the physical and mental health of individuals and the environment. In particular the Committee noted the campaigns directed at combatting tuberculosis, improving the health of mothers and young children and the efforts directed at improving the water quality by controlling access to fresh water resources and regulating the permissible levels of pollutants which may be discharged through water, in an effort to eliminate the primary causes of enteritis related diseases. To this extent the Committee also noted the provision of medical treatment centres designated for the treatment of diarrhoea.

The Committee observed that various Regulations had been enacted to provide for the supervision and inspection of work sites and the provision of medical examinations for employees working in occupations regarded as capable of causing health hazards. In particular the Committee referred to the provisions for noise abatement, food production control and radiation. The Committee asked that the next report provide more information pertaining to the content of the macro-plan in the event of a nuclear accident.

While the Committee was satisfied that the Government was taking positive action under the 1983 Environment Act to improve the general standard of public health, creating public awareness of the importance for hygiene and nutrition, it asked that the next report provide more precise information on the effectiveness of these actions.

Having regard to the detailed statistics the Committee observed that in some regions the provision of medically qualified personnel in urban areas was, when compared with rural areas, disproportionate to the local population. The Committee therefore asked that the next report provide more detailed information on the measures adopted to ensure that the provision of adequate medical treatment was geographically accessible to the general population.

More specifically the Committee asked that the next report address the following questions:

- what provision is made for improving the general health of young people, for example by annual school medical examinations;
- to what extent do the campaigns to eliminate the existence and causes of tuberculosis and diarrhoea reach the population inhabiting rural provinces;
- what proportion of the mother and infant population have access to the mother and child health care centres;
- what measures have been taken to provide preventative medical care for all children under school age;
- in respect of these public health centres, is the provision of treatment available to the whole of the population free of charge;
- in the provision of trained health personnel, what steps are being taken to ensure that professional medical care is sufficiently accessible to the whole of the population;
- to what extent has the Government adopted a system to ensure that information relating to public health, hygiene and nutrition is communicated to the population at large;
- to what extent are the Regulations and Macro Plan concerning Radiation andlor Nuclear accidents designed to protect public health and the safety of workers and persons living in the vicinity of nuclear establishments;
- what measures have been adopted to ensure the enforcement of the various Regulations on public health and environmental pollution in the provincial and rural regions.

Furthermore, in older to have an overall view, the Committee asked that the next report include information relating to the current situation concerning the occurrence of:

a. infant mortality, particularly in relation to diarrhoea and respiratory related illness;
b. maternity related mortality;
c. the primary causes of death and the current life expectancy in Turkey.

While the Committee noted that Turkey had not yet ratified Article 3 of the Charter, it nevertheless asked what measures were being taken to remove the causes of occupational accidents and diseases in industrial plants, having regard to the general obligation under Article 11 para. 1. The Committee hoped to receive more detailed information in the next report.

Pending receipt of this information die Committee deferred its conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Committee noted from the report under Article 11 para. 1 the list of measures taken to promote health education The Committee asked that the next report provide details as to the content of the information disseminated through those measures, public and private. The Committee also asked for details as to how the education campaigns are directed at the whole of the population, particularly at those people living in rural regions.

The Committee also noted the education campaigns which are in place, particularly aimed at mothers, with a view to addressing the major problems of diarrhoea and other parasitic intestinal diseases and pneumonia and other respiratory diseases, major causes of illness and death among babies and children. in this regard, the Committee noted in particular the enlightenment aimed at promoting adequate nutrition of pregnant women and babies and emphasising the importance of hygiene and environmental health in preventing disease. The Committee asked that the next report provide more detailed information as to these campaigns, and as to whether they are aimed at the general public in all areas of the country. The Committee noted that education campaigns are elaborated so as to reach persons of all levels of education.

The Committee also asked whether education and enlightenment programmes are in place or envisaged with regard to other health problems - for example to promote general awareness of public hygiene and the role of environmental health -in preventing the spread of enteritis and respiratory diseases, the need for preventive action as regards AIDS and awareness of methods of contraception (given the relatively high abortion rate).

As regards advisory and diagnostic services available in schools, the Committee noted the special health programme to be applied in schools which the Ministry of Health is preparing in co-operation with the World Bank. It asked that the next report provide detailed information as to the content and the implementation of this programme. Further to the information as to the school children who underwent a general medical examination during the academic years 1989/90 and 1990/91, the Committee noted that ten million children were examined in total, out of over twenty million children aged zero to fourteen (source, ILO Yearbook on Labour Statistics). The Committee asked what measures were taken for the rest of these children. Also, as these were the first such general medical examinations in schools, the Committee asked whether such scanning programmes will be repeated and, if so, how frequently.

As regards the advisory and diagnostic services other than in schools, again the Committee noted that a major target group was mothers and children. In addition to the education campaigns noted above, the Committee noted the campaigns to improve the nutrition of children once weaned, the medical surveillance of pregnant women and babies, the provision of family planning services and the surveillance of children up to the age of six. Nevertheless, the Committee again asked how these services, or indeed an awareness of their existence are ensured for the entire population, especially those people living in remote rural regions.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Committee asked for information as to the steps taken to promote awareness of the need for prevention and control of sexually transmitted diseases in general. It particularly wished to be informed as to steps taken to prevent the spread of AIDS.

The Committee noted that the number of dispensaries for the treatment of syphilis, as well as the number for the treatment of leprosy, had not increased from 1982 to 1986, and asked for information as to the geographic distribution of these dispensaries.

In view of the number of significant questions outstanding, the Committee could only defer its conclusion.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the first report the health protection services provided for mothers and children, as well as the social protection services for those women and their children who are forced to abandon their homes, for example, due to violence in the home. The Committee asked what other forms of economic and social protection existed, particularly for single mothers (unmarried, divorced, widowed or abandoned women with children). For example, it asked what economic assistance is provided to single mothers, what social services are provided to help single mothers provide adequate parenting, to help with their children's education, etc.

With regard to the economic protection of mothers and, children, the Committee referred to its conclusions under Article 12 para. 1 and Article 16, as regards the [limited] provision of family benefit and paid maternity leave. It asked that the next report indicate how economic protection is assured for mothers and children who are not entitled to any social security benefits.

The Committee further asked for complete information on the possibility for a father or mother to recognise his/her child born outside of his/her marriage. It also asked whether there is any differentiation in the juridical treatment of legitimate children and children born outside their parents' marriage(s). The Committee asked that the next report include copies, in one of the official languages of the Council of Europe, of the relevant legislation or parts of the Civil Code which govern this issue.

As regards guardianship and custody matters, the Committee noted that a court may grant custody and/or guardianship to the mother or, if paternity has been acknowledged by the father or determined by the court, to the

father. The court may also appoint a caretaker to protect the interests of a child when it discovers the child to be born out of wedlock or when a pregnancy as such is brought to the attention of the court by the pregnant woman. The court may assign a guardian instead of a caretaker. The Committee asked to receive a copy, in one of the official languages of the Council of Europe, of the text governing this issue.

The Committee also noted that the process of adoption was well regulated, with provisions to protect the interests of the prospective adopted child. The Committee asked for more detailed information on the adoption procedure, in particular regarding whose consent must be given (mother, father) and provision for maintaining ties with the natural parents. Having observed that an adoptive relationship may be terminated, the Committee would like to receive information as to the specific grounds for permitting the termination of such a relationship by the child or the parent, as well as copies of the relevant legislation or extracts from the Civil Code, in one of the official languages of the Council of Europe.

Pending receipt of the information requested the Committee could only defer its conclusion.

United Kingdom

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted from the United Kingdom report that no change had occurred during the reference period, except for a readjustment of the amount of maternity benefits. It therefore referred to its, previous conclusion (Conclusions XII-1, pp. 150-152).

With regard to maternity benefits, the Committee noted that at 31 December 1991 the amount of statutory maternity pay was £44.50 per week, while the. amount of the maternity allowance was £40.60 per week. Although this increase is higher than the inflation rate during the reference period, it is not sufficient to ensure that these benefits provide employed women with an income close to their previous income (the minimum adult wage was fixed at.£129.43 per week in 1991 as is established by the Committee's case-law (Conclusions. VIII, p. 123 and First report on certain provisions of the Charter which have not been accepted, page 19).

The Committee also noted, in response to the question raised in its previous conclusion. that employed women who received neither statutory maternity pay nor the maternity allowance could, subject to certain conditions concerning the length of National Insurance contributions, claim sickness benefit in the amount of £39.60 per week, for a period of eight weeks. Neither the duration of the payment (less than the minimum of twelve weeks required by the Charter), nor the amount of these benefits was considered satisfactory by the Committee, and it also observed that not all employed women were thereby guaranteed entitlement to maternity benefit.

In the circumstances, the Committee had to reiterate its negative conclusion with regard to maternity benefit.

As regards maternity leave, the Committee also had to reiterate its negative conclusion, as there was still no provision for a minimum of six weeks' compulsory post-natal leave.

2) COMMITTEE OF INDEPENDENT EXPERTS, CONCLUSIONS XIII-2, 1994

Between January and December 1994, the Committee of Independent Experts, appointed under Article 25 of the European Social Charter, examined the national reports from *Austria, Belgium, Cyprus, Denmark, France Germany, Greece, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden*, and the *United Kingdom*, relating to the second part of the thirteenth supervision cycle. Conclusions were made concerning Articles 7, 12, 13, 16, 17, 18, and 19 in respect of *Austria, Cyprus, Denmark, France, Greece, Iceland, Ireland, Italy, the Netherlands, Norway, Spain, Sweden*, and the *United Kingdom*. Conclusions were also made concerning Articles 8, 9, 10, and 15, in respect of which a negative or adjourned conclusion was adopted during the cycle XII-2. Included in this compilation are parts of the General Introduction, as well as comments made with regards to sexual and reproductive health rights.

The Articles of the Charter referred to here include Article 8 (the right of employed women to protection); Article 11 (the right to protection of health); Article 16 (the right of the family to social, legal, and economic protection); and Article 17(the right of mothers and children to social and economic protection).

General introduction

General considerations regarding the Committee's conclusions

THE FAMILY

1) Three of the provisions for which Contracting Parties were asked to provide a report during the current cycle concern the family or certain members thereof (Articles 7, 16 and 17), while others (particularly Articles 12 and 19) cover subjects of direct or indirect relevance to the family.

2. The Committee accordingly decided to dedicate the General introduction to Conclusions XIII-2 to the family, which would also be its contribution to the celebration in 1994 of the International Year of the Family (decided by the General Assembly of the United Nations on 8 December 1989). To this end it has referred chiefly to the reports submitted during the current cycle and the conclusions adopted, together with certain important aspects of its case law.

3. This overview illustrates a unique feature of the Charter in that its extensive range of economic and social welfare provisions covers not only workers but also persons in other categories. Conspicuous among them are children (Article 7), the family as such (Article 16) and mothers and children (Article 17), who are afforded special protection by the Charter. This demonstrates the already existing concern for giving the family in the broad sense close attention, which the case law developed by the Committee during each supervision cycle has sought to consolidate and adapt to social changes.

4. Most of the Charter's provisions are formulated in general terms, which gives considerable importance to their interpretation and has the advantage of permitting social and economic developments to be followed without amendments to the actual text. Social change, always a rapid process, has been marked during the second half of this century, and family issues aspects typify this; the very concept of the family has undergone radical change, as has the role of its members.

5. The provisions of the Charter relating to the family will be grouped around ideas of the family's organisation and the specific protection granted to it.

I. FAMILY ORGANISATION

6. The family, designated by Article 16 as a fundamental unit of society, has undergone a structural change in recent decades. The extended family at the start of the century gave way to the "nuclear" family consisting solely of the core formed by parents and children. This in turn has been modified by such factors as the rising divorce rate and social and legal recognition of cohabitation, which has lent ever-increasing importance to what are known as "broken homes" (dissolved unions which generate one-parent families), and "reconstituted families" (successive unions with stepchildren).

7. Meanwhile, economic changes on the one hand and the promotion of the principle of equality between women and men on the other have each been instrumental in revolutionising the traditional organisation of the family and the role assigned to individuals within it, particularly as a result of women's increased participation in professional life.

8. The text of the Charter does not explicitly refer to the organisation of the family, but the idea is embodied in the protection of the family (Article 16) which, in its legal aspect, implicitly requires family relations and children's status to be properly regulated. It is also embodied in the social and economic protection of mothers and children (Article 17), which presupposes measures on behalf of single parents and special arrangements for the children's welfare.

9. A major clue to the substantive content of Articles 16 and 17 which, particularly the latter, are framed in very general terms, may be discovered in the Form for Reports.

A - Family relations

10. The main questions with which the Committee concerns itself bear upon the status of couples who are parents, the solving of family difficulties and measures to help single parents.

a. Status of the parental couple

11. The status of parental couples is viewed principally from the angle of equality in relations between parents, both as couples and as parents, at the personal level and in respect of property. The Charter draws no distinction as to whether the couple is married or not, and the Committee has never stressed either situation, although some of the questions considered obviously relate to marriage and not to cohabitation (eg. property rights).

12. However, the Committee took a very early interest in the matter of equal status: as from the fifth supervision cycle (reference period 1974-75), it noted with satisfaction the new legislation on the family, "giving practical application (...) to the principle of non-discrimination and of equality of the obligations and rights of the partners in marriage, including for example the legal recognition of the economic value of the work of the partner who keeps house, which is put on the same footing as the work of the breadwinner".

13. Inequality of rights and responsibilities within the couple (marital authority, control over property assigned exclusively to the husband, etc.) and in respect of the children (paternal authority, paternal control over property of under-age children, etc.) are regarded as infringements of the Charter.

14. In this connection, some interesting developments were noted during the current cycle; in Ireland, a bill of 1993 stipulates that each spouse has an equal claim to the matrimonial home; in Malta the 1993 reform of family law establishes the principle of spouses' equal material and non-material rights and obligations together with the principle of equal parental responsibility towards children, and replaces paternal authority by parental authority throughout the Civil Code.

15. Another aspect of inequality between the father and mother in respect of the children is described in the Belgian report, to the effect that under the terms of section 319 para. 3 of the Civil Code, acknowledgment of a non-emancipated minor by a man is admissible only with the prior consent of the mother. The question whether or not this provision violated Articles 6 and 6b of the Constitution, stipulating that all Belgians are equal before the law

and that enjoyment of the rights and liberties to which Belgians are entitled must be ensured without discrimination, was raised in two appeals to the Court of Arbitration, which held that Articles 6 and 6b were violated where paternity was uncontested, and not violated where paternity was contested (rulings of 21 December 1990 and 8 October 1992). The Committee will follow with interest any legislative developments pursuant to the rulings of the Court of Arbitration.

b. Solving of family difficulties

16. The solving of family difficulties involves two issues: firstly the breakdown of the couple and secondly guardianship and custody of the children.

1. *Breakdown of the couple*

17. In the national reports, questions relating to the breakdown of the couple are virtually confined to divorce and its consequences.

18. Nevertheless, the Committee is aware of the current development of various mediation procedures, which tend to make divorce less a matter of litigation or may sometimes obviate it altogether. It is also aware of the consideration given by states not only to this matter but also to the types of family difficulties which cannot be solved by divorce, as for example those arising from the breakdown of an unmarried couple. The Committee hopes that future national reports will contain all the elements enabling it to have a general idea of the reality of the national situations in this area.

19. As concerns divorce, the Committee attaches great importance to the procedures whereby the child's personal situation and the financial situation of the former spouses, particularly the one in the less favourable position, are settled.

20. The Belgian report is of particular interest in this respect since, being a first report, it gives a full account of the question. Two points, seemingly but not actually contradictory, are worth noting here: the Belgian report stresses that since the stability of marriage is one of the foundations of society, the legislator has sought to encourage reconciliation between spouses, in particular by intensifying efforts of mediation and by assigning an important conciliatory function to the president of the Regional Court; in addition, a simplification of the divorce procedure is under consideration.

21. The most striking change occurred in Ireland, where divorce is not permitted, following the 1989 Judicial Separation and Family Law Reform Act; grounds for separation have been extended and the courts may take action as regards maintenance, division of property and ownership of the matrimonial home. A salient feature of this reform, the subject of questions in the conclusion, is that account is taken of the contribution of one partner in looking after the home and family, and to the repercussions of this partner's withdrawal from gainful activity on his or her future earning capacity. This partly corresponds to the legal recognition of the economic value of the contribution made by the partner keeping house, which the Committee had welcomed during the fifth supervision cycle.

2. *Guardianship and custody of children*

22. Guardianship and custody of children have always been of concern to the Committee. These questions are indeed crucial as they apply to situations which are usually distressing for the child, jeopardising its emotional and material well-being in the event of crisis or breakdown in the parents' relations, death of one or both parents or any other similar situation as, for example that of children born out of wedlock or that of one-parent families.

23. The manner in which custody and guardianship are regulated at national level does not as a rule determine the Committee's conclusion but more often gives rise to questions, requests or expressions of concern. Taking into account legal and social developments, the Committee has for some years concentrated on parents' rights and duties and on children's rights, particularly their right to express opinions on matters concerning them.

24. The Belgian report is very interesting on this subject too (for the reason explained in para. 20). For the purposes of custody during and after divorce proceedings, the legislation makes no provision for consulting children, and they are never heard by the court in custody and access proceedings. Nevertheless, since Belgium has ratified the United Nations Convention on the Rights of the Child, legislative amendments are under consideration in order to give effect to Article 12 of the Convention guaranteeing "the child who is capable of forming his her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child". In addition, the current reform of the 1965 Protection of Young Persons Act makes it a duty and no longer a possibility for courts to examine minors aged twelve or over in matters pertaining to their custody, administration of their property and exercise of the right to personal relationships. It should be pointed out that several Belgian courts have applied Article 12 of the United Nations Convention without awaiting the reform and have granted a hearing in divorce proceedings to children capable of understanding.

25. Where guardianship is concerned, the regulations presented in the Belgian report are rather complex; here again studies are being made in preparation for a reform which the Committee will note with interest. The report stressed that the view taken by the Belgian legislator is that on the death of one parent, the children's interests are not adequately secured by the presence of the other parent. Consequently, while the surviving parent becomes the statutory guardian of children who are not of age and has sole authority over them, in matters relating to administration of their property he or she is assisted and supervised by an auxiliary guardian and a family council.

26. Two Contracting Parties have recorded legislative developments:
- In Ireland, two statutes regulate the guardianship placement and custody of children: the above-mentioned 1989 Act which deals with this aspect in very general terms, and the 1991 Child Abduction and Enforcement of Custody Orders Act, whose aim is to ensure the protection of children with all due regard to the parents' rights and obligations and the children's wishes, which corresponds to the Committee's opinions;
- In Malta, the above-mentioned reform of 1993 enables children to be heard by the courts in matters concerning them as from the age of fourteen.

c. Measures on behalf of single parents

27. According to the Form, measures on behalf of single parents relate to mothers only, and cover institutions and services ensuring protection of mothers and children and financial assistance before and after confinement for women not covered by social security systems, as well as care during confinement.

28. On the evidence of changes in national situations, the Committee has progressively added questions to its conclusions regarding other forms of economic protection, such as special single parent allowances, without distinction between fathers and mothers. While up1nolding equality in family relations, it has not exceeded the actual terms of Article 17 which refer to mothers only, and consequently has never adopted a negative conclusion on the grounds that no provision was made for single fathers. However, conscious of the growing number of single fathers supporting children and of the difficulties they face in an area where de facto if not de jure discrimination against them is frequent, the Committee invariably expresses satisfaction where national legislation prescribes measures on behalf of single parents of either sex and, where only mothers are protected, it raises questions as to the economic and social protection granted to fathers.

29. The reports examined during this cycle chiefly relate to economic measures: benefits for single persons and higher family benefits for lone parents in Ireland; measures to assist one-parent families in Norway; the United Kingdom's concern over the low income of single parents and the percentage of children living below the poverty line. In Spain the measures are of a different kind, taking the form of vocational training for unmarried mothers and leave without pay for childcare purposes available to mothers (not fathers). The Belgian report also mentions "crisis intervention services" including single mothers' homes designed to house mothers with their children.

30. These brief particulars concerning family relations show that the Charter's standards have been the turning point of changes which have been occurring for over thirty years. They allowed the principles which now tend to govern family law in Europe to be taken into consideration by emphasising the rights and duties of parents, the rights

of the child and equality of the partners in family relations. As to the status of the child, the Committee has chiefly endeavoured to further the principle of equality.

B - Status of the child

31. Here, legitimacy is of concern to the Committee only in matters of parental authority or responsibility, divorce, guardianship, custody, etc. Thus attention is centred on children born outside the present marriage (whether born out of wedlock, adopted or offspring of another marriage), the main concern being equal rights for all children whatever their status and that of their parents.

32. Questions regarding the status of the child focus on three aspects which have received very unequal treatment both in the national reports and in the Committee's case law: establishment of parentage; rights of children not born of or within the marriage; protection of orphans and homeless children.

a. Establishment of parentage

33. Establishment of parentage concerns the investigation of natural paternity or maternity, legitimation and adoption. As a rule, the necessary information is given in the initial reports and the subsequent reports are confined to recent developments, as in the present cycle where only the Belgian report presents all the regulations applicable in these various fields.

34. The Committee's interest in the procedure of investigation of natural paternity or maternity focuses on the categories of children who cannot avail themselves of these procedures; it makes no appraisal of the procedures as such. In Belgium as in many other countries, the establishment of incestuous affiliation is not possible, which implies that a child whose descent from one parent is established cannot have its descent from the other parent established where this would reveal the incestuous nature of its affiliation. However, the legislator has taken the view that it may be in the child's interests to claim maintenance although the establishment of affiliation is undesirable. A child conceived of incestuous relations may accordingly institute proceedings for non-declaratory maintenance sufficient for its upbringing, education and training, the right to maintenance being the same as for children whose parentage is legally established. Another practical restriction, however, applies to adulterine children of the father: where a married man acknowledges a child born of a woman other than his lawful wife, the instrument of acknowledgement must be certified by the court and the wife must be summoned.

35. Where adoption is concerned, the Belgian report specifies two types, full and simple adoption, which are akin to legal arrangements elsewhere. In two Contracting Parties to the Charter, changes have occurred:

- in Iceland, an Act of 1992 clarified the adoption regulations in orderr to enhance the legal guarantees secured to all parties;
- in Ireland, an Adoption Act entered into force in 1991 but unfortunately is not analysed in the report. The Irish situation in this respect deserves to be attentively monitored since the European Court of Human Rights, in the judgment Keegan v. Ireland on 26 May 1994 (Series A No. 291) states that Irish legislation, in so far as it allows a child's adoption unknown to and without the consent of the father, is violation of the European Convention of Human Rights (Article 8). is judgment seems to be causing debate of considerable interest in Ireland regarding the rights of fathers and legislation on adoption.

b. Rights of children not born of or within the marriage

36. The rights of children not born of or within the marriage relate to liability for their maintenance, their inheritance rights and their general equality of status with children born within the marriage, which reflects the Committee's constant concern over equality between all children.

1. *Liability for maintenance*

37. Liability for maintenance, like the establishment of parentage, is usually discussed in full only in the initial reports, and no subsequent report mentions changes during the current cycle. The Belgian report deals with this issue in detail, and the Committee noted with satisfaction that since the 1987 reform of affiliation law all children have had

the same rights and obligations. This is the case with maintenance, for instance: there is the same liability for maintenance whether the children are born in or out of wedlock. Even children conceived of incestuous relations, as shown above, may take proceedings for maintenance against the parent from whom descent cannot be established.

2. ***Inheritance rights of children born out of wedlock***

38. The question of the inheritance rights of children born out of wedlock is covered by the extensive Committee case law regarding not only the existence of these rights but also equality of rights between children whether born in or out of wedlock, and dating as far back as the first supervision cycle. Debate has chiefly concerned the question of whether the inheritance rights of children born out of wedlock come within the ambit of Article 17 which, unlike Article 16, does not explicitly refer to the legal protection of the persons concerned.

39. The Committee substantiated its position in the fourth supervision cycle and has never diverged from it:

> "The Committee thought it was difficult to separate the social and economic protection of mothers and children from the legal provisions governing their situation; objectives of social policy in their regard could not be achieved without taking account of the rights granted to the persons protected and of the duties of those called on to ensure this protection.
>
> In this field, as in others, the law is not only the mirror of economic and social facts, but governs them through the way it regulated relationships in this area.
>
> It follows that, generally speaking, it is not possible to disregard the legal position of the mother and her child in establishing the extent of the social and economic protection on which they may call and in assessing the trends within the states in one important sector of social policy which is the very object of Article 17 of the Charter.
>
> Clearly, if there happened to be any measures of legal protection which had no economic and social implications, the Committee would have to ignore them, but it very much doubted that such measures could exist. In any case as regards all the points raised in Conclusions III, in particular the right of succession and the position with regard to its family of a child born out of wedlock, it was quite certain that social considerations were overriding".

40. The Committee stated during the same cycle that "a child born out of wedlock cannot be regarded as enjoying adequate economic social protection if he has no claim to inherit the estate of the father whose paternity has been established", and has consistently held that "discrimination against illegitimate children, even in the field of succession, conflicts with Article 17 which seeks to guarantee economic and social protection to all children".

It is interesting to note that in this respect, the case law of the Committee and that of the European Court of Human Rights are combined.

41. Cases where the inheritance rights of children born out of wedlock are non-existent or unequal to those of legitimate children therefore prompt negative conclusions, whereas the Committee welcomes any progress towards equality.

42. In this respect the first Belgian report presents an entirely satisfactory situation, as all children have held the same inheritance rights since 1987 provided that affiliation is legally established. Likewise, in Austria, where the inequality of legitimate and illegitimate children in respect of inheritance has long been criticised, the situation has complied in this respect with the requirements of the Charter since the 1989 Rights of Succession (Amendment) Act. The situation in Iceland is not very clear and therefore raises a question, while the conclusion for Malta is negative because inheritance rights differ between legitimate and illegitimate children and between offspring of a first and a second marriage. A reform is nevertheless in hand and the Committee is awaiting the outcome with interest. As for adopted children, in Malta they seem to enjoy the same inheritance rights as legitimate children, though on a somewhat uncertain legal basis which has led the Committee to request particulars in this connection.

Austria

[With regards to Article 8 of the Charter; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the Austrian report that there had been no change in the situation of domestic employees, who could still be dismissed from the end of the fifth month of pregnancy and thus during the period protected by this provision of the Charter.

The Committee could therefore only reiterate its conclusion, which had always been negative. Having taken note of Recommendation No. R ChS (94)l addressed by the Committee of Ministers to Austria on this subject, the Committee asked that the next report indicate what measures had been taken to follow up this recommendation.

In its previous conclusion (Conclusions XII-2, p. 139), the Committee had asked to be kept informed of any measures taken to improve the protection of women (other than domestic employees) against dismissal during the period covered and to prevent employers circumventing the provisions of the law through fixed-term contracts. In this regard, the present report referred to an amendment to the 1979 Maternity Protection Act, adopted in 1992 (BGB1 833/1992) and brought into force on I January 1993, under which the expiration of fixed-term contracts whose limitation in time was not provided for by law or was not objectively justified was ineffective up to the start of compulsory maternity leave (eight weeks before birth).

The Committee asked whether this indeed meant that these contracts were extended up to the beginning of maternity leave in order to allow the women concerned to benefit from maternity leave and benefits. It hoped that the next report under Article 8 para. 1 would contain all the necessary information on this last point. It also asked whether a similar amendment had been made to the Agricultural Labour Act.

The Committee noted the examples given in the report of cases where fixed-term work contracts were considered justified. It asked whether the examples were exhaustive and what was meant by "the interests of the employee" (which, according to the report, justified a fixed-term contract).

The Committee noted that the same amendment also provided that, in cases where employment was prohibited on an individual basis for the entire duration of pregnancy because of danger to the life of the mother or the child, the fixed-term contract ended on presentation of the corresponding medical certificate. The Committee wished to know whether this applied in the case of all fixed-term contracts (legal, justified and unjustified), what was the reason for the rule and also the situation of women under contracts of unlimited duration who were unable to work during their entire pregnancy. The Committee asked that the next report under Article 8 para. 1 indicate the maternity benefits to which such employees were entitled. It also asked whether, under Austrian law, this early termination of contract amounted to a dismissal.

Finally, the Committee noted that an Unpaid Maternity Leave Extension Act had been adopted in 1990 (BGBI 408/1990). It asked that the text or a summary of the act in one of the Council of Europe's official languages be included in the next report under Article 8 para. 1, together with all the necessary details about unpaid maternity leave, the conditions for its granting and the level of the benefits it provided.

[With regards to Article 16 of the Charter - The right of the family to social, legal and economic protection].

Given the importance of reconciling family life and professional life, the Committee asked that all states having accepted Article 16 indicate precisely in their following report on this provision the childminding services available to families, in particular crèches, nurseries and after-school and holiday schemes for children.

The Committee noted that in Austria family allowances had increased in 1992 and that, according to the report, mothers had been granted "a preferential right". It asked for clarification of this expression in the next report. It also asked how the government intended to respond to the Constitutional Court's judgement of 12 December 1991, which criticised the level of family allowances.

The Committee noted that a supplement to the birth grant or an extra grant was payable to parents who did not receive maternity allowance, unpaid parental leave allowance, the services of a helper or a part-time working allowance (see Article 17). It also noted a reference in the report to a "second-age" supplement (nineteen years) and asked for information on this.

In addition, it noted the existence of facilities to enable children and young people to seek counselling. It asked for information concerning the fields in which young persons could thus benefit from counselling and wished to know whether these services were free of charge.

[With regards to Article 17 of the Charter - The right of mothers and children to social and economic protection].

Taking account of the necessity to ensure adequate social protection to children, the Committee wished to reexamine, in the light of the development of national legislations and international conventions, the implementation of Article 17 in this respect. To this end, it asked all states having accepted Article 17 to provide an update in the next report regarding this provision (XIV-2) on the state of their legislation and their application in practice on all areas considered particularly important by the Committee: protection of children against ill-treatment, the access of children to civil and criminal courts and the protection of young delinquents.

As concerns protection against ill-treatment (including of a sexual nature), the Committee asked for all relevant information on the importance of this problem and the measures taken or planned in order to guarantee children and adolescents the protection to which they are entitled, as well as within their families, including not only preventive but also other measures, together with information about the setting-up and role of the various services responsible for these matters (in particular the social and legal services) and about the regulations governing these services.

In the report submitted by Austria, the Committee took note of the reply to its question on children born outside marriage. It noted that in areas other than inheritance rights and family law the distinction between children born in marriage and children born outside marriage remained. The Committee asked that the next report provide very precise information on all the situations in which this distinction was maintained.

The Committee noted that in 1992 the amount of the parental leave allowance had been raised and the period for which it was payable had been extended from one to two years. It wished to know whether entitlement to the allowance was conditioned by the nationality or place of residence of the parent receiving the allowance. The Committee also noted that under Act No. 833/1992 parents were entitled to work part-time after the birth of their child (for either two or four years) while being entitled to proportional amounts of the parental leave allowance. It asked to be kept informed of the results obtained under the act. It also wished to know whether the amount of parental leave allowance for single parent families was increased.

Lastly, the Committee noted the existence of the childcare allowance, which was intended to reduce the number of cases in which a parent had to refuse or give up employment or participation in a training course. The Committee wished to know the conditions governing the award of this allowance.

In view of the information supplied, the Committee reiterated its positive conclusion.

Belgium

[With regards to Article 8 of the Charter - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted the information in Belgium's report on the length of maternity leave. The Labour Act of 16 March 1971 fixed the duration of such leave at fifteen weeks, one of which had to be taken before confinement and eight afterwards.

The Committee noted that, in the civil service, the right to remuneration was guaranteed throughout the entire period of leave.

In the private sector, a female worker received maternity benefit amounting to 82 % of the uncapped gross wage during the first thirty days of leave (which was close to 100 % of the net wage in view of the taxation procedures), and to 75 % of the capped gross wage from the thirty-first day (3,416 Belgian francs per day at 1 November 1992).

The Committee wished to, know whether and by what means provision was made for compensation for women workers receiving a wage higher than the ceiling.

It also requested that the next report reply to the general question asked in Conclusions XIII-1 (p. 172).

Subject to the information requested, the Committee concluded that Belgium was in conformity with this provision of the Charter.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted in the Belgian report that an employer could not dismiss a pregnant employee between the date on which he was informed of the pregnancy and the expiry of a one-month period starting at the end of postnatal leave, except for reasons unconnected with the physical state arising from pregnancy or childbirth (Section 40 the Labour Act of 16 March 1971).

The Committee drew the Belgian authorities' attention to its case law on the authorised reasons for dismissal (serious misconduct by the employee, closing down of the firm, expiry of a fixed-term contract) and asked that the next report indicate what those reasons could be in Belgium.

The Committee also noted that if a female employee was dismissed in a manner contrary to those provisions, she would be entitled to lump-sum compensation amounting to three months' gross remuneration, without prejudice to the compensation payable in the event of termination of the contract.

The Committee pointed out that the purpose of Article 8 para. 2 was safeguard the jobs of women workers during maternity leave and drew the Belgian authorities' attention to its case law on Article 4 ; para. 3 on dismissal, which could be applied to this provision. In this regard, it is stated that reinstatement should be the rule and only in exceptional circumstances should compensation be the sole remedy and that the compensation should be sufficient to deter the employer and compensate the employee. It asked that the next report specify whether Belgian legislation provided for reinstatement of women workers and, if not. whether this reinstatement was envisaged.

Pending receipt of the information requested, the Committee deferred its conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted from Belgium's report that employers were not required by law to grant time off with pay for nursing mothers during working hours.

The Committee took note of the information concerning the possibility of part-time work or leave which could be taken after child-birth, but was obliged to observe that these measures, though interesting in themselves, did not correspond to the commitment entered into under Article 8 para. 3.

In the circumstances, the Committee concluded that Belgium was not in compliance with this provision of the Charter.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted in the Belgian report that under Section 36 of the Labour Act of 16 March 1971 women workers could not be employed at night, except in emergencies and cases of force majeure (Section 38). However, derogations were possible (some concerning industrial employment) and in this connection the Committee took note of the Royal Decree of 24 December 1968 on the employment of women, which defined the categories of women workers authorised to work at night.

It also noted that all workers over the age of fifty-five (or fifty where justified on medical grounds), workers adducing very pressing reasons and pregnant women workers who were employed on night work could ask to be assigned to daytime work.

As far as the regulation of night work was concerned, the Committee noted that the Act of 16 March 1971 defined the period regarded as "night" (as a rule between 8 pm and 6 am, but in some cases between 10 pm and 5 am or 11 pm and 6 am) and provided for a compulsory rest period of at least eleven consecutive hours, for women workers, between the end of a night's work and the start of the next one.

The Committee recalled that in the light of its case law, regulations on night work should specify the conditions governing night work, such as the need to secure permission from the Labour Inspectorate (if necessary), the laying down of working hours, breaks, days of rest following periods of night work, etc. (Conclusions X-2, p. 97). The Committee therefore hoped that the next report would provide more detailed information on the content of the regulations governing night work in industry, particularly with reference to the requirements laid down in its case law.

The Committee also learned from ILO information that Belgium had denounced ILO Convention No. 89 (Night Work - Women); it asked for information on any new provisions which might be introduced on night work.

Pending receipt of the information requested, the Committee deferred its conclusion.

With regard to tasks which were dangerous, unhealthy or arduous for women workers, especially in relation to maternity, the Committee noted that the employment of women in underground mining was prohibited (Section 8 of the Act of 16 March 1971), together with work endangering the health of pregnant employees or their unborn children (Sections 41 and 42 of the act). It also noted that these provisions, which were general in scope, enabled any pregnant employee who alleged a disease or risk associated with pregnancy and which might be attributed to her work to be examined by a medical officer who would prescribe the necessary measures and, in particular, determine which tasks she was prohibited from performing.

The Committee also took note of the list of prohibited activities for pregnant workers or nursing mothers laid down by the above-mentioned Royal Decree of 24 December 1968 which included work involving exposure to chemical substances (eg. lead, ceruse, benzene), physical agents (eg. high temperature, vibrations) or viruses. This list was not closed and, in view of the general principle of maternity protection provided for by the Act of 16 March 1971, the medical officer was empowered to prescribe any other measures in cases not covered by the Royal Decree.

In the light of this information, the Committee concluded that on this point Belgium complied with this provision of the Charter.

[With regards to Article 11 of the Charter - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted from the first Belgian report that the three Communities (French, Flemish and German-speaking) were responsible for most matters falling within the scope of Article 11, including the fields relating to individuals. However, it noted that central government still covered some aspects (mainly via the part played by the Public Social Welfare Centres) and that others fell within the sphere of competence of the three Regions (Wallonia, Flanders and Brussels) which had a territorial competence and implemented general measures to protect the environment, such as prevention of air and water pollution, protection against radioactive substances, noise abatement, etc.

The Committee took note of the full and precise information provided, within its sphere of competence, by the French Community. It noted in particular that the organisation of the public health services was based on co-operation between the public authorities and the private sector, some services (such as the school medical inspectorate, sports medical services and company medical services) being compulsory and free of charge, and others (such as mother and child protection services) being set up as the need arose, although they were widely and readily available. It noted the efforts being made in the prevention and screening of tuberculosis, venereal diseases, mental disorders, risks linked to motherhood and infancy (through the action of the Department of Childbirth and Childhood), cancer, Aids, metabolic congenital abnormalities and genetic malformations, and was gratified to learn that campaigns were being conducted against alcoholism, smoking and drug addiction, notably under the auspices of the Advisory Committee on Alcohol and Other Drugs.

The Committee also took note of the information supplied by the German-speaking Community on the prevention and screening of tuberculosis diabetes and cancer, as well as the statistics on the density of the hospital network within the territory of this community. It was pleased to note that special efforts were being made in connection with children, by way of covering both medical supervision (through inpatient and/or mobile consultations for infants and the school medical services), disease prevention and health education. It also took note of the information supplied by the Ministry of Public Health and the Environment on the role and activities of the Public Social Welfare Centres, which operated under federal authority and were responsible for providing the material, social, medical, medico-social and psychological assistance which was especially important for the most underprivileged groups.

The Committee noted from statistics published especially by the Council of Europe that life expectancy in 1990 in Belgium was 72.5 years for men and 79.2 years for women (as compared with 67.5 and 74 respectively in 1970), giving an average increase of one year every four years over the last two decades. It also noted that the infant mortality rate had greatly decreased in the last twenty years, from 18 to 6 per thousand for girls and from 26 to 8 per thousand for boys between 1970 and 1990, and that the proportion of persons living to the age of eighty was regularly increasing (34 % of men and 59 % of women in 1990, as compared with 23 % and 42 % respectively in 1970).

Although these indicators appeared to show that the health situation of the resident population of Belgium was satisfactory, the Committee was nonetheless unable to reach a positive conclusion through lack of information on a large section of the population (ie. the population coming under the authority of the Flemish Community), and because the Belgian report contained no contribution from the regions on matters within their sphere of competence (including general health and environmental measures). The Committee therefore postponed its conclusion and requested that the next report include the data which it needed in order to assess the situation fully.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Committee noted from the first Belgian report that the implementation of the obligations contracted under this provision of the Charter fell within the competence of the communities, within a legal framework established at national level. With regard to measures to develop health education, the Committee was interested to note the experimental reorganisation of school medical check-ups, organised under the Royal Decree of 16 May 1980, allowing health education sessions to be organised in all types and levels of school to replace certain systematic examinations, and the activity of working groups bringing together school representatives, parents and doctors in

"guidance centres", to implement projects designed either for the whole population or specific target groups: it requested that the next report give additional information on both these points.

In connection with consultations and screening services, the Committee noted that the School Medical Inspectorate Act of 21 March 1964 established the legal framework for the work of approved centres managed by each community: for example, school medical check-ups were compulsory, free of charge and organised on a regular basis "in all full-time nursery, primary, junior, secondary, technical and arts schools". Free consultations and systematic screening services were also provided under company medical schemes and sports medical services. In other fields and for other population groups, the fact that mother and infant welfare services and preventive services for diseases (cancer, Aids, mental disorders, and congenital and metabolic illnesses) were free, that they were widely available locally and that social services and health services staff worked in close cooperation provided satisfactory guarantees for the whole population.

In the light of the information received from the three Communities (French, German-speaking and Flemish) and central government, the Committee concluded that Belgium complied with this provision of the Charter.

[With regards to Article 11 - The right to protection of health; paragraph 3 - Prevention of diseases].

The Committee noted from the first Belgian report that it was the duty of the communities, within a legal framework established by the federal authorities, to take the measures provided for in this provision of the Charter to prevent epidemic, endemic and other diseases. It took note of the information supplied by the French and German-speaking Communities on this matter, concerning essentially, apart from the compulsory vaccinations (poliomyelitis) and/or free vaccinations (measles, German measles, mumps, diptheria, tetanus and whooping cough) for children and infants, the prevention and screening of tuberculosis and Aids.

The Committee noted that in Belgium, as in other developed countries, the policy of preventing diseases of the type included under this provision of the Charter had the result, if not of completely eradicating these diseases, at least of ensuring that they were no longer a major cause of death. Further to the analysis conducted in 1993 by the Centre for Operational Research in the Public Health Field on the causes of death in Belgium, it hoped to be kept informed of trends in the number of deaths from Aids, and of the measures taken and/or envisaged in this respect.

Pending receipt of the information on the population under the authority of the Flemish Community, the Committee decided to postpone its conclusion.

[With regards to Article 17 of the Charter - The right of mothers and children to social and economic protection].

The Committee took note of the Belgian report, which gave a detailed account of legislation on the legal status of children. Since the reform of affiliation law in 1987, there had been no further discrimination in matters of family law between children born in and out of wedlock. Likewise, equal treatment in matters of inheritance was secured to all children irrespective of their birth status.

The Committee also took note of the information on the protection of orphans. It noted in particular that, upon the death of one of the parents, guardianship remained de jure with the surviving parent, who was assisted by a surrogate guardian and a family counsellor.

The Committee noted that there were two modes of adoption in Belgium, these being plenary adoption, which fully assimilated the adopted child to a natural child born to the adoptive parents, and fostering, which allowed links to be retained between adopted children and their natural families.

Furthermore, the Committee noted the intention to revise the Protection of Young Persons Act of 8 April 1965 and wished to know in what respects the act was to be amended.

It took note of the information on support services for mothers and children, particularly those provided by the Baby and Child Welfare Office (antenatal clinics, child health clinics, reception centres, sick childminding services, holiday centre, mothers' homes, "SOS Enfants" teams, etc.).

However, as information on this subject was supplied only by the French-speaking Community, the Committee asked that the next report give a precise account of the measures taken in the other communities to give effect to this provision of the Charter.

Pending this information, the Committee concluded, on a provisional basis, that the situation was satisfactory.

Denmark

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the Danish report that the tasks of the "Inter-Ministerial Committee on Children" were carried out on the basis of the 1988 Action Plan, through a series of different initiatives aimed at enhancing the co-ordination activities of the ministries in matters relating to childhood and at improving living conditions for children.

The Committee further took note from ILO sources that some changes in the existing legislation had occurred outside the reference period. It therefore wished to be informed on any new regulation adopted. It further wished to receive detailed information as concerns legislation dealing with juvenile delinquency and measures taken to protect children against physical and moral danger (Questions G and H of the Form for reports).

Pending receipt of this information, the Committee reiterated its positive conclusion.

France

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee examined the updated information provided by the French report on the subject of issues covered by Article 17.

As concerns the protection of public health, families and children, the Committee took note of the Act of 18 December 1989 which modernised and amplified the protection of expectant mothers and children aged under five, and of the two Decrees of 6 August 1992 regulating family planning centres, compulsory medical examinations (pre-marital, pre- and postnatal), and maternal and infant welfare services.

It also noted that the Act of 8 January 1993 harmonised the rules of procedure for the establishment of paternity or maternity and permitted the joint exercise of parental authority in the family of natural filiation.

Act of 3 January 1972 established the equality between all types of filiation, while however doing nothing to modify the differences in inheritance rights for adulterine children. The Committee had not critcised this discrimination on the submission of France's first report (fifth supervision cycle) on account of the views generally held at the time. The changes in customs reflected by the case law of the Committee which holds any discrimination against children born out of wedlock to be in conflict with Article 17, particularly in issues of inheritance (see, inter alia, Conclusions XI-2 pp. 137 and 138), led the Committee to reconsider the situation which it found not to be in compliance with the Charter. It took note from the report of a bill brought before the National Assembly in 1991 but not yet examined which provided for total equality of inheritance rights for all children. The Committee asked to be kept informed of any developments in this matter, and meanwhile was obliged to conclude that in this respect the situation was not satisfactory.

As regards the protection of children from physical and moral danger, the Act of 10 July 1989 emphasised the role of the département in the prevention of the ill-treatment of children. These authorities were in fact responsible for protecting children by preventive measures, detection of cases of ill-treatment and protection of victims with prompt action to be taken in urgent cases, in consultation with the judicial authority. The same act also instituted a telephone counselling service for ill-treated children, with the role of providing assistance, counselling and support for children, parents and professionals.

The Committee regretted that the report did not contain updated information concerning special institutions or special courts dealing with juvenile delinquency (Question G of the Form for Reports); it asked that this be provided in the next report.

Germany

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted from the German report that the same situation prevailed in the new Länder as in the old Federal Republic.

It nevertheless regretted that the report did not contain the detailed up-to-date information requested in the previous conclusions. Moreover, hoped that the next report would reply to the general question asked under Article 8 para. 1 in Conclusions XIII-1.

Pending receipt of this information, the Committee reiterated its positive conclusion

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted from the German report that the same situation prevailed in the new Länder as in the old Federal Republic.

It regretted, however, that the report did not contain the updated detailed information requested in its previous conclusions, to which it referred. It hoped that the next report would comment on the observations made by the Confederation of German Trade Unions (DGB) according to which that the decisions made by certain Labour Tribunals limited the nursing period to one year even if the mother was still nursing her child.

Pending receipt of this information, the Committee reiterated its positive conclusion.

[With regards to Article 11 of the Charter - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted from the detailed report submitted by the German Government that the main causes of mortality, in particular cardio-vascular and cancer cases had increased very slightly since the previous supervision cycle.

The Committee also noted that the Psychiatric Staff Regulations of 1 January 1991 provided for the creation of 6,500 new positions within the following five years. The Committee wished to receive confirmation (with respect to the Ordinance of 10 April 1990 concerning new criteria used in collecting data on hospitals, beds and staff) that the figure given above would indeed improve the situation criticised by the German Salaried Employees' Union (DAG) and pointed out by the Committee in its previous conclusion.

As concerns other measures taken by the government in combating possible causes of ill-health, the Committee noted with satisfaction that, particularly in the areas of preventing air and water pollution, many new texts had been brought into force during the reference period. Regarding the general question raised in Conclusions XII-2, the

Committee noted that regular controls to monitor radiation in and around nuclear power stations had been carried out, showing that exposure levels of workers and the surrounding population continued to be low.

In the light of all this information, the Committee was able to reiterate its positive conclusion.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee regretted not finding in the German report, the information requested during the last supervision cycle (Conclusions XII-2, p. 207) regarding the implementation of the new legislation on assistance to children and young persons (entry into force 1 January 1991). It therefore repeated this request.

In response to one of the Committee's questions, the report stated that the Federal Ministry of Justice was engaged in the elaboration of a reform of the existing legislation in order to eliminate all differences in treatment in matters of succession between children born within wedlock and those children born out of wedlock (currently in the field of succession, children born in wedlock had property rights whereas children born out of wedlock could only claim financial compensation (Erbersatzanspruch); these rights were however of an equivalent value). The Committee wished to be more precisely informed of the situation and to know of any developments in this area and in the meantime decided to defer its conclusion. It furthermore asked that the next report contain information on specialised institutions and rulings pertaining to juvenile delinquents (Question G of the Form for Reports).

Greece

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee took note, in the Greek report, of the information which updated and supplemented that provided previously. While renewing its positive conclusion, it expressed concern at the fact that the amounts of family allowances were not adjusted, which entailed a substantial loss of purchasing power for families on account of inflation. It wished to know whether the amounts of the family allowances received by families were taxable.

The Committee also took note of the explanations given in the report concerning Act No. 2082/1992 reorganising the social welfare system and establishing new social welfare institutions, as well as providing for the setting-up of special services for the protection of maltreated children. It asked for the text of the act or a summary of its main provisions to be appended to the next report, in one of the Council of Europe's two official languages.

Iceland

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee took note of the information given in the Icelandic report, basically an update of the previous report.

It observed that the provisions on maternity leave were unchanged but that the maternity subsidy had increased from 22,418 to 25,090 Icelandic kroner, and the daily maternity leave grant from 940 to 1,052 Icelandic kroner during maternity leave.

Having noted that the various benefits were payable to mothers residing in Iceland, the Committee wished to know in general whether and by what means nationals of other Contracting Parties lawfully resident or working regularly in Iceland were guaranteed equal treatment to Icelandic nationals in all the areas covered by Article 17.

Regarding parental leave available to the father with the mother's consent, the Committee took note of the various possibilities provided. Having observed that only men married to women employed on the general labour market appeared to qualify for leave under the daily maternity grant system, the Committee enquired whether men married

to women employed in the public sector and unmarried fathers who were guardians or custodians were entitled to parental leave without these payments, and if so, on the basis of which job security guarantees and financial assistance. The Committee also wished to know whether unmarried fathers who were guardians or custodians of a child had possibilities of parental leave not requiring the mother's consent. Finally, having also noted that dismissal of a parent during parental was prohibited without valid reasons, the Committee enquired as to the nature of these reasons.

The Committee noticed that various benefits were awarded to single persons with one or more dependent children: widows, widowers and single parents, and that the lever was higher for single parents than for couples. Concerning the other details of family benefits as for those of the legal status of children born out of wedlock and recent developments in respect of adoption, the Committee adverted to its previous conclusion on Article 16 (Conclusions XIII-1, pages 199 and 200) analysing the information supplied, to which the current report referred (under Article 17). It drew the attention of the Icelandic authorities to the questions asked in these conclusions and requested that they be answered in the next Icelandic report, under either Article 16 or Article 17.

The Committee regretted the absence of a reply to the question raised in an earlier conclusion (Conclusions XII-1, p. 217) concerning a special admissions division of the State Institute for Maladjusted Youth. It insisted that the requisite information be given in the next report, together with replies to Questions G (juvenile delinquents) and H protection of children against physical and moral danger, especially ill-treatment) of the Form for Reports.

Meanwhile, the Committee agreed to reiterate its positive conclusion.

Ireland

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted with satisfaction in the Irish report and its appendices the adoption of the Child Abduction and Enforcement of Custody Orders Act in 1991, which had enabled the Irish Government to ratify in the same year the Hague Convention on the Civil Aspects of International Child Abduction, and the European Convention on Recognition and Enforcement of Decisions concerning Custody of children and on Restoration of Custody of Children.

The Committee also noted the brief particulars concerning juvenile delinquents, who were subject to the 1908 Children Act. According to the report, under the act young people up to seventeen years of age were judged by the District Court sitting as a special bench, while in common law a child under seven years of age could not be found guilty of a crime.

The Committee took note of the few particulars concerning protection of children against ill-treatment under the aforementioned 1908 Act. It asked for information on the effect in this respect of the abrogations of certain parts of this act, by the 1991 Child Care Act (no. 17), and it wished to know how the 1908 Act could be combined with the 1991 Act.

The 1991 Act, designed to ensure the protection of children with due regard to parents' rights and obligations and children's wishes, assigned a major function to the health boards in all cases of apparent danger to children's health, well-being and/or development. It embodied provisions on all forms of child abuse and prescribed placement arrangements of varying duration in such cases. In addition, the sale to children of solvent-based products which they might misuse was defined as an offence.

Having noted the existence of a new Adoption Act dating from 1991, the Committee asked that the next report give detailed information on its substance with particulars of the amendments made to the previous legislation, particularly regarding the status of adopted children, and it wished to receive the text of this act in the next report.

The Committee took note of the judgment of the European Court of Human Rights of 26 May 1994, Keegan v. Ireland (series A No. 291). It wished to know which measures were taken to remedy the situation of fathers who, unless they had the custody of their children or their guardianship, were neither heard nor consulted concerning the adoption of their children. Irish law provided no right of appeal against this state of affairs.

Pending receipt of the requisite information the Committee agreed to reiterate its positive conclusion, but on a provisional basis considering the importance of the outstanding questions, particularly those relating to juvenile delinquents.

Italy

[With regards to Article 8 of the Charter - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted from the Italian report, in the reply to the questions asked in its previous conclusion (Conclusions XII-2, p. 135), that there was a compulsory three-month period of post-natal leave in the private and public sectors, that maternity benefit amounted to 80 % of the worker's previous earnings in the private sector and 100 % in the public sector and that there was no ceiling on the amount of maternity benefit.

However, having also noted that there had as yet been no new developments with regard to domestic employees who, when dismissed during pregnancy, were still not entitled to maternity benefits in cash which was contrary to the Charter, the Committee could only reiterate its negative conclusion. Having taken note of Recommendation No. R ChS (94)4 addressed by the Committee of Ministers to Italy on this subject, the Committee asked that the next report indicate what measures had been taken to follow up this recommendation.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted, from the reply in the Italian report to the questions asked in the previous conclusion (Conclusions XII-2 p. 140), that Act No. 1204 of 1971 on the protection of working mothers remained in force, had not been amended and covered women workers in the private and public sectors. The Committee therefore considered that the situation as regards these women remained satisfactory.

The Committee however noted that there was still no prohibition on the dismissal of female domestic employees during maternity leave or at such time that the notice of dismissal would expire during such leave. It was therefore obliged to maintain its conclusion, which had been negative since the first supervision cycle. Having taken note of Recommendation No. R ChS (94)4 addressed by the Committee of Ministers to Italy on this subject, the Committee asked that the next report indicate what measures had been taken to follow up this recommendation.

[With regards to Article 8; Paragraph 3 - Time off for nursing mothers].

The Committee noted from the reply in the Italian report to the questions asked in its previous conclusion (Conclusions XII-2, p. 143) that Act No. 1204 of 30 December 1971 on the protection of working mothers remained in force, had not been amended and covered women workers in the private and public sectors. It therefore considered that the situation as regards these women remained satisfactory.

The Committee however noted that female home workers and domestic employees were still not entitled to the nursing breaks provided for by the 1971 Act (Section 10). It was therefore obliged to reiterate its negative conclusion. Having taken note of Recommendation No. R ChS (94)4 addressed by the Committee of Ministers to Italy on this subject, the Committee asked that the next report indicate what measures had been taken to follow up this recommendation.

[With regards to Article 8; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted from the Italian report that there had been no new developments in the field of underground extraction work in mines. Consequently, as there was no legal prohibition of the employment of women. except pregnant women, in such work, the situation still did not comply with Article 8, para. 4b. (Conclusions X-2, p. 97). The Committee noted that few women worked in underground mining, but did not find in the report the information requested on the work in which those women were employed. It insisted that the next report state whether this was extraction work.

With regard to dangerous, unhealthy or arduous work, the Committee took note of the adoption of Legislative Decree No. 277 of 15 August 1991 aimed to bring Italian legislation into line in particular with Community Directive 82/605). The legislative decree provided, inter alia, for measures to protect workers against the risks relating to exposure to lead, with specific exposure limits for women of child-bearing age.

The Committee asked. what medical checks such women received and whether the Italian authorities would not consider banning the employment of such women in work involving exposure to lead. Having learned from ILO sources that the 1991 legislative decree did not cover air and maritime transport, the Committee also asked how women working in that sector were protected against the risks relating to exposure to lead.

The Committee also noted that legislation providing for protection against the risks relating to exposure to benzene was in preparation with a view to implementing Community Directive No. 90/394. it asked to be informed as to any development in this area. In particular, it wished to know whether the new legislation would provide for an extension of the prohibition of the employment of nursing mothers beyond seven months after birth, so as to cover the entire nursing period.

With regard to the regulation of night work by women in industrial employment, the Committee regretted that the report did not supply the information requested on the content of the collective and company agreements providing for derogations to the prohibition of night work by women and laying down the applicable regulations. It was therefore unable to assess those regulations in the light of the requirements specified in its case law (Conclusions X-2, p.97). The Committee insisted that the next report should include this information (permission from the Labour Inspectorate, if any, laying down working hours, breaks, days of rest following periods of night work, etc.).

Finally, the Committee noted that, following the denunciation of ILO Convention No. 89 (Night Work - Women), the Italian government was considering ratifying Convention No. 171 (Night Work, 1990). The Committee wished to be informed of any developments on this point and of any measures taken in the matter.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the Italian report that the situation remained satisfactory, and therefore reiterated its positive conclusion.

The Committee also noted that legal reform was planned to institute parental leave. It asked to be kept informed of developments, whether there were already any measures whereby one or other parent could stop work for a time to bring up children and if so, whether the job was kept open and how resumption of work was assisted.

Malta

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee took note of the replies given in the Maltese report to numerous questions asked in the previous conclusion (Conclusions XII-2, pp. 135 to 138) to which it referred for a complete description of the situation.

With regard to the maternity leave provided for in the 1952 Conditions Employment (Regulation) Act. the report confirmed the compulsory nature of post-natal leave, but the duration of the leave was less than the six weeks required by the case law of the Committee. The Committee took note of the reform proposed by the government, which would increase post-natal leave to six weeks, thus bringing the situation into conformity with the requirements of the Charter. The Committee asked to be informed of the progress and definitive content of this reform.

The Committee noted that the rules currently governing the breakdown of leave before and after childbirth made no provision, in the event of premature child birth, for the unused period of pre-natal leave to be deferred until after the birth. Consequently, in cases of a birth more than one week ahead of the due date, a minimum of twelve weeks' leave was not guaranteed, and this also was not in conformity with the requirements of the Charter. The Committee noted that the Proposed reform mentioned above would make it possible for all or a part of the unused pre-natal leave to be deferred until after the birth, which would remedy this-situation.

The Committee also noted the explanatory information furnished in respect of Section 18 para. 1 of the act, which provided that a female employee who failed to give three weeks' notice of maternity leave before its beginning (or if this was not reasonably practicable, as soon as practicable), was only entitled to leave comprising the day of childbirth and the following five weeks. The Committee was obliged to observe that in this case, the employee's entitlement to a minimum twelve weeks' maternity leave was not respected. Having noted that Section 18 para. 1 had never been applied, the Committee recalled that the fact that a rule contrary to the Charter was not applied was not sufficient to render the situation satisfactory.

The Committee hoped that on the occasion of the reform under preparation - which ought to entitle female employees, as regards Section 18 para. 1, to take full maternity leave, to be taken exclusively after the birth - the Maltese authorities would also take into account the medical reasons for which it was highly desirable for female employees to be able, as provided for in Article 8 para. 1 of the Charter, to take both pre-natal and post-natal leave.

The Committee had requested information on the maternity leave regulations affecting four categories of female employees:

- with regard to part-time female employees, it appeared from various parts of the report that the total number of part-time workers accounted for only 3.83 % of the gainfully employed in 1992 and that most of them enjoyed the same working conditions as full-time workers, including maternity leave. On the other hand, this could mean that some part-time female workers, no doubt a small number, were not given, the maternity leave provided for in the 1952 Act;
- as regards employees related to their employer, Section 2 of the 1952 Act defined the family as including the spouse and unmarried children, and the report pointed out that on the basis of other rules they must be wholly or partially dependent on the employer; in the absence of these conditions they were treated like other workers. This implied that there might be some employees related to their employer who did not receive the maternity leave provided for in the 1952 Act;
- the report did not state whether the 1952 Act was applicable to domestic workers and women working at home.

As the report gave no details of the rules governing maternity leave for those female employees to whom the 1952 Act did not apply, the Committee asked that the next report contain information on this subject, together with information on the situation in this regard of domestic workers and women working at home. It drew the attention of the Maltese authorities to its case law, according to which all female employees, with no exception, should enjoy the protection provided for in Article 8 para. 1.

Concerning benefits paid during maternity leave, the Committee noted that, in thp rise of a female employee who did not resume work after her maternity leave or who resigned "without good and sufficient cause" less than six months after having resumed work, and who was then required to pay the employer a sum equivalent to the amount of the wages received during the maternity leave (Section 34 para. 20 of the 1952 Act), there was no overall definition of "good and sufficient use", and that the industrial tribunals made their findings on a case-by-case basis. It asked that the next report provide examples of the reasons put forward by a female employee not to resume employment or to leave her job after maternity leave (desire to stop working in order bring up a child, better paid job or one better adapted to family life, etc.) and of the tribunals' evaluation of such reasons.

Considering that the payment of a sum equivalent to the wages received during the period of leave, even on the grounds of damages for breach of the employment contract, amounted to a retroactive deprivation of pay during maternity leave for the female employee concerned, the Committee had asked whether other payments were made in lieu of such wages. The report contained no reply on this subject, but Section 81 para. 2 of the 1987 Social Security Act provided that a woman who was entitled to maternity leave under the 1952 Act and who availed herself of such leave was excluded from payment of maternity benefits, and this corresponded to the situation described in Section 34 para. 20 of the 1952 Act. The Committee concluded from this that, in the case in question, the female employee received no payment in lieu of the wages paid back to the employer, which was incompatible with the requirement of Article 8 para. 1 that maternity leave be accompanied by adequate payments. The Committee asked that the next report indicate whether the situation was indeed such as it had understood it to be.

The Committee had noted that female employees entitled to the maternity leave provided for by the 1952 Act received their full salaries during their leave; the present report confirmed that female employees not covered by the 1952 Act received the maternity benefit provided for in Section 81 para. 1 of the Social Security Act; however, the amount of such benefit (6.30 Maltese pounds per week) represented only 17.2 % of the 1993 minimum wage (compared with 16 % in 1990). The Committee considered, as in its previous conclusion, that this amount could not be considered adequate in the light of the Committee's case law which required that the payments accompanying maternity leave should be as close as possible to the previous income of the employee. It had asked whether supplementary benefits were provided for. Those mentioned in the report could be taken into account as constituting supplements to maternity benefit. This situation was therefore not in conformity with the requirements of the Charter either.

In addition, in the terms of Section 81 para. 2 of the Social Security Act, this benefit was reserved solely for Maltese citizens and the wives of Maltese citizens "ordinarily resident in Malta". The Committee took note of the explanation provided with respect to this residence condition. It observed, as in its previous conclusion, that the persons covered by this provision did not correspond to the definition, given in the Appendix to the Charter, of persons protected by Articles 1 to 17.

The Committee asked that the next report indicate how the Maltese Government gave effect to all the requirements in Article 8 para. 1 with respect to female employees, nationals of the other Contracting parties, working regularly in Malta.

Finally, the Committee noted with satisfaction that Section 82, para. 3(2) of the Social Security Act had not been in force since 1987(according to this provision, a woman who had received maternity benefit on three occasions or had given birth to three children was not entitled to any further maternity benefits).

Pending receipt of the various items of information requested, the Committee had to reiterate its negative conclusion with regard to both maternity leave and to the accompanying benefits. It hoped that the Maltese authorities would take the necessary steps to bring the situation into conformity with this provision.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted with satisfaction from the Maltese report that the ban on terminating a woman's employment during her maternity leave, provided for by the 1952 Conditions of Employment (Regulation) Act, meant that any notice of dismissal could not legitimately expire during that period.

As regards part-time female workers and workers related to the employer, the Committee referred to its conclusion concerning Article 8, para. 1, in which it analysed the information provided on this subject and, as in the case of Article 8 para. 1, it concluded from that information that the 1952 Act was not applicable to some of the employees concerned.

In order to make a full assessment of the situation, the Committee asked that the next report indicate whether any texts, other than the 1952 Act, provided for protection in conformity with the requirements of Article 8 para. 2, and pointed out that all female employees without any exception must enjoy such protection.

As the report did not respond to the question raised concerning domestic workers and women working at home, the Committee insisted that the next report should indicate whether the 1952 Act was applicable to them or, if not, whether other texts afforded them protection in conformity with the provisions of Article 8 para. 2.

With regard to the action taken on a dismissal in contravention of the prohibition contained in Article 8 para. 2, the Committee noted that a female worker dismissed in this way could apply to an industrial tribunal for redress; the tribunal could order the reinstatement of the worker in her job or the payment of reasonable compensation.

The Committee recalled that the purpose of Article 8 para. 2 was to guarantee the employment of female workers during maternity leave and it drew the attention of the Maltese authorities to its established case law regarding cases of dismissal under Article 4 para. 3, which also applied here, namely that reinstatement should be the rule and compensation, where authorised on an exceptional basis, must be sufficient to deter the employer and compensate the employee.

The Committee therefore hoped that the next report would specify the criteria adopted by the tribunal in choosing between reinstatement and compensation and the criteria used for establishing the level of such compensation, as well as any minimum and maximum amounts.

Pending receipt of all the information requested, the Committee agreed to defer its conclusion once again.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

With regard to night work by women in industrial employment, the Committee observed that according to the Maltese report the Director of Labour had thus far issued four permits authorising women to work at night, that these currently concerned fifty women, and that the employer was obliged to respect the conditions laid down in the permit.

This information did not enable the Committee to gain an opinion of the regulations applicable to night work from the standpoint of its case law: fixing of working hours, breaks, days of rest following periods of night work etc. (Conclusions X-2, page 97). It asked that the next report indicate whether such regulations were provided for in the permits currently in force issued by the Director of Labour or in a generally applicable text.

The Committee had noted in its previous conclusion (Conclusions XII-2, p.146) that the Director of Labour could withdraw a permit if an abuse was occurring at the place of work and the employer had failed to take the necessary preventive action. It noted from the present report that the concept of "abuse" varied according to the case concerned and the nature of the work and was left to the discretion of the Director of Labour. The Committee asked that the next report contain some specific examples of such abuse and to specify, as requested in the previous conclusion, what preventive measures the employer was required to take and what risks or dangers these measures were intended to prevent.

The Committee also noted the absence of a ban on night work in firms employing only members of the same family and asked that the next report indicate whether industrial employment existed in family firms and, if so, whether regulations in line with the Committee's case law were applicable to night work by women in such firms.

Finally, the Committee learned that the Maltese Government had denounced ILO Convention Nos. 4 and 89 (Night Work - Women). It wished to be informed of any legislative developments resulting from these denunciations and recalled that, although the Charter did not prohibit night work by women in industrial employment, it called for such work to be regulated in such a way as to prevent adverse effects and abuses.

As regards dangerous, unhealthy and arduous activities which must be prohibited for women workers, the Committee noted that there were no prohibitions other than those mentioned in the previous report (cleaning of prime movers and transmission machinery in motion, certain work involving contact with lead or zinc, work on electric accumulators and exposure to ionising and non-ionising radiation) and that no activities of such nature, including contact with lead, were carried out by women. The Superintendent of Health had therefore not been required to issue permits enabling women to carry out any of these activities, but the report specified that, if he had to do so, decisions would be taken on a case-by-case basis, depending on the circumstances. The Committee asked to be sent detailed information on such permits, in the event that they were issued.

Having noted that a bill for the promotion of occupational health and safety had been presented in 1993 (outside the reference period) and that the commission to be established thereunder would be given the task of proposing regulations to occupational health and safety at work, the Committee wished to be informed of any measure taken in this field, recalling that all potentially dangerous work which was not currently regulated should be taken into consideration. It called the attention of the Maltese authorities to the particular protection required for motherhood, notably pregnancy, confinement and the post-natal period, as well as future children (Conclusions X-2, page 98).

Pending receipt of the information requested, the Committee agreed to defer its conclusion once again, both as regards paragraph a and paragraph b of this provision.

[With regards to Article 11 of the Charter - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted from the Maltese report that during the reference period the provision of public health services had continued to improve.

More specifically, the report provided information on the practical measures adopted to combat alcoholism and smoking. In this regard the Committee noted with interest the high-profile media campaign launched by the Department of Health and the Health Education Unit, involving both public and private enterprise and plans for the establishment of counselling and curative treatment facilities. It also noted that an educational resource initiative was envisaged, facilitating the incorporation of health education into the secondary schooling curriculum.

In the light of this information the Committee concluded that the situation in Malta was in conformity with this provision of the Charter.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee took note of the answers in the Maltese report to the questions raised in the previous conclusion (Conclusions XII-2, pp. 207 and 208).

It observed with satisfaction that Act No. XXI of 1993 (enacted outside the reference period), which amended the Civil Code, substituted parental authority for paternal authority and imposed the same responsibilities towards the children on both spouses.

It also noted that, according to the report, adopted children's birth certificates have the same wording as those of children born within marriage, although the Public Registry still retains a record of adopted persons' original backgrounds to avoid any consanguinity problems when they marry, and that adopted children's inheritance rights are the same as those of other children, since by bearing the adoptive parents' name they enjoy all the same rights as the other children. The Committee wished to know which legal provisions these different rules were based on.

The Committee noted that children's legislation was currently being drafted and that for the time being the inheritance rights of illegitimate children were still inferior to those of legitimate children, which was not in conformity with the Charter. The Committee hoped that the proposed reform would soon take place and that it would rectify the inequalities not only between children born inside and outside marriage, but also between children of a first and of a second marriage. It asked to be informed of any developments in this area.

The Committee noted that section 66 of the above-mentioned Act of 1993 amended section 623 paragraph f of the Civil Code and appeared to provide for the revocation of a legacy in the case of a son, daughter or other descendant prostituting him or herself without the testator's agreement, which led the Committee to ask for information on the way in which young people were protected against prostitution. The Committee also hoped that the next report would contain a detailed answer to Question H of the Form (protection of children against physical and moral danger, especially ill-treatment).

Pending the information requested, the Committee could only maintain its negative conclusion.

The Netherlands

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the Netherlands report that in 1993 (ie. outside the reference period) a bill was presented to the lower House of Parliament containing further regulations on the custody of and the access to minors and providing for the possibility of divorced parents' joint authority, and that this bill confirmed the case law of the Dutch supreme Court in this issue. The Committee wished to be updated on any development of the situation in this regard.

The Committee also recalled that the previous report mentioned a bill revising the provisions of the Penal Code applying to minors submitted to Parliament in 1989; it wished to receive additional information on this point as well as details on legislation regarding juvenile delinquency and measures taken to protect children against all physical and moral dangers (Questions G and H of the Form for Reports).

Pending receipt of this information, the Committee reiterated its positive conclusion.

Norway

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee was able to deduce, from the information supplied by Norway, that the specific social and economic protection which mothers and children must enjoy in pursuance of this provision of the Charter had been strengthened during the reference period, especially thanks to the measures taken to help one-parent families and to more specific action, such as the extension of the period of parental leave associated with childbirth and the introduction of a supplementary allowance for children aged under three.

It also noted the major reforms under way in public sector provision for children, involving three-year programmes for the reorganisation and development of municipal child welfare services and the adoption, on 1 January 1993, of a new Child Welfare Act. It wished to receive any relevant information on this subject, particularly concerning the results of the action taken and the content of the new legislation.

Lastly, it noted with interest the 1991 report on the activities of the Commissioner for Children and it wished in future to receive all the relevant reports regarding the reference period under study.

This information, combined with that already available to it, enabled the Committee to conclude that Norway continued to comply with this provision of the Charter.

Spain

[With regards to Article 8 - The right of employed women to protection; Para. 2 - Illegality of dismissal during maternity leave].

With regard to Spain the Committee drew attention to its consistent case law (since Conclusions I; see p. 51) under which the prohibition in Article 8 para. 2 was not absolute and could be lifted: if an employed woman was guilty of misconduct which justified breaking off the employment relationship; if the undertaking concerned ceased to operate; if the period prescribed in the employment contract had expired.

The Committee noted that in Spanish law there was no prohibition on dismissal during maternity leave or at such a time that the notice of dismissal expired during such leave. It accordingly assessed the position in the light of the ordinary rules on dismissal.

The Workers' Statute provided for three types of dismissal:

- dismissal on disciplinary grounds (Article 54), corresponding to dismissal for misconduct, which the Committee recognised as a legitimate ground for terminating the employment relationship;
- termination of the employment contract for technological or economic reasons or in cases of *force majeure* (Article 51). This covered various possible contingencies but could not be regarded as corresponding to any of the grounds allowed by the Committee except that of an undertaking's ceasing to operate;
- termination of contracts for objective reasons (Article 52), which covered four cases: lack of skill on the worker's part that became known or manifested itself after his effective recruitment to the undertaking; a worker's failure to adapt to technological changes in the job; the objective need to eliminate a particular job in an undertaking employing fewer than fifty workers; the worker's absence from work, even justified, if it occurred repeatedly and represented 20 % of the working days in any two consecutive months or 25 % of the working days in any four non-consecutive months during the course of a year. The grounds here were wider than those allowed by the Committee.

The Committee also noted from the report that, under the rules of procedure (Articles 55 and 56 of the Workers' Statute) and the case law of the Spanish courts, dismissal of a worker whose contract was suspended (as was the case for female employees absent on maternity leave - Article 48 para. 4 of the Workers' Statute) was deemed null and void unless ruled lawful by the competent authority (Article 55 para. 6) and that it was deemed lawful where the ground alleged by the employer was substantiated (Article 55 para. 3). Where a dismissal was unlawful, the employer had a choice between reinstatement and compensation (Article 56 para. 1) whereas reinstatement was automatic if the dismissal was null and void (Article 55 para. 4). However, the latter consideration was not relevant to Article 8 para. 2.

The Committee's finding was therefore that the grounds of dismissal provided for in Spanish law were wider than those on which the Committee allowed an employed woman to be dismissed during maternity leave or at such a time that the notice of dismissal expired during maternity leave. It was accordingly forced to conclude that the situation was not in conformity with the requirements of the Charter and hoped that the Spanish Government would take the necessary steps to remedy the situation.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the Spanish report that the budget destined for infant care services, allocated to the autonomous communities which exercised responsibility in the matter, had increased by over 50 % in 1992 by comparison with 1990 and 1991. It also noted that in 1992 all the autonomous communities had been allocated such a budget. It welcomed the results of the implementation of the programme to establish infant care services and wished to be kept informed of developments in this area.

The Committee however noted that the amount of the grants awarded to the autonomous communities for the running of day nurseries had dropped by 7% in 1992 by comparison with 1990; it asked for explanations for this decrease.

The Committee observed that substantial grants had been awarded to non-governmental organisations for the conduct of leisure-time activity programmes for children from socially deprived areas.

The Committee also noted information in the report regarding experimental programmes for the prevention of ill-treatment; it wished to be informed of developments in this matter.

The Committee took note of the Ministerial Decrees of 13 March 1991 and 14 April 1992 on the training scheme for women over the age of sixteen, who were unmarried, separated, divorced or widowed, who had dependent children and needed a vocational qualification before entering the labour market. In view of the small number of women having benefited from this training in 1991 (911) and 1992 (909), the Committee asked that the next report, in addition to providing an update of statistics, state the number of applicants and indicate whether there were criteria for their selection.

With regard to assistance for mothers, the Committee noted that the report mentioned Act No. 26/90 of 20 December 1990 on women's entitlement to unpaid leave to take care of their children. It asked for more complete information on the subject.

As the Workers' Charter did not apply to civil servants, the Committee asked for information on the situation of civil servants with regard to matters covered by the Workers' Charter and on the system of leave to take care of young children.

The Committee finally noted that the report cited Act No. 4/92 of 5 June 1992 reforming legislation applicable to young offenders. It seemed to the Committee that the act protected the interests of young offenders more effectively and that minors under the age of twelve could no longer be brought before the courts. It asked to receive detailed information on the situation of juvenile delinquents (up to the age of eighteen), in particular: the age at which criminal responsibility was set; the age at which sanctions could be pronounced, what these sanctions consisted of, what were the places and forms of enforcement, what the preventive and rehabilitative measures were and what were the types of care, including psychological help. In case of sentences of detention, the Committee wished to know from what age these could be pronounced, what forms they took, in which places they were carried out and from what instruction young convicted persons benefited.

The Committee, considering that the situation as a whole complied with the Charter, was able to renew its positive conclusion.

Sweden

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee took note of the information in the Swedish report which updated and supplemented the information already in its possession. In particular it noted that the amendments to the Code of Parenthood, brought into force in March 1991, assisted parents in seeking an agreement over custody of children and visiting rights and that the municipal social welfare committees played an important role in these issues. It concluded that Sweden continued to comply with the requirements of this provision of the Charter.

United Kingdom

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted the information contained in the United Kingdom's report. It noted that the Children Act of 1989 had come into force during the reference period, and that according to the 1992 Children Act Report (supplied with the report) progress had already been made in realising the principles behind the legislation. Nevertheless, it noted, according to the same source, that there had been less progress in implementing the provisions relating to

children in need. The Committee wished to be kept informed of any developments in this area. It also asked for detailed information on all child day care facilities: the number, distribution, funding, etc.

As regards children in institutions, the Committee noted that a review on this subject had been undertaken in the United Kingdom. It wished to be kept informed of progress made in the implementation of the recommendations of the review body.

As concerns financial assistance the Committee noted that the report supplied details of the benefits available for lone parents: it however referred to its observation made under Article 16 that the gross incomes of lone parents seemed very low.

It took note of the entry into force of the Child Support Act of 1991 which provided for a new child maintenance system and it requested that the next report provide more information.

The Committee finally noted that the report provided updated information on the situation in Northern Ireland. In particular it noted that a strategy for dealing with child abuse had been introduced and further, that new legislation very similar to the Children Act of 1989 was planned in Northern Ireland.

All this information enabled the Committee to conclude that the United Kingdom continued to comply with this provision.

3) COMMITTEE OF INDEPENDENT EXPERTS, CONCLUSIONS XIII-3, 1995

Between January and November 1995, the Committee of Independent Experts set up under Article 25 of the European Social Charter examined national reports from *Austria, Cyprus, Denmark, Finland, France, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Turkey*, and the *United Kingdom* relating to the third part of the thirteenth supervision cycle.

Conclusions were made concerning Articles 1, 5, 6, 9, 10, and 15 of the Charter in respect of *Austria, Cyprus, Denmark, France, Greece, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden*, and the *United Kingdom*. Conclusions were also made concerning Articles 2, 3, and 4 in respect of which a negative or adjourned conclusion was adopted during the cycle XIII-1. Conclusions were made concerning first reports submitted by *Finland* and *Portugal* and concerning the second report submitted by *Turkey*. Finally, conclusions were made concerning Articles of the Additional Protocol accepted by *Finland, the Netherlands*, and *Sweden*.

Included in this compilation are the references made to reproductive or sexual health issues under Article 8 (the right of employed women to protection); Article 11 (the right to protection of health); and Article 17 (the right of mothers and children to social and economic protection).

Finland

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the Finnish report that according to the Contract of Employment Act and the Seamen's Act, notice of dismissal on grounds of pregnancy was prohibited and employers could not give an employee notice of dismissal during the employee's maternity, paternity or parental leave or during child-care leave. It also noted that any agreement to the contrary was invalid.

Furthermore, if the employer gave notice of dismissal to a pregnant employee, the dismissal was considered to have been based on the employee's pregnancy, unless the employer could prove otherwise. The Committee also noted that similar provisions were contained in the State Civil Servants Act.

The Committee asked for confirmation that all female employees, including civil servants, benefited from this protection, and also asked to find information in the next report as regards the situation of foreign women nationals of the other Contracting Parties to the Charter legally residing or regularly working within Finnish territory.

Finally, according to the report, an employer was obliged to pay compensation (ranging from three to twenty-four month's salary) in cases of unlawful termination of employment. The Committee asked that the next report specify whether the reinstatement of the worker in her job was provided for or if compensation was the only remedy. It recalled that the aim of Article 8 para. 2 being to guarantee the protection of women's employment, reinstatement should be the rule and compensation, awarded in exceptional circumstances, should be sufficient to deter the employer and compensate the woman worker.

Pending receipt of the requested information, the Committee deferred its conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

As concerns Finland, the Committee noted the description given of the structure of the health services which included 230 health centres operating around 1,000 child health centres and 900 maternity centres.

The report stated that services covered the whole population and that fees were government subsidised, the social welfare system paying for treatment when necessary.

The Committee further noted that there were around 2,000 private institutions providing diagnosis and care services and that private maternity clinics had been opened in about ten localities. It wished to receive further information on the structure of the private health service in Finland, in order to establish what fields of health other than maternity were covered by these services and the levels of staff employed.

...Pending receipt of the information requested, the Committee concluded, on a provisional basis, that Finland fulfilled the requirements of this provision of the Charter.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

From the Finnish report, the Committee noted that in general, health education in Finland was included in the school curriculum albeit integrated into other subject.

The Committee asked whether health education in schools included programmes of awareness aimed particularly to combat Aids and drug and alcohol abuse.

According to the report, 0.45% of the tobacco tax revenue was used each year for health education mostly targeted at the young. It was further mentioned that 15 million Finnish markka was allocated to research, education of health professionals, mass media campaigns and local health promotion projects. The Committee noted that much of the money was used to prevent young people smoking and that other programmes such as for the prevention of suicide and of drug and alcohol abuse were also supported by these funds. It equally noted that there was a separate appropriation for the prevention of sexually transmitted diseases including Aids.

The Committee concluded that Finland fulfilled the requirement of this provision of the Charter, but on a provisional basis, pending receipt of the additional information requested.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Finnish report contained a brief outline of measures taken in the prevention of epidemic, endemic and other diseases.

The Committee also referred to its question asked under Article 11 para.2 concerning the existence of health awareness programmes, focussing in particular on Aids and drug and alcohol abuse.

Pending receipt of the information requested, the Committee concluded that Finland fulfilled the requirements of this provision of the Charter.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The first Finnish report contained information on the social and economic protection of children. As far as protection for mothers was concerned, the report referred to information provided under Article 16, particularly with regard to maternity leave, benefits and care.

The Committee took note of the main acts covering children's rights: the Act on Child Support, containing provisions on child maintenance, which covered both children born in wedlock and out of wedlock; the Act on Child Welfare which provided inter alia for financial assistance, therapy services and holiday and recreational services.

The Committee noted that after the establishment of biological paternity, children born out of wedlock were legally entitled to inheritance, maintenance and survivor's pension, etc. Maternity was established through birth and the same rights as for paternity applied.

The Committee noted that remedial help was being given in cases where mothers' alcohol and drug abuse had affected the health of unborn children.

The Committee hoped that the next report would reply to the questions asked and considered meanwhile that Finland fulfilled the requirements of this provision of the Charter.

Portugal

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee noted from the Portuguese report that in conformity with the Constitution and ratified international conventions, employed women should have ninety days' maternity leave: sixty days of this had to be taken after childbirth; the other thirty days could be taken before confinement. The Committee asked for confirmation that this applied to all employed women without exception.

The Committee recalled that as regards maternity leave it had accepted that the twelve~week minimum provided for in the Charter was partly optional for employed women, but it had expressed the view (Conclusions VIII, p. 123) that employed women and employers should observe, within this total period, "a minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks". It therefore asked for confirmation that the six weeks' leave after confinement was compulsory.

It noted that the total duration of leave before and after confinement could not be less than ninety days, except in the following cases: the physical or psychological incapacity of the mother; the mother's participation in theoretical or practical vocational training courses; stillbirth; miscarriage or death of the child during post-natal leave. In these cases, the leave was reduced by between thirty and sixty days.

The Committee recalled its case law according to which "the twelve week period of leave, partly before and partly after the birth, is to be regarded as a minimum, since it is important both to allow the mother sufficient time to prepare properly for the confinement and for her subsequent return to work, and to enable the special needs of the child to be met". (First report on certain provisions of the Charter which have not been accepted, p. 19).

In the above-mentioned cases, the Committee noted that neither the minimum of twelve weeks' total leave nor the minimum of six weeks following birth were granted, which was not in compliance with the terms of the Charter. It asked for the reasons for these exceptions to be included in the next report, together with information as regards their practical application.

With respect to maternity allowances, the Committee noted that workers covered by the general employed and self-employed workers' social security scheme, and seafarers subscribing to voluntary social security schemes were entitled to social security benefits during maternity leave, subject to a qualifying period. These workers were entitled to daily maternity benefit equal to the amount of their reckonable earnings. The Committee asked what was meant by a "qualifying period" and requested that the next report reply to the general question raised on Article 8 para. 1 (Conclusions XIII-I, p. 172). The Committee also asked whether there was a ceiling to reckonable earnings.

As regards the minimum daily amount of maternity benefit, the report stated that this could not be less than 50 % of the minimum wage set for the sector of activity concerned. As a minimum wage only presently applied to two sectors, the Committee asked what was the minimum applied in the other sectors of activity.

The Committee recalled in this respect that it had "always insisted on the importance of income maintenance during the mother's absence on maternity leave, as it is essential that the mother should not suffer prejudice in the form of a substantial reduction in her income, implying a kind of sanction on maternity, for this would constitute a socially harmful instance of discriminations" (Conclusion XII-1, p. 151).

The Committee also noted that civil servants were entitled to full pay during maternity leave, including the meal allowance, regardless of the type of contract or length of service and irrespective of whether they were full-time or part-time workers and were employed permanently or for a fixed term.

Finally, the Committee noted that the legislation imposed no specific sanctions on employers who failed to observe maternity leave provisions where the statutory provisions were supplemented by collective agreements, but that employers could be sanctioned for violation of the provisions of collective agreements under Article 44 of Legislative Decree No. 519-Cl of 29 December 1979.

Finally, the Committee asked whether the protection of working women in the event of maternity also applied to nationals of the other Contracting Parties to the Charter legally residing or regularly working within Portuguese territory.

The Committee concluded that Portugal failed to comply with this provision of the Charter, owing to the insufficient length of maternity leave in cases of physical or psychological incapacity of the mother, the mother's participation in theoretical or practical vocational training courses, stillbirth, miscarriage or death of the child during post-natal leave.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the Portuguese report that according to labour law, unilateral termination of the employment contract by the employer was possible only for "good causes", which implied a fault on the part of the worker, or specified objective grounds, inter alia, abolition of the job on economic, market, technological or structural grounds and dismissal on the grounds of the worker's unsuitability. According to the report, in these cases the dismissal procedure always involved the.consultation of workers' representative bodies.

The Committee noted that this legislation also applied to employed women during maternity leave. In these circumstances, having observed that none of the objective grounds specified fell under the exceptions to the prohibition contained in Article 8 para. 2 allowed by its case law, the Committee concluded that the situation was not in conformity with the requirements of the Charter.

Furthermore, the Committee noted that when the dismissal was found unlawful the court ordered the employer to pay the worker all wages owing between the time of dismissal and the date of the judgement and to reinstate the worker in his or her employment with the same category and seniority as previously, unless the worker preferred compensation which represented one month's salary per year or part of a year's seniority and in no case less than three months (Legislative Decrees Nos. 64-A of 1989 and 400 of 1991).

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted from the Portuguese report that employed nursing mothers were entitled to two daily rest periods of not more than one hour, to be taken at different times, for as long as they were breastfeeding or until the child's first birthday, unless otherwise agreed. The Committee asked to receive information on the content of such agreements.

The Committee noted that this right applied with no loss of remuneration or other advantages. It asked for confirmation that the women concerned were not expected to make up the time which they took up for nursing.

The Committee concluded that Portugal complied with this provision of the Charter but on a provisional basis pending receipt of the requested information.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted from the Portuguese report that Legislative Decree No. 27891 of 27 July and Ministerial Order No. 186 of 13 March 1973 prohibited the employment of women workers in underground mining. Moreover, employers could be fined in the event that the prohibition was not observed. The Committee asked the government to submit in the next report additional information as regards the amount of these fines and whether there were cases in which fines had effectively been imposed.

Furthermore, it noted that Ministerial Order No. 186 of 1973 prohibited the employment of women on any work involving the frequent and regular handling of several toxic substances. However, this prohibition was not extended to chemical synthesis or analysis carried out in research laboratories by specialised personnel, operations necessitating the use and handling of such substances in closed systems or other processes offering the same guarantees of safety, and tested and certified as such by the General Labour Inspectorate in cooperation with other bodies competent in the matter.

As far as the employment of women on night work in industry was concerned (governed by Legislative Decree No. 409 of 27 September 1971), it had been challenged in the light of more recent legislation on equality and non-discrimination on grounds of sex, which guaranteed women access to all forms of employment with the only exceptions being the prohibition or imposition of particular working conditions in employment involving a risk to genetic functions (Legislative Decree No. 392 of 1979 and Act No. 4 of 1984), and women's statutory right to refuse tasks which were inadvisable on medical grounds during their pregnancy and up to three months after childbirth.

In addition, it took note that according Portugal had denounced ILO Conventions Nos. 4 and 89 in 1993 and 1992 respectively and that approval of the ratification of ILO Convention No. 171 on night work was in the process of being given, It asked to be kept informed of any development in this field.

The Committee also noted that the 1994 Observation of the ILO Committee of Experts regarding Convention No. 127 on the regulation of manual transport did not establish a difference between men and women workers with regard to the maximum weight of loads. However, according to the report existing legislation in Portugal prohibited the employment of women on work done under pressure in hyperbaric atmospheres, work entailing the moving of loads heavier than 27 kg. and work which exposed them to ionising radiation. Moreover, special protection existed for pregnant women.

Finally, the Committee hoped that the next report would contain replies to Questions B and C of the Form for Reports.

Pending receipt of the requested information, the Committee deferred its conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee appreciated the very comprehensive report submitted by the Portuguese government on the protection of health.

According to the report, the main illnesses in Portugal affected mothers and babies, persons suffering from cancer and cerebral or cardiovascular disorders, the aged, those with mental health problems, drug abusers, AIDS victims and those involved in car accidents.

The Committee noted that the rates of infant and perinatal death were among the highest in Europe, as was that of mothers. Mothers' and infants' health was described as a health policy priority in a Ministerial Order of 1991, and since then measures had been adopted to reduce death rates, involving the setting up of teams of obstetric and paediatric staff (Functional Co-ordinating Units - UCF) providing assistance for women before and during pregnancy and childbirth as well as care for their children. The Committee asked to receive details of the practical effects of these measures and wished to be informed of any other initiatives to reduce the rate of infant and perinatal deaths.

...Pending receipt of the information requested, the Committee deferred its conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Portuguese report contained a general overview of advisory and diagnostic services dispensed by the medical and nursing staff of the health centres.

The Committee noted that the Portuguese National Health Service provided several programmes covering, inter alia, mother and child health care, dental care, treatment for diabetes, a national plan for vaccination and for the prevention and control of infectious diseases.

The Committee also noted the various programmes aimed to improve health education, including sex education and family planning as well as public information campaigns on health education in the field of the prevention of Aids. The Committee requested that the next report contain information on the results of the action undertaken.

Meanwhile, the Committee concluded, on a provisional basis, that the situation was satisfactory.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

Information in the first Portuguese report showed that vaccination campaigns to combat epidemic, endemic and other diseases were regularly carried out for children between the first months of their lives and fourteen years of age. The Committee wished to know whether the vaccinations were compulsory or voluntary and whether or not they were free of charge. It noted that those persons considered in danger of Hepatitis B infection were not charged for their vaccination, whereas other persons were charged, with a 50% reduction depending on personal circumstances.

As concerns measures taken to prevent Aids, the report indicated that although the number of Aids-related deaths was relatively low in Portugal, a National Commission for the Fight Against Aids had been set up to co-ordinate and develop programmes against Aids. Portugal was also involved in the "Europe against Aids" campaign, providing bio-psycho-social and medical treatment for sufferers. Other measures taken in this respect included the setting up of education and information campaigns, the training of medical and care staff and assistance for health services in prisons. The Committee asked the government to provide details on the funds set aside by the government for these programmes as well as up-to-date figures on Aids-related illnesses and deaths.

Pending receipt of the information requested, the Committee concluded that the situation was satisfactory, but on a provisional basis.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

A detailed description of measures taken to protect mothers and children was provided in the Portuguese report under Article 17 as well as in other provisions. In general, the Committee noted measures applied to women in the case of maternity (not only working women), birth and breast-feeding allowances granted to beneficiaries of contributory and non-contributory social security schemes and free consultations and examinations provided for pregnant women and children aged under twelve. It also noted the information on health care programmes offered, and health centres as well as social service facilities such as nurseries and kindergartens.

The report included a detailed description of the methods used to establish maternity and paternity, and procedures for contesting them in the case of children born in or out of wedlock.

With respect to the equality of rights and duties of spouses and parents, the Committee referred to its conclusion under Article 16. It observed, however, that parental authority over children was jointly exercised only during marriage. It therefore requested that the next report state to whom and in which manner authority was given over children, both in the case of children born outside wedlock and when marriage was dissolved.

Turkey

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted the Turkish government's response to the questions asked in the previous conclusion.

It took note that during the reference period health services operated throughout the country under the responsibility of the Ministry of Health. They comprised various medical institutions such as hospitals or dispensaries as well as health units and maternity and child health centres.

The report further indicated that the main causes of death in Turkey were cardio-vascular diseases, malignant tumours, infant diseases and accidents, including road accidents. It also stated that measures had been taken and efforts made in the prevention of tuberculosis, diarrhoea and venereal diseases. As no answer had been given in the report on life expectancy in Turkey, the Committee learnt from the OECD that it was low by the standards of OECD countries as a whole (between 64 and 66 years). It asked what other measures were being taken in order to improve the health of the population and wished to be informed of the practical measures taken to combat drug addiction, Aids, alcoholism and smoking.

The report showed that in 1993, only 33% of mothers and children had access to the Maternity and Child Health Care Centres and that 24% of all deliveries had occurred without the help of health personnel. It also stated that the maternal mortality rate was about 100 in 100,000 during the reference period. The Committee, having previously considered that a maternal mortality rate of 10 per 100,000 was high, found that 100 for 100,000 was a cause for concern. In addition, infant mortality was a significant problem in Turkey: 49.3 per 1,000 live births in 1993 according to the OECD, which is very high in comparison with other Contracting Parties which vary from 4.8 to 9.3 for 1,000 births. The Committee expressed its concern regarding these high rates and hoped to find information in the next report to confirm that measures were being taken to remedy the situation. It also wished to be kept informed of any initiatives taken to make health services more readily available to women and children.

In the light of these elements and particularly of the insufficient number of measures taken to lower the rate of perinatal and infant mortality, the Committee had to conclude that Turkey did not satisfy this provision of the Charter.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Committee took note of the educational programmes on family planning, maternity and child health care. It also took note of the educational campaigns to fight respiratory diseases, particularly pneumonia and diarrhoea, the main causes of infant mortality in Turkey. It referred however to its conclusion under Article 11 para.1 and to the very high infant and maternal mortality rates and expressed the hope that these educational programmes and campaigns would be reinforced and extended throughout the country.

Pending the information asked and referring to its conclusion under Article 11 para.1, the Committee deferred its conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Committee took note of the information and the updated statistics supplied in the Turkish report in response to the questions asked in the previous conclusion.

...Finally, the Committee took note of the number of controls on foodstuffs, the production and sale locations as well as of the number of inspections of drinking water. It wished to be informed of all new measures taken on these different points. It noted the steps taken in order to promote the awareness of the need for prevention and control of

sexually transmitted diseases in general and Aids in particular and wished to be informed of the number of deaths from syphilis and Aids.

Pending receipt of the information requested, the Committee deferred its conclusion.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee took note of the detailed information supplied in the report by Turkey in reply to the questions asked in the previous conclusion.

1. Economic assistance to mothers before and after confinement

The report stated that there were no legal provisions for the economic protection of women before and after confinement. Only female civil servants and wage-earners covered by labour legislation were entitled to social security benefits at the time of childbirth.

Noting that the labour legislation did not cover agricultural work, work performed at home by family members or close relatives involving handicrafts and without any outside help, and domestic work, the Committee deduced that women working in these areas were not entitled to such benefits. It recalled its case law according to which "the basic principle in this field is that mothers before and after confinement should be in a position of medical and financial security" (Conclusions III, p. 87) and wished the next report indicate how the government planned to extend economic assistance before and after childbirth to women not covered by labour legislation.

2. Protection offered to single mothers

The report stated that there were refuges for single women (including single mothers) but acknowledged that these remained too few to satisfy the demand.

The Committee wished to be informed whether there was any special financial support for single mothers and according to which criteria this was awarded.

3. Situation of children born out of wedlock

The report pointed out that children born out of wedlock but recognized by the father or in respect of whom paternity was established by a court decision were registered as the legitimate child of the father, even if he was married (Article 312 of the Civil Code). On the other hand, according to the report, if the mother was married, it would only be possible to establish lawful descent from the natural father once the mother's marriage had been terminated by a divorce decree stating that her husband was not the child's father.

The Committee wished the next report to clarify whether in all such situations a divorce decree was necessary in order to establish lawful descent from the natural father.

The Committee noted that under Article 295 of the Civil Code, legal action to establish paternity could be brought by the mother or the child. It wished the next report to confirm this and to indicate whether this action could be initiated by public authorities.

Pending receipt of the information requested, the Committee adjourned its conclusion in respect of this provision of the Charter.

4) COMMITTEE OF INDEPENDENT EXPERTS, CONCLUSIONS XIII-4, 1996

Between January and September 1996, the Committee of Independent Experts (hereinafter referred to as the Committee) set up under Article 25 of the European Social Charter examined national reports from *Austria, Belgium, Cyprus, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden, Turkey*, and the *United Kingdom*, relating to the fourth part of the thirteenth supervision cycle.

This volume of conclusions refers to national reports submitted in 1995 on the application of Articles 8, 11, 12, 13, 14, 16, and 19 of the Charter and on the negative or deferred conclusions during cycle XIII-2 for Articles 7, 17, and 18, in compliance with the reporting system in force since 1992.

Included in this compilation are references made to reproductive and sexual health under the following articles: Article 8 (The right of employed women to protection); Article 11 (The right to protection of health); and Article 17 (The right of mothers and children to social and economic protection).

General Comments from the Committee:

Article 8 - The right of employed women to protection

The Committee recalled that in general the Charter did not distinguish between fixed-term and permanent employment contracts in the application of the rights it guaranteed to workers.

In its case law on Article 8 para. 2, the Committee has accepted that this provision, which forbids the giving of notice of dismissal to a female employee during her absence on maternity leave or on such a date that the notice would expire during such absence, does not prevent the termination of an employment relationship due to the expiry of a fixed-term contract. However, the increase in number of fixed-term contracts outside of specific and traditional instances which justify the use of such contracts changes the situation, with regard to the standards laid down In Article 8 paras. 1 and 2, which run the risk of being largely deprived of their effect.

The Committee has therefore asked those Contracting Parties which have accepted Article 8 para. 1 and/or 2 to provide information in their next report on the proportion of fixed-term contracts in their country, in particular as regards women, including foreigners nationals of other Contracting Parties, and the effects of these contracts on the protection provided by these provisions of the Charter.

Paragraph 2 - Illegality of dismissal during maternity leave

The Committee found it necessary to clarity the scope of Article 8 paragraph 2 in respect of the date of notice of dismissal.

Job security for a worker on maternity leave means that the contract of employment must not be terminated during this period. This is guaranteed by the prohibition on giving notice of dismissal at such a time that the period of notice would expire during the absence on leave. The giving of notice during maternity leave initiates the period of notice and, where appropriate, the interview, consultation or conciliation procedures to be carried out during this period. The Committee felt that, given the purposes of maternity leave and the unlawfulness of dismissal during this period, notice of dismissal as such was not incompatible with the Charter provided that the period of notice and any procedures were suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures during maternity leave must apply in the event of notice of dismissal prior to maternity leave, irrespective of the length of the period of notice.

Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers

The Committee asked all Contracting Parties having accepted Article 8 para. 4 sub-paragraph b to provide in their next reports under this provision the information requested in the general question asked under Article 3 para. 1 in so far as it applies to women, and more particularly to pregnant women, those having just given birth or who are breast-feeding.

Article 11 - The right to protection of health

The Committee asked that all Contracting Parties having accepted Article 11 submit information in their next reports on measures taken to ensure the effective protection of the health of their population against the risks connected with exposure to asbestos, either in their occupational activity or in the general environment in which they are living, in particular in their accommodation and in public buildings.

Austria

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The report of Austria referred to the entry into force on I January 1993 of the amended Maternity Protection Act.

Right to maternity leave

The act ensured a minimum maternity leave of sixteen weeks, normally divided into two equal periods before and after the birth. In cases of premature birth, post-natal leave would be lengthened, to arrive at a total period of sixteen weeks.

The Committee noted that the amended act also covered parental leave. It learned that fathers could obtain this leave in certain situations, such as where the mother did not use all of her maternity leave. The Committee asked the government to confirm that this did not affect the obligatory six-week post-natal leave period required by this provision of the Charter. The report stated that fines on employers who failed to respect the legislation had risen to 25,000 Austrian shillings for a first offence and 50,000 Austrian shillings for subsequent offences.

In relation to maternity leave for women employed on fixed-term contracts, the Committee referred to the information appearing in its conclusion and questions under Article 8 para. 2. Pending receipt of the requested information, the Committee concluded that the situation complied with Article 8 para. 1 on this point.

Right to adequate benefits

In relation to maternity allowances for women employed on fixed-term contracts, the Committee referred to the information and questions appearing in its conclusion under Article 8 para. 2.

It regretted not having received an answer to its request for information on maternity leave without pay (Conclusions XIII-2, p. 214). It requested a more detailed explanation of the nature of this leave in the next report.

It also regretted that its general question about qualifying criteria for maternity benefits (Conclusions XIII-1, p. 172) had not been answered and hoped that this would be included in the next report.

Finally, the Committee asked whether maternity benefits were subject to a ceiling, and whether this ceiling was set according to the reference wage or to the amount of the allowance. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.
As the report did not mention any changes altering the previous situation, the Committee renewed its positive conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the report of Austria that the Supplementary Act on Labour Law (BGBI No. 833/1992) amended the existing maternity legislation so as to give domestic or household staff who did not live in their employer's household the same protection as the rest of the working female population from dismissal during pregnancy. Domestic staff who resided in the house of their employer were given the same protection under legislation which took effect in July 1995 (outside the reference period). The Committee was satisfied to observe this progress on an issue which had caused it to arrive at a negative conclusion since the first Austrian report. However, the situation was i not entirely satisfactory at the end of the present reference period.

In its previous conclusion, the Committee had asked questions about the regulations governing the employment of women on fixed-term contracts, which could be used to undermine the protection provided this provision. The Committee had observed that the law ensured that only legally or objectively justified contracts could expire on the due date, even if this occurred during the pregnancy of the employee. With all other fixed-term contracts, expiry was suspended until the employee went on maternity leave (eight weeks before the birth) or had cease working at an earlier stage in her pregnancy. The Committee asked if the reason for this arrangement was to ensure that such women would qualify for maternity leave and benefit. The report confirmed that this was so. The Committee had also asked if the list of justifications for fixed-term contracts contained in Section 10(a)2 of the Maternity Protection Act was exhaustive. The report stated that the list was merely intended to give examples. The Committee asked what other justifications were acceptable and whether there was any case law on this matter. It noted that a fixed-term contract could be said to be "in the interests of the employee" if she herself had wished to have a contract for a determined period only.

Women who were obliged to stop working at an earlier stage of pregnancy for medical reasons were entitled to take special leave from their employment under Section 3(3) of the Maternity Protection Act. In case of women employed on fixed-term contracts, the contract terminated as soon as the period of leave commenced. If the incapacity for work was temporary, the fixed-term contract would not expire until normal maternity leave began. Whether termination of a fixed-term contract in these circumstances amounted in law to a dismissal was not addressed in the report, despite the Committee's question. Nor was any additional information supplied about maternity benefits in this situation. The Committee hoped that both matters would be dealt with in the next report in relation to paragraphs 2 and 1 of Article 8 respectively.

Pending receipt of the information requested, the Committee had to renew its negative conclusion because during the reference period domestic staff living in the household of their employers still did not benefit from the protection provided under this provision.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee took note of the information contained in the Austrian report.

Regulation of the employment of women workers on night work in industrial employment

A 1991 survey revealed that 93% of the 47,000 women who worked regularly at night were employed in the services sector. The survey indicated that there was very little increase in the total number of such workers between 1987 and 1991. The Committee hoped to find updated data in the next report.

In its previous conclusion, the Committee had asked about difficulties encountered by the Austrian Government in enforcing the regulations on night work and action to overcome these difficulties. As the report did not answer this question, the Committee hoped to find the matter addressed in the next report. Pending receipt of this information, the Committee reiterated its positive conclusion with respect to Article 8 para. 4a.

Prohibition of the employment of women in certain dangerous, unhealthy or arduous work

The report detailed the amendments made in 1993 to the Maternity Protection Act 1979, which regulated the employment of women during pregnancy and after childbirth. The Labour Inspectorate must be informed of which workers were pregnant and the tasks commonly performed by them. The act included a list of tasks which were prohibited to pregnant women and to women who had given birth less than twelve weeks previously. All pregnant women must cease work eight weeks before the expected date of confinement and could not return to work until eight weeks after the birth., The Labour Inspectorate was empowered to make the necessary orders to ensure that such women were given adequate protection from arduous duties at work. However, in view of its case law which took into account not only pregnancy, confinement and the post-natal period but also future children (Conclusions X-2, p. 97), the Committee asked whether special measures existed to protect women of child-bearing age. It also referred to the general question under Article 8 para. 4 in the present Conclusions. Pending receipt of this information, the Committee reiterated its positive conclusion under Article 8 para. 4b.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted the detailed information provided in the Austrian report and its appendix regarding recent health care developments.

The Committee noted that the number of hospitals and beds had decreased over the reference period (from 332 hospitals in 1989 to 324 in 1993 and from 81,619 beds in 1989 to 78,504 in 1993). Although there had been a general increase in the number of medical staff, the Committee asked for the reason the number of dentists had decreased by about a third.

In view of the information submitted, the Committee reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Austrian report contained updated information regarding vaccinations as well as on activities to combat Aids undertaken during the reference period

It stated that vaccinations were not compulsory although recommended by the Supreme Health Board in the framework of a vaccination plan. In most cases these vaccinations were available free of charge. The report gave a comprehensive list of recommended vaccinations in the "mother-and-child passport", also stating that information on vaccinations could be found in leaflets and brochures. Other vaccinations such as those against hepatitis A and B infection were also recommended, but only for certain vulnerable groups.

As concerns Aids, the Committee noted that information campaigns had continued over the reference period including by means of advertising, distributing information brochures and producing teaching material for schoolchildren. Efforts to prevent the increased spread of Aids focussed on the sources of infection (unprotected sexual intercourse and the use of infected hypodermic needles), and the use of condoms was further encouraged. The report also mentioned that counselling and free anonymous tests were available, provided by the newly founded Associations of Austrian Aids Assistance.

Further surveys regarding Aids awareness were carried out in 1992 and 1994. These showed that although there was an improvement in the knowledge and assessment of the possibilities of infection, the government still considered that great efforts needed to be made in Aids prevention among adolescents. The Committee wished to be informed of the government's findings.

In the light of the information received, the Committee concluded that Austria continued to satisfy this provision of the Charter.

Belgium

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information in the report submitted by Belgium.

Right to maternity leave

The Committee noted that there had been no changes in the situation which it had previously considered to be satisfactory. It therefore renewed its positive conclusion on this point.

Right to adequate payment

The Committee regretted that the report gave no replies to the questions which it had asked in its previous conclusion (Conclusions XIII-2, p. 303), and which it now repeated, insisting that the next report supply answers:

The Committee wished to know whether and by what means provision was made for compensation for women workers receiving a wage higher than the ceiling (3,416 Belgian francs per day at 1 November 1992). It had also requested that the next report reply to the general question asked in Conclusions XIII-1 (p. 172).

The Committee requested that the next report also indicate the number of women who earned more than the ceiling, the income bracket over the ceiling or at least the average monthly wage of women executives, the way in which the ceiling was calculated and how it was adjusted.

Subject to the submission of the requested information, the Committee reiterated its positive conclusion on this point.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee pointed out that under Section 40 of the Belgian Labour Act of 16 March 1971, employers could not dismiss a pregnant employee from the time they were informed of the pregnancy until one month after the end of post-natal leave, except on grounds which had nothing to do with the physical condition resulting from pregnancy or childbirth.

In answer to the Committee's question on possible grounds for dismissal, the report indicated that there was no requirement that the grounds for dismissal be given, provided the period of notice was observed or compensation paid, and that this also applied to the dismissal of pregnant women, except where the dismissal was related to pregnancy or childbirth. Consequently, the possible grounds for dismissal were not confined to those accepted in connection with Article 8 para. 2 (serious misconduct, the firm closing down or expiry of an employment contract).

Under Section 38 para. 2 of the Employment Contracts Act of 3 July 1978, however, "if the employer gives notice of dismissal before or during suspension [of the contract], the period of notice shall not operate during the period for which the contract is suspended", an Section 28 para. 2 of the same act provided for the suspension of the employment contract during maternity leave.

Referring to the general observation made under this provision in the present volume of Conclusions, the Committee considered that Belgian legislation, although it allowed the dismissal of a pregnant woman before and even during her maternity leave for reasons which went beyond those admitted, could be taken as being in compliance with the requirements of Article 8 para. 2 as long as the notice period did not include that of maternity leave as, in this case, dismissal could not take effect during this leave and as the deferred notice was resumed or commenced only at the end of it.

The Committee had also asked whether, in cases of dismissal that were contrary to Article 8 para. 2 of the Charter, Belgian law provided for the reinstatement of the employee in question and, if not, whether there were plans to introduce such a provision; it regretted that the report did not answer this question and repeated it.

In view of the importance of the information requested, the Committee was again obliged to defer its conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee took note of the details given in the Belgian report on the different types of full or part-time leave available after childbirth and the improvements brought to this area during the reference period.

However, as these measures did not concern the right of women workers to time off for breast-feeding included in working hours and paid as such, the Committee could only reiterate its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee took note of the information contained in the Belgian report.

Regulation of night work for women in industrial employment

The report stated that management and labour had undertaken, in the Inter-trade Agreement for 1993-94, to propose the adjustments needed following the denunciation of ILO Convention No. 89 (Night Work - Women).

Negotiations held by the National Labour Council had resulted in the conclusion, on 9 January 1995 (outside the reference period), of Collective Labour Agreement No. 46/6 on night work and in a recommendation on women's access to night work made to the joint committees by the management and union representatives on the National Labour Council.

The Committee asked to be informed of any legislative or other amendments adopted as a result of this recommendation and pointed out that the Charter did not prohibit night work by women in industry, but required it to be regulated.

In this connection the Committee regretted that the information supplied did not include the details requested in its previous conclusion (Conclusions XIII-2, p. 310) on the content of the regulations governing night work in industry, particularly with reference to the requirements laid down in its case law (Conclusions X-2, p. 97). It insisted that this information be provided in the next report. The Committee also noted in Collective Labour Agreement No. 46/6, appended to the report, that "persons employed in family businesses in which only relatives, relatives by marriage or wards normally work, under the sole authority of the father, mother or guardian", were not covered by the agreement. The Committee asked which regulations applied to night work in industrial employment in those businesses.

Pending receipt of this information, the Committee was again obliged to defer its conclusion on this point.

Prohibition of the employment of women workers in prescribed dangerous, unhealthy or arduous activities

As the report did not announce any changes, the Committee renewed its positive conclusion on this point.

As the reports had never included information on the practical application of the prohibition of certain activities for pregnant women or for those breastfeeding, the Committee requested that this be submitted with the next report.

In addition, having noted from the 1992 General Report of the ILO Committee of Experts the maximum permissible doses of ionising radiation adopted on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP), particularly those applying to pregnant women directly carrying out tasks under exposure, the Committee requested that the next report indicate whether the legislation on protection against ionising

radiation hazards mentioned in the previous report took into account the dose limits laid down by the CIPR for pregnant women. In this respect, it referred to its general question under Article 8 para. 4 of the present Conclusions.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee recalled that it had received information in the previous report on the legal status of children in Belgium and on child protection in the French-speaking Community. It noted the reply contained in the Belgian report to its question on plans to revise the Protection of Young Persons Act of 8 April 1965 submitted by the German-speaking Community. It noted in particular that a German-speaking Community Decree on assistance for young persons of 20 March 1995 (outside the reference period), had set up a new Youth Assistance Council, which would play a major preventive role. Its bureau would supervise the work of the youth assistance service and would mediate between this service and interested parties in the event of disagreement.

The new decree aimed to take more measures with the agreement of the parents and young persons concerned. It established a right to assistance for young persons in danger, sought to avoid placement and put greater emphasis on contact between parents and children when children had to be placed. In addition, all procedures, from voluntary assistance by the youth assistance service to measures decided upon by the Juvenile Court, were clearly regulated and time limits were laid down.

Finally, as the report did not answer the Committee's question on support services for mothers and children in the Flemish and German speaking Communities, the Committee expressed the hope that this information would be included in the next report.

Regretting that the report contained very little information for the reference period and no information on the situation in the Flemish Community in particular, the Committee reiterated its positive conclusion, but maintained its provisional nature.

Cyprus

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information in the report submitted by the Government of Cyprus on the application of this provision.

Right to maternity leave

In accordance with Section 3 subsection 1 of the Maternity Protection Law No. 54 of 1987 as amended by Law No. 48 (1) of 1994, female employed persons were entitled to maternity leave on production of a certificate, issued by a registered medical practitioner, stating the expected date of confinement. The total length of the maternity leave was fourteen weeks (sixteen from 1 January 1997), eleven of which were compulsory and had to be taken from the second week preceding the expected week of confinement. In the event of a late confinement, the prenatal leave was extended to leave the eight weeks of compulsory leave following the confinement unaffected. In the case of premature confinement, the remainder of the leave was granted after the confinement, thus ensuring the full fourteen weeks' leave.

The Committee observed that the situation complied with the Charter's requirements, both with respect to the minimum length of maternity leave and to its compulsory nature and length and concluded that in this regard the situation was satisfactory. However, it asked for the next report to state whether all employed working women, without exception, in all branches of activity, including foreign female employees who were nationals of Contracting Parties, enjoyed such protection.

Right to adequate benefits

Under Section 3 subsection 3 of the Maternity Protection Law No. 54 of 1987, employees received a maternity allowance during their maternity leave at a level and subject to conditions laid down in the Social Insurance Law. According to the report, the Social Insurance Laws from 1980 to 1995 provided for maternity allowance to be paid to insured female employees for a sixteen-week period starting between the sixth and the second weeks preceding the expected week of confinement.

Having noted that according to the report on article 12 para. 1, 94,4 % of persons in paid employment were covered by social security, the Committee wished to know whether all employed working women, without exception, in all branches of activity received maternity allowance and, if not, what other payments they were entitled to.

It also asked for confirmation that there was genuine equality of treatment with regard to maternity allowances between Cypriot employees and those who were nationals of other Contracting Parties.

The report stated that the allowance was set at 75 % of women's weekly average insurable earnings in the previous contribution year. The Committee asked whether the year of reference was the previous calendar year or the twelve months preceding the payment of the allowance and if average revenue was calculated from wages before or after taxation.

It also asked whether maternity benefits were subject to a ceiling, and' whether this ceiling was set according to the reference wage or to the amount of the allowance. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

The report also stated that maternity allowance was not paid to women who continued to receive their full wages and was reduced in the case of those who received part of their wages to ensure that the total of the maternity allowance and the wage paid did not exceed the employee's full wages.

Finally, the Committee hoped that the next report would answer the general question on Article 8 para. 1 (Conclusions XIII-1, p. 172).

In view of the outstanding questions, the Committee deferred its conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted the information included in the Cypriot report, according to which the extension of maternity leave from twelve to fourteen weeks (sixteen as from 1 January 1997) in application of Law No. 48 (I) of 1994 had resulted in a similar extension of the period during which working women were protected from dismissal (from the notification of pregnancy to three months after the end of maternity leave).

In reply to the Committee's question, the report stated that there was still no case law concerning exceptions to the prohibition of dismissal (which were the same as those recognised in the case law on Article 8 para. 2). The Committee hoped that subsequent reports would draw attention to any legal decisions taken in this field.

In answer to another question, the report indicated that employers who dismissed workers unlawfully were liable to a fine of 1,000 Cypriot pounds and the employees were entitled to compensation, though the dismissal was not null and void and the employment contract did not remain valid.

However, the Committee noted that the Termination of Employment (Amendment) Law No. 61 (I) of 1994 empowered the courts to order employers with twenty or more employees to reinstate unfairly dismissed workers, if this seemed to be justified by the circumstances and at the employee's request. The Committee asked to be informed

of the use made of this provision in cases of dismissal in breach of Article 8 para. 2, and in particular the circumstances justifying reinstatement.

While considering that the new legislation represented an improvement, the Committee asked whether it was intended to extend its scope to all cases of unlawful dismissal of women workers during maternity leave, irrespective of the number of employees in the firm.

The Committee also noted in the report that Law No. 61 (1) of 1994 limited the level of compensation to twelve months' wages, whereas previous report had indicated that it could be up to two years' wages, The Committee asked how these two apparently contradictory statements could be reconciled.

The overall situation enabled the Committee to renew its positive conclusion, but on a provisional basis in view of the importance of the outstanding questions.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee welcomed the detailed account of the health situation in Cyprus provided in the report.

It noted the updated information on the main forms of ill-health and the umbers of hospitals, beds and staff for the reference period. It took note in particular of the attendance rates at the Maternal Welfare Centres and Child Welfare Clinics showing a significant drop between 1989 and 1991: from 8,679 to 2,741 visits at the Maternal Welfare Centres and 99,258 to 83,090 at the Child Welfare Clinics. These figures had only slightly improved between 1991 and 1993 for the Maternal Welfare Centre and had continued to drop by 10,000, for the Id Welfare Clinics. The Committee hoped to receive an explanation for these decreases.

In light of the information provided, the Committee reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

From the figures appended to the report, the Committee noted that vaccination coverage had steadily risen in Cyprus over the reference period.
The Committee noted that the number of Aids sufferers had increased, although it hoped that the next report would provide a clear indication of the number of those suffering from Aids and those testing HIV+. It asked for figures showing the total number of Aids-related deaths.

The Committee noted the response to the question asked in its previous conclusion regarding measures taken to strengthen the campaign against Aids. These included intensified health education campaigns in 1991 targeting various at-risk groups. An Aids Fund was set up in 1992, funded by the government and private donations, for providing assistance in preventing the transmission of HIV and to support Aids victims. The report also mentioned that training programmes were available for doctors, health visitors and teachers, that education material was produced in the form of leaflets, pamphlets, posters and TV spots, and that this subject received mass media coverage.

In the light of the information received, the Committee reiterated its positive conclusion.

Denmark

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information supplied in the Danish report.

Right to maternity leave

The Committee noted that Act No. 412 of 1 June 1994 had been introduced to implement Community Directive No. 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The 1994 Act amended existing legislation on maternity leave so that inter alia women were not permitted to return to work after giving birth for at least two weeks. The Committee regretted that this stipulation fell far short of the compulsory six-week post-natal leave period required by Article 8 para. 1.

As the Danish situation with respect to compulsory post-natal leave was not in compliance with the requirements of the Charter, the Committee reiterated its negative conclusion on this point.

Right to adequate benefits

In answer to its question about the basic level of maternity benefit being supplemented by extra payments, the report stated that in the public sector, full pay was maintained for women employees throughout maternity leave. In other sectors, collective agreements also provided for the continued payment of full wages, but this was not the general practice. The Committee underlined the importance of ensuring an adequate income for women on maternity leave, as close as possible to their normal salary. It therefore requested that the next report supply additional information on the way in which this principle was applied in the case of women in above-average income brackets and give figures for the number of women earning more than the maximum level of benefit, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

The Committee regretted that no answer had been given to the general question it posed in Conclusions XIII -1 (p. 172) about the conditions to which the payment of maternity benefit was subject. It hoped that the next report would address this issue.

Pending receipt of the information requested, the Committee deferred its conclusion on this point.

France

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information concerning this provision contained in the French report.

Right to maternity leave

The report reiterated the regulations on maternity leave, which the Committee had considered to be in conformity with the Charter: a minimum of sixteen weeks; eight weeks, six of which had to be taken after childbirth, were compulsory. Employers who failed to observe these regulations had to pay not only compensation but also a maximum fine of 10,000 French francs, increased to 20,000 French francs in the case of an employer's repeated offence.

However, the Committee noted that Article L 122-26 of the Labour Code, laying down the rules applicable to maternity leave, was not included in Article L 772-2 of the same code concerning the provisions applicable to household employees. It pointed out that all salaried women without exception, including domestic employees, should be entitled to the protection provided for in Article 8 para. 1; it therefore asked that the next report indicate whether this was the case and, if so, what the legal basis for such protection was.

Subject to examination of the information requested, the Committee renewed its positive conclusion with respect to maternity leave.

Right to adequate benefits

The report once more stated that the daily maternity allowance was equivalent to 84 % of basic daily earnings, with an upper limit, which was the social security ceiling. This ceiling was set at 12,610 French francs per month at 1 July 1993, which represented a maximum daily allowance of 353,08 French francs. The Committee asked that the next report also contain information on the minimum daily allowance.

In reply to the question asked by the Committee in its previous conclusion (Conclusions XII-2, p. 134) concerning compensation for salaried workers and public employees earning more than the social security ceiling, the report indicated that the state continued to pay the wages of public employees during their maternity leave. The Committee wished to have information on the situation of temporary employees in the public sector in this respect.

In the private sector, employers continued to pay wages, in full or in part, to employees on maternity leave, if this was provided for in collective agreements: in such cases the employee's rights to the daily maternity allowance paid by social security passed to the employer.

The report provided detailed information from the study of a sample of 224 agreements, covering most of the provisions in such agreements: 134 agreements (66 % of the sample) provided for continued payment of wages and 129 of these for payment of the full wages; the duration of such payments was usually equal to, and often more than, fourteen weeks, except in sixteen agreements, which provided for a shorter duration; in 103 agreements the continued payment of wages was subject to length of service (one year or more in eighty-nine agreements; two years or more in fourteen agreements).

The report also stated that compensation for maternity leave was still the subject of important collective bargaining; the Committee wished to be kept informed of any changes in this field.

On the basis of the information submitted, the Committee noted that a substantial proportion of employed women were not entitled to any allowances other than the maternity benefit paid by social security. It also noted from the report that the current maximum maternity allowance represented 66 % of women's average monthly earnings, which implied on one hand a smaller proportion of the monthly earnings of professional women (58 % in 1990), and on the other that certain wages were substantially higher than the ceiling, as up to this limit maternity benefit amounted to 84 % of basic wages.

In order to assess the situation of women earning higher wages than the social security ceiling but receiving only the maternity allowance allocated by social security, the Committee asked that future reports contain information on the amounts of these higher salaries or, at least, on the average monthly earnings of executive women, on the number of women in this wage category, on the method used to calculate the ceiling and on the way in which it was adjusted.

Finally, the Committee drew the government's attention to the general question on Article 8 para. 1 asked in Conclusions XIII-1 (p. 172) and insisted that the next report reply to this question.

Subject to the examination of the information requested, the Committee reiterated its positive conclusion with respect to benefits during maternity leave.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the French report that there had been no changes in the situation which it had previously considered to be satisfactory.

Nevertheless, it observed that Articles L 122-25 and L 122-27 of the Labour Code, which regulated the prohibition of dismissal and notice of dismissal during maternity leave, did not appear in Article L 772-2 same code which contained the provisions applying to domestic employees. It recalled that all women workers without exception,

including domestic employees, must enjoy the benefits of the protection guaranteed by Article 8 para. 2. It therefore requested that the next confirm whether this was indeed the case and, if so, on what basis.

In reply to the Committee's question on the legal consequences of a violation of the ban on dismissing employees or giving them notice of dismissal during maternity leave, the report stated that, under Article L 122-30 of the Labour Code, women could receive not only compensation for unfair dismissal but also damages.

The Committee, pointing out that the purpose of Article 8 para. 2 was to ensure that women who had taken maternity leave did not lose their jobs, drew the French Government's attention to the fact that as was the case for Article 4 para. 3, this provision required that reinstatement be the rule and that compensation awarded, by way of exception, had to have a sufficient deterrent effect on employers and adequate redress for employees. It asked that the next report state whether French legislation provided for the woman's reinstatement and, if not, whether there were plans to introduce such a measure. It also asked for information on the amount of benefit that a woman could claim.

Pending receipt of the requested information, the Committee reiterated its positive conclusion, but on a provisional basis.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

From the French report, the Committee noted that there had been no changes in the situation which it had previously considered to be satisfactory.

However, having noted that the relevant legislation (Articles L 224-2 and R 224-1 of the Labour Code) made no reference to payment for time off for nursing mothers, it asked that the next report indicate whether time off for mothers nursing infants included in working hours was remunerated as such. Having also noted that the above-mentioned article of the Labour Code did not appear in Article L 772-2 of the same code with the provisions which applied to domestic employers, it requested that the next report also indicate whether all female employees, without exception, and in particular domestic employees, were entitled to such time off.

Pending, receipt of this information, the Committee deferred its Conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee examined the information included in the French report.

Regulation of night work for women in industrial employment

The Committee noted from the French report that night work by women in industry was still legally prohibited but the legislation was no longer applied. The report also referred to the authorised exceptions to this prohibition but did not contain any information, requested since the eleventh supervision cycle (reference period 1987-88), on the circumstances in which women could carry out night work in industrial occupations, particularly in the light of the rules laid down in the case law (permission from the Labour Inspectorate, the laying down of working hours, breaks and days of rest following periods of night work and so on - Conclusions X-2, p. 97). It demanded that this information be included in the next report.

The Committee drew the government's attention to the wording of Article 8 para. 4a, which did not prohibit women's employment at night but did insist on its being regulated. It also pointed out that special regulations governing women's night work were not necessary so long as there were general regulations applicable to workers of both sexes that afforded sufficient protection. Finally, it referred to the abovementioned case law.

The Committee had also asked in its previous conclusion (Conclusions XII-2, p. 145) whether the special circumstances of pregnant women and women who had just given birth were taken into account for the purposes of this provision. It regretted that the report had not replied to this question either and repeated it.

In view of the government's repeated failure to answer its questions on the conditions governing women's employment in night work, the Committee deferred its conclusion with respect to Article 8 para. 4a.

Prohibition of the employment of women in certain dangerous, unhealthy or arduous work

The Committee hoped that the next report would contain full and up-to-date information on the prohibition of the employment of women workers in work unsuited to them by reason of its dangerous, unhealthy or arduous nature, particularly in situations related to childbirth.

The Committee noted that, according to information from the ILO, there were difficulties concerning exposure to benzene, and it noted with concern that the radiation regulations had still not been modified to take account of the maximum levels recommended in 1990 by the International Commission on Radiological Protection (ICRP). It asked what measures existed or were planned in this area to provide protection regarding pregnancy, confinement, the post-natal period and future children. It referred to the general question under Article 8 para. 4 of the present Conclusions.

Pending receipt of the requested information, the Committee also deferred its conclusion with respect to Article 8 para. 4b.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee took note of all the information on health protection measures undertaken during the reference period contained in the French report and its appendices.

It remarked from statistics provided in the United Nations Development Programme (UNDP) Human Development Report of 1995 that the rate of maternal mortality between 1980 and 1992 was 9 per 100,000 five births. This was a high figure in comparison with that of other European states. The Committee wished to receive the government's comments on this issue.

The Committee hoped that the next report would also indicate the measures taken to reduce smoking and alcohol consumption.
Finally, it noted the information provided on sickness insurance, showing a series of proposals made by the Public Health Committee for improving access to medical and welfare services for disadvantaged sections of the population. The Committee hoped to be kept updated on the outcome of the proposals which included developing networks of medical and welfare workers, developing specific health education and promotion activities in the light of the demands and needs of people in difficult social situations, providing general welfare cover on the basis of a residence criterion and simplifying administrative formalities.

In the light of the information provided, the Committee reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The French report referred to information provided under Article 11 para. 1, but no update was provided on measures taken to prevent epidemic, endemic or other diseases. The Committee therefore hoped to find updated information in the next report in answer to Question D of the Form for Reports.

The Committee noted the figures appended to the report indicating that in 1991, 3,551 persons had died from Aids and that the number had risen in 1992 to 4,140. The Committee wished to be informed in the next report as to whether these figures constituted an annual total or an overall total of deaths. In any event it hoped that the next report would provide updated figures and an account of the efforts undertaken in the campaign against the spread of this disease.

In the meantime, the Committee considered that France continued to comply with this provision of the Charter.

Germany

[With regards to Article 8 - The right of employed women to protection; Paragraph 1- Maternity leave].

The Committee noted the information contained in the report of Germany:

Right to maternity leave

The Committee regretted that the report did not provide comprehensive information on the law applying to maternity leave in Germany. However, it noted from ILO information that Section 6 of the Maternity Protection Act provided for a compulsory maternity leave period of eight weeks after the birth.

The Committee reiterated its positive conclusion, on this point.

Right to adequate benefits

The Committee noted from the report the qualifying conditions for maternity benefit: 1. that a woman have a contract of employment at the start of the maternity leave period or otherwise, that her employment had been lawfully terminated during pregnancy; 2. that she had completed twelve weeks of insured employment between the tenth and fourth months preceding confinement. The Committee asked for statistics on the percentage of pregnant workers who qualified for maternity benefits during the next reference period and on what arrangements were made for those women workers who did not.

It regretted that the report did not provide a complete update of nformation on maternity benefit in Germany, in particular if compensatory benefit existed for women workers whose previous earnings were substantially higher than the basic allowance. It hoped to find this information in the next report.

Finally, the Committee asked whether maternity benefits were subject to a ceiling, and whether this ceiling was set according to the reference wage or to the amount of the allowance. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation on the ceiling and the way in which it was adjusted.

Pending receipt of the information requested, the Committee reiterated its positive conclusion on this point, albeit on a provisional basis.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee regretted that the German report did not reply to its repeated requests for an update of the information. However, it noted from the Maternity Protection Act that time off for nursing was considered as working time and was remunerated as such (Section 7).

The report considered the comments made by the Confederation of German Trade Unions (DGB) concerning certain Labour Tribunal decisions limiting the right to such time off work to the first year of the child's life. It stated that German law did not lay down a maximum period, leaving this matter to be decided according to each individual situation The overriding consideration was the health of the mother and child.

The Committee considered that the situation was satisfactory, and reiterated its positive conclusion, but on a provisional basis pending receipt of the information requested.

[With regards to Article 17 - The right of mothers and children to social and economic protection].

The Committee noted from the German report that, in view of the joint competence of Federal, regional and local authorities for assistance to children and young persons, there was no official appraisal of the implementation of the 1991 legislation providing for assistance to these groups. In view of the importance of this legislation, the Committee nevertheless insisted that it should receive the information previously requested on its practical impact.

In reply to the Committee's general question in Conclusions XIII-2, (p. 157), the report explained the various provisions protecting children against physical and sexual abuse. The authorities were under a duty to ensure that children were adequately protected against such abuse. This could mean removing them from the family home, but only if no other solution was feasible. The Guardianship Court had jurisdiction to review all such actions.

Finally, the report contained some brief information on proposals to eliminate legal differences in treatment for children born within and outside of wedlock. However, the report did not explain in detail what the current legal differences in treatment were, despite the Committee's request reiterated since the twelfth cycle (Conclusions XII-2, p. 207). It thus repeated its request, insisting on receiving more precise information on this point, which was of fundamental importance in relation to Article 17 of the Charter. Pending receipt of this information, and having noted from the report and from other sources that differences between the right of children born within wedlock and those of children born out of wedlock existed as regards succession rights, the Committee reached a negative conclusion on this point, while recalling that Article 17 does not allow for any difference in treatment of children born out of wedlock even as regards succession rights (Conclusions VI, p.105).

Greece

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information contained in the Greek report.

Right to maternity leave

The Committee noted that maternity leave had been extended to sixteen weeks for all female employees in pursuance of the National General Collective Labour Contract of 1993. This period was divided equally before and after the expected date of confinement. In the case of premature birth, the woman was still entitled to the full sixteen weeks. In the case of late birth, the woman was still entitled to eight weeks of post-natal maternity leave.

The report also stated that the minimum period of maternity leave was twelve weeks. The Committee asked that the report clarity this apparent inconsistency with the sixteen-week period described above. It further asked if the compulsory post-natal leave was in fact six weeks.

The issue of maternity leave entitlements of women civil servants in the case of still-birth had been resolved satisfactorily.

Pending receipt of the information requested on the duration of compulsory maternity leave, the Committee deferred its conclusion.

Right to adequate benefits

The report stated that the following categories of workers were not covered for maternity benefits by the general social security scheme (IKA); public servants, employees of some government agencies and enterprises, bank employees and employees in the press and in the hotel sectors. These workers were covered by special insurance schemes. The Committee asked that the next report indicate the level of benefit available under each maternity scheme and what proportion of average earnings this constituted. In addition, as the report did not address its general

question about conditions imposed on maternity benefit (Conclusions XIII-1, p. 172), the Committee hoped to find these issues dealt with in the next report.

With regard to women in agriculture, the Committee noted that salaried employees were covered by the provisions normally applied under the IKA scheme. It asked for confirmation in the next report that every employed working woman, without exception, including those working in the agricultural sector, was entitled to adequate maternity benefits.

Finally, the Committee asked whether maternity benefits were subject to a ceiling, and whether this ceiling was set according to the reference wage or to the amount of the allowance. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

Pending receipt of the information requested the Committee deferred its conclusion on this point.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the report of Greece that a woman on maternity leave could not be dismissed for "serious reasons" under Article 672 of the Civil Code, as this only applied either to persons actually at work or absent without permission. The report added that there was no case law concerning the dismissal of women either during pregnancy or in the twelve months following the birth.
The report confirmed that all women employed in the public sector enjoyed the general protection against dismissal laid down in Act No. 1483 of 1984 by virtue of Presidential Decree No. 193 of 1988.

The Committee learned that the reform of the Civil Service Code described in the previous conclusion was still in progress and that the question of dismissal had not yet been considered.

Lastly, in relation to the protection of women seafarers the report stated that the issue of dismissal during the maternity period could not arise, since pregnant women were not permitted to be hired to work at sea. During this time, all women seafarers were entitled to claim maternity benefits. The Committee asked how the rule of not hiring pregnant women applied when the woman became pregnant after being recruited for employment on board a vessel. It repeated its observation made in the previous conclusion that explicit provisions should be introduced into legislation to secure for women seafarers the protection required by Article 8 para. 2.

As not all employed women without exception had such protection, the Committee reiterated its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted the information contained in the Greek report.

Regulation of the employment of women workers on night work in industrial employment

The report did not describe the substance of the relevant national regulations, despite the Committee's request in the previous conclusion. The report stated that the "National General Collective Labour Contract" of 1993 stipulated that employers were expected not to place pregnant women on night shifts. A pregnant woman could ask to be transferred to daytime work at any stage of her pregnancy, on health grounds. This latter rule would be reinforced with the implementation of Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The Committee drew the attention of the Greek Government to the fact that this provision of the Charter applied to all women workers, not just those who were pregnant.

It noted from statistics appended to the report that approximately 2% of female industrial employees regularly worked at night, with a further 4 % occasionally working at night. However, pending receipt of an explanation of the content of the applicable Greek regulations, the Committee deferred its conclusion under Article 8 para. 4a and hoped that the next report would provide the necessary information.

Prohibition of the employment of women in dangerous, unhealthy or arduous work

Apart from underground mining, the report listed several instruments which concerned the health and safety of workers exposed to various risks (work involving manipulation of industrial dyes, benzene, metallic lead and compounds and ionising radiation). In each case, pregnant women and nursing mothers were prohibited to work where there were risks of exposure to such hazards. The report also described general laws on health and safety, which provided for expert assessment of hazards and notification of the work force. All of these texts were applied to work on ships by the Ministry of the Merchant Navy.

Recalling that the previous report had admitted that national regulations were inadequate to completely protect women of child-bearing age, the Committee hoped that the next report would fully explain the content, practical implementation and supervisory mechanisms of these regulations.

Pending receipt of this information, the Committee deferred its conclusion under Article 8 para. 4b.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee welcomed the detailed information in the Greek report on the state of health protection which included updated statistics.

The Committee took note of Act No. 2194 of 1994 on the reformation of the National Health System providing that the health centres would henceforth operate as decentralised organic units of the hospitals of the regional department to which they were attached. Noting that the decrease in perinatal and infant mortality in recent years was more significant in urban than in rural areas, the Committee hoped to receive further details in the next report on the regional distribution of hospitals as well as on the number of doctors. The Committee had already noted that according to a European Parliament study of 1993 entitled "The health systems of European Community member states", hospitals and doctors were primarily established in and around Athens and Thessaloniki.

Other information provided showed that Greece was making efforts to inform the public about health care measures such as family planning and campaigns against smoking.

In the light of the information received, the Committee reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The information on health education in Greece, as set out under Article 11 para. 1, showed that a great amount of printed material was available to the public as well as to health staff on diverse subjects including smoking, narcotics, hepatitis, oral hygiene, family planning, blood donation, diet, etc.

Additional information was appended to the report concerning in particular the establishment in 1993 of Youth Advisory Centres (YAC), organised and funded by the Ministry of Education and the Ministry of Religious Affairs. The Committee noted that amongst their main tasks, the YAC's implemented, supported and monitored health education programmes for students, and produced and distributed educational material, They also trained and retrained staff and evaluated the results of implementing these programmes.

In the light of the information received, the Committee maintained its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

As there was no information in the Greek report relating to this provision of the Charter, the Committee was obliged to repeat its questions concerning the information gathered by the responsible authorities on Aids victims. Bearing in mind the long interval between the submission of national reports under Article 11, the Committee hoped to receive a full response in the next report to the questions in Form for Reports. It decided in the meantime to reiterate its positive conclusion.

Iceland

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee noted the brief account given in the Icelandic report of health facilities available throughout the country and hoped to receive confirmation in the next report that all residents, including those living in outlying areas, were within reach of health services which corresponded to their needs.

Bearing in mind the long interval between the submission of national reports relating to Article 11, the Committee insisted on receiving a full response to the questions it had asked in the next report. In the meantime, it reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Icelandic report contained no information under this provision, but referred to information provided under Article 11 para, 1. Under this provision, the Committee noted that health clinics were responsible for health care in schools, in particular for sight and hearing tests of schoolchildren. It also noted that advice was provided in schools on subjects such as diet, dental care, sex, smoking and drugs.

Bearing in mind the long interval between the submission of national reports relating to Article 11, the Committee requested that the next report contain full and updated information in respect of this provision.

Meanwhile, it reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Committee took note of the information supplied in the Icelandic report showing measures taken to combat Aids. It regretted, however, that there was no information on new measures taken against sexually transmitted diseases and other transmissible diseases, as requested in its previous conclusion. It hoped that the next report would contain this information, as well as an update of information on vaccination programmes, including information on the type of vaccinations carried out, to whom they were administered, whether they were compulsory and whether they were free of charge.

Pending receipt of the information requested, the Committee renewed its positive conclusion.

Ireland

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information supplied in the Irish report In respect of this provision.

Right to maternity leave

The report described the provisions of the Maternity Protection Act No.34 of 1994, which left unchanged the earlier period of maternity leave of at least fourteen weeks, eight of which were compulsory, four to be taken before the expected date of confinement and four after.

The Committee was interested to note the existence of compulsory post-natal leave, but expressed regret that when the new legislation was passed the situation had not been brought into line with the Charter's requirement of six weeks' compulsory post-natal leave. In response to the Irish Government's question about the criteria upon which the application of a six-week compulsory post-natal period were based, the Committee referred to the explanations given in Conclusions VIII (see the general observation, p. 123) and pointed out that this was the legal situation in the great majority of European countries (Conclusions XII-1, p. 152).

The Committee noted from the report that all female employees were now entitled to maternity leave. It asked for confirmation that the right to leave was not contingent on either a required number of hours worked per week or a required length of service with the same employer or subject to any other condition.

The Committee was obliged to repeat its negative conclusion because of the insufficient length of compulsory post-natal leave.

Right to adequate benefits

The report stated that the costs of the Maternity Benefit Scheme were met from the Social Insurance Fund, which was financed almost entirely from contributions paid by employers and employees, and specified the conditions for payment of maternity benefit. Claimants should be in insurable employment before the first day of maternity leave, their earnings should be 30 Irish punts or more per week, they should be insured at class A, H or E of the Social Welfare Code, and they should meet the minimum requirements as to social insurance payments.

The Committee therefore noted that female employees whose weekly earnings were below 30 Irish punts did not receive maternity benefit. Having also noted the occupations to which classes A, H and E of the Social Welfare Code corresponded (industrial, commercial and service type employment, non-commissioned officers and enlisted personnel of the Defence Forces and Ministers of Religion employed by the Church of Ireland Representative Body), the Committee noted that agricultural occupations were not included and therefore that female employees in the agricultural sector apparently did not receive maternity benefit either; it asked for confirmation of this. It also asked whether other categories of employees were likewise excluded, such as those in domestic employment, and what the situation was in the civil service. It also wanted to know what was meant by "insurable employment".

It recalled that all female employees without exception must have access to adequate benefits throughout their maternity leave and it therefore considered that, in this respect, the situation was not satisfactory. It asked whether employees not covered by social insurance were entitled to another form of financial aid.

Referring to the general question asked in Conclusions XIII-11 (p. 172), the Committee noted that to be paid maternity benefit claimants were required to have been affiliated to the social insurance scheme for at least thirty-nine weeks in the twelve months preceding the first day of maternity leave or since they first started work and to have thirty-nine weeks' social insurance contributions paid or credited for the relevant contribution year. It asked what other form of financial assistance was granted to female employees who did not satisfy these conditions and requested that the next report provide information on the other aspects of the general question.
The report pointed out that maternity benefit corresponded to 70 % of gross weekly earnings, which was equivalent to almost 100 % of net earnings, and that the minimum rate of benefit was 74 Irish punts (at July 1994) and the maximum rate 159 Irish punts (at July 1993).

Having noted from the report that no provision was made for the payment of a supplement to employees whose earnings exceeded the maximum benefit, the Committee asked whether collective agreements contained provisions on this subject. It also wanted to know the position of women civil servants in this respect. In order to assess the situation of women earning higher wages than the ceiling, the Committee requested that the next report contain

information on the number of women in this wage category, on the amounts of the wages in question or at least on the average wage of women executives, on the method used to calculate the ceiling and on the way in which it was adjusted.

Since not all female employees received maternity benefit, the Committee was obliged to renew its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted the information supplied in the Irish report on this provision.

Regulation of night work for women in industrial employment

The report referred to the cases in which night work was possible and the regulations applicable to workers of either sex, which were the same as those described earlier. The Committee had found that they were not consistent with the aims of this provision of the Charter, nor did they afford sufficient protection (Conclusions XIII-1, pp. 182 and 183), and hence that the situation was not satisfactory.

The Committee noted that a review of the 1936 Conditions of Employment Act was envisaged in order to bring the legislation into line with European Community Directive 93/104 concerning certain aspects of the organisation of working time. It asked to be kept informed of any developments in this situation concerning women carrying out night work.

It also noted that the Maternity Protection Act No. 34 of 1994 provided that night workers who were pregnant, had recently given birth or were breastfeeding should be assigned to day work; if the change of post was not possible. these employees were entitled to special health and safety leave.

The Committee recalled that the requirement that night work by women in industrial employment should be regulated was not limited solely to cases involving maternity and that, although a single set of regulations governing night work by employees of either sex was permitted, these must still afford sufficient protection, and this was not so in the case under consideration.

It was therefore obliged to reiterate its negative conclusion under 8 para. 4a.

Prohibition of the employment of women in certain dangerous, unhealthy or arduous work

The report stated that following the denunciation of ILO Convention No. (Underground Work, Women), the 1965 Mines and Quarries Act been amended with effect from 19 June 1991 to permit women to work in all occupations, including manual occupations, below ground in mines.

The Committee pointed out that prohibiting the employment of women on underground extraction work was sufficient to meet the requirement of prohibition of underground work for women in mines (Conclusions X-2, p. 97); even this prohibition did not exist in this instance.

The report listed the legislation and regulations applicable to protection of the safety and health at work of women who were pregnant, had recently given birth or were breastfeeding and stated that in their most recent drafts they complied with European Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who had recently given birth or were breastfeeding.

However, in view of its case law, which in addition to pregnancy, confinement and the post-natal period took future children into consideration (Conclusions X-2, p. 98), the Committee asked whether special measures had been taken to protect women of child-bearing age. It also referred to its general question under Article 8 para. 4 of the present Conclusions.

In the absence of a prohibition on the employment of women in underground mining, the Committee was obliged to conclude that the situation was not in compliance with the requirements of Article 8 para. 4b either.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Irish report provided up-to-date statistics and a full account of the situation of health protection offered to the population.

Primary and secondary health care services available covered, *inter alia*, general practitioner services; Aids prevention, care, control and surveillance; dental, aural and ophthalmic services, screening and drug abuse programmes, as well as emergency and general hospital services. In 1993, there were sixty-four public hospitals with 12,199 beds. There were also special Health Boards providing childcare and family support services including social work, family resource centres, day-care services, child guidance, and counselling and advice services.

Reference was made in the report to a Four-Year Action Plan (covering years 1994-97) aimed at promoting health awareness in areas such nutrition, diet and exercise, as well as improving general practitioner services, dental services, family planning and women's and children's health.. The Committee hoped that further information regarding this Plan would be provided in the next report.

The report responded to the Committee's request for detailed information on the action taken on the recommendations of the National Aids Strategy Committee, *inter alia*, that: condoms were on sale from vending machines following the implementation of the Health (Family Planning) Amendment Act of 1993; distribution of the Health Promotion Unit's leaflet “Aids - the facts” was continuing, with 100,000 copies printed in December 1993, and the level of Aids education within the prison system was improving. However, the report added that by 1992, a total of 308 people had developed Aids and 137 people had died from the disease.

In the light of the extensive information provided, as well as the efforts being made or under way in various fields to improve the nations' health, the Committee reached a positive conclusion, albeit on a provisional basis, pending receipt of the additional information requested.

Italy

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information contained in the Italian repot.

Right to maternity leave

The Committee noted that there had been no changes in the situation: in pursuance of Act No. 1204 of 30 December 1971 on the protection of working mothers, all wage-earning women benefitted from maternity leave which met the requirements of the Charter. The Committee concluded that the situation was satisfactory on this point.

Right to adequate benefits

The Committee noted from the report that there had as yet been no new developments with regard to domestic employees who, when dismissed during pregnancy, were still not entitled to maternity allowance, which was contrary to the Charter.

The Committee was obliged to renew its negative conclusion on this point, while regretting that no action had yet been taken on Recommendation No. R ChS (94) 4 addressed to Italy on the subject by the Committee of Ministers. It hoped that the recommendation would be duly taken into account in the legislative changes to be made when Community Directive No. 92/85 was transposed into Italian law.

The Committee also asked for the next report to answer the general question asked in Conclusions XIII-1 (p. 172) on the subject of Article 8 para.1 and confirm that maternity benefits were not subject to a ceiling.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted in the Italian report that the dismissal of domestic employees during their maternity leave or at such a time that the notice would expire during maternity leave was still not prohibited.

It was therefore obliged to renew its conclusion, which had been negative since the first supervision cycle, while regretting that no action had yet been taken on Recommendation No. R ChS (94) 4 addressed to Italy on the subject by the Committee of Ministers.

The report mentioned a first-instance judgment delivered in July 1995 setting aside the dismissal of a pregnant woman worker on the grounds that it was illegal; according to the report, the judgment called into question the constitutionality of certain provisions of Act No. 1204 of 30 December 1971 "on the protection of working mothers". The Committee asked for the text of the judgment and information on the action taken on it.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted in the Italian report that female home workers and domestic employees were still not entitled to the remunerated nursing breaks provided for by Act No. 1204 of 30 December 1971 on the protection of working mothers (Section 10).

It was therefore obliged to renew its negative conclusion, while regretting that no action had yet been taken on Recommendation No. R ChS (94)4 addressed by the Committee of Ministers to Italy on the subject.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee examined the information in the Italian report.

Regulation of night work for women in industrial employment

The Committee greatly regretted that the Italian report did not reply to the question asked since the twelfth supervision cycle on the conditions in which industrial night work could be carried out by women, and especially on "the content of collective and company agreements providing for derogations to the prohibition of night work by women and laying down the applicable regulations", in order to be able to assess those regulations in the light of the requirements specified in its case law (permission from the Labour Inspectorate if any, laying down working hours, breaks, days of rest following periods of night work, etc. - Conclusions X-2, p. 97).

The Committee took note of the work in progress with a view to ratification of ILO Convention No. 171 (Night Work) and possible amendments to Act No. 903 of 9 December 1977 on equal treatment of men and women at work. It asked to be informed of any developments in this area.

Pending receipt of the information requested, the Committee was obliged to defer its conclusion in respect of Article 8 para. 4a.

Prohibition of the employment of women in certain dangerous, unhealthy or arduous work

The Committee noted in the report that there had been no new developments in relation to underground mining work. Consequently, as there was no legislative ban on the employment of women, except pregnant women, in such work, the situation still did not comply with Article 8 para. 4b. The Committee noted that only one mine was still in

operation for the time being and that very few women worked there. It pointed out that the prohibition of underground extraction work for women was sufficient to meet the requirement of prohibition of underground work in mines for women (Conclusions X-2, p. 97) and regretted that the report did not answer the question asked since the twelfth supervision cycle on the work in which women were employed in mines. It insisted that the next report state whether this was extraction work.

It also regretted that the report did not answer the questions asked on other dangerous, unhealthy or arduous work for women workers, and reiterated them:

"The Committee asked what medical checks [women of child-bearing age] received [in the matter of risks relating to exposure to lead] and whether the Italian Government would not consider banning the employment of such women in work involving exposure to lead. Having learned from ILO sources that the 1991 legislative decree did not cover air and maritime transport, the Committee also asked how women working in that sector were protected against the risks relating to exposure to lead.

It also noted that legislation providing for protection against the risks relating to exposure to benzene was in preparation with a view to implementing Community Directive 90/394. It asked to be informed of developments in this area. In particular, it wished to know whether the new legislation would provide for an extension of the prohibition on the employment of nursing mothers beyond seven months after birth, so as to cover the entire nursing period".

In addition having noted the concerns voiced by the ILO Committee of Experts in its 1994 Observation on the application of Convention No. 127 (Maximum Weight) by Italy, on the subject of the maximum weight of loads that could be transported by women, the Committee asked whether, in view of the medically established physiological differences between women and men, which were reflected in differences in aptitude for certain categories of work, the weight in question for all women assigned to the transport of loads was substantially less than that permitted for men.

The Committee referred to its general question under Article 8 para. 4 in the present Conclusions.

Pending receipt of the information requested, the Committee renewed its negative conclusion in relation to Article 8 para. 4b, on the ground that there was no prohibition of the employment of women in underground extraction work in mines.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

According to the Italian report, Act No. 162 of 26 June 1990 provided the Ministry of Education co-ordinate education activities and disseminate information in schools on the harm caused by the abuse of alcohol and drugs. The Ministry was also responsible for organising centres for teachers, and for setting up information and consultation centres in schools. The Committee hoped to receive more details on activities undertaken and the results achieved.

The Committee asked that the next report contain information on how the distribution of information on health issues was ensured throughout the regions. It also requested recent information on the nature and frequency of periodic check-ups for women and children (screening, vaccination, dental care, etc.), sex education and family planning, as well as the funds devoted to these health areas.

Pending receipt of all the information requested, the Committee concluded that Italy met the requirements of this provision of the Charter.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Italian report contained data on the number of cases of infectious diseases recorded in 1993, information on obligatory and voluntary vaccinations carried out, as well as information on awareness programmes and campaigns in the fight against Aids.

The Committee expressed concern regarding the increasing number of Aids cases, which according to the report had reached 30,000 in June 1995. It asked that annual figures be provided on Aids and HIV-related illnesses as well as the number of Aids-related deaths. It noted that initiatives had been taken in order to educate and inform various groups, including seminars on prevention aimed at staff of lower and upper secondary schools in conjunction with parallel training schemes on drug addiction problems. According to the report, drug addicts accounted for 60 % of those infected. The Committee asked that the report provide information on any further measures taken or envisaged to address this serious situation.

In the meantime, the Committee reiterated its positive conclusion, albeit on a provisional basis, in view of the importance of the outstanding questions.

Malta

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee strongly regretted that the report of Malta failed entirely to respond to its comments and questions in the previous conclusion. However, it considered information from the Maltese Government contained in the report of the Governmental Committee on Conclusions XIII-2.

Right to maternity leave

It emerged from this source that there had been no changes during the reference period in the rules on the length of maternity leave. Therefore, Malta still failed to ensure either a minimum period of maternity leave of twelve weeks, or an obligatory period of six weeks post-natal leave, which was in breach of the Charter.

The Committee had criticised the insufficient length of post-natal leave granted to women who did not give their employer three weeks' notice of their confinement. It emphasised that this rule must not operate so as to oblige such women to take maternity leave of less than twelve weeks and/or to return to work within six weeks of giving birth.

According to the above-mentioned information, the general arrangements for paid maternity leave set out in the 1952 Conditions of Employment (Regulation) Act also applied to domestic servants and women working at home. As no information was supplied on the position of employees related to their employer, the Committee asked that the next report specifically address the situation of such workers.

Pending receipt of the requested information, the Committee renewed its negative conclusion on this point.

Right to adequate benefits

With regard to adequate maternity benefits, the government recognised that some part-time workers were not covered by the 1952 Act on conditions of employment. Instead, they could claim maternity benefits under the 1987 Social Security Act. This answer was unsatisfactory, as the Committee had already criticised the maternity provisions of the 1987 Act for providing inadequate benefits which were not available to nationals of other Contracting Parties (unless they were married to a Maltese national). The Maltese Government argued that maternity benefit could be combined with other payments, depending on the circumstances of the claimant. The Committee considered this to be an insufficient response, as this provision would not ensure an adequate payment to all female employees who were not covered by the 1952 Act. Furthermore, the problem of nationals of other Contracting Parties being excluded from maternity benefits under the 1987 Act was not addressed in the report.

The Committee asked whether maternity benefits for women entitled to maternity leave under the Act of 1952 and who received their salary over the thirteen-week period of their leave, were subject to a ceiling. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category

or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

Finally, the Committee learned from the report of the Governmental Committee on Conclusions XIII-2 that if a female employee was obliged to refund the equivalent of her maternity pay to her employer, following her decision not to return to work or to resign within six months of doing so (Section 34 para. 20 of the 1952 Act), she could make subsequently a retrospective claim for benefits under the 1987 Act. However, as such benefits would represent amounts which were considerably lower than the money she had been forced to refund, the situation was still incompatible with the requirements of Article 8 para.1.

In view of these considerations, the Committee was forced to reiterate its negative conclusion. It hoped that the next report would deal fully with the issues raised and indicate what progress had been made with the planned reforms and answer its general question on qualifying conditions for maternity benefits (Conclusions XIII-1, p. 172).

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

Committee regretted that the report of Malta failed to answer the questions it had posed in the previous conclusion. However, it noted from the report of the Governmental Committee on Conclusions XIII-2 some part-time women workers were indeed outside the scope of Conditions of Employment and Regulation Act of 1952 which provided for paid maternity leave. Recalling that Article 8 para. 2 applied to all female employees without exception, the Committee concluded that, in the absence of evidence that such workers were covered by any other rule, the situation was not in conformity with the Charter.

The Committee further noted that domestic workers and women working at home were protected against dismissal by the 1952 Act. However, it still wished to know the precise legal position of employees related to their employer, as it could find no information on this point in the report. The Committee also hoped to find in the next report an answer to its question about the reinstatement of women unlawfully dismissed during maternity leave.

Pending receipt of this information, the Committee considered that the situation was not in conformity with the Charter, since some part-time workers were not protected against dismissal during maternity leave.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee greatly regretted that the report of Malta failed completely to reply to the series of questions which it had posed in the previous cycle. It therefore referred the Maltese Government to its previous conclusion and insisted that the next report provide all the information required.

In addition, the Committee noted that the ILO had addressed a direct request to Malta in 1995 about the prohibition of women working with benzene (Convention No. 136) and lifting heavy weights (Convention No. 127). It asked that the next report indicate the content of the answers supplied to these two requests.

Hoping that the next report would include the information it needed before it could arrive at a conclusion, the Committee had no option but to defer its conclusion under Article 8 para. 4a and b.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

The Maltese report showed that health information covered areas such as nutrition, stress, Aids and drugs, and that diagnostic health education programmes were offered, *inter alia*, by medical officers, counsellors and dental officers. This information enabled the Committee to renew its positive conclusion.

The Netherlands

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information submitted by the Netherlands' government and the comments made by the Netherlands Trade Union Confederation (FNV).

Right to maternity leave

In reply to the Committee's questions, the government described the protection given to women employed in sectors excluded by the Netherlands f rom the application of ILO Convention No. 103 (Maternity Protection). The sectors involved comprised work in agricultural undertakings other than plantations and domestic work for wages in private households: insurance was compulsory for women working in the agricultural sector but not for women working in private households for less than three days a week, who could take out voluntary insurance.

The Committee made the following observations:

> - maternity leave outside the six weeks provided for following confinement was only guaranteed by the payment of maternity benefit during sixteen weeks (under the Sickness Insurance Act of 1913 as amended). As a result, women working in the agricultural sector insured under the compulsory sickness benefit scheme were protected, whereas employees in private households usually working less than three days a week did not receive maternity benefit, and consequently the sixteen weeks' maternity leave; their situation thus did not comply with the Charter's requirements. The Committee wished to know whether the length of professional activity was a condition for the payment of maternity benefit, and therefore for granting maternity leave, for other categories of workers;
>
> - six weeks' compulsory post-natal leave was guaranteed under Section 11 of the Act of 1919 in its 1977 version. The Committee wished to know whether this provision applied to the two categories of workers concerned.

As all employees without exception should benefit from maternity leave as provided under Article 8 para. 1, the Committee was obliged to conclude that the situation was not in compliance with this requirement of the Charter, in the light of the situation of domestic employees who worked less than three days per week.

Right to adequate benefits

The report pointed out that maternity benefit amounted to 100 % of the daily wage with an upper limit of 286.84 Dutch guilders as at 1 January 1994 (the same upper limit as at 1 January 1992) but did not reply to the Committee's question on compensatory measures in favour of employees earning more than the limit. The Committee asked that th next report include this information and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

In reply to its question, the Committee took note of the information given on the precise categories of person who could be excluded from social welfare (Section 3 sub-section 4 of the 1913 Sickness Insurance Act, as amended). These persons were: foreigners not residing permanently in the Netherlands, working for non-profit-making institutions based abroad and who remained insured by the social security system of their home countries; diplomatic and consular staff application of the Vienna Convention on Diplomatic or Consular Relations; the staff of international organisations such as the United Nations. It noted that they were covered by another social security scheme which, according to the report, offered protection similar to that offered by the Netherlands' system.

The Committee also took note of the FNV's concern that the privatisation of the system provided for in the Sickness Insurance Act affect social security benefits in respect of pre- and post-natal leave and make it more difficult for

women to find employment. It wished to have detailed information on this privatisation and its effect on maternity benefit as well as the government's comments.

With respect to the maternity benefit to which women employed in activities excluded by the Netherlands on ratification of ILO Convention No.103 were entitled, the Committee referred to the explanations given on the subject of maternity leave, which also covered benefits, and to the comments made and questions asked on the subject.

In addition, the Committee drew the government's attention to the general question relating to Article 8 para. 1 asked in Conclusions XIII-1 (p. 172), to which no reply had been given. It insisted that the next report contain this information.

Meanwhile, as all wage-earning women must be entitled to adequate benefits as provided under Article 8 para. 1, the Committee was forced to conclude that, in view of the situation of women employed in private households for less than three days a week, the situation did not satisfy the requirements of the Charter.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee regretted that the Netherlands' report did not contain answers to the following questions, asked in the previous conclusion (Conclusions XIII-1, p. 179), and insisted that the next report contain the information requested:

“The Committee was concerned about the situation of pregnant employees who, although not ill, were no longer able to do the stipulated work, for instance because it was too strenuous or dangerous for pregnant women [Section 1639 h paragraph 4 of the Civil Code]”. The explanations supplied led the Committee to believe that, in practice, such women were considered to be ill and, as such, were protected against dismissal. It wished to know who was competent to take such a decision and if it was certain that all cases were covered.

The Committee also noted, as under Article 8 para. 1, that the government had made exceptions in respect of occupations carried out in agricultural undertakings, other than plantations and domestic work for wages in private households when it ratified ILO Convention No. 103 (maternity protection). It asked what protection was provided for female workers in these cases as regards Article 8 para. 2.

With respect to the last question, the Committee stressed that the answers given under Article 8 para. 1 did not apply to Article 8 para. 2.

In addition, Section 1639 o of the Netherlands' Civil Code provided for dismissal from employment without notice for "urgent reasons" and Section 1639 p listed a certain number of these reasons, including the fact that the worker "is largely lacking in ability or suitability for the work for which he or she was engaged". The Committee had showed concern at the possible application of this provision to workers on maternity leave and in its previous conclusion (Conclusions XIII-1), noted that the dismissal on urgent grounds of workers on maternity leave could only take place in exceptional circumstances, thus implying that it was not impossible, although it had noted that according to the report no pregnant worker had ever been dismissed on urgent grounds. The Committee asked that as long as the Netherlands' legislation did not expressly prohibit the dismissal of an employee during her absence on maternity leave or at such a date that the notice would expire during this absence, future reports mention any practical cases of dismissal on urgent grounds of an employee on maternity leave.

Owing to the lack of replies to the questions asked in its previous conclusion, the Committee was obliged to maintain its only provisionally positive conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee recalled that it was critical of the situation in the Netherlands because the legislation on time off for breast-feeding (Section 11 para. 2 of the Labour Act of 1919) indicated neither whether such time was considered as working time, nor whether it was paid and that its criticisms were backed up by the comments by the Netherlands

Trade Union Confederation (FNV) to the ILO, according to which on the one hand collective agreements did not comprise any provisions explicitly ensuring that breaks in work for nursing purposes were included in working hours and remunerated as such, and on the other that in practice many employers required women to make up for any time taken off for breast-feeding or refused to pay them the salary corresponding to this time.

In reply, the government pointed out that a widely disseminated publication on maternity protection stated that time off for breastfeeding was to be regarded as working time and paid as such. It pointed out that this was based on the ratification of ILO Convention No. 103 (Maternity Protection) and on the interpretation given to Article 5 of this convention (time off for breast-feeding) by the Minister of Foreign Affairs, and quoted a decision handed down by the President of the Amsterdam Court in 1979, also based on that interpretation.

The Committee noted in this connection that, in its 1994 Observation on the implementation of Convention No. 103 by the Netherlands, the ILO Committee of Experts had again requested that measures be taken to give effect to Article 5 of the convention, in legislation as well as in practice.

The Committee also noted that a provision explicitly stipulating that time off for breast-feeding was to be regarded as working time and paid as such had been included in the new Working Hours Bill which was currently before the Upper House of Parliament. It asked to be kept informed of developments in the enactment procedure and to receive a copy of the adopted text of the section of the new act relating to time off for breast-feeding in one of the official languages of the Council of Europe.

The Committee regretted that the report did not answer the question of the right of women employed in sectors for which an exception was made when the Netherlands ratified ILO Convention No. 103 (occupations carried out in agricultural undertakings, other than plantations and domestic work for wages in private households) to time off for breast-feeding: it insisted that the next report contain the information requested, specifying, inter alia, whether the Working Hours Bill applied to such employed women.

The report also mentioned an investigation by the Minister of Social Affairs in 1990-1991 into the actual situation with regard to breastfeeding. The Committee was interested to read of this investigation, and noted that, firstly, most collective agreements did not contain provisions relating to time off for breast-feeding; that, secondly, 71 % ; of the companies questioned knew that such time off should be paid; and that finally, women had the right to breast-feed their child for a period of between one and six months in 75 % of these companies and for a period of less than one month in 18 % of the companies. The Commiittee noted that the results of this investigation did not contradict the information supplied to the ILO by the FNV. It hoped that this situation would be remedied, particularly when drafting the current reform.

Although it appreciated the efforts made, the Committee was obliged, in view of the absence of any significant changes during the reference period, to reiterate its negative conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee examined the information included in the report of the Netherlands.

Regulation of night work for women in industrial employment

The Committee noted from the report that these regulations (Section 28 of the 1919 Labour Act) had been incorporated in the new Working Hours Bill which was currently before the Upper House of Parliament. The Committee wished to know whether any changes to the existing rules had been considered on this occasion and asked to be kept informed of any developments in the enactment procedure.

Meanwhile, it renewed its positive conclusion under Article 8 para. 4a.

Prohibition of the employment of women in certain dangerous, unhealthy or arduous work
In its previous conclusion, the Committee had considered that there was no longer any need for the prohibition of underground work in mines in the Netherlands as, according to the report, such work no longer existed.

In its previous conclusion (Conclusions XIII-1, p. 184), the Committee had asked a series of questions on the prohibition of other work dangerous, unhealthy or arduous for women workers so as to be able to assess the situation. It regretted that the report did not reply to these questions and thus repeated them, insisting that the next report contain the requested information:

"As the information provided was very general, the Committee asked for the next report to give more substantial and detailed information and to state, inter alia, how Article 3 (f) of the aforementioned Working Conditions Act was applied, whether - and if so how - its implementation every case was monitored, and how the different arduous or dangerous aspects mentioned in the report were taken into account in this context. It also asked whether, in accordance with its case law (Conclusions X-2, p. 98), there were not some dangerous activities, such as those involving contact with benzene, prohibited to women in order to protect motherhood, particularly pregnancy, child-birth and the postnatal period, as well as future children".

The report only mentioned the publication of a Decree of 10 May 1994 to implement European Community Directive 92/85 on the introduction of measures to improve the safety and health at work of pregnant workers and workers who had recently given birth or were breastfeeding. According to the report, the purpose of the decree was to improve the safety and health of workers during pregnancy and breastfeeding and it laid down obligations for both employers and female employees. The Committee was not in a position to assess the position only on the basis of the information given in the report. It asked the government to include the necessary information in its next report.

According to the Netherlands Trade Union Confederation (FNV), there was no prohibition on work which was dangerous for the health of female workers and the provisions in Netherlands safety and health legislation, which only stipulated that employers could not oblige women to do such work, were ineffective as they did not prevent employers from "authorising" women to perform work which was dangerous for their health.

In reply to the FNV, the government had pointed out that the policy of equal treatment for women and men had led it to limit special protection for women to pregnancy and confinement. However, it drew the government's attention to its case law (Conclusions X-2, p. 97), according to which the prohibition of the employment of women in work which was unsuitable for them by reason of its dangerous, unhealthy or arduous nature applied, inter alia, to the protection of "motherhood, notably pregnancy, confinement and the post-natal period, as well as future children", which went beyond the limits mentioned by the government.

Having noted from the 1992 General Report of the ILO Committee of Experts the maximum permissible doses of ionising radiation adopted on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP), in particular those applicable to pregnant women executing tasks involving direct exposure to radiation, the Committee asked whether the legislation took into account the limits laid down by the ICRP.

The Committee insisted that the next report contain all the information requested to enable it to assess whether the situation met the requirements of the Charter. Meanwhile it was obliged once again to defer its conclusion as regards Article 8 para. 4b.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee regretted that the Dutch report contained no information on the protection of health. It asked that the next report provide information in response to the questions in the Form for Reports.

...It also wished to receive comments on the rate of maternal mortality (10 per 100,000 live births between 1980 and 1992).

Pending receipt of the information requested, the Committee reiterated its positive conclusion.

Norway

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Committee noted that an Act on the Prevention and Control of Infectious Diseases had been brought into force in Norway over the reference period. Its objectives were to protect people against infectious diseases, to ensure that health and other authorities implemented the necessary control measures and to safeguard the legal protection of individuals.

The act clarified the rules regarding confidentiality and the right to information about infection or non-infection of others. It contained provisions for medical examinations and vaccinations to be carried out in emergency situations. The duties of infected persons were established by law, including their duty to seek medical advice, undergo medical examination and give information about other persons contacted and potentially infected. Measures were to be taken whenever possible with the consent and co-operation of those concerned, although coercive measures could be applied to infected persons. The Committee asked to be informed which illnesses this covered and of the results of the implementation of the new act.

The Committee also requested that the next report provide information on the vaccination programmes available, including information on the type of vaccinations carried out, to whom they were administered, whether they were compulsory and whether they were free of charge.

Meanwhile, the Committee reiterated its positive conclusion.

Spain

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information pertaining to the application of this provision by Spain.

Right to maternity leave

The Committee noted, in the 1994 Observation of the ILO Committee of Experts on Spain's application of Convention No. 103 (Maternity Protection), that the UGT (General Union of Workers) had stated that domestic employees did not in practice enjoy maternity protection because it was possible for their employers to terminate their employment contracts prematurely by "renunciation" (desistimiento) (Section 10 sub-section 2 of Royal Decree No. 1424 of 1 August 1985 governing the special nature of the employment relationship of domestic employees). The UGT stated that employers thus terminated contracts as soon as they become aware of pregnancies. In reply, the government had explained to the ILO that the renunciation procedure applied only to fixed-term contracts.

The Committee requested that in addition to the issues raised under Article 8 para. 2, the next report contain information about this renunciation procedure, particularly the conditions to which it was subject, and about the practice of renunciation where pregnant employees were concerned.

The Committee reiterated its positive conclusion, but on a provisional basis.

Right to adequate benefits

The Committee noted from the report that the Tax, Administrative and Employment Provisions Act No. 42 of 30 December 1994 had added Chapter IV A on maternity to the revised text of the General Social Security Act,

providing that maternity benefit be paid throughout maternity leave (sixteen weeks) at a rate equal to the full amount of the basis for calculation.

The Committee asked whether, as previously, the level of benefit was equal to 75 % of the wage and whether a ceiling still existed. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

The Committee drew the government's attention to the general question raised in Conclusions XIII-1 (p. 172). In this context, it had already noted that under the above-mentioned 1994 Act, the payment of maternity benefit was subject to a nine-month affiliation requirement prior to childbirth and to 180 days' contributions during the year immediately preceding the start of maternity leave; it wished to learn what women workers who did not fulfil the above-mentioned conditions of affiliation and contribution were entitled to receive. It also asked that the other information requested be given in the next report.

The Committee also referred to the renunciation procedure applicable to domestic employees described in relation to maternity leave (Section 10 sub-section 2 of Royal Decree No, 1424 of 1 August 1985 governing the special nature of the employment relationship of domestic staff) and it wished to know to which maternity benefits pregnant domestic employees were entitled when the employer used the renunciation procedure.

The Committee reiterated its positive conclusion, but on a provisional basis.

[With regards to Article 8 - The right of employed women to protection; Paragraph 2 - Illegality of dismissal during maternity leave].

The Committee noted from the Spanish report that Act No. 11 of 19 May 1994 had reformed the rules on dismissal by amending certain provisions of the Workers' Statute.
It noted there was still no Provision expressly prohibiting the dismissal of an employed woman during her maternity leave or at such a time that the notice of dismissal expired during such leave. It therefore assessed the situation in the light of common practice on dismissal.

The Committee recalled that it had adopted a negative conclusion because there were more possibilities for dismissal under Spanish law than were allowed under Article 8 para. 2 (the Committee had always held that the prohibition laid down in this provision could be lifted if an employed woman was guilty of misconduct which justified breaking off the employment relationship, if the undertaking concerned ceased to operate and if the period prescribed in the employment contract had expired).

The version of the Workers' Statute as amended by the 1994 Act still vided for three types of dismissal, although there were some differences in relation to the previous situation:

- dismissal on disciplinary grounds (Section 54) was unchanged, and therefore still corresponded to dismissal for misconduct, which the Committee had recognised as a legitimate reason for terminating the employment relationship;

- collective dismissal (new Section 51) had replaced the termination of the employment contract for technological or financial reasons or in cases of force majeure. It could be used for economic or technical reasons or for reasons relating to organisation and production, which could only correspond to the grounds allowed by the Committee where the undertaking in question ceased to operate (Section 55 paragraph 1 sub-paragraph 3);

- the termination of contracts for objective reasons (Section 52) still prised four possibilities. Three of these remained unchanged: lack of skill on the worker's part that became known or manifested itself after his effective recruitment to the undertaking; a worker's failure to adapt to technological changes in his job; and the worker's absence work, even justified, if it occurred repeatedly and represented 20% of the working days in any two consecutive months or 25% of the working days in any four non-consecutive

months during the course of a year. The fourth possibility was the duly attested need to eliminate jobs for one of the reasons laid down for collective dismissal and for a smaller number of workers than was established for such dismissal. These grounds were wider than those allowed by the Committee.

The 1994 Act also replaced the old wording of Section 55 paragraph 6, which had stipulated that the dismissal of a worker whose contract was suspended (which was still the case for female employees absent on maternity leave, as Section 48 paragraph 4 of the Workers' Statute had not been amended) was deemed null and void unless ruled lawful by the competent authority. Now, the only rule was that where the grounds alleged by the employer were proved, the dismissal was lawful (Section 55 paragraph 4) and if this allegation was not proved or if the prescribed formalities (Section 55 paragraph 1) had not been respected, the dismissal was unlawful (Section 55 paragraph 4).

In its comments, the General Workers' Union (UGT) criticised the deletion of the old Section 55 paragraph 6 because in its view such a deletion meant that the dismissal of a pregnant employee could no longer be declared null and void, which had previously involved her reinstatement; it stressed that this constituted a reduction of protection at a time (suspension of contract) when full protection was most needed.

The report referred to the new Section 55 paragraph 5, which it considered provided an effective safeguard against the dismissal of a female employee during her maternity leave. This provision stipulated that dismissal was null and void if based on one of the grounds of discrimination prohibited by the Constitution or by law, or where it violated the worker's fundamental rights and public freedoms.

The Committee noted from the report that dismissal on the grounds of pregnancy would therefore be null and void because it would constitute discrimination based on sex, but it felt that collective dismissal and dismissal for objective reasons did not, as such, represent cases of discrimination. The Committee was also not convinced by the reference in the report to Articles 24 paragraph I and 39 paragraph 2 of the Constitution.

In these circumstances, the Committee noted that the amendments made had not brought the situation into line with the Charter.

Lastly, the Committee referred to its conclusion under Article 8 para. 1 to the effect that employers could prematurely terminate domestic staff's employment contracts by renunciation (*desistimiento*) (Section 10 para. 2 of Royal Decree No. 1424 of 1 August 1985, governing the special nature of the employment relationship of domestic staff). Where Article 8 para. 2 was concerned, it wished to know whether employers could still resort to such premature termination of contracts while an employee was on maternity leave.

Given that the grounds for dismissal provided for by Spanish law as amended by the 1994 Act were still wider than those set out by the Charter for the dismissal of an employed woman during her maternity leave or at such time that the notice of dismissal expired during this leave, the Committee had to conclude that the situation was still not in compliance with the requirements of the Charter and requested that it remedied.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee noted from the Spanish report that Section 37 para. 4 of the Workers' Statute, which applied to time off for nursing mothers and regulated this in a manner which had been deemed satisfactory by the Committee, had not been amended.

The Committee regretted that the report gave no reply to the question concerning any incompatibilities between the application of common law and the special nature of the employment relationship of domestic staff (additional provision of Royal Decree No. 1424 of 1 August 1985, governing the special employment relationship of domestic staff). It hoped that the government would expressly indicate in each report whether such instances of incompatibility had or had not been found by the courts.

Pending receipt of the requested information, the Committee reiterated its positive conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 4 - Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers].

The Committee noted in the Spanish report that pursuant to Act No. 11 of 19 May 1994, which amended certain sections of the Workers' Statute, the regulation of night work for women in industrial employment was now governed by the new section 36 of this Statute.

The act, which did not distinguish between workers according to sex, retained the same definition of the night-time period, restricted night work to eight consecutive hours per twenty-four hours averaged over a fifteen-day period, defined as night work that carried out when at least three hours of the working day or one-third of annual working hours were worked at night, prohibited overtime on night work (which was already the case) and provided for a collectively negotiated higher rate of pay, which could be replaced by additional time off.

Section 36 para. 4 provided for health and safety protection for those working nights: special protection adapted to the nature of the work, free medical examinations before starting night work and at regular intervals thereafter and the right to transfer to daytime work in the event of health problems associated with night work.

The Committee noted with interest that the new provisions were in accordance with its case law (Conclusions X-2, p. 97) and asked for information on their practical application, and on the application of governors' powers to take other steps to control night work in certain occupations or for particular categories of worker, in accordance with the health and safety risks involved (section 36 para. 1, in fine).

The Committee noted that employers were required to notify the employment authorities of any regular use of night work. The report stated that as this provision had come into force on 13 June 1994, it was not yet possible to provide statistics on women's employment in night work in industry (Questions B and C of the Form). The Committee hoped that the next report would include the relevant statistics, which had already been requested in the previous conclusion.
The report did not reply to the Committee's request for information on progress made in drafting general legislation on health. It hoped that the next report would reply to this question, indicating in particular whether special measures had been taken for the protection of women, women who had recently given birth or who were nursing their infants and who were assigned to night work, or whether other provisions provided such protection.

The Committee also took note of Spain's denunciation of ILO Convention No. 89 (Night Work - Women). It asked whether the ratification of Convention No. 171 (Night Work) was envisaged or in process.

Since the improvements brought about by the 1994 legislation applied to a situation already considered to be satisfactory the Committee confirmed its positive conclusion with respect to Article 8 para. 4a.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

The Spanish report contained, under Article 11 para. 1, an update of the percentage of children vaccinated and gave an indication of other programmes covering vaccination against german measles for women of child-bearing age, an influenza vaccine for persons aged over sixty five and at-risk groups, as well as tetanus programmes.

According to the report, assistance for Aids victims was the responsibility of the primary care service, with diagnosis and screening provided as well as psychosocial assistance. The Committee asked that the next report provide annual statistics on the number of HIV+ persons, of Aids sufferers and of Aids-related deaths.

Meanwhile, the Committee considered that Spain continued to meet the requirements of this provision of the Charter.

Sweden

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information contained in the Swedish report.

Right to maternity leave

The report indicated that changes to parental allowances had taken effect from 1 January 1995 (outside the reference period) and stated that the legislation did not make part of the maternity leave obligatory since it was the practice for female employees who had just given birth to exercise their right of absence. According to estimates, 98 % took leave of absence and the remainder took sick leave.

In the absence of compulsory post-natal leave of six weeks, the Committee was obliged to reiterate its negative conclusion.

Right to adequate benefits

The report mentioned that a new act concerning parental leave had entered into force on 1 July 1995 (also outside the reference period). The Committee, noted from the information submitted that the amount paid to the employee during her maternity leave would no longer amount to 90% of her income for one year, but to 90 % of the qualifying income for sickness allowance for the first sixty days of leave and to 80% of this income for the following three hundred days. The Committee asked what the qualifying income for sickness benefit was and what the payments made represented in relation to the employee's previous income. Having noted that women not entitled to income-related maternity benefits were paid a flat-rate daily allowance of 60 Swedish kroner, the Committee asked whether employed women were included in this measure.

The Committee expressed its regret that the report did not reply to the general question on Article 8 para. 1 asked in Conclusions XIII-1 (p. 172); it asked that the next report provide the information requested.

Finally, the Committee asked whether maternity benefits were subject to a ceiling, and whether this ceiling was set according to the reference wage or to the amount of the allowance. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

Subject to examination of the requested information, the Committee reiterated its positive conclusion.

[With regards to Article 8 - The right of employed women to protection; Paragraph 3 - Time off for nursing mothers].

The Committee took note of the replies provided by the Swedish Government to the questions it had asked in its previous conclusion (Conclusions XIII-1, pp. 180-181).

The report referred to the wide possibilities for extended leave and part-time work provided after childbirth. The Committee considered that this could not be regarded as time off for breast-feeding within the meaning of Article 8 para. 3, because the very concept of "time off" implied that the breaks occurred during working hours.

The report also stated that female employees' right to time off for breast-feeding purposes carried no guarantee of payment (Section 4 of the 1978 Parental Leave Act) and that the new Parental Leave Act which entered into force on 1 July 1995 did not alter the situation in this respect.

The Committee recalled that according to its established case law, time off for breast-feeding should be deemed to be hours of work and remunerated as such (Conclusions 1, p. 51; see also Conclusions XIII-3, p. 312). The fact that there was no guarantee of remuneration for time off for breast-feeding was therefore incompatible with the requirements of the Charter.

Finally, the Committee took note of the fact that the percentage of six month-old children still being breast-fed was steadily increasing (49 % in 1987; 58 % in 1992).

The Committee hoped that the Swedish Government, concerned with preserving women's free choice, would arrange for time off for breastfeeding in conformity with the requirements of the Charter for those women who wished to work, particularly full-time. In the meantime, the Committee was obliged to conclude that as there was no paid time off for breast-feeding, the situation was incompatible with the requirements of Article 8 para. 3 of the Charter.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Swedish report provided substantial information on health care.

... The government stated that a new central agency, the National Institute of Public Health (NIPH), had been created on 1 July 1992 to promote health and prevent diseases. The Committee learned that one of its most important tasks in the field of health education, centred around programmes on allergies, prevention of alcohol and drug abuse, Aids and other sexually transmissible diseases as well as programmes on women's, children's and adolescent's health. The Committee wished to be kept informed of the activities of this institute.

In view of information provided, the Committee reiterated its positive conclusion.

Turkey

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The Committee recalled that it had previously concluded negatively, particularly with regard to the insufficient number of measures taken to lower the very high rate of perinatal and infant mortality. For this reason it reiterated its negative conclusion while drawing the Turkish Government's attention to the seriousness of the situation which called for efficient measures to be taken without delay.

[With regards to Article 11 - The right to protection of health; Paragraph 3 - Prevention of diseases].

As regards the Turkish report, the Committee bore in mind the fact the government had not been able to respond to the questions asked in its previous conclusion, owing to the reporting system. Nevertheless, it took note of the updated statistics and information provided in the report covering, *inter alia*, malaria, food and water analysis, and Aids.

The Committee noted the updated information on the number of persons HIV+ and of Aids victims, showing that there were 59 deaths caused by Aids and a total of 177 Aids sufferers and 295 persons HIV+ in 1995. Various activities were being carried out to enhance public awareness, such as training programmes and seminars within a project jointly implemented by the World Health Organisation and the Turkish Government.

Pending receipt of the information requested, the Committee deferred its conclusion once again, drawing the government's attention to the questions posed in its previous conclusion.

United Kingdom

[With regards to Article 8 - The right of employed women to protection; Paragraph 1 - Maternity leave].

The Committee examined the information contained in the report of the United Kingdom.

Right to maternity leave

The Committee noted from the report that the rules on maternity leave had been amended upon implementation of Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. This was done through the Trade Union Reform and Employment Rights Act 1993 and the Maternity Allowance and Statutory Maternity Pay Regulations 1994. The changes took effect in June 1994 in respect of all female workers due to give birth from 16 October 1994.

The new rules provided for fourteen weeks of maternity leave, which the report stated was available to all female employees. However, the Committee noted from an explanatory brochure annexed to the report that police officers were excluded from the scope of the rules. It therefore asked what arrangement was made for them.

Maternity leave could begin as early as eleven weeks before the expected date of confinement. It was compulsory for a woman to take a minimum of two weeks off at the time of the birth. According to the report, this was to comply with the minimum obligatory period of leave laid down in Community Directive No. 92/85. The Committee reminded the United Kingdom that in accepting Article 8 para. 1, it had undertaken to bring its legislation into conformity with this provision which, according to the Committee's case law, required an obligatory period of post-natal leave of at least six weeks. Hoping that the government would undertake the necessary steps to remedy the situation, the Committee concluded once more that the United Kingdom was not in conformity with the Charter on this point.

Right to adequate benefits

Female employees on maternity leave were entitled to statutory maternity pay (SMP) or maternity allowance for eighteen weeks. The Committee noted that the qualifying conditions for both payments had changed. In order to obtain SMP, a woman had to have been with her employer for at least twenty-six weeks by the fifteenth week before the expected date of delivery and to have had an average weekly wage of at least 57 Pounds sterling during the previous eight weeks. The Committee was pleased to note that these criteria were easier to fulfil than those described in Conclusions XII-1 (p. 150) and that 90 % of employees who had taken maternity leave under the new rules had qualified for SMP. Maternity allowance was payable to women who had paid National Insurance contributions for a minimum of twenty-six weeks prior to confinement.

The manner of calculating SMP had not changed, being 90 % of average weekly earnings for the first six weeks, followed by twelve weeks at a flat rate. At the end of the reference period, this rate was 52.50 Pounds sterling. Maternity allowance also came to 52.50 Pounds sterling at the end of the reference period, which represented a more significant increase, as it had always been lower than SMP in the past. However, the Committee did not consider that these sums could be considered as adequate for the purpose of Article 8 para. 1 of the Charter.

The Committee asked whether SMP was subject to a ceiling, and whether this ceiling was set according to the reference wage or to the amount of SMP. If this was the case, the Committee requested that the next report indicate whether and how compensation was awarded for wages higher than the ceiling and give figures for the number of women earning more than the ceiling, the wage bracket of this category or at least the average monthly wage for executive women, the basis for calculation of the ceiling and the way in which it was adjusted.

A woman who failed to meet the qualifying conditions for either SMP or maternity allowance would have to seek sickness benefit, which could last for six weeks before the birth until fourteen days afterwards. The Committee repeated that this arrangement was unsatisfactory.
In view of these considerations, the Committee considered that. the situation in the United Kingdom was still not satisfactory in view of the low amounts of benefit paid during maternity leave and of the inadequacy of the current system for women who were not eligible for either of the two main forms of maternity benefit. It therefore reiterated its negative conclusion on this point.

[With regards to Article 11 - The right to protection of health; Paragraph 1 - Removal of the causes of ill-health].

The United Kingdom report contained a broad outline of the activities undertaken in the health field over the reference period.

The Committee took note that a White paper entitled "Health of the Nation" was published in 1992 which highlighted target areas for health improvements in England in diseases such as coronary heart disease and strokes, cancers, mental illness, HIV/Aids and sexual health. In Scotland, priority areas also included smoking, alcohol and drug misuse, dental and oral health, with a special focus on lifestyle hazards including smoking, diet and exercise. As efforts were being made, inter alia, to reduce smoking, improve diet and nutrition, reduce average blood pressure counts and reduce drug abuse, the Committee hoped to receive a summary of the progress reports issued to date.

Finally, the report stated that efforts were being made to continue to heighten public awareness of HIV/Aids. The Committee hoped to receive more detailed information in the next report on funds allocated to supporting Aids programmes, as well as the latest figures on the number of people suffering from Aids/HIV.

In the light of the information received, the Committee reiterated its positive conclusion.

[With regards to Article 11 - The right to protection of health; Paragraph 2 - Advisory and educational facilities].

Reference was made in the United Kingdom report to information contained under Article 11 para. 1.

The Committee noted the funds provided by the Department of Health to the Health Education Authority for raising public awareness on various issues, including alcohol misuse, Aids and vaccination programmes. These funds had increased over the reference period to a total of 41.9 million Pounds sterling.

The Committee reiterated its positive conclusion. However, it insisted that the next report under this provision provide a response to the questions in the Form for Reports, which was lacking since the ninth supervision cycle.

5) COMMITTEE OF INDEPENDENT EXPERTS, CONCLUSIONS XV-1, 1999-2000

Between September 1999 and March 2000, the European Committee of Social Rights set up under Article 25 of the European Social Charter examined national reports relating to the first part of the fifteenth supervision cycle submitted by *Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Iceland, Italy, Malta, Norway, Portugal, Spain, Sweden, Turkey*, and the *United Kingdom*.

The Conclusions concern the provisions of Articles 1, 5, 6, 12, 13, 16 and 19 accepted by these countries, and the reference period was 1997-1998.

Included in this compilation are comments made with reference to reproductive and sexual health under the following Articles: Article 1, paragraph 2 (The right of the worker to earn his living in an occupation freely entered upon); Article 12 (The right to social security); Article 13 (The right to social and medical assistance); Article 16 (The right of the family to social, legal and economic protection).

Austria

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

Elimination of all forms of discrimination in employment

As regards *discrimination based on sex* the report lists the measures taken by the public employment services in order to promote equal opportunities and women's employment. A number of positive measures reflect the priority given by the Austrian Government to non-discrimination between the sexes. Low levels of qualification among women, which often do not go further than basic compulsory education, have required the public Employment Service to focus its efforts on training and educational schemes.

In addition, the Committee takes note that the equality-oriented programmes started during the previous reference period continued to be successfully implemented in the present reference period, particularly in the areas of vocational guidance for young women and support to women with family obligations (ie. support for childcare, re-employment allowances, etc.). These programmes have allowed 1.5 % more women to find employment in 1997 than in 1993 and the participation rate of women in employment rose from 35.1 % to 35.7 %.

Responding to the Committee's request for information on the amendments to the Equality of Treatment Act No. 833/1992, the report presents the improvements introduced by the Fourth Amendment (BGBL. No. 44/1998), notably the creation of new infrastructures at central and regional level in order to facilitate the lodging of complaints. The Ombudsman for Equality of Treatment is entitled to open regional centres under the licence of the Federal Chancellor. The Committee would like the next report to state how many such centres have been opened and give information on their activities.

The Committee notes that the courts have discretionary powers in determining the amount of compensation to be awarded in cases of discrimination. The report confirms that in the past, levels of compensation have been insufficient, mainly as regards cases of equal treatment. The report states, however, that compensation levels is one of the issues presently under discussion with the social partners with a view to introducing a further amendment to the Equality of Treatment Act. The Committee wishes to be informed of progress in this matter.

The Committee notes that the discussions commenced with the social partners during the previous reference period, concerning the establishment of a monitoring system, an increase in compensation levels and changes to the rules on the burden of proof, have not yet been concluded. It therefore renews its request to be kept informed of all further developments.

With respect to *other forms of discrimination* the report, states that the prohibition of discrimination against the disabled was introduced into the Austrian Federal Constitution on 9 July 1997. As a consequence, on 19 January 1998 a working

group was set up with the aim of identifying provisions in Austrian legislation that discriminate directly or indirectly against people with disabilities. The Committee notes that the report of this working group was submitted in spring 1999 and hopes to find information about its content in the next report.

Pending receipt of the information requested, the Committee concludes that the situation continues to comply with Article 1 para. 2 of the Charter with respect to the elimination of discrimination in employment.

[With regard to Article 12 – The right to social security; Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102]

During the reference period, Austria complied with the requirements of the five parts of ILO Convention No. 102 which it has accepted (medical care, old-age benefits, employment injury benefits, family benefits and maternity benefits).

The Committee considers accordingly that the situation in Austria is also in conformity with Article 12 para. 2 of the Charter.

[With regard to Article 13 – The right to social and medical assistance; Paragraph 1 – Social and medical Assistance for those in need]]

Medical assistance is provided on the same statutory basis as social assistance.

The report provides comprehensive statistics on social and medical assistance in Austria, notably the concerning the number of beneficiaries per province and the overall level of expenditure. It asks to receive similar data in the next report covering the next reference period.

In light of the information in its possession, the Committee concludes that the situation is in compliance with Article 13 para. 1 of the Charter.

[With regard to Article 13 – The right to social and medical assistance; Paragraph 4 – Social and medical assistance for nationals of Contracting Parties lawfully within the territory of another Contracting Party]

The report of Austria states that in all provinces, social and medical assistance is available to nationals of other Contracting Parties to the Charter, lawfully present but not resident within the state, in cases of emergency.

The Committee therefore concludes that the situation in Austria is in conformity with Article 13 para. 4 of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee recalls that, following the reform of family law in the early 1970s, spouses now enjoy equal rights between themselves and in respect of their children.

Belgium

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

Elimination of all forms of discrimination in employment

As regards *discrimination based on sex*, the Committee notes from the Belgian report that the level of unemployment among women remains significantly higher than for men workers. Women also continue to be mainly employed in what is seen as traditionally female work. In order to find a positive outcome to this problem, the federal social partners have

reviewed collective agreements, with a view of fostering equal opportunities and promoting women in all the sectors in which they are under-represented.

In order to facilitate the integration of women on the labour market, the Committee notes the measures introduced allowing for a better reconciliation of work and family life (ie. the Royal Decree of 6 February 1997 relating to career breaks).

Following the Inter-ministerial Conference on immigration policy in April 1998, a collective agreement (CCT No. 38 of 17 July 1998) was reached, including a new anti-discrimination clause for employment, covering a wider range of situations. According to this new clause, employers cannot discriminate between job candidates on grounds of "age, sex, civil status, medical records, race, skin colour, national or ethnic origin, political or philosophical conviction, membership of a trade union or other organisation". Furthermore, the clause enables any person who has been the victim of such a discrimination to lodge a complaint with the labour tribunal, although the burden of proof remains on the plaintiff.

This clause refers only to recruitment and does not cover forms of discrimination that may occur in the course of the employment contract.

In the meantime, the Committee concludes that the situation in Belgium is in conformity with Article 1 para. 2 with respect to the elimination of all forms of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system]

The Committee notes that the main social security developments in Belgium in 1997-98 followed up the measures taken during the previous reference period concerning which it requested explanations in order to make an assessment of their conformity with Article 12 para. 3.

[...] Secondly, as regards phasing out the more favourable retirement pension calculation rules for women, the Committee notes that the following measures may offset reductions in women's pensions to a certain extent:

> – establishment of a transitional period from 1 July 1997 to 31 December 2008, during which women's retirement age is being raised by one year every three years until it reaches sixty-five and the fraction used for calculation purposes is being increased in the same gradual way;
>
> – periods during which a claimant (usually a woman) temporarily stopped working in order to raise a child under the age of six will be treated as periods of employment for calculation of the overall length of service, up to a maximum of twenty-four months.

The Committee finds that the developments in the old-age pensions branch which according to the previous report aim to ensure the financing of the pension scheme taking into account the ageing of the population and the situation of the labour market are in conformity with Article 12 para. 3. It considers that the measures to offset the impact of the reform on women's pensions, and in particular the introduction of a minimum right per year of service, are appropriate to the aims pursued.

The Committee finds that the developments in the Belgian social security system satisfy the requirements of Article 12 para. 3 of the Charter.

[With regard to Article 13 – The right to social and medical assistance – Paragraph 1; Social and medical assistance for those in need]

With respect to *medical assistance*, the Committee recalls that it has already deemed the situation to be in compliance with the Charter.

Pending receipt of the information requested on the effective right to social assistance granted to nationals of other Contracting Parties to the Charter, and further details on the suspension of benefit, the Committee defers its conclusion.

[With regard to Article 16 — The right of the family to social, legal and economic protection]

Legal protection of the family

The Committee notes that the Belgian Civil Code provides that parents exercise joint parental authority whether married or not. The principle of joint authority also applies after a divorce (see Conclusions XIV-1, p.131).

Cyprus

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

Elimination of all forms of discrimination in employment

With respect to *discrimination based on sex*, the report of Cyprus refers to the Government's policy of non-discrimination in employment. Measures have been undertaken in relation to education and training to encourage less stereotypical assumptions about female career choices. These include encouraging girls to pursue technical education as well as broadening the career possibilities for women through training programmes, such as "Working women: Empowerment for reaching higher targets". Recalling that the rate of participation by women in the programmes organised by the Industrial Training Authority had declined significantly over the two previous supervision cycles, the Committee now notes that this trend appears to have been reversed. Female participation in initial and continuing training courses in 1998 rose to 36 %. The Committee wishes to receive information in future reports both on the rate of female participation in training and the nature of courses offered to them.

The report refers to an increasing number of women employed in senior, managerial and professional posts, although the figures quoted go no further than 1996. The Committee wishes to see data on this point in the next report covering the current and subsequent reference periods (ie. 1997-98 and 1999-2000).

As for *other forms of discrimination*, the report lists the various legal texts which prohibit discrimination on such grounds as race, religion, ethnic origin, language, political or other convictions (Section 28(2)) of the Constitution, (the Termination of Employment Law No. 24/67) and relevant ILO Conventions that, according to the Constitution (Section 169), are superior to domestic law. No mention is made of any problems in practice of discrimination in employment. The Committee asks that the next report contain details of any such difficulties, especially concerning nationals of the more recent Contracting Parties to the Charter and the Revised Charter.

[With regard to Article 12 — The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security]

In its previous conclusion, the Committee noted that there was no general medical care scheme covering the entire population: only certain categories of the population are covered. Having learned that outside the reference period a bill was drafted to introduce general coverage for health care, the Committee asks that the next report contain information on this subject.

Pending receipt of this information, the Committee concludes that the situation in Cyprus remains in conformity with Article 12 para. 1 of the Charter.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system]

The Committee notes from the report by Cyprus that besides the changes mentioned in the conclusion under Article 12 para. 2, other amendments to the social security system occurred during the reference period.

For example, Law No. 80(I)/1998, amending the Social Insurance Law of 1980, provides for an automatic increase in the basic rate of long-term benefits (old-age, invalidity or survivor's pension) where the rate is lower than the maximum basic pension rate. In addition, maternity benefit is now paid to adoptive mothers where the adoption occurred during the first five years of the child's life (rather than the first four years, as before).

The Committee concludes that the situation in Cyprus remains in conformity with Article 12 para. 3 of the Charter.

[With regard to Article 19 — The right of migrant workers and their families to protection and assistance; Paragraph 8 – Security against expulsion]

According to the Cypriot report, Law No. 54/1976 prohibits the expulsion of migrant workers unless they endanger national security or offend against public interest or morality. In Conclusions VI (p. 126), the Committee considered that the grounds for expulsion permitted under this law conform to the wording of Article 19 para. 8.

Nonetheless, referring to its conclusion on Article 19 para. 2, the Committee asks whether workers systematically tested on arrival in Cyprus are expelled on the grounds that they endanger public interest or public health where they test positive for AIDS, hepatitis or venereal disease.

The Committee also asks that the next report state confirm or update the information provided in the third report by Cyprus on the right of appeal to a court or other independent body by migrant workers who have been expelled.

Finally, the Committee asks if other rules apply with respect to the expulsion of children who are minors. It also wishes to be informed of the consequences of the expulsion of a migrant worker for his family.

Pending receipt of the requested information, the Committee defers its conclusion.

Denmark

[With regard to Article 12 - The right to social security; Paragraph 3 – Progressive improvement of the social security system].

There have been several changes in the unemployment branch. Act No. 377/1997 has relaxed the conditions for entitlement to unemployment benefit after a period of sickness or maternity or parental leave. To be eligible for unemployment benefit, job-seekers must be able to prove that they have worked for fifty-two weeks over the past three years. This period, to which there were formerly no exceptions, has been extended to a maximum of five years if the individual concerned had to cease work on account of illness or to look after a sick child or a dying person, following study, parental or maternity leave.

Act No. 892/1997 now grants sickness benefits to parents who cease full-time or part-time work because of the serious illness of a child aged under fourteen. The benefit level is the same as it would have been had the parent been ill.

The Committee also notes the changes introduced by Act No. 1111/1997, which has extended by two weeks the period in which social benefits are paid to parents who request parental leave following the birth or adoption of a child.

It also takes note of Act No. 1045/1998 which has introduced changes into the system of reimbursing the cost of medicines. These changes will come into force in March 2000 (outside the reference period). The Committee asks that the next report describe the reasons for these changes, the social and economic policies of which they form part and the results obtained.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive Improvement of the social security system]

From the statistical data in the report and the appendices, the Committee notes that all the social benefits have been increased in line with inflation during the reference period and that the number of recipients has remained stable.

There have been several changes in the unemployment branch. Act No. 377/1997 has relaxed the conditions for entitlement to unemployment benefit after a period of sickness or maternity or parental leave. To be eligible for unemployment benefit, job-seekers must be able to prove that they have worked for fifty-two weeks over the past three years. This period, to which there were formerly no exceptions, has been extended to a maximum of five years if the individual concerned had to cease work on account of illness or to look after a sick child or a dying person, following study, parental or maternity leave.

The Committee also notes the changes introduced by Act No. 1111/1997, which has extended by two weeks the period in which social benefits are paid to parents who request parental leave following the birth or adoption of a child.

Subject to the information requested, the Committee concludes that the situation in Denmark remains in conformity with Article 12 para. 3 of the Charter.

[With regard to Article 13 – The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need]

A voluntary scheme has been introduced to allow a claimant's spouse choose to continue to work at home. The condition of availability for employment no longer applies to such persons. An allowance of 2,144 DKK is paid to the claimant in respect of their spouse (Sections 13 (5), 26(3)). In such cases, no claim can be made for special support for high housing expenses or a heavy burden of maintenance (Section 34(1) and (3)).

The Committee takes note of the level of social assistance benefits, as set out in Section 25 of the 1997 Act. It notes that these have scarcely increased since the end of the last reference period (1996). For example, the rate of benefit for an adult with dependent children rose from 9,057 DKK in 1996 to 9,100 DKK in 1998. The rate for an adult without dependants rose from 6,803 DKK to 6,825 DKK. These increases amount to less than 0.5%. The Committee observes that the rate of inflation stood at 2.2% in 1997 and 1.8% in 1998. It wishes to receive the comments of the Danish authorities on this failure to ensure that benefits keep pace with increases in the cost of living, and to be informed of the criteria which guide the Government in indexing benefit.

The Committee concludes that the situation is not in conformity with Article 13 para. 1 of the Charter on the ground that non-nationals who are lawfully resident in Denmark do not enjoy the same entitlement to social assistance as nationals.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee recalls that in Denmark, the payment of family benefits is subject to a residence requirement for children in Denmark. In its previous conclusion the Committee considered that this residence requirement constituted indirect discrimination against nationals of states not covered by Community Regulation No. 1408/71 (nationals of Cyprus, Malta and Turkey and, for the present reference period, Polish and Slovakian nationals), these nationals being potentially more affected than Danes by the non-payment of family allowances for the reason that their children do not reside in Denmark. As for

article 12 para. 4, the Committee requested confirmation from the Danish Government that measures would be taken to eliminate such a possibility. The Government does not indicate any change in this respect. As a result, the Committee notes the persistence of indirect discrimination against Cypriot, Maltese and Turkish nationals resident in Denmark whose children do not reside there.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 16 of the Charter, as equal treatment is not guaranteed as regards entitlement to family allowances.

[With regard to Additional Protocol Article 1 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex].

Situation in law and practice
The Committee notes from the Danish report that the aim to promote equality between men and women, *inter alia*, in employment, education and training is laid down in the Act on Equal Opportunities between Men and Women (Equal Opportunities Act) No. 238/1988. The Act obliges the public authorities to promote equality within their field of action. For this purpose they may take measures of positive action. The Act established the Equal Status Council which may examine situations falling under the Act either on its own initiative or after they have been referred to it.

The Consolidation Act on Equal Pay for Men and Women No. 639/1992 (Equal Pay Act) lays down the principle of equal pay for men and women, including equal pay conditions, for the same work or for work of equal value. The Committee recalls that it has held that the situation is in conformity with Article 4 para. 3 of the Charter following amendments to the Act, according to which a worker who has been dismissed as a result of a claim for equal pay or equal working conditions, shall be reinstated. If this is considered unreasonable, the worker concerned will be entitled to compensation of up to a maximum of 78 weeks (Conclusions XIII-3, pp. 218-219).

Employees who consider that their rights under the Act have not been respected have access to court. The Act provides that if an employee has been dismissed following a claim for equal pay, the employer must show that the dismissal was not a result of the claim. The burden of proof also rests with the employer in case there are differences in the remuneration between male and female employees. The employer must then show that the work performed is not of the same value. The Committee notes from the report that most cases concerning violation of the above-mentioned Act are settled by industrial arbitration.

The Consolidated Act on Equal Treatment of Men and Women as regards Access to Employment, Maternity Leave, etc. No. 213/1998 (Equal Treatment Act), protects both men and women against discrimination in access to employment, transfers and promotions; in access to vocational guidance, training and re-training; in terms of employment and working conditions including dismissal. The Act also contains provisions to protect workers in case of pregnancy, confinement, etc.

The Act provides that clauses in agreements and workplace regulations that are discriminatory shall be declared null and void.

In cases of dismissal because of pregnancy, maternity leave etc., the worker shall be reinstated and only if this is not possible compensation of up to 78 weeks salary shall be paid to the dismissed worker. In these cases the burden of proof rests with the employer.

However, in cases of dismissal following alleged discrimination in access to training and promotion and with respect to working conditions, it appears that the Act does not provide for reinstatement, but for compensation of up to 39 weeks salary. Moreover, in these cases the burden of proof does not rest with the employer. The Committee would like the next report to confirm that it has correctly interpreted the legal situation.

It recalls that Article 1 of the Protocol requires states to provide for adequate safeguards against discrimination

and retaliatory measures. "Legislation must provide for the rectification of the situation concerned – in the case of dismissal - reinstatement and compensation for any financial loss incurred during the intermediate period" (Conclusions XIII-5, p. 256). It also recalls that it has held that 39 weeks salary is not sufficient to deter the employer in particular in cases where the law does not even provide for reinstatement (Conclusions XII-1, pp. 96-97). Finally, it recalls that an alleviation of the burden of proof is required under Article 1 of the Protocol. "Where persons who consider that the principle of equal treatment as guaranteed by this provision has not been applied to them, establish before a court or other competent body, facts from which discrimination may be presumed to exist, is shall than be for the respondent to show that the apparent discrimination is due to objective factors unrelated to any discrimination based on sex" (Conclusions XIII-5, p. 256).

The report states that it is estimated that the courts have decided about 200 cases concerning equality based on the Equal Treatment Act. Most of these cases deal with dismissal in connection with pregnancy and maternity. In most cases, compensation corresponding to six months' salary is granted.

There is also an Act on Equal Opportunities between Men and Women concerning certain Executive Board Positions in the Public Administration (No. 427/1990). It provides that all authorities in the civil service directed by boards, councils or other collective management should have a balanced composition of men and women.

Furthermore, the Official Secrets Act and the Public Administration Act include provisions concerning objective administration; which according to the report, in itself is a protection against gender discrimination.

The Danish Co-operation Agreement in the field covered by the Danish Employers' Confederation (DA) and the Confederation of Danish Trade Unions (LO) includes a supplementary agreement concerning equal treatment in relation to both gender and ethnic background. This agreement has been in force since 1 May 1999. In the agreement the social partners commit themselves to work actively to promote equal treatment in working life. In the municipal/county sector, some collective agreements include references to the legislation, for instance the agreements on wage formation and on maternity.

The Committee observes that according to the Danish authorities social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, are not excluded from the scope of Article 1. It therefore asks whether differences exists between men and women in matters relating to such benefits and/or whether equality of benefits may lead to indirect discrimination.

The Committee notes that under the Equal Treatment Act it is lawful to have special provisions concerning protection of women, mainly in connection with pregnancy and maternity. It notes the summary of the regulations on maternity leave, etc. and, in particular, that an employer may not dismiss an employee for having claimed the right to absence or for having been absent due to pregnancy, maternity or adoption.

The Committee observes that in connection with the performance of certain types of professional activities where the sex is of decisive importance, the relevant Minister may grant deviations from a number of provisions concerning equal treatment after having consulted the interested parties. As an example is mentioned that the Ministry for Ecclesiastical Affairs has issued an Order making it possible for religious communities to decide themselves whether to employ female priests. It was considered to be of decisive importance for the performance of the office of priest that the communities could decide the sex of the priest. The Committee would like to know which other exemptions of this kind have been granted.

The report states that the activity rate of both women and men is very high in Denmark. It also states that the labour market is highly sex-segregated, which is considered to be one of the main reasons why wage differences still exist between men and women. In the autumn of 1999 a campaign was launched with the purpose of identifying the causes of wage differentials and formulating recommendations to counteract these problems.

The Committee would like the next report to contain exhaustive information on the situation in practice in respect of all four areas specified in this provision. It refers in this respect to Question E of the Form for Reports and to its general observation in Conclusions XIII-5, pp. 256-257.

Positive action

The Committee notes that a Minister for Equal Opportunities was appointed in October 1999 to deal with the question of gender equality. The Minister is contemplating measures of positive action. The Committee asks to be informed in future reports about any measures taken in this respect.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

Finland

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment

With respect to *discrimination based on sex*, the Committee notes that the Finnish Government's Plan of Action for the Promotion of Gender Equality Programme 1997-1999 was approved in February 1997. According to the report it is a tool of official equality policy which defines the aims pursued and the measures to be taken. The Committee wishes to be informed of the results of the action plan.

In reply to the Committee's question concerning the potentially disadvantageous effects for women of certain labour market schemes, the report confirms that women still account for a large majority of workers taking leave under the Job Alternation Leave Scheme (71 % in 1997). The report emphasises, however, that the scheme is completely gender neutral, while adding that recently the proportion of men going on leave has increased somewhat. Moreover, a follow-up study has shown that the experiences of the participants in the scheme, both those going on leave and those hired as replacements, were mainly positive. The job alternation scheme does not seem to have had a negative impact on the labour market status of the workers going on leave. On the contrary, it provides an opportunity for self-motivated training and education which may in fact reinforce the position in the labour market of the workers concerned.

The Committee notes that in 1998 about 90 % of those benefiting from the part-time pay supplement were women. The report states that the available information does not permit an accurate analysis of the impact of this scheme on the career and labour market status of the participants. It would seem, however, that the opportunity to shift from full-time to part-time work provided by the scheme in many cases is used by the participants to spend time on training, thus upgrading their qualifications and presumably their status in the labour market.

Pending receipt of the information requested, the Committee concludes that the situation is in conformity with Article 1 para. 2 of the Charter as regards the elimination of all forms of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system]

The Finnish report states that during the reference period the Government continued its efforts to rationalise the social security schemes and control public spending on social security so as to meet the requirements of Economic and Monetary Union. The high unemployment rate is still the main concern and a number of the reforms undertaken are aimed at reducing the number of unemployed, particularly by making active job-seeking more profitable and increasing training opportunities.

In addition, consultation for and treatment of certain contagious diseases which must be notified (sexually ransmitted diseases and HIV infection) are now free of charge.

Improvements have been made to family allowances. On 1 January 1997, the payment period for adoptive parents' allowance was increased from 100 to 180 days, the children's age limit being increased from six to seven. Allowances for multiple births or premature births are now also payable for a longer period.

[With regard to Article 12 - The right to social security; Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security].

With respect to states not bound by Community regulations:

— Equal treatment

Maternity and paternity allowance

Payment of maternity and paternity allowance is also subject to a residence requirement for a period of 180 days before the birth of the child.

The Committee considers that, since these allowances are non-contributory, the residence requirement is permitted by the appendix to the Charter relating to Article 12 para. 4. In this particular case, it does not find the period of residence excessive in relation to the aims pursued.

Conclusion

The Committee concludes that Finnish social security legislation is not in conformity with Article 12 para. 4 of the Charter, as on one hand equal treatment is not guaranteed for entitlement to family benefits and on the other the aggregation of insurance or employment periods is not ensured for all the nationals of the Contracting Parties to the Charter.

[With regard to Article 13 – The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need]

The Finnish report indicates that Act No. 1412/1997 on Social Assistance entered into force on 1 March 1998, the Decree on Social Assistance No. 66/1998 of 30 January 1998 took effect on the same date. Under the act, social assistance is defined as a measure of "last resort", intended to ensure the minimum support necessary for a life of human dignity and to help recipients to live independently (Section 1). No group is excluded from assistance, according to the report. The criterion is need (Section 2). Social assistance comprises basic benefit and supplementary benefit. The former covers the assistance needs of individuals and families. Supplementary benefit covers items such as higher housing and health care costs, as well other expenses which arise from the particular circumstances of the recipients (Section 7).

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee refers to its comments in the previous conclusion (Conclusions XIV-1, p. 234) on equality between spouses and marital property regimes.

It notes that the law on custody and access to children was amended in 1996: it now emphasises the role of mediation between the parents and to this end provides for the development of training for psychologists and social workers.

— Family advice and support services

The Committee takes note of the different family welfare services mentioned in the previous report (conciliation service, children's guidance service, family counselling, mother and child homes and hostels for victims of domestic violence). It observes that situation did not change during the reference period.

Conclusion

The Committee concludes that the situation in Finland does not comply with Article 16 of the Charter, as equal treatment in entitlement to family allowances is not guaranteed.

France

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment

The French report indicates that during the reference period there were no major changes in the legislative and institutional framework for non-discrimination in employment. Emphasis continues to be put on promoting equal treatment between women and men and combating race discrimination.

With respect to *discrimination based on sex*, the report states that regional employment services are expressly instructed and receive adequate financial means for putting in place and following up balanced employment policies. The Committee notes that special attention is given to the vocational resettlement of long-term unemployed women through the creation and development of more flexible work schemes and childcare facilities.

Moreover, the Committee notes that positive measures introduced in the late eighties continued to be applied during the reference period, such as professional equality contacts and measures to prevent sex-based discrimination in employment. Diversification of employment opportunities for women and their access to professions in which they are still under-represented have been encouraged through individualised "c*ontrats pour la mixité des emplois"* (1,500 since their introduction), as well as through special in-company training courses.

The Committee also observes that within the overall programme for equal opportunities, a series of campaigns has been implemented, aimed at awareness-raising among trade unions, associations, labour inspectorates as well as courts and police services in relation to issues of sexual harassment at the workplace.

It also notes that according to the case law, the burden of proof is now on the employer as far as the justification of wage differences is concerned.

With respect to *other forms of discrimination*, the Committee takes note of several education and awareness programmes carried out during the reference period to combat race discrimination. A working group has been created in order to envisage measures to improve the application of the non-discrimination principle. The Committee wishes to be informed in the next report of measures implemented in this field.

In the meantime, the Committee concludes that the situation in France remains in conformity with Article 1 para. 2 of the Charter with respect to the elimination of all forms of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system]

The Committee notes that a number of restrictive measures have been adopted under family benefits policy:

– Order No. 96-50 of 24 January 1996 establishes the principle of means testing for the allowance for young children (*allocation pour jeune enfant*), payable from the fourth month of pregnancy until a child is three months old;
– subsidy of social-insurance contributions for employing someone to take care of children in the home (*allocation de garde d'enfant à domicile* - AGED) has been halved, as has the limit on the corresponding tax reduction.

It also notes that a means test was introduced for assessing entitlement to family allowances, but was subsequently abolished by the 1999 Finance Act, outside the reference period.

Noting that these measures are prompted by the Government's concern to make financial transfers in favour of families more equitable, while at the same time restoring the financial equilibrium of the family benefits branch and that they correspond to this aim, the Committee finds that these developments do not contravene Article 12 para. 3.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

As for other forms of social assistance, the report indicates that in addition to RMI, the following benefits exist to ensure a guaranteed minimum income to certain sections of the population. These are:

> – Lone parent benefit (API). This benefit is paid to single parents with young children, up until the youngest child reaches the age of three years. The benefit is also payable to a single woman during pregnancy. At the start of the reference period, 149,000 recipients of this benefit, which was worth 3,163 FRF for a pregnant woman and 4,217FRF for a single parent with one child (per month). Each additional child raised the amount by 1,054 FF. By the end of the reference period, the last two amounts had increased to 4,293 FRF and 1,073 FRF;
>
> – Survivor's insurance benefit (AAV). This is a temporary benefit, usually lasting three years, to aid the occupational resettlement of a person widowed before the age of fifty-five years, ie. before the age at which they may claim a survivors' pension. The recipient must have either raised a child for at least nine years before its sixteenth birthday, or be responsible for at least one child at the time of bereavement. 15,600 persons received this benefit at the start of the reference period. The value of the benefit decreases over the three years of payment. At the start of the reference period, it amounted to 3,073 FRF per month for the first year, 2,019 FRF for the second year and 1,537 FRF for the third year. These amounts had increased by 2.3% by the end of the reference period; ...

The Committee concludes that the situation in France is not in conformity with Article 13 para. 1 of the Charter, since nationals of certain other Contracting Parties to the Charter are obliged to fulfil a length of residence requirement of three years before being allowed to receive RMI. They are also subject to a length of residence requirement for entitlement to certain other forms of assistance provided by the Code de la Famille et de l'Aide Sociale. Furthermore, the exclusion of those under the age of twenty-five years from RMI, and the insufficiency of alternative arrangements for providing them with social assistance in case of need, is not in conformity with this provision of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

According to the information provided in the previous report, parental authority is exercised jointly only if both parents recognise the child before its first birthday and are living together at the time of concurrent recognition or that of recognition by the second parent. Where these conditions are not met, parental authority may be assigned to the mother (Article 374 of the Civil Code, as amended by the Act of 8 January 1993).

Conclusion
The Committee concludes that the situation in France does not conform to Article 16 of the Charter on the following grounds:

> – there is indirect discrimination against nationals of certain Contracting Parties by virtue of the continuing requirement that dependent children must be resident in France in order to qualify for family benefit;
>
> – the bilateral convention between France and Turkey is discriminatory in its conditions for the payment of dependence benefit in respect of children of Turkish nationals where the former are resident in Turkey.

Greece

[With regard to Article 12 - The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security]

The Committee takes note of the answers to the question asked in its previous conclusion. It observes that a social security system is maintained in Greece and therefore concludes that the situation is in conformity with Article 12 para. 1 of the Charter.

[With regard to Article 12 - The right to social security; Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security]

Furthermore, the Committee notes that, under the terms of Presidential Decree No. 527/1984, entitlement to family allowance is conditional on the children concerned being resident in Greece or in another state which is a member of the European Union or party to the Agreement on the European Economic Area. As a result, Cypriot, Maltese, Turkish, Polish and Slovak nationals whose children are not resident in Greece were not entitled to family allowances during the reference period.

The Committee considers that maintaining this residence requirement for children of nationals of certain Contracting Parties to the Charter, the Greek legislation is in breach of Article 12 para. 4 as its application may lead to indirect discrimination. The foreign nationals concerned are more affected than nationals by the non-payment of family allowance on account of non-residence.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

The report indicates, in reply to a question raised by the Committee in the previous conclusion, that the official group which reviewed the issue of Greece's non-compliance with Article 13 para. 1 of the Charter proposed that the right to income support be clearly enacted. This was done in Section 22 of the Act. According to this provision, income support programmes for families, maternity, children, persons with special needs, repatriated Greek emigrants and persons without resources shall be established by ministerial decision, which shall determine the conditions, nature and amount of such assistance. Since the Committee previously concluded that the situation was not in conformity with the Charter on the basis that the criteria for granting assistance allow too broad a discretion to the authorities, thereby undermining the effectiveness of judicial review in such matters (Conclusions XIV-1, p. 359), it views Section 22 of the Act with interest. It asks to receive a detailed description in the next report of the implementing measures taken under this provision, especially the conditions for granting assistance, the nature of such assistance and the amounts paid out to persons without resources. Information should also be supplied to allow the Committee to evaluate the adequacy of the assistance provided in relation to the cost of living in Greece.

With respect to *medical assistance*, the Committee considers that the situation is still in conformity with the Charter.

Considering that the situation in Greece, previously considered not to be in conformity with Article 13 para. 1 of the Charter, did not change during the reference period, the Committee concludes that this situation is still not in conformity. It nevertheless welcomes the adoption of Act No. 2446/1998 and hopes that its implementation during the next reference period will serve as the basis for a social assistance system in conformity with Article 13 para. 1 of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

In reply to the Committee's question, the report gives details of the changes that have been made to family law, particularly in respect of provisions concerning relations between spouses in the event of divorce and the protection of children.

Amongst these changes, the Committee notes that the courts may decide to grant the family home to the spouse who is not the owner if this should prove necessary as a result of the living conditions of one of the spouses, in the interests of the children or in the event of abandonment. They may also decide to maintain joint parental responsibility for minor children in the event of separation of the parents.

This information does not allow the Committee to make an assessment of whether the situation in Greece meets the requirements of Article 16 of the Charter in relation to family allowances. The Committee asks that in order for it to make this assessment the next report includes the information requested in the Form for the application of the part of the European Code of Social Security relating to family benefits, ie.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 16 of the Charter, as equal treatment is not guaranteed as regards entitlement to family allowances.

Iceland

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment
In relation to *discrimination on the basis of sex*, the report states that the four-year plan of action to establish equality between women and men under Section 17 of the Sexual Equality Act No. 28/1991 remained in force until the end of 1997. The minister presented a report to Parliament at the end of this period evaluating the status of individual parts of the project, this evaluation being based mainly on reports submitted by the ministries involved to the Office for Gender Equality. The Committee notes with interest the activities carried out in this respect under the auspices of the different ministries.
It further notes that in 1997 the Parliament approved a new four-year plan on measures to achieve gender equality covering the period from 1998 to 2001. This plan emphasises that gender equality is a matter of human rights. In its presentation of the plan the Government stressed that equality issues concern both women and men and that collaboration involving both sexes is essential, if results are to be achieved. According to the report, the Government aims to have the principle of equality introduced into all official policy formulation and decision-making.

The Committee concludes that the situation is in conformity with this provision of the Charter with respect to the elimination of all forms of discrimination in employment.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

Finally, the report states that persons who have not completed the six-month qualifying period for health care under the Health Services Act can still receive necessary medical assistance if they are without resources. The Committee notes from the information supplied under Article 13 para. 4 that an exemption may be made to the rules on the qualifying period by the State Social Security Institute. The exemptions are stipulated in Section 8 of Regulation No. 463/1999 and concern, *inter alia*, urgent illness and contagious diseases. The Charter confers on persons without adequate resources, in case of sickness, the right "either to financial assistance allowing them to meet the costs of treatment necessitated by their condition or to free health care" (Conclusions XIII-4, p. 57). The Committee considers that the situation in Iceland does not conform to the Charter in this regard.

The Committee concludes that the situation in Iceland is not in conformity with Article 13 para. 1 of the Charter because of the six-month residence requirement for medical assistance.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Family policy

Family allowances

The Committee notes that new legislation on child benefits (grouping general family benefits together with supplementary benefits) was adopted in 1997. It would like to know what changes are introduced by this law.

It recalls that under the Income Tax Act No. 75/1981, family allowances paid in respect of any child under sixteen years of age are conditional on the child being resident in Iceland, whatever his or her nationality. Where supplementary benefits are concerned, the Committee recalls that they are subject to a residence requirement, and that in some cases there may also be a qualifying period.

The child pension, for example, which is paid when one parent of a child is deceased or in receipt of a disability pension, is subject to the child or one of the parents having been resident for three years prior to the date of application for the benefit. The childcare payments granted to parents responsible for looking after a child with a disability or suffering from a chronic illness are conditional on the parents being resident in Iceland. The same applies to the motherhood and fatherhood allowances paid to single parents with dependent children under eighteen years of age.

Conclusion

The Committee concludes that Iceland is not in conformity with Article 16 of the Charter, as equal treatment is not guaranteed as regards entitlement to family allowances.

Italy

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

The Committee takes note of the brief information in the report of Italy with respect to the elimination of all forms of discrimination in employment. Most of the questions asked in the previous conclusion have, however, remained unanswered.

Pending receipt of the information requested, the Committee defers its conclusion as regards the elimination of all forms of discrimination in employment.

[With regard to Article 12 - The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security]

The Committee takes note of the developments in social security in Italy during the reference period with respect to the population protected, the risks covered and the level of benefits and how they are funded. It finds that a social security system has been maintained in Italy and concludes therefore that the situation in Italy is in conformity with Article 12 para. 1 of the Charter.

[With regard to Article 12 — The right to social security; Paragraph 2 – Maintenance of a social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102].

The Committee recalls that Italy has accepted three parts of ILO Convention No. 102 – parts V (old-age benefit), VII (family benefit) and VIII (maternity benefit) – and has accepted the corresponding parts of the European Code of Social Security as well as part VI of the Code (work-accident and occupational-disease benefit).

The Committee had previously noted that Italy attained the level of ILO Convention No. 102 in only two branches and had asked the Government for information enabling it to determine whether Italy reached the level of Convention No. 102 in a third branch of social security, the required minimum to comply with Article 12 para. 2. It takes note of the conclusions of the ILO Committee of Experts concerning the application by Italy of the European Code of Social Security from 1 July 1997 to 30 June 1998, which pointed out a significant improvement in the field of family benefits. The ILO Committee of Experts notes with interest that the total value of family benefits now reaches the percentage prescribed by the Code and therefore finds that Italy's legislation and practice guarantee the application of the three parts of the Code which it has accepted.

Reiterating that the levels specified in the parts of the Code accepted by Italy and in ILO Convention No. 102 are much the same, the Committee notes that Italy attains the level for ILO Convention No. 102 in these three branches.

The Committee concludes therefore that the situation in Italy is in conformity with Article 12 para. 2 of the Charter.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

In the absence of information on the existence of an individual right to social assistance in all areas of the country, on an effective right of appeal to an independent authority and on any particular conditions laid down at regional or local level, the Committee concludes that the situation remains in breach of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection]

The Italian report shows that discussions on a coherent and integrated family policy were launched in 1995. The Committee takes note of the initiatives taken in this regard.

Legal protection of the family

The Committee recalls that husbands and wives have the same rights and obligations in marriage (Article 143 of the Civil Code).

The Committee notes that under Articles 315 to 337 of the Civil Code, married and unmarried parents, on condition that they live together, share parental authority. In the event of separation or divorce, parents continue to share parental authority, but it is exercised exclusively by the parent who has been granted custody of the child. However, the Civil Code provides that decisions of major importance for the child must be taken by both parents together.

Family policy

The Committee recalls that the general condition for the payment of family benefit is that the child concerned must be resident in Italy. It also recalls that such a condition is not compatible with the requirements of Article 16 insofar as it creates a risk of indirect discrimination, as the nationals of certain Contracting Parties are more likely to be concerned by non-payment than nationals.

Conclusion

The Committee considers that the situation in Italy is not in conformity with Article 16 as equal treatment is not guaranteed as regards entitlement to family allowances.

Malta

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

According to the report, the Department of Women's Rights has instituted a review of Maltese legislation. The Committee wishes to be informed of the outcome and follow-up of this exercise.

The report contains no information on *other forms of discrimination*, despite the Committee's request in the previous conclusion. The Committee asks that this information be included in the next report.

Pending receipt of the requested information, the Committee concludes that the situation in Malta is in conformity with Article 1 para. 2 of the Charter with respect to the elimination of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security].

The Maltese report states that the 1987 Social Security Act established a universal comprehensive social security system.

The Committee takes note of the reply to its question about discrimination based on sex and the information regarding the changes made with effect from 1 January 1998, which have eliminated any remaining discrimination in this area. Survivor's pension, which used to be higher for women, is now the same for widows and widowers. For sickness benefit, a single rate is now applied to married people, irrespective of sex.

The Committee notes that Malta maintains a social security system and concludes that the situation is in conformity with Article 12 para. 1 of the Charter.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

The Committee regrets that the Maltese report under this provision contains very little information, making no reference to its questions in the previous conclusion. It requests that the next report provide information concerning this provision specifically and reply to its questions.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 2 – Non-discrimination with respect to persons receiving social and medical assistance].

The report does not provide any information whatsoever under this provision. The Committee recalls that the two previous reports also failed to respond to the questions posed concerning the application of Article 13 para. 2 in Malta. It cannot but defer its conclusion once more and insist that the Maltese authorities provide a full account of the manner in which all political and social rights are maintained in full for persons in receipt of social or medical assistance.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee recalls that by virtue of the civil code as amended by Act No. XXI of 1993, spouses have the same rights and responsibilities in wedlock (section 2 of the Civil Code).

The Committee recalls that there is no provision for divorce in Maltese law. Legal separation is possible only on specific grounds (adultery, threats and cruelty, unjustified desertion lasting at least two years, irreparable breakdown of the marriage provided that the couple have been married for at least four years). Once the separation has been pronounced, the judge decides which of the parents will have custody of any children, in the best interests of the latter.

Family policy

— Measures of compensation for family costs

Malta has not ratified either the European Code of Social Security or ILO Convention No. 102.
As stated in the previous report, family allowances have been subject to means testing since July 1996. Now only those parents with children under 21 years of age whose combined income does not exceed 10,000 LM are entitled to family allowances. The Committee asked for information concerning the impact of this measure. However, the report contains no information indicating whether family allowances cover a significant number of families or provide families with sufficient supplementary income. In this particular case, the Committee is unable to verify the situation in Malta by this indirect method as it has done for other Contracting Parties, since Malta has not ratified the European Code of Social Security. In the absence of ratification, the Committee requests that the next report supply the information requested on the part of the form concerning the application of the European Code of Social Security which relates to family benefits…

Conclusion

The Committee concludes that the situation in Malta is not in conformity with Article 16 of the Charter, as equal treatment is not guaranteed as regards entitlement to family allowances.

Norway

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive Improvement of the social security system].

The Committee observes that in this case the measures adopted in the unemployment branch are very stringent, compelling the person concerned to accept a job regardless of his skills, qualification or prior occupational experience, or of their personal and family situation when the proposed job entails a change of residence. The Committee considers that in a situation close to full employment and of economic growth (see the conclusion under Article 1 para. 1) the adoption of measures which are so restrictive is not proportionate to the objectives pursued and does not come within the range of adaptations of the social security systems permissible under Article 12 para. 3.

The Committee concludes that the development of the situation in Norway during the reference period was not in conformity with Article 12 para. 3 of the Charter.

[With regard to Article 12 - The right to social security; Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security].

— Equal treatment

The report also confirms that in order to qualify for family benefits, the children in respect of whom they are paid, without distinction as to nationality, must be resident in Norway. Family benefits are not awarded in respect of children resident in Norway for less than twelve months.

The Committee considers that by maintaining a residence requirement in Norway for children of nationals of certain Contracting Parties to the Charter, Norwegian legislation is in breach of Article 12 para. 4 as its application may lead to indirect discrimination. The foreign nationals concerned are more affected than nationals by the non-payment of family allowance on account of non-residence in Norway.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

The Committee concludes that the situation in Norway is not in conformity with Article 13 para. 1 of the Charter since nationals of other Contracting Parties who are legally resident in Norway are subject to a length of residence requirement of three years before they may receive social assistance on the same basis as nationals.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee points out that the Marriage Act of 4 July 1991 establishes equality between spouses in relation to assets. It also points out that under Norwegian law children have the right to state their views in cases concerning them, in particular those brought to decide who shall have custody of them when their parents fail to come to an agreement on the subject (Section 32 of the Children Act of 8 April 1991).

Conclusion

The Committee considers that the situation in Norway fails to comply with Article 16 of the Charter as equal treatment is not guaranteed as regards entitlement to family allowances.

Portugal

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment

With respect to *discrimination based on sex*, the Committee takes note of the extensive information provided by Portugal in relation to combating discrimination in employment. The Constitution Act No. 1/1997 of 20 September introduced a number of amendments to the Constitution to strengthen existing protection against discrimination. Article 9 was amended so as to include as a basic, positive duty of the state the promotion of equality between men and women (para. h). Section 26 was amended to expressly provide for legal protection against all forms of discrimination. This provision is directly applicable and binds both the state and private persons. In addition, Act No. 105/1997 of 13 September concerns the right to equal treatment between men and women in employment. It lays down a statutory definition of indirect discrimination, and provides for the reversal of the burden of proof in sex discrimination cases. Trade unions are accorded *locus standi*, regardless of whether the potential victim takes action. In order to facilitate the detection of discriminatory acts, public and private bodies are required to conserve all recruitment records for five years, as well as the criteria applied and the results they produced. Acts of sex discrimination will, without prejudice to any further sanction, be subject to a fine amounting to between five and ten times the highest statutory minimum wage. In the case of repeated offences, the fine is doubled and further sanctions apply, such as publishing notice of the discrimination in a national newspaper and posting the same information in the workplace.

With a view to promoting equal opportunities, the Government approved a plan in Resolution No. 49/1997 of 24 March comprising 7 main objectives and 51 measures. these include more effective implementation of existing legislation, the creation of an observatory in the Equal Employment Opportunities Commission to monitor collective labour instruments and raise awareness of equality issues among the social partners, and the granting of technical and financial aid to female entrepreneurs. The first review of the plan was carried out in March 1998 and underlined inter-ministerial co-operation, and information and awareness-raising activities among national, regional and local officials, teachers and local representatives. The report also mentions the equality dimension of the national employment plan for 1998, specifically combating gender segregation and pay disparity.

As for enforcement of the law, the report indicates that the Labour Inspectorate drew up a total of 131 contravention reports relating to sex discrimination during the reference period. The Equal Employment Opportunities Commission delivered twenty-two opinions in 1997 and 18 in 1998, most of which concerned the dismissal of pregnant workers. Updated figures are provided for the number of women in the professions which were restricted to men up until 1974, indicating ongoing progress towards a better gender balance.

Regarding *other forms of discrimination*, the Committee notes that the quota on the recruitment of foreign workers, which it considered to be inconsistent with Article 1 para. 2, was abolished by Act No. 20/98 of 12 May 1998, which provides for equal treatment for non-national workers.

The Committee concludes that the situation in Portugal is in conformity with Article 1 para. 2 in relation to the elimination of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system].

The Portuguese report gives an account of the developments since 1996 in the social security system, which mainly concerned invalidity, maternity, family, occupational accident and occupational sickness benefits.

A specific invalidity pension scheme for persons infected with HIV was introduced by Legislative Decree No. 213/98 of 16 July 1998: conditions under this new scheme are more favourable than those applied under the general scheme, particularly as regards the qualifying period and the amount of the pension.

Special leave of six months (this period may be extended) was introduced to enable one of the two parents to care for a severely disabled or chronically sick child. Entitlement commences during the child's first year and an allowance is payable during the period of leave.

In addition, the Committee notes the progressive increase of the duration of maternity leave from 98 days to 120 days (Act No. 18/1998 of 28 April 1998).

The Committee concludes that the social security system in Portugal is in conformity with Article 12 para. 3 of the Charter.

[With regard to Article 12 - The right to social security; Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security].

— Equal treatment

The Committee recalls that, in the absence of a social security agreement between Malta and Portugal, Maltese nationals in Portugal do not have access to the national health service (non-contributory scheme) since, under the law, foreign nationals are only entitled to health care on the basis of reciprocity. In reply to the Committee's question, the report states that the Portuguese authorities are unaware of any instance where a person was refused access to the national health service on the grounds that he or she was a Maltese national and therefore not covered by an agreement providing for reciprocity in health care coverage. The Committee recalls that the obligation contained in Article 12 para. 4 is not subject to reciprocity. It is therefore a positive obligation on Portugal which can be fulfilled by means of a unilateral measure. In view of the small number of persons concerned, the Committee urges that such a measure be taken. In the meantime, it considers that the situation is still not in conformity with this provision of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

The Committee notes that the measures taken to protect families in Portugal are part of a comprehensive, co-ordinated policy. It also notes that the action taken on family benefits and taxes reflects a desire to distribute resources more fairly among the population.

Legal protection of the family

The Committee observes that parental responsibilities are equally shared between both parents in Portugal, and that children’s interests are taken into consideration in proceedings concerning them.

Family policy

— Measures of compensation for the burden of family costs

Family allowances

The Portuguese report describes the main changes that have occurred since the coming into force of Legislative Decree No. 133/97, which introduced an element of redistribution into policy on offsetting family expenses.

The old family allowance, nursing mother's allowance and birth grant have now been replaced by a single allowance (the allowance for children and young persons), the amount being determined by the family's income and the number and age of dependants. When necessary, an additional allowance is paid to offset the extra cost to families of looking after disabled children under twenty-four years of age (disability supplement).

Conclusion

Pending receipt of information on the total value of family benefits, the Committee defers its conclusion.

Spain

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

With regard to *discrimination based on sex*, the report provides details on a number of initiatives to promote greater equality between men and women in employment. The third Plan for equality of opportunity between men and women was adopted on 8 March 1997 and covers the period 1997-2000. The ten areas covered include better integration of women into the labour market, offering support to women in rural areas and integrating an equality perspective in all relevant policies. Similar goals are pursued through the national Action Plan for Employment of 1998, which also promotes women's entrepreneurial activity. A specific programme for women in rural areas has been established for 1998-99 (GEA Network Project). It aims to provide technical and material assistance to women for the development of their own business, the creation of a panel of expert advisers and the development of suitable training modules.

The report recalls that discrimination in employment is classed as a serious offence under the Labour Standards Act, leading to fines imposed by the Labour Inspectorate ranging from 500,000 pesetas (PTA) to 15,000,000 PTA, without prejudice to any compensation which the employer may be ordered to pay on foot of proceedings taken by the victim or their representatives. Figures are provided on the activities of the Labour Inspectorate during the reference period relating to the combat against discrimination at work.

In relation to *other forms of discrimination*, the Committee takes note of the information in the programme for the development of the Gypsy people included in the report. The Programme identifies the inequality and social isolation of this community, due in part to poor standards of education. An estimated 500,000 to 600,000 Gypsies live in Spain, almost half of them in Andalusia. They face an array of social and economic difficulties, including poor housing, shorter life expectancy, poor health and limited access to employment. Since 1989, the Government has set aside a specific budgetary allocation for initiatives in favour of Gypsies, responsibility for which comes under the Ministry for Labour and Social Affairs. The Programme depends to a large degree on co-operation between the state and the autonomous communities. Projects are jointly approved and cover a variety of issues, such as better access to education, housing, training, employment and health. According to the report, approximately 8.5 billion PTA was spent on such measures in the period 1989-1998. The state provides financial assistance to NGOs working with the Gypsy community. Funded activities include the adaptation of itinerant trades to modern market requirements. Gypsies are represented on the Consultative Body for the Gypsy Development Programme. While quantitative data is available on the resources of all the different projects undertaken, the report states that qualitative assessment will necessarily take longer. Nevertheless, some indicators are already apparent, such as the diversification in occupational choice, with a move towards non-traditional activities in other sectors of the economy. Some autonomous communities, like Andalusia and Castilla y Leon have established specific regional programmes for the Gypsy community, and the report stresses the importance of regional and local efforts throughout the country. The Committee asks that the next report describe developments over the next reference period as well as results achieved.

As the report does not reply to the questions posed in the previous conclusion about the treatment of HIV sufferers and young persons on apprenticeship contracts, the Committee asks that these issues be addressed in the next report under this provision.

The Committee concludes that the situation in Spain is in conformity with Article 1 para. 2 of the Charter in relation to the elimination of all forms of discrimination in employment.

[With regard to Article 12 - The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security].

In reply to the Committee's question in its previous conclusion, the report states that under Royal Decree No. 15/1998 of 27 November 1998, part-time workers are now entitled to social security protection in proportion to their working hours, irrespective of how little time they work. This development does not concern health care in so far as Spain has introduced universal coverage in this branch.

The Committee concludes that the Spanish social security system still complies with Article 12 para. 1 of the Charter.

[With regard to Article 12 - The right to social security; Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security].

With respect to nationals of states not covered by Community regulations:

– the report confirms that nationals of the Contracting Parties with which Spain has not concluded a reciprocal agreement covering family allowances are not granted these allowances in respect of children not residing in Spain. During the reference period Cypriot, Maltese, Polish, Slovak and Turkish nationals were concerned;
– the reports states that if children are residing temporarily abroad for the purpose of studies, work, medical treatment or any other purpose which does not affect their status as a dependent child, family allowances continue to be granted during their stay abroad.

The Committee does not consider this possibility as sufficient to bring the Spanish situation into line with Article 12 para. 4. It considers that Spanish legislation, by maintaining a residence requirement for children of nationals of certain Contracting Parties to the Charter, may lead to indirect discrimination in breach of Article 12 para. 4. Foreign nationals are more concerned than Spaniards by the non-payment of family allowance in cases where children do not reside in Spain, whatever the length of the stay.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

The Committee concludes that situation in Spain is not in conformity with Article 13 para. 1 of the Charter, since minimum income benefit is subject to a residence requirement in all parts of the country. Furthermore, the fact that certain forms of social assistance are conditional on budgetary resources is not compatible with the Charter. Lastly, the setting of a minimum age limit of twenty-five years for the receipt of social assistance in most autonomous communities is not in conformity with Article 13 para. 1 of the Charter.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee notes that under the provisions of the Civil Code (Book I), spouses have the same rights and duties (Article 67), and that under Act No. 11/1981 of 13 May 1991 reforming family law, parents living together exercise joint parental authority irrespective of whether they are married.

Family allowances

The Committee reiterates that states that have accepted Article 16 of the Charter are expected to provide economic protection for families. It considers that the payment of sufficient family allowances is essential to provide this protection. The Committee draws the Spanish Government's attention to the fact that, during the present supervison cycle, it examined this question with reference to the European Code of Social Security. This instrument contains prescriptions on the amounts of family allowances and the number of people who should be entitled to them which enable it to evaluate systematically whether states have a family branch of social security offering effective benefits and whether they are providing adequate economic protection for families. Therefore, in order to ascertain whether this is the case, the Committee requests that the next Spanish report provide the information required in the Form for the application of the part of the European Code of Social Security relating to family benefits…

The report confirms that the nationals of Contracting Parties with which Spain does not have a bilateral agreement on the subject are not entitled to family allowances for children who do not live in Spain. During the reference period, this restriction applied to Cypriot, Maltese, Turkish, Slovak and Polish nationals.

The report states that family benefits shall continue to be paid for any period during which children reside temporarily abroad for the purposes of study, work, medical treatment, or any other purpose which does not affect their status as a dependent child.

The Committee considers that this entitlement is not sufficient to bring the situation in Spain into conformity with Article 16. It considers that, by maintaining a residence requirement for the children of nationals of certain Contracting Parties living in Spain, Spain's legislation may give rise to an indirect form of discrimination contrary to Article 16. The foreign nationals concerned are potentially more affected than Spaniards by the non-payment of family benefits when their children do not live in Spain.

Conclusion

The Committee concludes that Spain does not comply with Article 16 of the Charter as equality of treatment is not guaranteed as regards entitlement to family allowances.

Sweden

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment

As regards *discrimination based on sex*, the rules of the Equal Opportunities Act have been made more stringent especially as far as sexual harassment at work is concerned, by increasing the responsibility of employers and their duty to take preventive measures.

In 1998, a special investigator was appointed to further review the Equal Opportunities Act in the light of the requirements of the Community law (ie. Community Directive 97/80 on the burden of proof in cases of discrimination based on sex).

The investigator has examined strengthening provisions such as presumption rules, indirect discrimination, procedural rules, aspects of discrimination on ethnic and functional impairment. The Committee wishes to receive information on the conclusions reached by this special investigator.

It further notes that in 1999 (outside the reference period), new anti-discriminatory legislation was adopted, covering discrimination related to sex and sexual orientation, on grounds of physical and mental disabilities and ethnic discrimination.

The Committee concludes that the situation in Sweden is in conformity with Article 1 para. 2 of the Charter with respect to the elimination of all forms of discrimination in employment.

[With regard to Article 12 — The right to social security; Paragraph 1 – Establishment or Maintenance of a System of Social Security]

It notes that a social security system has been maintained and that the situation in Sweden is therefore in conformity with Article 12 para. 1 of the Charter.

[With regard to Article 12 — The right to social security; Paragraph 3 – Progressive improvement of the social security system]

The report and appendices refer to developments since 1996 in the Swedish social security system.

The Committee takes note of the following improvements:

> – with effect from 1 January 1998 sickness benefits were raised from 75% to 80% of the qualifying income. The sick pay paid by the employer for the first twenty-eight days of illness rose by the same amount, and the employer has also the possibility to pay a supplement to compensate for loss of income, equal to a maximum of 90% of the worker's normal salary, without any resultant reduction in sick pay;
>
> – a similar rise in parental benefit and maternity benefit took effect at the same date. In addition, pregnant women unable to perform their job in the late stages of pregnancy are entitled to fifty days' benefit during the last two months of pregnancy;
>
> – family benefits were also improved. At 1 January 1998, the basic level rose to 9,000 Swedish Krona (SEK) per child per year (from 7,600 SEK).

In order to establish whether Article 12 para. 3 is complied with, the Committee would like information on other changes which occurred during the reference period and in particular on the reform of the pension scheme and the changes introduced in the system of reimbursement of health care and medical costs. It requests that the next report indicate the reasons for these changes, the social and economic policy framework within which they took place and the results obtained.

Subject to the information requested, the Committee concludes that developments in the Swedish social security system during the reference period were in conformity with Article 12 para. 3 of the Charter.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

With respect to *medical assistance*, the report recalls that medical care is mainly financed by taxation. All residents are entitled to treatment, and, drawing on another source (MISSOC 1998), the Committee notes that there is no qualifying period for entitlement. It considers that the situation is in conformity with Article 13 para. 1 of the Charter in this regard.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

The Committee takes notes of the steps taken by Sweden to develop a comprehensive family policy, including provision for family perspectives in other policies.

Legal protection of the family

The Committee notes that under Swedish legislation spouses are on an equal footing as regards marital property regimes.

A series of measures has also been taken to ensure equality between parents in their relations with their children,

particularly after a separation. Joint custody of children in the event of divorce is very widespread in Sweden and it is now planned to extend it automatically to unmarried parents. The Committee wishes to be kept informed of the steps taken on this point.

The Committee notes that fuller account is taken of the child's interests under express provisions to that effect inserted into various laws. In addition, a bill designed to secure ongoing implementation of the United Nations Convention on the Rights of the Child is currently before Parliament. The Committee hopes that the next report will describe the action taken on the bill and detail its content.

Conclusion

The Committee concludes that the situation in Sweden is in conformity with Article 16 of the Charter.

Turkey

[With regard to Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

1. Elimination of all forms of discrimination in employment

With respect to *discrimination based on sex,* the report provides details concerning the survey "Increasing Female Employment," as requested by the Committee. The survey was aimed at finding the economic, social and cultural causes of the very low rate of women's employment, especially in urban areas, as well as evaluating the training courses provided by the National Employment Agency in order to foster female employment. The surveys have also looked at sectoral women's employment patterns (eg. textile, healthcare, employment in offices, the banking sector, etc.) and at the effectiveness and impact of existing vocational training schemes.

In view of the persistent low employment rate of women (only 15% in the urban areas), it appears to the Committee that the situation has not improved since the previous reference period. It therefore requests more information on the measures aimed to promote women's access to employment and the results obtained.

[With regard to Article 12 — The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security].

Turkey has three social security schemes: the SSK (Sosyal Sigortalar Kurumu) is the main scheme covering private-sector employees, the ES (Emekli Sandigi) covers civil servants and military personnel, and the BK (Bag Kur) covers the self-employed, including farmers. These schemes are managed by the public authorities and are financed with employee, employer and public-authority contributions. Insurance is compulsory for all employees and for the self-employed. The definition of a "dependant" is fairly broad. For example, women without a husband are regarded as dependants of their parents or their children regardless of their age. According to the report, if all risks and all schemes are taken into account, 88.4% of the population was covered in 1997 either as working or retired insured persons or as dependants.

The Committee notes from the report that an Act reforming certain aspects of the social security system came into force on 8 September 1999 (outside the reference period)…

The Committee therefore asks the Government to ensure that the next report give the number of people covered in the old-age, invalidity, death, medical care, sickness, maternity and work-accident and occupational illness branches. It would like to be informed of progress made with the plans to establish a general sickness-insurance scheme covering the population groups not protected by the existing social security schemes.

The Committee also notes that the Constitution recognises the right of everyone to social security (Article 60), but makes this conditional on budgetary constraints by providing that, "in meeting its economic and social obligations,

the state shall take account of economic stability and the availability of financial resources" (Article 65). Since welfare expenditure represents a low percentage of GDP and primarily relates to old-age and sickness benefits, which respectively accounted for 41% and 36% of welfare expenditure in 1997-98, the Committee would like to know what resources are made available for invalidity, death and maternity benefits.

Pending receipt of this information the Committee defers its conclusion.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

The Committee takes note of the information in the Turkish report.

Legal protection of the family

The Committee formerly noted that certain provisions in the Turkish Civil Code were contrary to the principle of equality between spouses and between parents. The provisions in question are set out in Conclusions XIII-3 (p. 384).

The latest report states that the draft legislation providing for equality between spouses and between parents, which the Committee noted in its previous conclusions, is now before Parliament. In this connection, the Committee stresses that it will not alter its opinion until those provisions which are contrary to the principle of equality are definitively repealed.

Conclusion

In the absence of measures to revoke provisions which are contrary to the principle of equality between spouses and between parents and to extend the scope of family allowances, the Committee again concludes that the situation in Turkey is not in conformity with Article 16 of the Charter.

United Kingdom

[With regard to Article 12 — The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security].

The Committee regrets that the report does not provide details on this essential reform of the social security system.

The Committee wishes to submit the changes made by this act to greater scrutiny. It therefore requests that the next report provide information on the content, scope and objectives of the changes made.

Pending receipt of the information requested, the Committee defers its conclusion.

[With regard to Article 13 — The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need].

With respect to *medical assistance*, the Committee takes note of the information supplied about current and proposed changes in the National Health Service. It considers that the situation remains in conformity with the Charter on this point.

The Committee concludes that the situation in the United Kingdom is still not in conformity with Article 13 para. 1 of the Charter, because during the reference period all social assistance claimants, both British and non-national, were subject to a habitual residence test which presupposes not only an intention to reside but also completion of an "appreciable" period of residence in the United Kingdom.

[With regard to Article 16 — The right of the family to social, legal and economic protection].

Legal protection of the family

The Committee recalls that in the United Kingdom, equality between spouses is recognised as regards marital property regimes.

Conclusion

The Committee concludes that the situation in the United Kingdom is not in conformity with Article 16 of the Charter as equality of treatment is not guaranteed as regards entitlement to family allowances.

6) Committee of Independent Experts, Conclusions XV-2, 2000

Between June and December 2000, the European Committee of Social Rights set up under Article 25 of the European Social Charter examined national reports relating to the second part of the fifteenth supervision cycle submitted by *Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Turkey*, and the *United Kindgom*.

The Conclusions concern the provisions of Articles 7, 8, 11, 14, 17 and 18 accepted by these countries.

Included in this compilation are comments made with reference to reproductive and sexual health under the following Articles: Article 7 (The right of children and young persons to protection); Article 8 (The right of employed women to protection); Article 11 (The right to protection of health); Article 14 – (The right to benefit from social and welfare services); and Article 17 (The right of mothers and children to social and economic protection) ;

The Committee also examined the reports on the 1988 Additional Protocol submitted by Finland, Italy, the Netherlands, Norway, Slovakia and Sweden.

Austria

[With regard to Article 7 – The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The report of Austria indicates that the Agricultural Labour Act 1984 (LAG), which the Committee has long considered to provide insufficient protection to children working in agriculture, was amended by the Act No. 101/1998. The purpose of this amendment was, according to the report, to bring the situation into conformity with Article 7 para. 3 of the Charter and implement Community Directive 94/33 on the protection of young people at work…

The Committee recalls that it has previously held that children should not be permitted to do any kind of work before going to school in the morning (Conclusions VIII, p. 108), as such work may deprive them of the full benefit of their compulsory education. Having regard to the amended provisions of the LAG, especially the limited nature of the activities permitted (Section 110(3)), its emphasis on children's education (Section 110(4)), the duty to safeguard the child's safety and welfare and the limits to the duration of light work (Section 110(5)), the Committee considers that there is a sufficient statutory basis for the authorities to ensure that the right of school-going children to benefit fully from their compulsory education is implemented in practice. It therefore requests that the next report under this provision indicate the activities of the Agriculture and Forestry Inspectorate and, as appropriate, the educational authorities or social services, in ensuring compliance with this provision of the Charter. It further asks information on the extent to which early morning work is performed by children in the agriculture and forestry sectors.
Pending receipt of the information requested on the application of the LAG, the Committee defers its conclusion.

[With regard to Article 7 - The right of children and young persons to protection ; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which thery are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.
The Committee concludes that the situation in Austria is in conformity with Article 7 para. 10 of the Charter.

[With regard to Article 8 — The right of employed women to protection ; Paragraph 1 – Maternity leave]

1. Right to maternity leave

The Austrian report confirms that under the legislation in force, women are strictly prohibited from working during the eight weeks before and the eight weeks after giving birth (Sections 3 and 5 of the Maternity Protection Act, No. 221/1979, as amended by Act No. 123/1998). In the event of a premature birth, post-natal leave is extended so that the total period of leave is 16 weeks.

The report also confirms that parental leave does not affect compulsory maternity leave: it can only be taken by the mother or the father after the compulsory period of maternity leave.

The Committee notes from another source[12] that trainee nurses are not covered by the legislation and that student dentists and probationary teachers are only partially covered. The Committee requests that information on the legal position regarding these categories be supplied in the next report.

The Committee recalls that under Article 8 para. 1 of the Charter, the right to maternity leave must be granted to all women in gainful employment, and the minimum period of leave must be 12 weeks, including 6 weeks' compulsory post-natal leave.

On the basis of the information at its disposal, it concludes that the situation in Austria is in conformity with Article 8 para. 1 of the Charter in this respect.

2. Right to adequate benefits

Public-sector employees in Austria receive their wages in full during the 8 weeks before and the 8 weeks after childbirth.

In the private sector, women are entitled to a pre- and post-natal allowance during the 8 weeks before and after childbirth (12 weeks after childbirth where there are complications with the birth). The right to the pre and post-natal allowance obtains throughout the compulsory period of leave. The allowance is equal to 100% of the average wage received during the previous 13 weeks.

In reply to the Committee's general question in Conclusions XIII-1, p.172, the report indicates that payment of the pre and post-natal allowance is not subject to conditions such as length of coverage by the social security scheme or a specified period of occupational activity or employment with one or more employers. To receive the allowance, women merely need to have been covered by the social security scheme at the time when the pregnancy occurred. The report also states that the type of employment contract (fixed-term or permanent) has no bearing on payment of the allowance.

The report also indicates that the maternity allowance has no ceiling. It further adds that women engaged in "marginal employment" whose wages are below the threshold for compulsory insurance contributions (in 1999, the threshold was set at 3,899 Austrian schillings (ATS) per month) are not eligible for maternity allowance. However, if they have taken out voluntary insurance, they are entitled to an amount equal to the rate of sickness benefit (1,400 ATS per month in 1999). The Committee wishes to know whether there is a subsidiary social welfare scheme covering such women during pregnancy.

Pending the receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 8 para. 1 of the Charter in this respect.

[With regard to Article 8 – The right of employed women to protection ; Paragraph 2 – Illegality of dismissal during maternity leave]

[12]Report by the Commission of the European Communities on the implementation of Community Directive 92/85 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding – March 1999.

Prohibition of dismissal

In Austria, women may not be dismissed while pregnant or until the end of the fourth month following childbirth (Section 10 of the 1979 Maternity Protection Act, as amended). They must, however, have informed their employer that they are pregnant; failing this, they may inform the employer in the five days after receiving notice of dismissal, in which case the dismissal will be treated as void.

Since 1 July 1995, domestic staff, regardless of whether they reside in their employer's home, have enjoyed the same protection from dismissal as all other female employees (pursuant to the 1992 Supplementary Act on Labour Law and the 1995 amendment to the Maternity Protection Act). The situation, which has been considered contrary to the Charter since 1973 (Conclusions III), is therefore now in conformity with the Charter on this point.

Dismissal during the protected period is permitted for non-maternity-related reasons, such as serious misconduct, a serious breach of contractual obligations or closure of part or the whole of the business (Sections 10 and 12 of the Maternity Protection Act). Dismissal on such grounds is normally subject to prior authorisation by the competent tribunal. The Committee observes out that these grounds come within the scope of the exceptions it allows to the principle of prohibition of dismissal, under in Article 8 para. 2 of the Charter.

In its previous conclusions (Conclusions XIII-2, p. 214 and XIII-4, p. 93), the Committee asked a number of questions about the regulations governing fixed-term contracts, in order to ensure that contracts of this type were not being used by employers to circumvent the protection afforded by Article 8 para. 2.

The Committee recalls that under Austrian law, only statutory or objectively justified fixed-term contracts may expire on the due date, even if this occurs while the employee is pregnant. Where there is no objective justification for a fixed-term contract, expiry of the contract is suspended until the employee goes on maternity leave or is compelled, on medical grounds, to stop working at an earlier stage of the pregnancy. Suspension of the expiry date enables employees in this category to qualify for maternity benefit.

The present report lists the grounds justifying fixed-term contracts for women, pursuant to the Maternity Protection Act (Section 10a (2)):
– a fixed-term contract is "in the interests of the worker" - in other words (according to the report) the employee herself only wanted a short-term contract;
– the contract was concluded for the purpose of replacing workers prevented from performing their duties;
– it was concluded for training purposes;
– it was concluded for a trial period where the post requires a longer trial period than is provided for by legislation or collective agreements;
– it was for seasonal work.

The report states that it does not follow from the Act or the relevant commentaries that this list is exhaustive or that it is merely intended to give examples. It explains that in assessing whether a contract is legally or objectively justified, the Supreme Court takes two factors into consideration: the case must be comparable to those listed above, and the employer must not deliberately seek to circumvent maternity protection requirements.

Lastly, the Committee reiterates that women who are compelled to stop working earlier in pregnancy for medical reasons are entitled to special leave under Section 3 (3) of the Maternity Protection Act. The report points out in this connection that fixed-term contracts for women in this situation do not expire, but are suspended. According to the report, suspension does not amount to notice of dismissal: instead, it extends the contract until the beginning of the statutory period during which employment is prohibited, i.e. the point at which the employee becomes entitled to maternity allowance. The Committee requests that the next report on Article 8 para. 1 provide a clear answer regarding the benefits to which women are entitled during special leave for medical reasons, whether they are employed on fixed-term or permanent contracts.

Consequences of unlawful dismissal

Examination of the Maternity Protection Act reveals that dismissal of a woman during pregnancy and until the end of the fourth month following childbirth is void, i.e. the employment relationship continues.

The Committee nevertheless observes that the competent tribunal, whose authorisation is systematically required in cases of dismissal, may authorise dismissal when a woman who has been dismissed unlawfully does not wish to continue the employment relationship (Section 10 para. 3 of the Maternity Protection Act). Neither the present report nor the previous ones provide any information on the compensation paid to the employee in such cases. The Committee notes from another source[13] that according to the competent tribunals' case-law, women not wishing to be reinstated in their job receive compensation calculated on the basis of the period during which they are entitled to protection.

In order to properly assess the situation and determine whether the compensation is sufficient for the employee, the Committee requests that the next report provide examples of case-law and explain the method used for calculating the compensation payable.

Conclusion
Pending the receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 8 para. 2 of the Charter.

[With regard to Article 8 – The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

*1. Regulation of night work for women in industrial employment (Article 8 para. 4*a*)*

The Committee reiterates that Article 8 para. 4*a* requires that regulations on night work, whether general (applicable to both sexes) or specific (applicable to women only), ensure that women, in particular those who are pregnant, have just given birth or are breastfeeding, are given adequate protection against the effects of night work on their health and family life. Such regulations must also seek to prevent abuses.

The Committee therefore requests that the next report detail the conditions governing night work (whether permission needs to be obtained from the Labour Inspectorate, rules governing working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work, etc.). The Committee also asks what impact the implementation of Community Directive 92/85 of 19 October 1992 on the introduction of measures to encourage improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding has had on regulations on night work.

Pending receipt the information requested, the Committee defers its conclusion in respect of Article 8 para. 4a of the Charter.

2. Prohibition of the employment of women in certain dangerous, unhealthy or arduous types of work (Article 8 para. 4b)

The Committee points out that Article 8 para. 4*b* contains a dual prohibition:
– it prohibits the employment of women workers in underground mining, a restriction strictly limited to actual extraction work;
– and it prohibits the employment of women, "as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature", the expression "as appropriate" being understood to limit this restriction solely to those case where it is necessary, in particular to protect pregnant women and women who have recently given birth or are breastfeeding.

[13]Schwarz/Löschnigg, *Arbeitsrecht* (Vienna, 1997), p.629.

The Austrian report states that women are still prohibited from working in mines. This situation complies with the Charter.

With regard to other prohibited forms of employment for women who are pregnant, have just given birth or are breastfeeding, the Committee refers to the outline of the situation given in its previous conclusion (Conclusions XIII-4, pp.105 and 106).

In reply to a question from the Committee on special measures to protect women of child-bearing age, the report states that since Community Directive 92/85 was incorporated into domestic law, it has become "necessary to assess the dangers to the safety and health of expectant and nursing mothers and their effects on pregnancy and breast-feeding".

The Committee requests that the next report also contain a reply to the question it asked in its previous conclusion, concerning measures taken to protect women who are pregnant, have just given birth or are breastfeeding against ionising radiation and exposure to asbestos (the question appears at the top of the section on Article 8 para. 4 in Conclusions XIII-4, p.105).

Pending receipt of the information requested, the Committee defers its conclusion in respect of Article 8 para. 4*b* of the Charter.

[With regard to Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

State of health of the population - General indicators

Life expectancy and principal causes of death
The Committee notes from OECD data[14] that life expectancy at birth has improved considerably, rising from 79.2 years in 1992 to 80.6 in 1997 for women and from 72.7 years in 1992 to 74.3 in 1997 for men.
The Committee observes that the reduction in the number of cases of AIDS diagnosed was significantly below the general trend in Europe. In order to assess the situation and, in particular, how well the health care system is dealing with AIDS the Committee asks that the next report provide information on trends in the number of AIDS-related deaths.

Infant and maternal mortality
According to the OECD data referred to above, the rate of infant mortality in Austria was reduced considerably in the reference period, from 7.5 deaths per 1,000 live births in 1992 to 4.7 in 1997. The average rate of maternal mortality is also lower than in the previous reference period (4.1 deaths for 100,000 live births in the period 1994-97 as against an average of 5.6 for 1990-93).

Health care system

Access to health care
The Austrian system is based on the principle of compulsory social insurance except for persons whose income is less than 3,899 Austrian schillings (ATS) per month. The Committee recalls that it already raised a question in this respect in Conclusions XIV-1 concerning the application of Article 12 para. 1 and states that it will take the answer into account under Article 11 para. 1. 99% of the population is covered.

Management of the system is shared between the federal state and the provinces. Patients consult their doctor, who is paid by the sickness insurance schemes. Hospital treatment is provided in federal public hospitals and in private care establishments under the supervision of the federal or local authorities or religious orders.
Health care outside hospital is financed mainly from employers' and employees' contributions. Health care in hospital is financed from contributions and taxation.

[14]OECD Health Data, 1999.

According to the OECD data referred to above, total health care expenditure in 1997 amounted to 8.3% of GDP. Public expenditure on health as a percentage of total health expenditure is among the lowest in European OECD countries, amounting in 1997 to 73%.

The patient does not pay the doctor's bill, which is settled by the insurance scheme. Since 1 January 1997, for each medical or dental expenses claim form a contribution of 50 ATS is levied, except in the case of children, pensioners and those in receipt of social assistance. In hospital, insured patients pay a maximum of 72 ATS per day for 28 days per year. The maximum charge for treatment of family members is 10% of the costs for four weeks. Pharmaceutical products are provided free of charge for notifiable contagious diseases. Otherwise medicines are covered if they are approved and included in the official list but the patient pays a prescription fee of 44 ATS per prescription.[15] According to the OECD data referred to above, the average rates of reimbursement of hospital costs and pharmaceuticals are among the lowest in European OECD countries, amounting in 1997 to 90% and 49% respectively. However, the average rate of reimbursement for out-patient medical care is one of the highest (80%).

In considering whether the patients' share of the cost of pharmaceuticals and hospital care impedes access to health care for the majority, the Committee takes into account that medicines are provided free of charge to persons without adequate means. It wishes to know what provisions exist to prevent the share of the costs of hospital care placing too heavy a burden on lower-income groups.

Health professionals and equipment
The Committee notes in the OECD data referred to above a further reduction in the total number of hospital beds (73,128 in 1997) but that the number of beds per 1,000 inhabitants (9.1) corresponds to the European average. The proportion of intensive care beds is 71% of the total and the proportion allocated for psychiatric patients is 7.8%. The number of beds in private care establishments is unchanged, at about 30% of the total.

Conclusion
The Committee concludes that the situation in Austria is in conformity with Article 11 para. 1 of the Charter.

[With regard to Article 11 – The right to protection of health; Paragraph 2 – Advisory and educational facilities]

Health education in schools
The Committee noted from the second Austrian report that, under the legislation on the education system, health education was included in all school curricula, both primary and secondary, and in higher education. The topics mentioned in the reports include food hygiene, prevention of AIDS, and drug, alcohol and tobacco abuse and it has been stated that the Ministry of Health provides teaching aids. The Committee wishes to have information on the health education approach in schools, in particular the involvement and training of teachers and any support from outside.

Public information and awareness-raising
With regard to AIDS, the Committee notes that information campaigns aimed at the population in general and health professionals in particular continued during the reference period, notably in the form of TV publicity spots, radio announcements, information leaflets, etc.

The Committee would like future reports to be more systematic, providing it with information on any publicity campaign dealing with major health problems.

Counselling and screening

Children and adolescents

[15]Ibidem.

The first Austrian report mentioned the existence of counselling centres for mothers and children and school dental clinics. Since then the Committee has been regularly informed of attendance at the centres. The present report states that, since 1997, the screening programme for congenital diseases of newborn children includes cystic fibrosis. The Committee asks that the next report provide more precise information on:

– the activities of maternal and childcare centres, whether they are free of charge and their geographical spread;

– whether medical examinations are conducted in schools and, if so, their nature and frequency during schooling.

Rest of the population

Since 1977, all Austrians over the age of 19 have been entitled to a free medical check-up once a year to detect the main diseases (cardiovascular, respiratory, tumours, etc.). Since 1988 this check-up has also included a mammography every two years for women over the age of forty.

The report also states that anonymous counselling and free anonymous testing are provided by the Austrian AIDS assistance association.

Conclusion

The Committee defers its conclusion pending the information requested about counselling on and screening for diseases in children and adolescents.

[With regard to Article 11 – The right to protection of health ; Paragraph 3 – Prevention of diseases]

The Committee takes note of developments in Austria concerning the prevention of health risks generally and prevention of diseases in particular.

Policies on the prevention of avoidable risks

General

The Committee asks that future reports state as far as possible what proportion of public authorities' budget is allocated to the main prevention policies listed below.

Epidemiological monitoring

The report states that cases of AIDS must be reported and that considerable progress has been made in the control of tuberculosis as a result of Austria's membership of the European tuberculosis control network.

The Committee wishes updated information showing that Austria has a system for data collection and for the monitoring of other communicable or infectious diseases and that, if there were the risk of an epidemic, special measures and targeted surveys could be ordered.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Austria is in conformity with Article 11 para. 3 of the Charter.

[With regard to Article 17 — The right of mothers and children to social and economic protection]

The Committee notes from the Austrian report that Ombudsmen for children have been established in the provinces and at the federal level. It wishes to receive information on the role and functioning of the Ombudsmen.

Establishment of parentage and adoption

The situation in respect of establishment of parentage and adoption is in conformity with Article 17. The Committee notes with interest that legislation contains special provisions enabling children conceived using medically assisted reproduction techniques to know their origins.

Children in public care

The Committee wishes to receive information on the procedures for taking a child into care.

According to the Austrian report submitted under the Convention on the Rights of the Child,[16] every effort is made to avoid placing small children and babies in institutions and to place them with foster families.

The Committee wishes to receive information on the number of children receiving assistance within the family, the total number of children in public care, of these the number who are placed in an institution and the number who are placed with a foster family, as well as information on the types of institutions that exist.

The Committee wishes to receive information as to whether there is an authority responsible for monitoring care in institutions and whether there is any specific procedure for complaining about the care or treatment in institutions, and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him.

Protection of children from ill-treatment and abuse
Custody of children is vested in their parents. It however, may be transferred entirely or partly to the youth welfare authorities if the child is "at risk". The youth welfare authorities are responsible for ensuring the welfare of children. Children at risk and their families should normally firstly be offered help and support within the family. Placement of a child with a foster family or in an institution should only be considered as a measure of last resort.

The Act No.162/1989 on Parents and Children (Amendment) prohibits the use of force and the infliction of physical and mental suffering on children. Section 146a of the General Civil Code states, "the application of violence and the infliction of physical or mental harm are unlawful".

In 1998 amendments were made to the criminal law on sexual offences; the punishment for the abuse of children under fourteen years of age was increased, and in the case of certain sexual offences committed against children, the statute of limitations does not begin to run until the age of majority has been reached.

Conclusion
The Committee concludes that the situation in Austria is in conformity with Article 17 of the Charter.

Belgium

[With regard to Article 7 – The right of children and young persons to protection; Paragraph 4 – Working hours for young workers and apprentices]

The Committee takes note of the information contained in the Belgian report and recalls that in Belgium young people having completed compulsory full-time education (over 15 or 16 years of age) must not work more than 8 hours per day or 40 hours per week (a reduction of 2 hours per day and 10 per week as compared to the limits set by the Labour Act of 16 March 1971). As time spent on vocational training is included in working hours the Committee considers that this limitation is sufficient in the light of this provision of the Charter.

In reply to its question in the previous conclusion, the report states that a Royal Order adopted…Given the nature of the situation, the Committee asks to be informed in each supervision cycle of any relevant Royal Orders adopted. Pending receipt of such information, the Committee concludes that the situation in Belgium is in conformity with Article 7 para. 4 of the Charter.

[With regard to Article 7 – The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from a physical and moral dangers to which they are exposed]

As regards the information requested in the previous conclusion on measures taken or envisaged by the competent authorities to combat such phenomena as family violence, juvenile delinquency and sexual abuse of children, reference is made to its conclusion under Article 17.

[16]CRC/C/II/Add.14.

The Committee repeats its request for information on preventive and other measures taken to combat the spread of alcoholism, smoking, drug addiction and sexually transmitted diseases (particularly AIDS).

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may enforce this prohibition.

The Committee concludes that the situation in Belgium is in conformity with Article 7 para. 10 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 1- Maternity leave]

The report of Belgium contains updated information on Article 8 para. 1 as well as answers to questions posed by the Committee.

1. Right to maternity leave
Performance of an employment contract is suspended during "pregnancy leave" and "confinement leave" (under the Labour Act of 16 March 1971, amended by an Act of 3 April1995 and a Royal Order of 2 May 1995). Pregnancy leave (before childbirth) lasts for a maximum of 7 weeks, one of which is compulsory. Confinement leave (after childbirth) has a mandatory duration of 8 weeks. The duration of maternity leave is therefore 15 weeks, one of which must be taken before confinement and eight after. These provisions apply to both the public and the private sectors and cover all women engaged in a paid occupation.

The report also states that Section 39 of the Act of 16 March 1971 was amended by the Act of 25 January 1999 laying down welfare provisions. In the event of a multiple birth, maternity leave now lasts 17 weeks instead of 15. Employers who fail to comply with the compulsory period of suspension of the employment contract incur criminal sanctions (Section 52 of the 1971 Act).

The Committee recalls that Article 8 para. 1 of the Charter requires that all women engaged in a paid occupation be guaranteed the right to maternity leave and that the minimum duration of such leave be 12 weeks, including a mandatory 6 weeks leave after childbirth. The situation of Belgium is therefore in compliance with Article 8 para. 1 of the Charter on this point.

2. Right to adequate payment
In the Belgian civil service the right to remuneration is guaranteed throughout maternity leave (Royal Order of 22 November 1991 laying down general rules on the administrative and pecuniary status of state employees).
In the private sector a female employee is entitled to a benefit throughout her maternity leave under the same conditions as are applicable to sickness benefit. For the first 30 days this benefit is equivalent to 82% of the uncapped gross salary (which, because of the taxation rules, is close to 100% of net salary and is higher than sickness benefit). From the 31st day the employee receives 75% of the capped gross salary. The Committee has already held that these payments are adequate within the meaning of this provision of the Charter (Conclusions XIII-2, p. 303).

In reply to the general question asked by the Committee in Conclusions XIII-1 (p. 172) the report specifies the conditions of eligibility for maternity benefit. Employees must have worked for at least 120 days over the six-month period preceding the date of acquisition of entitlement (part-time workers must have totalised 400 hours of work over the six-month period). The report states that periods of "involuntary unemployment", statutory annual leave and inactivity due to a work accident or an occupational disease resulting in inability to work are treated as days of work. The employee is also required to have paid contributions to the National Social Security Office in respect of the days worked.

The Committee holds that these conditions are in conformity with Article 8 para. 1 of the Charter.

In reply to a question from the Committee, the report states that the ceiling in force from the 31st day of maternity leave is set by Royal Order and was 3,772 BEF per day as of 1 June 1999. The report says that the Belgian authorities have no data on the number of women receiving a salary higher than the ceiling. It also points out that there is no compensation under the social security scheme for a woman whose salary is higher than the ceiling.
In addition the Committee notes that the ceiling does not apply during the first 30 days of maternity leave.

The Committee draws attention to the fact that during maternity leave a female employee's financial situation must enable her to avoid having to work, so that she can really rest. This obligation can be fulfilled only by continuing payment of the woman's salary or by paying a benefit equivalent to or only slightly lower than that salary. The Committee nonetheless takes the view that, where the salary exceeds a certain ceiling, a substantial reduction in salary during maternity leave is not, in itself, contrary to Article 8 para. 1 of the Charter. In order to assess the situation and to ensure the fairness of the reduction, the Committee takes into account a number of factors such as the amount of the ceiling, the ceiling's position on the scale of earnings or the number of women earning more than that ceiling.
In view of the information at its disposal, the Committee holds that in this respect, the situation in Belgium is in conformity with Article 8 para. 1 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal
Under Belgian law (the Labour Act of 16 March 1971 amended by the Act of 3 April 1995 and the Royal Order of 2 May 1995) employers cannot end an employment contract (or even give notice of dismissal) during a period running from the time when they are informed of the pregnancy to one month after the end of confinement leave. Women are also protected during probationary periods.

Employers can nonetheless end an employment contract for serious reasons and with "sufficient grounds", that is to say grounds unconnected with the physical condition arising from pregnancy or childbirth. If the employee appeals against the dismissal, the employer has to prove that the grounds actually exist.

In its previous conclusion the Committee held that the situation was in compliance with Article 8 para. 2, pointing out that the period of notice was suspended during maternity leave.

The report does not answer the general question asked in Conclusions XIII-4 (p. 73) on "the proportion of fixed-term contracts, in particular as regards women, including nationals of other Contracting Parties, and the effects of these contracts on the protection provided by these provisions of the Charter." The Committee asks that the next report answer this question.

In this connection, the Committee notes, that a fixed-term employment contract terminates at the pre-determined expiry date and no notice need to be given before expiry (Act of 3 July 1978 on employment contracts). It follows that the special protection against dismissal, which applies during a fixed-term contract, does not prevent the contract's expiry; this is permissible under the Charter.

Consequences of unlawful dismissal
Under Belgian law a woman dismissed unlawfully for a reason connected with her pregnancy or confinement is not entitled to reinstatement. An employer who fails to observe the above rules in dismissing a woman who is pregnant or has recently given birth is required to pay special compensation, equivalent to six months' gross salary, in addition to the ordinary compensation payable for unfair dismissal.

The Committee recalls that reinstatement must be the rule in cases of unfair dismissal. The purpose of Article 8 para. 2 is not only to guarantee the financial security of a female employee on maternity leave, but also to protect her job. Payment of compensation is acceptable only in exceptional circumstances where reinstatement proves impossible or the employee does not want it. The Committee then ensures that the amount paid is sufficient to deter the employer and compensate the employee.

The Committee notes that, under Belgian law, reinstatement is not the rule in the event of unfair dismissal. It holds that the special compensation is not dissuasive enough as it amounts to only six months' gross earnings.

Conclusion
It therefore concludes that the situation in Belgium is not in conformity with Article 8 para. 2 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

The Committee recalls that States which have accepted Article 8 para. 3 of the Charter must guarantee female employees time off for breast-feeding during working hours, and paid as such.

Since Conclusions XIII-2 (p. 309), the Committee has noted that in Belgium employers are not legally required to grant nursing mothers time off with pay during working hours.

This report does not indicate any change in the situation.

The Committee therefore concludes that the situation in Belgium is not in conformity with Article 8 para. 3 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

*1. Regulation of night work for women in industrial employment (Article 8 para. 4*a*)*
Lastly, pregnant women working under a shift system or other arrangements entailing night work may request a change in working arrangements in writing. Such a request can be made without any further formality during a period of at least 3 months before the expected date of confinement and at least 3 months after childbirth. A medical certificate confirming that a change of hours is necessary to the woman's or the child's health must be produced during other periods in the course of a pregnancy or, at a doctor's discretion, after the expiry of the 3 month period following childbirth.

Following such a request, the employer assigns the employee to day work or, where that is not possible, the employee is granted leave of absence and immediately receives compensation under the mutual sickness and invalidity insurance scheme, covering the entire duration of that leave. Following this period of protection, the employee resumes work under the same conditions as before.

The Committee points out that, although Article 8 para. 4*a* specifically relates to female employees, the Committee does not require Contracting Parties to lay down special rules for women in so far as the general regulations afford them adequate, effective protection.

In the present case the Committee notes that the Act of 17 February 1997 on night work maintains the official ban on night work, lays down rules on the permitted derogations, clearly specifying the conditions under which women may work at night and determines working hours. It also notes that special protection exists for pregnant women.
In order to be able to assess the situation, the Committee nevertheless needs the information requested above. It therefore defers its conclusion concerning Article 8 para. 4*a*.

*2. Prohibition of the employment of women workers in certain dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)*
The Committee points out that Article 8 para. 4*b* contains a dual restriction:
– it prohibits the employment of women workers in underground mining, a restriction strictly limited to actual extraction work;
– and it prohibits the employment of women, “as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature”, the expression “ as appropriate” being understood as a limitation to this restriction solely to those cases where it is necessary, in particular to protect pregnant women and women who have recently given birth or are breastfeeding.

Employing women to work underground in mines is prohibited (Section 8 of the 16 March 1971 Act).

Moreover, sections 41 and 42 of that Act enable a pregnant or nursing woman claiming ill-health or a risk associated with her condition to be examined by an occupational health doctor, who will prescribe the necessary measures and, in particular, determine what tasks the woman must not perform.

Lastly, in reply to a question from the Committee, the report states that Belgian regulations are currently being amended to take account of the recommendations on dose limits made by the International Commission on Radiological Protection (ICRP). The Committee asks that the next report specify whether the regulations in question have been amended.

In the meantime the Committee finds that, in this respect, the situation in Belgium is in compliance with Article 8 para. 4*b*.

[With regard to Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the report by Belgium and in the addendum to the report as well as in the 1998 report transmitted to the World Health Organisation (WHO).[17]

State of health of the population – General indicators

Life expectancy and principal causes of death

The Committee notes from OECD figures[18] that life expectancy at birth increased from 79.8 years in 1992 to 80.2 years in 1996 for women and from 73.1 years in 1992 to 73.5 years in 1996 for men.
In reply to a question from the Committee, an appendix to the report shows that the number of new cases of AIDS has fallen sharply since 1996, mainly as a result of the introduction of new anti-retroviral treatment strategies. With regard to the incidence of hepatitis, the Committee notes that, according to the new information supplied in the report, the part played by hepatitis in overall mortality is in line with the average for European Union and European Economic Area countries.

Infant and maternal mortality

In Belgium the infant mortality rate decreased and stood at 5.6 per 1,000 live births in 1997. The Committee observes from the Eurostat data quoted above that the rate remains higher than the average of the countries of the European Union and the European Economic Area (5.3). It also notes that in 1995, the mortality rate of males due to the sudden infant death syndrome was by far the highest among these countries (3.9 deaths compared to an average of 1.1) The Committee finds that this raises doubts about the efficiency of the preventive campaigns of cot death in Belgium and it requests that the Government comment on this point. It further underlines that infant mortality is an avoidable risk which states should bring under control in order to be in compliance with Article 11 of the Charter. Particularly taking into account the level of development of the Belgian health care system, it considers that all measures should be taken to approach a result as close as possible to zero risk. The Committee observes that the evolution of the situation on this point will be a determining factor in its next assessment of compliance with Article 11 para. 1.

In 1992, i.e. during the previous reference period, the maternal mortality rate stood at 5.6 per 100,000 births. The Committee requests updated statistics for the next reference period.
Health care system

Access to health care

The Belgian health care system is based on compulsory sickness and invalidity insurance schemes. 98% of the total population is covered for health care purposes.

[17] *Highlights on Health in Belgium* (website of the European WHO office: www.who.dk).
[18] OECD Health Data, 1999.

General medical care is provided by private practitioners. Insured persons can obtain partial reimbursement of the resulting costs and they pay a proportional contribution to the cost of pharmaceutical products. Hospitalisation costs are reimbursed in full, except for a flat-rate daily charge payable by the patient.

The Committee notes that the compulsory sickness and invalidity insurance schemes are financed collectively through the general management of the social security system.

According to the OECD data quoted previously, total expenditure on health amounted to 6.7% of GDP. The share of public expenditure was one of the highest of the European OECD countries at 87.6% in 1997.

According to OECD data, the average rate of reimbursement of health care expenses[19] decreased from 95% in 1992 to 92% in 1997 for hospital care and from 78% in 1992 to 72% in 1997 for out-patient medical care. The average rate of reimbursement of the cost of pharmaceutical products remained stable at 50%. The Committee therefore notes that, compared with the previous reference period, patients' level of contribution to expenses has increased and that the situation has been worsening steadily since 1980. It also observes that the rate of reimbursement for out-patient medical care and pharmaceutical products is one of the lowest among European Union and European Economic Area countries.

The Committee nonetheless notes that this situation is partly offset by the adoption of measures aimed at reducing the impact of cost-sharing on disadvantaged population groups. As mentioned in the Committee's last conclusion in respect of Article 12 para. 3 (Conclusions XV-1, p. 85), widows/widowers, invalids, pensioners and orphans and persons receiving various welfare benefits and their dependants are entitled, where their income is below a certain level, to increased cost-coverage, at a level of 85 or 90%. They are also entitled to exemption from payment of the patient's contribution once the total annual cost of treatment that they themselves have borne exceeds 15,000 BEF. In addition, all insured persons are entitled to tax exemption on the patient's contribution which varies according to the household's gross taxable income. Overall, the contribution paid by patients, all categories included, averages 27.7%. The Committee also notes that patients suffering from a serious long-term illness are not required to contribute to the cost of pharmaceutical products.

In the light of all this information, the Committee finds that health care in Belgium is accessible to as many people as possible, in accordance with Article 11 para. 1 of the Charter.

Health professionals and equipment

The Committee notes that health care practitioners and equipment are distributed among the three regions in proportion to the population density.

Conclusion

Pending receipt of the information requested on infant mortality, the Committee concludes that the situation in Belgium is in conformity with Article 11 para. 1.

[With regard to Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

In each community health education is organised in schools.

i. In the French-speaking Community, the various parties involved are: psycho/medical/social centres, the school medical inspectorate and bodies (associations, institutions, etc.) responsible for implementing more specific projects. The Committee does not consider this information to be sufficient. It wishes to know what are the issues dealt with (see *infra*) as well as the forms and methods of health education. In particular whether health education is

[19] This corresponds to the proportion of overall expenses normally borne by public authorities.

integrated into the school curriculum and whether it is provided for the entire period of primary and secondary schooling.

ii. In the Flemish Community, the Order of 20 June 1996 defines the end objectives and the development objectives for the first year of secondary education (pupils aged 12 years old) requiring schools to integrate certain health-related objectives in their curricula, notably in biology, such as healthy food. The addendum to the report indicates that the objectives for the second to the fourth year of secondary education are under preparation. The Committee observes that during the reference period health education in the Flemish Community was only provided for during one school year.

The Committee considers that if this situation remains the same it may raise a problem of compliance with Article 11 para. 2 of the Charter. It is recognised that apart from the family framework, the most appropriate structure for health education is the school, inasmuch as the general objective of education is to communicate knowledge and know-how enabling pupils to tackle life. The Committee refers in particular to Recommendation No. R (88)7 of the Committee of Ministers of the Council of Europe on school health education and the role and training of teachers.
Article 11 para. 2 of the Charter requires that health education in school be provided throughout the entire period of schooling and that it cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits. It being understood that the activities may be more or less developed in accordance with the nature of the public health problems in the countries. The Committee is of the opinion that the integration of these subjects into the school curricula will contribute to giving full effect to this provision.

Public information and awareness-raising
The Belgian government has so far failed to provide information on the organisation of or participation in information campaigns intended to heighten public awareness of major public health problems.

The Committee would like to know, for the whole Belgian territory, which bodies, public or private, are responsible for public information and awareness-raising, what subjects they address and what means of action they have.

Consultation and screening

Children and adolescents
The Committee notes that, in compliance with Article 11 para. 2:
– mother and infant welfare services are provided free of charge throughout Belgian territory by the following institutions: "*Oeuvre de la Naissance et de l'Enfance*" in Wallonia and Brussels, "*Dienst für Kind und Familie*" in the German-speaking community, "*Kind en Gezin*" in Flanders and Brussels, either directly or by way of external providers such as the prenatal centres in the French-speaking Community. The addendum to the report explains that in the French-speaking Community mobile health units exist in regions with low population density;
– compulsory, free medical check-ups are organised in schools, mainly through the school medical inspectorate established under an Act of 21 March 1964. Medicals are compulsory in all nursery, primary and secondary schools and non-university higher education establishments. Pupils are sent to the school health centre for a preventive medical check-up every two years on average. This includes detection of physical and mental disorders, full sight and hearing tests for nursery school pupils, checking that vaccinations are up to date and issue of a vaccination card. Teams consisting of a doctor and a nurse visit schools to provide information on the prevention of transmissible diseases. In total, pupils undergo at least two medical check-ups in nursery school and eight check-ups during compulsory schooling.

Rest of the population
It is clear from previous reports that a variety of screening services exist throughout Belgian territory, examples being the cancer screening and sports medicals available in health centres, the AIDS tests on offer in a number of laboratories, and detection of mental disorders in the French-speaking community's mental health centres.

Conclusion
While underlining the inadequacy of health education in schools in the Flemish Community, the Committee decides to await the information requested and defers its conclusion.

[With regard to Article 11 — Right to protection of health; Paragraph 3 – Prevention of diseases]

The Committee takes note of developments in Belgium as regards avoidance of health risks in general and prevention of diseases in particular.

Policies on the prevention of avoidable risks

General

The Committee requests that the next report indicate, if possible, the share of the public authorities' budget devoted to the main prevention policies listed below.

Epidemiological monitoring
It is compulsory to report cases of certain epidemic diseases. Some doctors act as "watchdogs", responsible for monitoring trends in epidemic diseases not subject to compulsory reporting. They keep weekly records concerning the occurrence of specific health problems. This monitoring network makes it possible to estimate the incidence of these diseases and to study their epidemiological characteristics. The main items of information recorded are cases of rubella and mumps and requests for screening HIV tests. The aim is to study the impact of prevention and vaccination campaigns.

With particular regard to the AIDS epidemic, an appendix to the report states that all data are forwarded to the epidemiology department of the Louis Pasteur Scientific Institute for Public Health, which is responsible for recording new cases of AIDS or HIV infection in Belgium reported by doctors.

Conclusion
The Committee concludes that the situation in Belgium is not in conformity with Article 11 para. 3 of the Charter because the immunisation coverage levels for some diseases are not sufficient.

[With regard to Article 17 – The right of mothers and children to social and economic protection]

The Committee notes the information contained in the Belgian report.

Establishment of parentage and adoption

The Committee recalls that the situation is in conformity with Article 17 of the Charter on this point. It nevertheless wishes to be informed whether children under the age of 15 years may be heard in adoption proceedings. The situation is also in conformity with this provision as regards certain aspects relating to children and the law, i.e. inheritance rights, maintenance and the right of children to be heard in court proceedings.

Children in public care

The Committee observes the information contained in the report on the various institutions available for children in need of assistance, in particular in the Flemish-speaking community. It would like to find information in the next report as to how the quality of the care provided in these institutions is monitored and whether there is any specific procedure for complaining about care or treatment in such institutions. Further it wishes to receive information on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet persons close to the child.

According to the report in 1998, 12,202 children or young people were placed by the authorities, 3,175 in families and 451 to live alone under guidance. The Committee would like to be informed why such a small proportion of children were placed in families. Moreover, the Committee notes that 531 minors were staying in non-approved institutions. It would like to be informed what a non-approved institution is and to find an explanation in the next report as to why so many children are placed in such institutions.

The Committee also asks to find the relevant statistics relating to placements, i.e. the number of children removed from their families and placed in a foster family or in an institution, in the next report for all the Belgian Communities and covering the next reference period.

Conclusion
The Committee defers its conclusion pending an answer to the questions asked about the extent to which legislation in Belgian prohibits the corporal punishment of children.

Denmark

[With regard to Article 8 — The right of employed women to protection; Paragraph 1- Maternity leave]]

1. Right to maternity leave
2.
According to the report, Danish legislation makes provision for 30 weeks of maternity leave, divided up as follows: 4 non-compulsory weeks before the birth and 26 weeks after the birth, to be taken by one of the parents (Act No. 213/1998 on equal opportunities for men and women with reference to employment and maternity leave etc.). Only two of the 26 weeks following the birth must be taken by the mother. Of the remaining 24 weeks, which are optional, 12 are available only to the mother, 10 to either of the parents and 2 only to the father.

The report points out that the two weeks of compulsory post-natal maternity leave meet the requirement of Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. It also states that, in practice, 95% of women take at least 14 weeks of leave after childbirth and that there is therefore no need for a longer period of compulsory post-natal leave. It adds that ILO Convention No. 103 on maternity protection, which makes express provision for 6 weeks' compulsory post-natal leave, was revised in June 2000 and that new Convention No. 183 has liberalised this requirement.[20] Finally, the report states that Article 8 para. 1 does not specifically require a compulsory post-natal leave period of 6 weeks.

The Committee recalls that the aim of Article 8 para. 1 is to ensure women have special protection in cases of maternity and to meet the general public health interest through the protection of mother and child. The period of 12 weeks of rest apportioned before and after confinement, is to be considered a minimum, as the text of the Charter itself states. The period of compulsory post-natal leave set at 6 weeks by the Committee (Conclusion VIII, p. 125) is also a minimum period permitting no derogation. The Committee adds that even if in practice the majority of women enjoy post-natal maternity leave longer than the compulsory 2 weeks, this does not mean that all women enjoy post-natal maternity leave of 6 weeks. It considers it necessary that the relevant texts expressly provide for 6 weeks of compulsory leave after confinement.

Since there is no compulsory post-natal leave period of six weeks, the Committee concludes that the situation in Denmark is not in conformity with Article 8 para. 1 of the Charter.

2. Right to appropriate benefits
A woman on maternity leave in Denmark remains under contract to her employer and is entitled, under the Daily Cash Benefit (Sickness or Maternity) Act, to a "daily cash benefit". In the public sector, provision is made in collective agreements for an additional amount to be paid, so that all women in this sector receive full pay throughout maternity leave. Certain collective agreements also make provision for supplementary payments in the private sector.

[20] Article 4 para. 4 of Convention No. 183 states the following: "With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers."

In order to receive the daily cash benefit, a woman must have worked for at least 120 hours during the previous 13 weeks. The amount of benefit varies according to the hourly income to which the employee would have been entitled if she had been absent on sick leave. In 1998, it could not exceed 72.65 Danish Crowns (DKK) per hour or 2,688 DKK per week (i.e. approximately 11,648 DKK per month). These figures are adjusted annually. It should be pointed out that, in 1998, the average gross monthly wage of an industrial worker was 22,311 DKK (see Conclusions XIV-2, p. 211).

The Committee finds the conditions of entitlement to the daily cash benefit reasonable. However, it asks whether periods of unemployment are taken into account. It also asks what conditions apply to women who work on a part-time basis.

As for whether the daily cash benefit paid during maternity leave is adequate, the Committee observes, in the light of the data available, that the maximum or ceiling amount is rather low, representing only around 53% of the average gross monthly wage. In the past, the Committee has even considered 70% of the average wage to be insufficient (Addendum to Conclusions XI-1, p. 34).

However, the Committee observes from the report that all female public sector employees and many who work in the private sector receive full pay during maternity leave under the terms of collective agreements. It also notes that, for low earners, the daily cash benefit is close or even equal to their normal wage and that, for people on higher salaries, the benefit inevitably covers a smaller proportion of their usual income.

Consequently, in order to assess the situation properly, the Committee requests that the next report include an estimate of the number of women who are not covered by collective agreements guaranteeing them a supplement to the daily cash benefit. It also asks how many of them earn more than the maximum daily benefit.

The Committee furthermore draws the attention of the Danish authorities to the general question raised in Conclusions XIII-4, p. 77 concerning the number of fixed-term contracts in Denmark and the impact of these on the protection provided by Article 8 para. 1 or Article 8 para. 2 of the Charter.

In the meantime, the Committee once again defers its conclusion on this subject.

[With regard to Article 11 — The right to protection of health; Paragraph 1 – Removal of causes of ill-health]

The Committee takes note of the information contained in the Danish report and appendices, as well as on the Internet site of the Health Ministry.[21]

State of health of the population – General indicators

Life expectancy and principal causes of death
The Committee notes that life expectancy at birth has increased very slightly, rising from 77.7 years in 1991 to 78 years in 1997 for women and from 72.2 years in 1991 to 72.9 years in 1996 for men. Compared with trends in other OECD countries in Europe,[22] the Committee notes that the change in Denmark from one year to the next is so low that life expectancy is stagnating. From Eurostat[23] figures for 1995, the Committee notes that the male and female mortality rates were the highest in the European Union and that female mortality in Denmark was almost twice as high as the European Union average.

The Committee notes that the number of cases of AIDS diagnosed annually has declined sharply since the start of the reference period, falling from 214 in 1995 to 60 in 1998. The number of new cases of HIV infection was 200 in 1998.

[21] www.sum.dk
[22] *OECD Health Data*, 1999.
[23] Eurostat Yearbook: *A statistical eye on Europe,* 1988-1998 data.

Infant and maternal mortality

The rate of infant mortality in Denmark has fallen since the previous reference period, and stood at 5.3 in 1997 as opposed to 7.3 in 1991. The Committee wishes the next report to contain updated information on maternal mortality.

Health care system

Access to health care

Health care in Denmark is provided on a universal basis. The health care system is collectively funded through taxation.

Total health expenditure accounted for 8% of GDP in 1997. The public spending component in total health expenditure is falling steadily, but still stood at approximately 80% in 1996.

Primary care is provided for all residents under the health care reimbursement scheme. Consultation of general practitioners is free for 98% of Danes[24]. The same applies to visits to consultants and nursing care if prescribed by general practitioners. Dental care and physiotherapy are partly reimbursed. Care in public hospitals is free of charge. During the reference period, 50 to 75% of the cost of prescription drugs was reimbursed, except for insulin, where the cost is reimbursed in full under the health care reimbursement scheme. The Committee does not have standardised statistical data with which it could compare the average reimbursement rate for pharmaceutical products with that of the other Contracting Parties. The report indicates that a new system was introduced in March 2000, under which the level of reimbursement varies according to the amounts spent. As this change fell outside the reference period, the Committee will examine the new system when the next report on Article 11 is submitted.

The Committee notes that a waiting list system applies for access to hospital care (examinations and treatment). According to Health Ministry figures for 1997, 71% of patients were treated immediately and 7% had to wait over three months for treatment. The Committee takes note of the waiting times (details available on the Internet) broken down by type of operation and notes that, although patients have to wait only relatively short times or not at all for cancer-related operations, the waiting lists for heart operations in certain hospitals are very long. Moreover, the average waiting time is increasing steadily and has risen from 73 days in 1988 to 87 days in 1997. With reference to Recommendation No. R (99) 21 of the Committee of Ministers of the Council of Europe on criteria for the management of waiting lists and waiting times in health care, the Committee wishes to receive information on the reasons for these waiting lists and on how they are managed (admission and follow-up criteria).

Health care professionals and equipment

The number of hospital beds has continued to fall and stood at 24,525 in 1997, i.e. 40% down on 1975. The Committee notes from OECD figures that in relation to the total population, the number of beds (4.7 beds per 1,000 inhabitants in 1996) is among the lowest in OECD countries in Europe. It considers that the very low density of hospital beds, combined with the waiting lists, could be an obstacle to access to health care by the largest possible number of people. However, pending information on the waiting lists, it does not pronounce itself on this question. Psychiatric hospitals accounted for 17% of total beds in 1996. The private hospital sector is very small (only 0,2% of total beds).

In 1996, the density of general practitioners per 1,000 inhabitants was 0.6, in the lower range for European OECD countries. The same applies to the proportion of dentists, which stood at 0.5 per 1,000 inhabitants in 1996. At the same time, the Committee notes that the number of consultants is particularly low, viz 886 in 1994, or 0.17 per 1,000 inhabitants, which is the lowest density by far of all OECD countries in Europe. The same applies to the density of pharmacists (0.2 per 1,000 inhabitants). The Committee would like to know the reasons for this.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Denmark is in conformity with Article 11 para. 1 of the Charter.

[With regard to Article 11 — The right to protection of health; Paragraph 2 – Advisory and educational facilities]

The Committee takes note of the information provided in the Danish report and its appendices.

[24]Health Ministry brochure, *The Danish Health Care Sector*, 1999.

Encouragement of individual responsibility

Health education in schools
The report contains no new information despite the Committee's request in its previous conclusion. It merely states that health education in schools is essentially the responsibility of various public and private bodies - the National Board of Health, the Danish Council on Smoking and Health, etc - which organise information campaigns and produce educational resources. The subjects covered include tobacco, alcohol and drug abuse, sex education and nutrition.

The Committee finds this information relevant but insufficient for it to assess the practical implementation of Article 11 para. 2 in relation to health education in schools. Denmark has never indicated whether a general health education programme exists, the extent to which teachers are involved and whether they are trained in the prevention of dangerous activities among pupils, whether health education is provided to schoolchildren of all ages or what financial resources are devoted to it. The Committee requests that the next report answer these questions in full.

Conclusion
Pending receipt of detailed information on the application of Article 11 para. 2 of the Charter, the Committee defers its conclusion.

[With regard to Article 17 — The right of mothers and children to social and economic protection]

It notes the Interministerial Children's Committee is still in existence and is currently dealing with topics such as the sexual abuse of children, conditions for children of the mentally ill, children of the ethnic minorities and more general problems concerning social inheritance. The Committee wishes to be kept informed of all developments in this area.
The Committee also wishes to be informed of the activities of the National Council for Children.

Establishment of parentage and adoption
As regards adoption the Committee recalls that the situation is in conformity with the Charter.
According to the report the Child Law Reform Commission issued a report in 1997 proposing *inter alia*, changes to the rules on the establishment of parentage. Under the proposals it would be easier for unmarried fathers to have paternity registered, where they are cohabitating they would be in the same position as married fathers.

At present only a married father has the right to institute legal affiliation proceedings to have his paternity established, the report of the Child Law Reform Commission proposes that other men under certain conditions should also have the right to take legal proceedings to establish paternity.

New rules have also been proposed in relation to the establishment of paternity where a child has been conceived through artificial insemination.

The Committee wishes to be informed about all developments in this area.

Children in public care
The Committee wishes to receive information on the number of children placed outside the home, and of these, on the number of children placed in a foster family and in residential care.

The Committee wishes also to receive information as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care or treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him.

Protection of children from ill treatment and abuse
The Committee notes with satisfaction that Act No. 416/1997 abolished corporal punishment in the home; a child may not be punished corporally or exposed to other degrading treatment.

Legislation entered into force in 1995, which makes it an offence to posses indecent photographs of children. In 1999 a working group was appointed with representatives from the Ministries of Health, Justice, Education, Culture and Social Affairs to draft proposals for initiatives to prevent and combat sexual offences against children. The Committee wishes to be kept informed of all developments in this field.

It also wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

Children and the law – Young offenders
The Committee wishes to know what is the minimum marriage age.

Conclusion
The Committee concludes that the situation in Denmark is in conformity with Article 17 of the Charter.

Finland

[With regard to Article 7 — The right of children and young persons to protection; Paragraph 3 - Safeguarding the full benefit of compulsory education]

The Committee recalls that it has previously held that children should not be permitted to do any kind of work before going to school in the morning (Conclusions VIII, p. 108). The previous Finnish report under this provision indicated that Section 57 of the Compulsory Education Decree prohibits the employment of a child subject to compulsory education during school hours, including travelling time. It also requires that any work assigned to children must not be such as to deprive them of sufficient free time for rest and homework. The Committee wishes to receive information in the next report under this provision on the nature and extent of early morning work performed by children under and over the age of 15 years old, and on the supervision carried out by the competent authorities to ensure that children benefit fully from compulsory education. Pending receipt of this information, the Committee reserves its position on this matter.

The results of the Nordic study[25] on work by children in Finland in the years 1997-98 are quoted in the report. The Committee notes that the majority of those children who work during the school year are employed for less than eight hours per week.

The Committee defers its conclusion, pending receipt of the information requested.

[With regard to Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes that the Criminal Code was amended in 1999. The amendments *inter alia*, raised the maximum penalty for the distribution, manufacture, and importation of child pornography, and made the purchase of sexual services from a young person (under 18 years of age) a criminal offence, punishable by a fine or imprisonment (maximum 6 months). The Committee wishes to receive information on the supervisory system, if any, that accompanies this prohibition. It notes from the information under Article 17 of the report, that Finland is preparing a national action plan for the prevention of commercial sexual abuse in Finland. The Committee wishes to receive further information on this point.

As regards the information contained in the Finnish report under Article 7 para. 10, regarding the introduction of specific offences concerning the sexual abuse of children, the Committee decides to examine this information under Article 17 of the Charter.

[25] *Ibidem.*

[With regard to Article 8 — The right of employed women to protection Paragraph 2 – Illegality of dismissal during maternity leave]

With respect to the description of the overall situation, it refers to its previous conclusion (Conclusions XIII-5, p. 76).

The Committee points out that the Finnish legislation (the Contracts of Employment Act, No. 320/1970, as amended) makes provision for reinstatement in her former post of an employed woman dismissed in contravention of Article 8 para. 2 of the Charter.

This provision provides that, in such a case, the court, once it has been requested to do so, has to investigate whether, due to the circumstances of the case, the conditions exist for the employment relationship to continue or to be restored if it has been terminated. The court takes into account the activities of the employer, the number of employees working for the employer, the desire of the dismissed employee to be reinstated in her former job and other circumstances.

The same legislation, like the Seamen's Act, No. 423/1978, also provides that, in the event of unlawful dismissal, the employer must pay a compensation of an amount determined to be between three and twenty-four months' pay. When setting this amount, the court takes into account the estimated length of the woman's period of unemployment, her estimated loss of earnings, her period of employment, her age, her chances of being able to find another job matching her professional experience and training, the way in which the employer ended her contract and any other circumstances relating to the dismissed employee or the employer.

In reply to a question raised by the Committee, the present report states that, during the reference period (1996-98), none of the judgments issued by the Supreme Court or the employment tribunal ordered the reinstatement in her previous post of a woman dismissed in contravention of Article 8 para. 2 of the Charter, i.e. during her absence on maternity leave, or on a date such that the period of notice expired during such absence.

The report nevertheless refers to a decision of the Kajaani District Court in the case of a woman dismissed on account of pregnancy. The employer dismissed the employee after being told of her pregnancy, and without offering any legitimate reason. The employer was fined and ordered to pay her 60,000 FIM plus interest for loss of earnings, reduced maternity allowance and annual holiday pay.

The Committee points out that reinstatement must be the rule in the event of unlawful dismissal. It is in fact the purpose of Article 8 para. 2 of the Charter, not only to guarantee employees' financial security in the event of pregnancy, but also to guarantee their jobs. Payment of a compensatory allowance is accepted only on an exceptional basis, i.e. when reinstatement proves impossible (e.g. closing down the of the business in question) or is not desired by the employee concerned. The compensatory allowance must in that case be a sufficient deterrent for the employer and a sufficient compensation for the employee.

The Committee notes from the above-mentioned case-law that even if legislation provides for the reinstatement of unlawfully dismissed female employees, the competent courts almost never issue such orders.

It also notes that the amount of the compensation payable by employers who have unlawfully dismissed female employees ranges from three to twenty-four months' pay, depending on the courts' decisions, a sum the Committee does not regard as a sufficient deterrent for the employer or as a sufficient compensation for the employee. It points out that it has already regarded as inadequate a legislation which, in respect of unlawful dismissal following a claim for equal pay between women and men, "merely provides for a maximum compensation of thirty-nine weeks' pay" (Conclusions XII-1, pp. 96 and 97, and Conclusions XIII-2, p. 260). It further observes that the court decision referred to in the report does not demonstrate that sanctions in respect of the employer are sufficient to deter the employer and compensate the employee.

Finally, the Committee observes that the compensation system provided for is the system applicable to dismissals in general and that no specific protection exists for the women concerned.

Conclusion
For the reasons set out above, the Committee concludes that the situation in Finland is not in conformity with Article 8 para. 2 of the Charter.

[With regard to Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the Finnish report on the Charter, on the Internet site of the Ministry of Social Affairs and Health[26] and in the 1996 report of the European Observatory on Health Care Systems.[27]

State of health of the population - General indicators

Life expectancy and principal causes of death
The Committee notes that life expectancy at birth increased from 79.4 years in 1992 to 80.5 years in 1997 for women and from 71.7 years in 1992 to 73.4 years in 1997 for men. It observes that these figures are significantly higher than those recorded in the previous reference period and that life expectancy in Finland is now around average for European Union and European Economic Area member states.

The Committee notes that the number of new AIDS diagnoses per year fell from 40 in 1995 to 17 in 1998.
Infant and maternal mortality

The rate of infant mortality in Finland remains one of the lowest in Europe. In 1997 it was 3.9 deaths per 1,000 live births, significantly lower than the figure for the previous reference period (in 1992 the rate was 5.2). The maternal mortality rate is also relatively low, although it has risen slightly in recent years: the average rate over the period 1994-1996 was 5.2 deaths per 100,000 live births, compared to an average of 4 between 1990 and 1993.

Health care system

Access to health care
The Finnish health care system covers the whole population. It is financed by municipal authorities, which are in turn subsidised by the state.

In 1997, 7.4% of GDP was devoted to total health expenditure. The proportion of health care funded by the state, one of the lowest of all European OECD countries, is steadily falling (from 79.6% in 1992 to 76% in 1997).
Primary health care is managed by municipal health centres (numbering 265 in 1999). Each municipality forms part of one of twenty hospital districts, each of which has its own main hospital. Five districts have university hospitals which offer specialised medical care. Private health care is also available. In 1996, the private sector accounted for around 16% of all medical consultations.

As far as health centres are concerned, patients pay either an annual fee of around 100 FIM or 50 FIM per visit, up to a maximum of three visits per calendar year, depending on the municipality. Health care for children under 15 and dental care for those under 19 are free. Patients pay different amounts for hospital treatment, depending on whether they require outpatient care (100 FIM), an overnight stay (125 FIM) or a day-time operation (250 FIM). Health insurance covers a certain proportion of the cost of care provided or prescribed by private doctors.[28]
With regard to medicines prescribed by a doctor, patients must pay 50 FIM plus 50% of the rest of the cost, up to a maximum of 3,283 FIM (after which all costs are reimbursed for the remainder of the year). The purchase price of certain listed pharmaceutical products intended to treat serious or chronic illnesses is reimbursed at a rate of between 75% and 100% if they cost more than 25 FIM.

[26] www.vn.fi

[27] *Health Care Systems in Transition Profile* (Observatory Internet site: www.observatory.dk).

[28] European Commission, *Social Protection in the Member states of the European Union, situation on 1 July 1999 and evolution*, Missoc.

According to OECD data, the average reimbursement rates for pharmaceutical products and hospital care are among the lowest in European OECD countries (45% and 82% respectively in 1996). On the other hand, the average reimbursement rate for out-patient medical care is one of the highest (90%).

In order to be satisfied that the low reimbursement rate for pharmaceutical products does not hamper public access to health care, the Committee would like to know whether measures are being or will be taken to ensure that these products are not too expensive for the less well-off.

The Committee wishes to know whether waiting lists are available for access to medical services and should it be the case, how such lists are managed.

Health professionals and equipment
The number of hospital beds available in health centres is constantly falling. In 1996 there were 47,140 beds, i.e. 9.2 per thousand inhabitants. 40% of all hospital beds are chronic care beds and 12.9% are for psychiatric patients. These figures are average for a European OECD country. There are very few private hospitals, accounting for less than 5% of all beds.

In 1997 the density of general and specialist physicians per thousand inhabitants was 1.6 and 1.4 respectively. These figures are much higher than in most European OECD countries, as is the density of dentists and pharmacists (0.9 and 4.1 per thousand inhabitants respectively).

Conclusion
The Committee concludes that the situation in Finland is in conformity with Article 11 para. 1 of the Charter.

[With regard to Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility
In addition to municipal budgets, the state allocates a total of 37 million FIM per year for health promotion initiatives (including 25 million FIM for health education and 9 million FIM for the prevention of alcohol abuse).

Health education in schools
The Committee noted from previous reports that health education, including sex education, traditionally forms part of primary and secondary school syllabuses, integrated into other subjects and taught by the school nurse. Since 1994 Finland has been part of the European Network of Health Promoting Schools, set up by the European Office of the World Health Organisation (WHO), the European Commission and the Council of Europe.
Public information and awareness-raising

The municipal authorities are responsible for implementing the "Health for All" programme and for health promotion in general, involving all partners concerned: health centres, health professionals, qualified catering staff, nursery and school employees, local town planners, etc. Particular attention is paid to promoting the health of children and young people.

According to previous reports, information campaigns on major public health issues including AIDS and public awareness campaigns designed to promote healthy living and prevent smoking, alcohol and drug abuse are either currently being or were recently carried out. National, regional and local follow-up studies are used to determine target groups and themes as well as to assess results.

Counselling and screening

Children and adolescents
Health centres organise antenatal consultation programmes in order to monitor and look after the physical well-being of future mothers and unborn children and to prepare parents for childbirth. They also run paediatric clinics, which evaluate and support children's physical, mental and social development from birth up to school age and, if appropriate, refer children elsewhere for further examinations and treatment. These clinics support and guide

families with regard to educational matters. Many of them have set up discussion groups where parents can talk about educational and child health issues. These services are all free.

The municipal authorities are required to provide health services in primary schools (for children in years 1 to 9), vocational training centres and secondary schools under their control. The health of students in higher education is the responsibility of the Student Health Foundation. Regular medical checkups are therefore carried out throughout a child's education, comprising a blood test, hearing and sight tests and weight and height measurements. On average, routine medical checkups are carried out for seven different age groups. The report states that most municipal authorities carry out more frequent examinations on children from families at risk. Pupils are examined by a doctor on two or three occasions and otherwise by the school nurse, who may be consulted at any time. The school health programme also embraces dental and psychological care and speech therapy.

Rest of the population
In addition to the information provided in previous reports, the Committee notes that municipal authorities screen for breast cancer in women aged between 50 and 59 and for cervical cancer in women aged from 30 to 60.

Conclusion
The Committee concludes that the situation in Finland is in conformity with Article 11 para. 2 of the Charter.

[With regard to Article 17 — The right of mothers and children to social and economic protection]

Children in public care
The Committee wishes to receive information on the number and types of institutions that exist for the care of children.

According to the first Finnish report submitted under the United Nations Convention on the Rights of the Child when a child is in institutional care, human rights such as the right to personal integrity, right to privacy and secrecy of phone conversations, protection of property, right to freedom of movement, and the right to meet persons close to the child are guaranteed.

Staff and directors of child welfare institutions have no authority to restrict children’s rights except as provided for by law. The Child Welfare Act has separate provisions on the conditions under which an institution may interfere with a child’s property, mail and personal integrity and right to meet persons close to the child. Any decision to restrict certain rights may be appealed to the courts.

While noting that this is in conformity with the principles laid down in the General introduction to the present Conclusions, the Committee wishes to know whether there is any body responsible for the monitoring of care in institutions and whether there is any specific procedure for complaining about care or treatment in institutions.
Protection of children against ill treatment and abuse

The Committee recalls that under the Child Welfare Act, the social welfare board must take immediate action if the health or development of a young person is endangered by his living conditions. Non institutional measures must be resorted to first. This includes financial assistance, assistance in housing matters, therapeutic services, home help, recreational services, school assistance and training. Non-institutional welfare action also includes mutually agreed placement in an institution or foster family.

A child must only be taken into care if the child’s health and development are seriously endangered by its living conditions and the situation cannot be improved through non institutional measures. A child can be taken into care if necessary without the consent of its parents, the decision to do this is taken by the social welfare board. The parties concerned may appeal the decision to the County Administrative Court and further to the Supreme Administrative Court.

This transfer of guardianship, through the taking into care of a child, does not necessarily remove the legal custody from the parents, but permits the social welfare board to decide on the care and upbringing of the child. Wherever

possible the social welfare board should act in cooperation with the parents and enable the child to keep in contact with them.

The Committee wishes to receive information on the number of children in receipt of non institutional welfare measures, the number of children taken into care and placed with foster families and in institutions.

The Committee recalls that the Child Custody and Right of Access Act 1984 prohibits the abuse of children and that this includes the corporal punishment of children and other humiliating treatment.

It notes from the information provided under Article 7 para. 10 of the Charter that the criminal law prohibits sexual intercourse with a minor under 16 years of age (the age is 18 years where the persons involved are family members or where the minor is in an institution). The sanction for sexual abuse is a maximum of 4 years imprisonment, for aggravated sexual abuse it is between 1 and 10 years.

Conclusion
The Committee concludes that the situation in Finland is in conformity with Article 17 of the Charter.

[With regard to Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex]

Situation in law and in practice
The Committee deferred its previous conclusion (Conclusions XIII-5) pending a reply on two points: the possibility of reinstatement for an employee who is dismissed following a claim for equal treatment, and the possibility to declare discriminatory clauses in individual or collective agreements null and void.

With respect to discriminatory clauses in individual contracts the Committee refers to its conclusion under Article 4 para. 3 of the Charter (Conclusions XIV-2, pp. 229-230), in which it noted that it follows from general legal principles that such provisions are null and void. It now notes that the Labour Court may declare clauses in collective agreements in conflict with the Equality Act null and void. This principle has been affirmed in the Labour Court's case-law. However, the Committee considers it advisable to enhance the possibility for workers to bring action in such matters and requests information on any possible changes of the situation to that effect.

In reply to the Committee's question whether there are any collective agreements still in force to which Article 25 of the Equality Act applies, the report states that this provision was repealed in 1997 (1037/1997). At the same time, a separate Act on the Equalisation of the Voluntary Occupational Pension Arrangements (schemes) (1038/1997) was passed, by virtue of which the retirement age and benefits under those schemes were changed to be the same for both women and men.

With regard to the possibility of reinstatement following dismissal, the Committee recalls that this question has been put also under Article 4 para. 3. It has still received no answer. The Committee thus cannot but again defer its conclusion and insists on receiving a reply in the next report.

The Committee takes note that the amount of compensation payable under the Equality Act in cases of discrimination has been increased, the minimum amount now being 15,600 FIM and the maximum amount 51,900 FIM. The amount of compensation is reviewed every three years. It further notes that compensation on the basis of discrimination in vocational rehabilitation may be claimed under the Damages Act (No. 412/1974).

In its previous conclusion, the Committee asked for information on differences in terms of employment and working conditions between men and women. The report indicates that in this respect, several legislative amendments have been made concerning fixed-term employment, aiming to harmonising the status of persons in atypical employment and that of regularly employed persons. The Committee observes from the report that women are more often employed in fixed-term employment than men (e.g. 21% of all female wage-earners and 15% of male wage-earners in the 30-39 age group).

As to the situation in education, the report states that women account for more than half of university students. Their share has risen steadily since the mid-1970´s among graduates with upper secondary education and tertiary education programmes. Out of persons with a university qualification, 58% were women in 1997, and almost half of those taking a licentiate and doctorate were women. Furthermore, 18.4% of all professors are women, the highest figure for any European Union country.

By international standards, part-time work is uncommon in Finland, the majority of those working part-time being women (twice as many as men). After the recession, part-time work among men has decreased, whereas the number of women part-timers has somewhat increased. Approximately 20% of all part-time workers (women and men) in 1997 stated that they had opted for part-time employment because they did not want to work full time. About 40% of women working part-time stated at the same time that they had opted for part-time work because they had failed to find any full-time employment. A little over 30% of men were of the same opinion.

The unemployment rate of men has by tradition been higher than that of women in Finland. In 1996-1998, unemployment between both genders decreased consistently; yet, the decrease in men's unemployment was clearly faster. For this reason, the unemployment rate of women has become slightly higher. The Committee refers in this respect to its latest conclusion under Article 1 para. 1 of the Charter and to the question asked therein (Conclusions XV-1, p. 189).

From the information contained in the report on the number of women in senior positions, the Committee observes that in 1999, of the highest and second highest positions in the ministries, respectively 16% and 6% were held by women. In the supreme courts, women occupied 19% of the posts. The Committee would like to find up-dated information in the next report on the number of women in senior positions in the private sector.

The Committee observes from the report that wage differences between men and women remained largely unchanged during the reference period, with female wage-earners' average income (regular working time) being 80% of male wage-earners' income in the private sector, 82% in government service and 86% in the service of municipalities in 1997.

In reply to the Committee's question as to whether differences exist between men and women in matters relating to social security and unemployment benefits, old age and survivor's benefit, the report states that social security legislation makes no difference between men and women.

Positive action

In reply to the Committee's question whether the requirement introduced in the Equality Act, that an employer with more than 30 employees includes measures to further equality between women and men in the annual personnel and training plan for the workplace, has had positive results, the report states that the Ombudsman for Equality gave instructions for equality planning at workplaces in 1996. A study carried out later in about a hundred workplaces showed that the state of equality planning was fairly good. Of all the groups studied, 78% had either completed an equality plan or were planning one. More than half of all organisations had, at the time of the study, an equality plan. The Finnish Government's Plan of Action for the Promotion of Gender Equality for 1997-1999 was approved in February 1997. The main principles of the Plan of Action follow those of the Beijing Platform of Action and consequently emphasise the empowerment of women, the promotion and protection of the human rights of women, and the promotion of equality by mainstreaming.

The report further mentions that projects promoting women's status in working life and female entrepreneurship have been implemented under the European Community Initiative "Employment-NOW" of the European Social Fund (programme period 1995-1999).

Conclusion

Pending a reply to the question concerning the possibility of reinstatement for an employee who is dismissed following a claim for equal treatment, the Committee defers its conclusion.

France

[With regard to Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee notes from the French report that there was no change in the situation of children working in family businesses (with the exception of agriculture – see conclusion under Article 7 para. 1), which it has repeatedly found to violate this provision of the Charter.

The report to Government indicates that children who take part in public performances are not subject to the general rule laid down in the Labour Code that any work undertaken by children aged 14-16 years during school holidays may not last more than half of such period (Article L. 211-1, 211-11). Instead, they may work for the entire holiday period. The Committee considers that this situation is contrary to Article 7 para. 3 of the Charter. Children cannot enjoy the full benefit of compulsory education if the law permits them to work for more than half of school holidays. As the report to Government itself acknowledges the risk constituted by this shortcoming in the legal protection of children, the Committee wishes to be informed in the next report under this provision of progress achieved in bringing the situation into conformity with the Charter on this point.

Referring to its conclusion under Article 7 para. 1, the Committee concludes that the situation in France is not in conformity with Article 7 para. 3 of the Charter because children still subject to compulsory schooling may work in family businesses, without the guarantees laid down in Article L. 211-1 of the Labour Code as to the nature of the work possible and minimum rest periods during school holidays. Moreover, the absence of a guaranteed rest period for children who take part in public performances during the school holidays is similarly not in conformity with Article 7 para. 3 of the Charter.

[With regard to Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes the information contained in the French report in response to the general question on measures taken to prevent and protect children from ill treatment. It decides to examine this information in its conclusion under Article 17 of the Charter.

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in France is in conformity with Article 7 paragraph 10 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

The Committee asks that the next report fully describe the situation of part-time workers regarding the right to maternity leave and the right to adequate payments.

1. Right to maternity leave

a. Existence of the right and duration of leave

Female employees are entitled to time off work for a defined period before and after confinement, known as "maternity leave", Article L. 122-26 of the Labour Code provides for maternity leave. A woman giving birth to her first child has the right to suspension of her employment contract for a period beginning six weeks before the expected date of confinement and ending ten weeks after the actual date of confinement. That period is increased for a multiple birth or where the birth brings the number of children cared for by the woman herself or the household, or the number of viable children born to the woman, to three or more.

In reply to a question by the Committee, the report states that domestic employees are entitled to the same treatment in matters of maternity as other employees, since under the relevant national collective labour agreement of 3 June

1980, which came into force on 27 June 1982 when the decree making it generally applicable was published in the French official gazette, the provisions of the Labour Code dealing with maternity also apply to domestic employees.

b. Compulsory nature of maternity leave

For the employee, maternity or adoption leave is an entitlement and also in part an obligation. Although a woman is not required to take all her maternity leave, she must cease work for a total of eight weeks before and after confinement, necessarily including the six weeks after confinement (Article L. 224-1 of the Labour Code). Employers who fail to observe the rules on the compulsory period of suspension of the employment contract incur criminal penalties (Article R. 262-7 of the Labour Code).

The situation is therefore in conformity with Article 8 para. 1 of the Charter, which requires that all women engaged in paid employment, including domestic employees, be guaranteed the right to maternity leave and that the minimum duration of such leave be 12 weeks, including a mandatory 6 weeks after childbirth.

2. Right to adequate payments

In the event of pregnancy, a woman who is insured as an employee in France is entitled to cash benefits under the maternity insurance scheme as compensation for loss of earnings while away from work.

In reply to the general question posed by the Committee in Conclusions XIII-1 (p. 172), the report specifies the conditions of eligibility for cash maternity benefit. Employees must have been registered for at least 10 months before the expected date of confinement or the date on which an adopted child comes to live with the household. They must also either have paid a minimum amount of contributions, calculated on the basis of earnings for the previous 6 calendar months, or worked for at least 200 hours in paid employment, or the equivalent, over the previous 3 calendar months or 90 days. The report also states that periods of unemployment, with or without the award of benefit, are not taken into account as hours worked.

The Committee appreciates that eligibility for benefit may be subject to conditions such as a minimum period of payment of social security contributions and/or employment. It nevertheless reserves the right to examine the reasonableness of those conditions. In this case it notes that, although the minimum period required is not excessive, failure to take into account periods of unemployment as hours worked constitutes a restriction which might prevent the acquisition of a right to benefit and is consequently contrary to Article 8 para. 1.

The report states that the daily rest allowance is now equivalent to the basic daily net wage (instead of 84% of the basic daily gross wage). It cannot exceed the social security ceiling (14,090 French Francs (FRF) per month as at 1 July 1998).

The report also specifies that public service employees on fixed-term contracts are entitled to maternity or adoption leave on full pay after six months' employment.

Lastly, in reply to a question from the Committee, the report states that in 1998 the number of female senior executives or managerial employees in full-time work was estimated at 366,000. Their average monthly gross salary was 20,518 FRF. In the same year, the social security ceiling for maternity insurance purposes was 14,090 FRF per month. In some areas of activity, industry-wide agreements or collective labour agreements make provision for supplementary payments.

The Committee reiterates that during maternity leave a woman's financial situation must permit her to avoid having to work, so that she can rest properly. This obligation can be fulfilled only by continuing payment of the woman's wage or by paying a benefit that is not substantially lower than that wage. The Committee nonetheless takes the view that, where the wage exceeds a ceiling, a substantial reduction in it during maternity leave does not, in itself, contravene Article 8 para. 1 of the Charter. In assessing the situation, the Committee takes account of a number of factors such as the amount of the ceiling, the ceiling's position on the scale of earnings and the number of women earning more than the ceiling.

It notes that, in the present case, the ceiling is of a high amount and the number of women earning more than the ceiling is relatively small. It therefore holds that the situation is in conformity with Article 8 para. 1 of the Charter in this regard.

The Committee concludes that the situation in France is not in conformity with Article 8 para. 1 of the Charter concerning the right to adequate payment, as periods of unemployment are not taken into account as working hours for the acquisition of entitlement to maternity benefit.

The Committee ask that the next report fully describe the situation of part-time workers regarding the right to maternity leave and the right to adequate payments.

[With regard to Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal
The Committee observes that under Article L. 122-25-22 of the French Labour Code, no employer may terminate a female employees contract at any time during a period when the woman is entitled to have that contract suspended, (i.e. maternity leave and adoption leave) whether or not she avails herself of that right.

The ban on dismissal is lifted where the employer can prove either serious misconduct on the part of the employee, or that it is impossible to continue the employment contract for a reason unconnected with the pregnancy, confinement or adoption (Article L.122-25-2 para. 1 of the Labour Code). These reasons are acceptable under this provision of the Charter.

In addition, notice cannot be served and dismissal cannot take effect during any period of maternity or adoption leave.
In reply to a question from the Committee, the report states that domestic employees are protected from dismissal under the relevant national collective agreement of 3 June 1980, which came into force on 27 June 1982 when the decree making it generally applicable was published in the French official gazette. Under that agreement, the provisions of the Labour Code dealing with maternity also apply to domestic employees.

In reply to the general question posed in Conclusions XIII-4 (p. 73), the report states that the special protection from dismissal which applies during a fixed-term contract does not prevent expiry of the contract (Article L. 122-25-2 para. 3 of the Labour Code). Employers are therefore not required to continue the contractual relationship beyond the contract's expiry date, even where the contract contains a renewal clause. The Committee asks what penalty is incurred by an employer where it can be shown that a pregnant woman's contract was not renewed on account of her condition.

The report also supplies information on the number of women and men working under temporary and fixed-term contracts. In January 1999 the figures were respectively 127,400 and 473,374 for women and 319,559 and 418,833 for men.

Consequences of unlawful dismissal
The report states that, although a dismissal is invalid where it contravenes the ban, the employer is not required to reinstate the employee concerned. The penalties for unlawful dismissal are therefore solely pecuniary in nature. Where the dismissal is invalid, the employer is required to pay the employee concerned the wages that she would have received for the entire period covered by the ban on dismissal (Article L. 122-30 para. 2 of the Labour Code). A woman dismissed unlawfully may also be awarded compensation in addition to the dismissal payment (Article L. 122-30 para. 1 of the Labour Code). The report states that in a judgment of 17 November 1997 the Court of Cassation approved the simultaneous payment of both compensation and wages. According to the report, this precedent means that "the financial risk run by an employer who dismisses a woman during maternity leave is highly dissuasive and cannot but encourage the offending employer to consider reinstating the employee, so as to avoid the consequences of a court decision".

The Committee recalls that reinstatement must be the rule in cases of unlawful dismissal. The purpose of Article 8 para. 2 is not only to guarantee the financial security of a female employee on maternity leave, but also to protect her job. Payment of compensation is acceptable only in exceptional circumstances. The amount payable must be sufficient to deter the employer and compensate the employee.

The Committee notes that, under French law, reinstatement is not the rule in the event of unlawful dismissal. It therefore considers that the situation is not in conformity with Article 8 para. 2 of the Charter.

[With regard to Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

Under Articles L. 224-2 to L. 224-5 and R. 224-1 to R. 224-23 of the French Labour Code, nursing mothers are entitled to one hour a day for breast-feeding during working hours, divided into two 30-minute periods (one in the morning and one in the afternoon). This right is granted for a period of one year from the date of birth.
The time when the employee ceases work to nurse her child is determined by agreement with the employer. Failing an agreement, it falls in the middle of each half-day's work.

Women may breast-feed their children at the place of work in a room which must satisfy certain criteria. In addition, employers with more than one hundred female employees may be served notice to set aside rooms, fitted out according to the regulations, on or near their premises.

However, in reply to a question from the Committee, the report states that time off for breast-feeding is not regarded as work and need not be paid as such (except where more favourable treatment is provided for under a collective or other agreement).

The Committee points out that Article 8 para. 3 lays down two principles, in that time off for breast-feeding must not only be regarded as working hours but must also be paid as such.

Moreover, in reply to a question from the Committee, the report states that neither the Labour Code nor the national collective labour agreement relating to domestic employees grants such employees the right to time off for breast-feeding and that there is no case-law on such matters. It nonetheless specifies that "subject to the courts' unfettered discretion, Article L. 224-2 applies to nursing mothers in general, no mention being made of the employer, and should logically cover domestic employees." The report considers that the lack of precedents from the national courts in this area shows that no problem arises in practice.

The Committee concludes that the situation in France is not in conformity with Article 8 para. 3 of the Charter. Although all female employees are entitled to time off for breast-feeding, this does not qualify as actual work and need not be paid as such.

[With regard to Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

*1. Regulation of night work for women in industrial employment (Article 8 para. 4*a*)*
The French report states that Article L. 213-1 of the Labour Code, which prohibits night work for women in industrial employment and is no longer applied in practice, will shortly be repealed under the Social Modernisation Act. This will bring the situation into line with European Community law, namely Community Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The report does not answer the questions posed in the previous conclusion concerning the conditions under which women may work at night in industry and the specific situation of pregnant women. It merely says that the above-mentioned bill takes into account the situation of pregnant women.

The Committee has accordingly examined the bill in question (web-site: www.legifrance.gouv/fr). It notes in particular that Section 53 permits the transposition into national law of the provisions governing night work, based

on the principle of general regulation of night work in respect of all employees, along with increased medical supervision of employees regularly required to work at night. Night work is defined as any work between 10 p.m. and 5 a.m., but these hours may be changed under an industry-wide agreement or with the labour inspectorate's permission. The Committee also notes that Section 56 sets out general rules governing night work: anyone working at night must be granted compensation in the form of either rest periods or an increase in wages. In addition, night work may only be introduced or extended to new categories of employees subject to the conclusion of a collective agreement that must specify the compensation due to the employees concerned, which as a priority shall take the form of rest periods or, failing that, an increase in wages.

The Committee moreover notes that Section 59 of the bill contains provisions on pregnant women or women who have recently given birth. They must be temporarily excluded from night work. They are assigned to another post on production of a certificate from an occupational health doctor attesting that the reassignment is necessary for medical reasons.

The Committee points out that the aim of regulating night work must be to limit the negative effects of such work on employees' health and family life and to prevent abuses. It therefore requests that the next report specify whether the bill has been passed and describe the conditions under which night work is performed. Pending receipt of this information, the Committee defers its conclusion in respect of Article 8 para. 4*a*.

*2. Prohibition of the employment of women workers in certain dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)*

The report recalls that Article L. 711-2 of the Labour Code prohibits the employment of women in mines and quarries. This is in conformity with the Charter, which merely requires a ban on underground extraction work in mines.

The report also states that Decree No. 96-364 of 30 April 1996 on the protection of pregnant or nursing employees from the risks resulting from exposure to chemical, biological or physical agents brought French legislation into line with European Community law. It is consequently forbidden to assign women who have declared a pregnancy to work that exposes them to metallic lead and its compounds, work in a hyperbaric environment where the maximum relative pressure exceeds 1.2 bars, or work involving a risk of exposure to the rubella virus or to toxoplasmosis.
The report does not however, answer the questions posed in the previous conclusion on the measures envisaged with regard to exposure to benzene and to ionising radiation (general question heading the section on Article 8 para. 4 in Conclusions XIII-4, p. 105). The Committee stresses that the next report should answer these questions.

In the meantime the Committee again defers its conclusion in respect of Article 8 para. 4*b*.

[With regard to Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the French report and in the second general report on health in France published by the High Committee for Public Health and the Ministry for Employment and Solidarity (1994-1998).

State of health of the population – General indicators

Life expectancy and principal causes of death

The Committee notes that life expectancy at birth has continued to increase, rising from 81.1 years in 1991 to 82.3 years in 1997 for women and from 72.9 years in 1991 to 74.6 years in 1997 for men.
The Committee notes that the life expectancy of French women at birth is the highest in Europe and that that of men is average. However, it also notes that the gap between male and female life expectancy is the widest of all OECD countries in Europe and that excess male mortality is much higher than the European average.[29]

[29]*OECD Health Data,* 1999.

The Committee notes from the report that the number of new cases of AIDS has declined significantly since the start of the reference period, falling from 5,253 in 1995 to 2,343 in 1998, mainly as a result of the introduction of new anti-retroviral treatment strategies. The number of new cases of HIV infection has remained stable.

Infant and maternal mortality

The infant mortality rate has fallen steadily and significantly since the previous reference period, and stood at 4.8 per 1,000 live births in 1997 as opposed to 6.8 in 1992, placing France among the European countries with the lowest rates of infant mortality. This improvement is mainly the result of prevention campaigns aimed at the sudden infant death syndrome.

In contrast, the prenatal mortality rate is unchanged in overall terms and remains among the highest in the European Union, at an average of 11 deaths per 100,000 births from 1994 to 1996 according to OECD and UNICEF[30] statistics. From the information available to the Committee,[31] it seems that this could be explained by the fact that too many maternity clinics are under-utilised and are not therefore properly equipped to meet all safety requirements. The Committee stresses that prenatal mortality is an avoidable risk which states must deal with if they are to comply with Article 11 of the Charter. Considering in particular the level of development of the French health care system, it holds that all necessary measures should be taken in order to achieve the risk as near as possible to zero.

The Committee notes that in 1994, the High Committee for Public Health recommended the adoption of a prenatal plan with the target of reducing prenatal mortality by 30%. Some specific measures have been taken, including the setting up in 1998 of a national committee of experts on prenatal mortality and the division of maternity clinics into three tiers, depending on the care to be provided for newborn children and their mothers. The Committee will assess the efficiency of the measures taken during its next examination of Article 11.

Health care system

Access to health care

The French health care system is based on compulsory health insurance (three main schemes for wage-earners, farmers and the self-employed). Supplementary cover is provided by mutualist organisations and private insurers. Most general medical care is provided by doctors in private practice.

The Committee notes that compulsory health insurance is collectively funded (from contributions and taxation, following the introduction of the supplementary CSG levy) and that almost the entire population (99.5%) is covered for health care.

According to OECD figures, the share of GDP accounted for by total health expenditure has risen and is among the highest in Europe (9.6% in 1997). However, the proportion of health spending covered by the social security system has continued to fall, from 74% in 1992 to 73% in 1997.

Insured persons pay for care when they receive it and are then reimbursed by their health insurance fund. However, they must pay a proportion of the costs themselves (30% of doctors' fees and 25% of the cost of outpatient consultations) and sometimes also charges above the standard fees, which may be covered by their supplementary insurance. Except for certain cases where no patient contribution is required, insured persons pay a share of 20% of the costs of care provided during hospitalisation up to the 31st day. They also pay for pharmaceutical products, which are reimbursed according to a variable scale (35% or 65% patient contribution for medicines intended to treat disorders or illnesses that are not usually serious). "Convenience" drugs are not reimbursed. The cost of drugs prescribed to treat long-term illnesses is reimbursed in full.

The average reimbursement rate has remained stable in the case of hospital care (92%), but has continued to decline in the case of out-patient medical care (57% in 1997 as against 58% in 1992) and pharmaceutical products (54% in

[30]UNICEF, *The State of the World's Children 2000*.

[31]Reports on health in France by the High Committee for Public Health, 1994 and 1998. See also the opinion of the High Council for the Population and the Family of 8 July 1997 on birth conditions in France.

1997 as against 55% in 1992). The Committee notes that the share patients must pay themselves has been growing steadily since 1980. It also notes that the reimbursement rate for pharmaceutical products and, above all, for general medical care is among the lowest in the European Union.

The Committee does, however, note that the impact of this situation on the most disadvantaged groups should have been lessened by the introduction on 1 January 2000 (i.e. outside the reference period) of a universal health care scheme. The basic cover of the general scheme will be available to everyone, and free supplementary cover is provided on a means-tested basis. The Committee therefore reserves the right to consider this aspect of the accessibility of care again at the time of the next report on Article 11.

Health professionals and equipment

According to OECD statistics, the number of hospital beds stood at 508 075 in 1996 (approximately 6% down on 1992), placing France in the European average in relation to the total population. Psychiatric hospitals accounted for approximately 14% of these beds in 1996. Private hospitals provide approximately 35% of hospital beds. The Committee notes that the number of psychiatric hospital beds has fallen by over 20% since 1992 and wishes to know the reason for this.

The number of general practitioners has increased in relation to the previous reference period and stood at 87,048 in 1997, or approximately 1.5 doctors per 1,000 inhabitants, which is much higher than in most other OECD countries in Europe. The proportion of consultants was the same. There were 39,471 dentists, or approximately 0.65 dentists per 1,000 inhabitants. Lastly, there were approximately 0.9 pharmacists per 1,000 inhabitants in 1995, in line with the high average for OECD countries in Europe.

Conclusion

The Committee observes that the situation in France with respect to Article 11 para. 1 of the Charter presents several weak points as far as the state of health of the population is concerned (excess premature male mortality and maternal mortality). Nevertheless it decides to wait until the next assessment of Article 11 before pronouncing itself and meanwhile concludes that the situation in France is in conformity with Article 11 para. 1 of the Charter.

[With regard to Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

Measures were adopted during the reference period to improve health policy in schools.
Firstly, health education was given greater emphasis in nursery and infant schools, where it was already part of the curriculum, with a particular focus on the theme of "respect for the body". A 20-hour training module was also introduced in secondary schools.

Secondly, for prevention purposes, all secondary schools were encouraged to set up their own health and citizenship education committee. One of the main tasks of these committees, which were initially established in 1990, is to carry out projects designed to prevent high-risk activities such as drug-taking, alcohol abuse, smoking and violence, taking into account the situation in the school itself. The whole school community is involved.

The Committee would like to be informed of the results of this policy, particularly whether many health and citizenship education committees have actually been set up.

The Committee notes that teacher training courses cover the prevention of high-risk activities. However, even though many health education resources are available to secondary school teachers, they are only used at teachers' own initiative and health education projects are rare.

This situation in particular led the Ministry of National Education to decide at the end of the reference period (circular No.98-234 of 19 November 1998) to include AIDS prevention in a more comprehensive sex education

programme. Provision was made to make certain sex education modules compulsory. The Committee would like to be informed of the results of this initiative.

Public information and awareness-raising
The *CFES*, a non-profit-making organisation operating under the authority of the Minister of Health, is responsible for organising national public information and education campaigns in the health field. Its purpose is to inform the public about healthier lifestyles and habits. To this end, the *CFES*, in partnership with the social security authorities, state agencies, study and research bodies and other organisations in the public and private sectors, runs between four and six major campaigns per year, covering the following main themes: smoking, alcohol, vaccination, accidents and AIDS. The campaigns include television, radio and magazine advertisements, leaflets, handbooks, videos, conferences, etc.

The *CFES* also supports the development of community health education activities, using personalised, participative methods (e.g. fitness trails, exhibitions, drama), and produces printed and audiovisual resources. These activities are aimed at the general public as well as the various groups of professionals involved in health education.

Funded by the state and the bodies that make use of its services, the *CFES* budget varies between 160 and 200 million FRF per year (i.e. 2.2% of ordinary health expenditure[32] in 1996), depending on the size of its publicity campaigns.
Responsibility is assumed at regional level by Regional Health Education Committees and at *département* level by Departmental Health Education Committees.

Counselling and screening

Children and adolescents
The Committee notes that, in conformity with Article 11 para. 2, free mother and childcare services are provided throughout the country and free, compulsory medical checks are carried out in schools.

Mother and childcare services offer premarital, antenatal and postnatal consultations as well as paediatric care for children up to the age of 6. Their role is purely preventive. They also help to implement medical and social preventive measures in crèches, approved childminding services and nursery schools. The report indicates that, in 1996, these services employed 4,500 doctors, 631 midwives, 3,151 paediatricians and 938 nurses. Comparing these figures with those contained in France's first report on the application of the United Nations Convention on the Rights of the Child, the Committee notes that staffing levels have fallen since 1992. It also observes from the aforementioned report by the High Committee on Public Health that mother and childcare services are less efficient than they could be on account of the purely preventive nature of their role and that their activities vary greatly from one *département* to another. The Committee requests the Government’s comments on this matter and on any measures to improve the situation.

The health of children aged over 6 is monitored by the school health service. Two compulsory check-ups are carried out, at ages seven and fifteen. Examinations are also carried out on request or in emergencies. Each year, doctors carry out around 2.5 million medical examinations on the 13 million primary and secondary schoolchildren in France. In 1995 the school health service employed 2,200 doctors and 5,000 nurses, with each doctor responsible for an average of 7,200 pupils and each nurse responsible for 2,500. The Committee considers that these figures demonstrate a clear shortage of medical staff. However, having learned that new posts were created outside the reference period in an effort to improve the situation, the Committee decides to await until the next time Article 11 is examined.

Rest of the population
The Committee takes note of several positive developments.
Firstly, it observes that a national skin cancer screening programme was launched during the reference period.

[32]Ordinary health expenditure comprises spending on the sick, prevention, the health care system and health management and funding.

It also notes that, outside the reference period, a national anti-cancer campaign was launched in order to extend national screening programmes for breast cancer (the most common fatal cancer among women), cervical cancer (causing 5% of cancer deaths among women) and cancer of the colon/rectum (responsible for 10% of cancer deaths among men and 13% among women).

Finally, the Committee notes that, under the Social Security Funding Act for 1999, the state was to finance all activities linked to organised screening programmes.

Conclusion
Pending receipt of the information requested concerning advisory and screening services for children and young people, especially in schools, the Committee concludes that the situation in France is in conformity with Article 11 para. 2 of the Charter.

[With regard to Article 17 — The right of mothers and children to social and economic protection]

Establishment of parentage and Adoption

The Committee recalls that the Act of 8 January 1993 lays down the rules of procedure for investigating the parentage of children (establishing filiation). It notes that these procedures are not applicable in four cases:
a. Where a child is born of an incestuous relationship, parentage may only be established with regard to one of its parents;
b. When the mother has requested that her identity should be kept secret, during the birth and declaration of the birth;
c. When there has been medically assisted procreation with a third party donor;
d. When parents who place their child in the care of the child welfare authorities request that their identity remain secret.

The Committee considers that the right of a child to know its origins may not be adequately protected in certain situations above, namely where the mother requests that her identity remains secret during the birth, and where parents who place their children in care request their identity remain secret. The Committee notes that the authorities are studying these issues and requests to be kept informed of all developments.

Children in public care and protection of children against ill treatment and abuse
The Committee notes the new Act on the prevention of sexual offences (Act No. 98-468 of 17 June 1998). The Act contains provisions which aim to strengthen the protection of sexually abused children *inter alia*:
– a guardian *ad litem* may be appointed to represent the interests of a child who has been sexually abused where the child's best interests are not completely assured by the parents;
– the child's evidence may be recorded by video.

In 1998, 83,000 children were deemed "in danger", according to the annual report of the National Observatory for Decentralised Social Action (reported in Le Monde 2/10/99). This figure comprises both children deemed at risk and ill treated children. In 1997, the figure was 82,000, and in 1995, the figure was 65,000.

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Germany

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

Young persons over the age of 15 and still subject to compulsory education may work during school holidays for a maximum of 4 weeks per calendar year. School summer holidays in Germany last for approximately 6 weeks in all parts of the country. The Committee considers that the main purpose of school holidays is to let children rest in order

to benefit fully from school after the holiday. It refers to its case law that the rest period must cover at least half of the holiday period for children still subject to compulsory education. This not being the case in Germany, the Committee finds that the situation is not in conformity with Article 7 para. 3 of the Charter.

The report provides information on the activities of the authorities in detecting infringements of the Act on the Protection of Young People at Work. More detailed information for all Länder is to be found in the report of the Federal Government on child labour in Germany.[33] According to this source, 1,360 cases of illegal employment of children were detected throughout the country during periods reaching from 1997 to 1999. The same source indicates the difficulty of detecting illegal child labour, and the lack of awareness of the law on the part of parents and employers. It considers, however, that the recent amendments have made the legal situation clearer.

The Committee concludes that the situation in Germany is not in conformity with Article 7 para. 3 of the Charter because the mandatory rest period for children still subject to compulsory education during school holidays is not sufficient to ensure that they may benefit from such education.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes the information contained in the German report. In particular it notes the measures taken by the German authorities following the 1996 Stockholm World Congress on the sexual exploitation of children. It wishes to receive further details on the measures taken to prevent the use of children in the sex industry and the supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Germany is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

Firstly, the Committee notes that the report replies to the general question raised in Conclusions XIII-4 (p. 73) about the number of fixed-term contracts other than in the specific and traditional instances which justify the use of such contracts. The report says that 2.5 million employees in 1998, constituting 8.5% of all such workers, were employed on the basis of fixed-term contracts. Proportionately, women were employed on such a basis to a lesser extent than men. The report also mentions studies which had found that women benefiting from specific protection from dismissal during maternity leave were not particularly involved in the use of this kind of contract.

The Committee considers that the proportion of women employed on the basis of fixed-term contracts is not excessive. Nevertheless, it stresses that fixed-term contracts are not the only kind of contracts to be considered as insecure work agreements. Therefore, it requests that information on the situation of part-time female employees be presented in the next report.

1. Right to maternity leave

The situation in Germany, already deemed to be in conformity with the requirements of the Charter, has improved in respect of the entitlement to maternity leave of women who have given birth prematurely. With effect from 1 January 1997, any employed woman giving birth prematurely, and thereby losing part of the compulsory six-week period of prenatal leave, benefits from an equivalent extension of her postnatal leave, thus receiving an effective total of twelve weeks' leave.

The Committee concludes that, on this point, the situation in Germany is in conformity with Article 8 para. 1 of the Charter.

2. Right to adequate benefits

[33] *Bericht der Bundesregierung über Kinderarbeit in* Deutschland, available at http://www.bma.de/de/job/kinderarbeit.htm.

The report states that German legislation guarantees to employees who are on maternity leave payments equivalent to their previous net wage.

The payment system varies according to whether the employee is affiliated to the statutory health insurance (about 90% of employees) or is privately insured.

Those who are affiliated to the statutory health insurance[34] receive benefits of up to 750 Deutschmarks (DEM) per month, the difference between this ceiling and the previous net wage being paid by their employer. To be entitled to such benefits, the employee must have been affiliated to the statutory health insurance or in an employment relationship for at least twelve weeks during the period from the tenth to the fourth month before confinement. On this point, the Committee considers that the twelve-weeks requirement is not excessive but it would like to know whether such time frame includes periods of unemployment.

Female employees, who are privately insured or have chosen not to be insured at all, are also granted a maternity allowance by the Federal Government, but this allowance cannot be higher than 400 DEM. In this case, the employer does not pay the full difference between the 400 DEM and the previous net wage but only the difference between the 750 DEM ceiling provided for employees affiliated to the statutory health insurance and the previous net wage. To be entitled to this allowance, the employee must have been in an employment relationship from the tenth to the fourth month before confinement.

The Committee considers that in the case of female employees who are privately insured or, given their high wages, have chosen not to be insured at all, the 400 DEM allowance in addition to the employer's contribution is a sufficient source of income. It also considers that the six-months employment relationship requirement is not excessive. Subject to the requested information, the Committee concludes that the situation in Germany is in conformity with Article 8 para. 1 of the Charter on this point.

[Article 8 — The right of employed women to protection; Paragraph 3 –Time off for nursing mothers]

According to the report, the Maternity Protection Act entitles female employees to two thirty-minute nursing breaks per day or to a single one-hour break. Employees working for more than eight consecutive hours are entitled to two 45-minute breaks or to a single 90-minute break a day.

The report recalls that nursing breaks are paid as working hours and are in addition to the usual daily rest breaks prescribed by law. It also indicates that there is no statutory provision for a specific period during which female employees are entitled to nursing breaks, but that the courts set this period as between a minimum of six months and a maximum of twelve months after confinement, depending on the health-related needs of the mother or the child. The Committee concludes that the situation in Germany is in conformity with Article 8 para. 3 of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the German report on the Charter, the 1997 report forwarded to the World Health Organization (WHO)[35] and the 2000 report of the European Observatory on Health Care Systems.[36]

The Committee requests that the next reports provide it with the Ministry of Health's annual reports on the main health indicators.

State of health of the population – General indicators

[34] Membership to the statutory health insurance is compulsory for those employees whose wages do not exceed a fixed ceiling. In 1999 the ceiling was fixed at 6 375 DEM for the old *länder* and 5 400 DEM for the new ones.
[35] *Highlights on Health in Germany* (Internet site of WHO's Regional Office for Europe: www.who.dk).
[36] *Health Care Systems in Transition Profile* (Internet site of the Observatory: www.observatory.dk).

Life expectancy and principal causes of death

The Committee notes in the Eurostat[37] data that between 1992 and 1997, life expectancy at birth increased from 79.1 years to 80.3 years for women and from 72.6 years to 74.1 years for men, levels that are slightly lower than the average in the countries of the European Union and the European Economic Area.

The Committee notes that the annual number of AIDS cases diagnosed (morbidity) fell sharply in the reference period, from 1,695 in 1995 to 871 in 1998, and that the incidence of AIDS is one of the lowest in Europe.

Infant and maternal mortality

According to the Eurostat data, the infant mortality rate has continued to fall since the previous reference period, from 6.2 per 1,000 live births in 1992 to 4.9 in 1997, which is lower than the European average (5.3 in 1997).

The Committee notes that, according to OECD data,[38] the average maternal mortality rate declined to 5.75 per 1,000 births for the period 1994-1997.

Health care system

Access to health care

The health care system is based on a statutory compulsory insurance scheme. Persons whose earnings exceed a certain amount (varying between 6,300 Deutschmarks (DEM) per month in the old Länder and 5,250 in the new Länder for 1997- about 20% of the population) are not insured mandatorily,[39] but on a voluntary basis with the insurer of their choice and, unlike persons covered under the compulsory insurance scheme, are also completely free in their choice of physician.

According to the report on Article 12, 61.7% of the population are affiliated to the statutory health insurance scheme (including those affiliated by choice), 25.2% are insured as family members under the family insurance category. According to the OECD data, since the early 1990s Germany has had by far the biggest increase (+2%) of European OECD countries in overall health care expenditure as a percentage of GDP (10.7% of GDP in 1997 as against 8.7% in 1990). This is due in particular to the cost of rebuilding the health care system in the new Länder. The proportion of public expenditure in overall health care expenditure remains stable at about 77%.

Health professionals and equipment

The Committee notes in the OECD data that the total number of hospital beds has decreased since the previous reference period (769,294 in 1997) but that the bed density per 1,000 inhabitants (9.4 beds in 1997) remains higher than the average in the European countries of the OECD. The proportion of beds in psychiatric hospitals remains stable, at about 13% of the total number of beds. The private hospital stock is one of Europe's highest, with 51.5% of total beds in 1997 (or nearly 25% more than in the early 1990s).

In 1997, the number of general practitioners fell to 1 per 1,000 inhabitants, whereas the density of specialists rose to 2.2 per 1,000. The number of pharmacists per 1,000 inhabitants is stable at 0.5.

Conclusion

The Committee concludes that the situation in Germany is in conformity with Article 11 para. 1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Observing that the German report does not contain up-dated information on the application of Article 11 para. 2, the Committee asks that the next report replies to the questions raised below.

Encouragement of individual responsibility

Health education in schools

The Committee has noted on several occasions that the German Government gives considerable attention to health care education in schools. It noted in a previous report on Article 12 that the Act of 20 December 1988 on the reform

[37] Eurostat Yearbook: *A statistical eye on Europe*, 1988-1998 data.

[38] OECD, Health Data, 1999.

[39] Federal Ministry of Labour and Social Affairs, *Social Protection – Overall view*, 1999.

of health care system structures provided for the introduction of classes on health education in schools and kindergartens, to be taught by doctors.

The Committee wishes the next report to contain up-dated information indicating whether health care education is offered throughout schooling, whether it is included in school syllabuses, what topics are taught and what means are employed.

Public information and awareness-raising

It emerges from the previous reports that activities aimed at educating the public are conducted on a number of themes: the dangers of tobacco, alcohol and drugs, stress management, environmental protection, AIDS, the importance of physical activity, etc. Information campaigns, conferences, brochures, films, exhibits are the means most frequently used. These activities are organised on behalf of the federal ministries of youth, family and health, primarily by the Federal Health Care Education Council, in co-operation with several institutions, such as the German Food Society, the Länder and associations.

Counselling and screening

Children and adolescents

The Committee noted in its conclusion on Article 11 para. 1 that under the compulsory health insurance scheme, medical and dental care administered by a practitioner certified by the health insurance funds as well as orthodontic care until the age of 18 are free of charge. Medicines are free for children under 18 years of age. Children are entitled to prophylactic and early screening measures for a number of illnesses until the age of six and receive an examination at the onset of puberty. The Committee wishes to know what these screening tests entail, in particular those conducted between a child's birth and the start of schooling.

The Committee notes that dental check-ups are conducted in schools but has no information on other types of medical examinations carried out there. It requests that the next report indicate the content of medical examinations carried out in schools, their frequency, the percentage of pupils examined and staff resources.

Rest of the population

The Committee notes in the brochure appended to the report on social protection[1] that under the compulsory health insurance scheme, insured persons (see conclusion on Article 13 para. 1) are entitled to prophylactic and early screening measures for a number of illnesses (regular health care check-ups starting at 20 years of age for women and 45 years of age for men) and dental check-ups and vaccinations provided they are recommended by the Standing Vaccination Committee. Particular attention is given to the prevention of cardiovascular diseases, diabetes, allergies and cancer.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Germany is in conformity with Article 11 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in public care

The Committee recalls from previous reports that under the Civil Code, the Guardianship Court will intervene where a child's health, integrity and welfare are at risk and the parents are unable or unwilling to take the necessary action. As a last resort, the child may be taken into care. Such a decision is subject to appeal.

The Committee wishes to receive information in the next report on the number of children taken into care and, of these, the number placed in a foster family or for adoption, and the number placed in an institution for each year of the reference period. It further wishes to be informed as to whether there is any body charged with monitoring care in institutions; whether there is any procedure for children to complain about the care and treatment in institutions; and

[1] Federal Ministry of Labour and Social Affairs, *Social Protection – Overall view*, 1999.

on the conditions under which an institution may interfere with a child's property, mail personal integrity and right to meet with persons close him.

Protection of children from ill-treatment

The Committee notes the measures taken by the German authorities to strengthen the protection of children from ill-treatment, for example the amendments to the law on child abuse and further increases in the penalties for child abuse, and for the dissemination of child pornography.

The Committee wishes to receive information in the next report on the bodies responsible for detecting the ill-treatment of children, and for protecting children from such abuse.

The Committee wishes to know whether legislation prohibits the corporal punishment of children in institutions, in schools, in the home and elsewhere.

Children and the Law

The Committee recalls that, previously, it concluded that the situation in Germany was not in conformity with the Charter because of certain differences in treatment for children born outside marriage with respect to succession. The report explains that several pieces of legislation entered into force to abolish the remaining differences in treatment between children born within marriage and children born outside marriage.[40] The Committee takes note of this improvement.

Greece

[Article 7 — The right of children and young persons to protection; Paragraph 1 – Minimum age of admission to employment]

With respect to the situation in practice, the Committee notes from official statistics[41] that 3,639 children aged 14 were lawfully employed in 1996, half of them in agriculture. The Committee asks to receive updated data in the next report. It particularly requests, in view of the entry into force of Presidential Decree No. 62/1998, information, or estimates, concerning the extent to which children work illegally in Greece.

Supervision and enforcement of the law on minimum age for admission to employment is the responsibility of the labour inspectorate. The Committee asks that the next report describe the strategy of the authorities in detecting and combating illegal work by children, and an indication of the results obtained.

Pending receipt of this information, the Committee defers its conclusion.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes the information provided in the Greek report on the protection of working children. It refers in this respect to its conclusion under Article 7 paras 2 and 3.

As regards the information contained in the report on ill-treated and neglected children the Committee refers to its conclusion under Article 17.

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on the supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Greece is in conformity with Article 7 para. 10 of the Charter.
[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

[40] Act to reform Parent and Child Law, Child Maintenance Act, Act on Equal Status under Succession Law.
[41]National Statistical Service of Greece

1. The right to maternity leave

The Greek report confirms that, under the National Collective Labour Agreement of 1993, the provisions of which are contained in legislation, and its implementing provisions, women working in the private sector must take 16 weeks' maternity leave, eight weeks before the birth and eight after. The Collective Agreement covers all private-sector employees irrespective of nationality.

The report also states that under the new Public Service Code – adopted in 1999 and thus outside the reference period – maternity leave for public employees was increased from four to five months. Two months must be taken before the birth and three after.

Lastly, the report states that employers who do not comply with the Collective Agreement are liable to fines of not less than 200,000 Greek Drachmas (GRD) .

On the basis of this information the Committee concludes that the situation in Greece is in conformity with Article 8 para. 1 of the Charter in this respect.

2. The right to adequate benefits

The Greek report states that the main insurance fund is the Social Insurance Institute (IKA), to which the great majority of salaried women and those in equivalent categories are affiliated. There are also special schemes for certain categories, such as women working in the hotel sector, and for self-employed women.

Answering the question the Committee asked about female agricultural workers in its previous conclusion, the report confirms that they are affiliated to the IKA and have the same entitlement to maternity benefit as other employees. In reply to the Committee's general question about conditions of entitlement to maternity benefit, the report explains that each social security fund is governed by specific legislation and that the conditions vary from one to another. For example, in order to qualify for maternity benefit, employees affiliated to the IKA and to the Hotel Employees' Insurance Fund must, over the previous two years, have worked 200 days and paid contributions in respect of them. The Committee observes that the eligibility criteria are strict. It asks that the next report explain the situation of workers who do not meet the above conditions, and whether they receive any other form of adequate benefit and the conditions applicable.

The Committee wants the next report to detail the conditions of entitlement applied by each of the funds to which the various categories of employees are affiliated, stipulating (as already requested, see Conclusions XIII-1, p. 172) whether periods of unemployment are counted as time worked. It also requests information about the conditions on which women working part-time are eligible for maternity benefits.

The report states that maternity benefits are paid by various social security funds, by employers or by both during the 56 days prior to the expected delivery date and the 56 days after the birth. It also states (though without supplying any figures or percentages) that the level of benefit is equal to the claimant's previous full salary, irrespective of whether she works in the private or public sector. The Committee notes, on this point, that, according to previous reports, the maternity benefit paid by social security funds covers some 70-85% of the salary, with employers making up the difference.

Replying to the question about a benefit ceiling, the report indicates that most of the social security schemes apply such a ceiling. In the case of women affiliated to the IKA, maternity benefit may not exceed 22,950 GRD per year. In practice, these women still receive their full salary because the difference is paid by the employer. Where just the employer pays maternity benefits, (e.g. in banks and in the public sector), there is no ceiling and the employee receives her full salary.

In view of this information, the Committee considers that the amount of maternity benefits is in conformity with the Charter.

Subject to the replies concerning conditions of entitlement to maternity benefits and the situation of workers who do not meet the eligibility criteria for maternity benefits, the Committee defers its conclusion.

[Article 8 - The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal
The Committee finds on examining the Greek report that women employed in the merchant navy still do not enjoy the protection of Article 8 para. 2.

The report states that a Decree to ensure this protection is in preparation.

The Committee asks that the next report state whether the Decree has been adopted, so as to bring the situation into conformity with the Charter.

Consequences of unlawful dismissal
The report gives no information on this aspect of Article 8 para. 2.

It is pointed out here that reinstatement must be the rule in the event of unlawful dismissal. The aim of Article 8 para. 2 is in fact not only to guarantee the employee's financial security in the event of motherhood but also to preserve her job. Payment of an indemnity is permissible only by way of exception, in circumstances where reinstatement proves impossible (e.g. closure of the undertaking) or is not desired by the employee. If such is the case, the Committee verifies that the indemnity is sufficiently dissuasive for the employer and is sufficient compensation for the employee.
The Committee accordingly asks that information be provided on this point in the next report.

Conclusion
The Committee concludes that, since women employed in the merchant navy do not enjoy the protection afforded by Article 8 para. 2 of the Charter, Greece does not comply with this provision.

[Article 8 – The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

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

It therefore concludes that the situation in Greece is in conformity with Article 8 para. 3 of the Charter.

[Article 8 – The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women]

1. Regulation of night work by women in industrial employment (Article 8 para. 4*a*)
The report of Greece states that Article 2 of Presidential Decree No. 88/1999 stipulates, in conformity with Community Directive No. 93/104 concerning certain aspects of the organisation of working time, that night work means work done between 10 p.m. and 6 a.m. Section 9 sub-section 2 provides that night workers may transfer to day work on presentation of a medical certificate issued by the company doctor.

It also stipulates that, following the judgment of the Court of Justice of the European Communities in the Stoeckel case on 25 July 1991, Act No. 3924/1959 prohibiting night work by women was repealed on 25 February 1993. Henceforth, in conformity with Community Directive No. 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Section 7 of Presidential Decree No. 176/1997 regulates night work by pregnant women and women who have recently given birth or are breastfeeding. They have the right to be transferred to daytime work provided that they present a medical certificate showing that night work is dangerous for their health and safety. If, for technical or practical reasons, they cannot be transferred, they may stop working, i.e. take leave.

The Committee points out that Article 8 para. 4*a* of the Charter requires States to regulate the employment of women on night work. The regulations may be general and concern workers of both sexes, but they must strictly regulate the

possibilities of night work, which must be authorised only because of particular production constraints and taking into account the specific workplace and work organisation conditions. They must also determine the conditions under which women may work at night, such as obtaining the authorisation of the Labour Inspectorate, the fixing of working hours, breaks and days off following periods of night work, the right to be transferred to a daytime job in the event of health problems linked to night work, etc. The Committee also recalls that the regulations must make allowance for pregnant women and women who have recently given birth or are breastfeeding.

In the case of Greece, the Committee observes that the regulations addresses the situation of pregnant women and women who have recently given birth or are breastfeeding. However, it notes that the regulations on night work as described in the report are incomplete in respect of Article 8 para. 4*a*.

It therefore asks that the next report explain the type of activities which may be performed at night and the conditions under which such work is carried out (authorisation of Labour Inspectorate, introduction of night work through a branch-level or company-level collective agreement).

Pending receipt of the information requested, the Committee defers its conclusion.

2. Prohibition of the employment of women in dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)

The Committee points out that Article 8 para. 4*b* contains a dual prohibition:

– it prohibits the employment of women workers in underground mining, a restriction strictly limited to actual extraction work;

– and it prohibits the employment of women, "as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature", the expression "as appropriate" being understood to allow states to limit this restriction solely to those cases where it is necessary, in particular to protect pregnant women and women who have recently given birth or are breastfeeding.

Concerning the former restriction, the Committee recalls that, in keeping with this provision of the Charter, Greek legislation prohibits the employment of women in underground mining work.

Concerning the latter restriction, the latest report, like the previous one, reveals that the legislation is now designed to protect pregnant women and women who have recently given birth or are breastfeeding. For example, women may not be assigned to work involving exposure to benzene or industrial paint containing lead. Women who are breastfeeding may not be assigned to work involving too great a risk of radiation exposure. The law also fixes the maximum levels of ionising radiation to which pregnant women may be exposed. The Committee repeats the request it made in its previous conclusion for information concerning measures to protect pregnant women and women who have recently given birth or are breastfeeding from the risks of asbestos exposure.

The report also mentions Presidential Decree No. 17/1996, requiring the employer to evaluate the risk to pregnant women and women who have recently given birth or are breastfeeding who are exposed to substances listed in Appendix I to the Decree, which is the non-exhaustive list of substances appended to Community Directive No. 92/85. It includes such risk factors as ionising radiation, non-ionising radiation and mercury and its derivatives. The report explains that if the findings reveal a potential health hazard, the employer must take the necessary steps to remove the woman from the exposure risk.

All this information enables the Committee to conclude that the situation in Greece is in conformity with Article 8 para. 4*b* of the Charter.

The Committee nevertheless insists that the next report answer the question asked in the previous conclusion concerning the practical application of these regulations, the supervisory machinery and the penalties incurred in the event of violation.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee notes the information contained in the Greek report on the Charter and the 1998 report submitted to the World Health organisation (WHO).[42]

State of health of the population – General indicators

Life expectancy and principal causes of death

The Committee notes from OECD figures[43] that there has been a marked rise in life expectancy at birth, from 79.6 years in 1992 to 80.8 years in 1997 for women and from 74.7 years in 1992 to 75.6 years in 1997 for men.
The Committee also notes that the number of reported cases of AIDS (morbidity rate) declined over the reference period and that both the incidence of AIDS and the AIDS-related death rate are still below the European averages.

Infant and maternal mortality
According to the Eurostat figures and the report, infant mortality in Greece fell sharply over the reference period, from 8.4 per 1,000 live births in 1992 to 6.4 in 1997. The Committee observes, however, that this rate is still above the average for the European Union and European Economic Area (5.3 in 1997). It emphasises that infant mortality is an avoidable risk, which governments must counter in order to comply with Article 11 of the Charter. It would remind the Greek authorities that the infant mortality rate will be a key factor in assessing conformity with the Charter, and encourages them to continue their efforts towards achieving a risk as near as possible to zero.
The Committee notes that the maternal mortality rate is very low (0.6 deaths per 100,000 live births between 1995 and 1997).

Health care system

Access to health care
A national health service was introduced in 1983. The main authority responsible for it is the Ministry of Labour and Social Affairs. It is financed by workers' and employers' contributions to the various insurance funds and by the state.
According to the OECD figures already quoted from, total spending on health in 1997 amounted to 8.6% of GDP (as against 8.3% in 1992). The proportion of health spending that comes from public funds has fallen and (at 58.7% in 1997) is by far the lowest among the OECD countries.

Under the national health system there is universal access to hospitals and health centres, while the system of primary care (including dental care) is largely insurance-based. Private health care (for both general and specialist treatment) is highly developed. The insurance funds reimburse their affiliates' health spending either in full (for public patients) or partially (for private patients). According to the OECD figures, the average rates of reimbursement are 95% for hospital care and 85% for out-patient medical care.

Patients have to pay a proportion of the cost of pharmaceutical products except in respect of chronic illness. As a rule the proportion is 25% in the case of prescription medicines.[44] It is 10% in the case of certain serious illnesses and for people on the basic old-age pension. According to the OECD figures, the average rate of reimbursement for pharmaceutical products in 1997 was 74%.

The Committee wishes to know whether hospital waiting lists have been introduced and, if so, requests information on how they are managed.

[42]*Highlights on Health in Greece* (WHO Regional Office for Europe website, www.who.dk)
[43]OECD *Health Data 1999*
[44]Commission of the European Communities, Missoc, *Social protection in the member states of the European Union: situation on 1 July 1999 and evolution*

The Committee also wishes to know whether any studies have been conducted on the operation of the national health service, particularly on the effects of its disjointed nature, and, if so, what findings have been reached.
Health professionals and equipment

The Committee notes, from the OECD figures, that the average number of hospital beds of all types has risen since the previous reference period (it was 52 582 in 1997) and that the number of beds per 1,000 inhabitants (5) is among the lowest in the European OECD countries. Private hospital provision has declined and currently accounts for 29% of total beds. The report includes information on the geographical distribution of hospitals and health centres.

From the Eurostat figures, the Committee notes that the overall number of doctors per 1,000 inhabitants in 1996 was 397, one of the highest densities in the European Union and European Economic Area. However it also notes from the above-mentioned WHO report[45] that there are more specialists than general practioners and that there are not enough general practioners and nurses, especially in rural areas, a factor prejudicial to the quality of primary health care. The Committee asks the Government to comment on this point.

According to OECD data, the density of pharmacists was 0.8 per 1,000 inhabitants in 1992.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 – Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools
The previous report explained that responsibility for setting up, sustaining and supervising health education programmes (notably in schools) lay with the youth advice centres run and funded by the Ministry of National Education and Religious Affairs and established in various parts of the country. The current report indicates that the school health services established under Act No. 2519/1997 also have a role.

The Committee requests more detailed information about what the different bodies actually do, and whether health education is delivered at every level in primary and secondary schools, whether it is a curriculum subject and what topics are covered.

Public information and awareness-raising
The report states that various public information and awareness-raising campaigns were run during the reference period, notably in co-operation with the WHO on public-health issues such as sun exposure and skin cancer, healthy eating, the dangers of smoking and alcoholism, the benefits of breast-feeding, and diabetes. The campaigns were conducted mainly through publication and distribution of booklets and other printed matter and via the media. The Committee notes here that, under Act No. 2328/1995 on the legal status of private television and local radio, public service ads, particularly on health matters, may be broadcast free.

The Committee asks whether AIDS-prevention campaigns are still being conducted regularly.

Counselling and screening

Children and adolescents
Since 1989 the Ministry of Health and Welfare, in co-operation with the Ministry of National Education and Religious Affairs, has run a number of programmes to monitor and promote pre-school and school-age children's health through regular medical check-ups. Children have a personal medical card which a doctor completes twice during primary school and twice at secondary level. Noting the introduction in 1997 of school health services (see above), the Committee wishes to be informed in future reports about the work which these services perform in

[45]See also *OECD Economic survey of Greece*, 1997

schools. It also wants to know what is included in the regular medical check-ups. In this regard and in the light of the marked decline in children's oral health in the early 1990s, signalled in the 1998 report to the WHO,[46] it requests information about measures taken to remedy this situation, and their effectiveness.

The Committee wishes to know whether specialised mother and baby health protection services are provided in health centres or elsewhere and requests information about access (both geographical and financial) to such services.

Rest of the population
The report states that free national screening programmes for cervical and prostate cancer and a national programme for the prevention and prenatal diagnosis of haemophilia have been carried out.

Conclusion
Subject to the information requested, the Committee concludes that the situation in Greece is in conformity with Article 11 para. 2 of the Charter.

[Article 11 – Right to protection of health; Paragraph 3 – Prevention of diseases]

The Committee notes the developments that have taken place in Greece with regard to the prevention of health risks generally and preventive treatment in particular.

Epidemiological monitoring
The report notes the establishment in 1998 of a National Centre for Epidemiological Surveillance and Intervention (EKEPAP). In co-operation with local health services, the centre is responsible, in particular, for recording infectious diseases throughout the country, detecting and rapidly combating epidemics and evaluating prevention programmes. It publishes a monthly epidemiological bulletin. An EKEPAP station has been operating in Northern Greece since 1998 and two mobile units have been introduced.

The previous report noted that cases of AIDS must be reported.

[Article 17 — The right of mothers and children to social and economic protection]

Children in public care
The Committee wishes to receive information on the number of children receiving assistance within their family, the number removed from their families and a) placed in an institution or b) placed with a foster family.

The Committee wishes to receive information on the types of institutions that exist.

It also wishes to receive information as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to him.

Protection from ill treatment and abuse
The criminal law provides for the penalisation of sexual offences against children.

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Children and the law – Young offenders
The Committee wishes to know the minimum marriage age.

[46] *Highlights on Health in Greece* (WHO Regional Office for Europe website, www.who.dk).

Iceland

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee notes the information in the Icelandic report on the Charter and in the 2000 report to the World Health Organisation (WHO).[47]

Health of the population – general indicators

Life expectancy and main causes of death
The Committee notes from OECD data[48] that life expectancy at birth increased from 80.7 years in 1992 to 81.5 years in 1997 for women. It also notes that the average life expectancy for men increased in comparison with the previous reference period. Icelanders' life expectancy is above average for European Union and European Economic Area countries.

The Committee notes from Eurostat data[49] that the number of AIDS cases diagnosed annually is very low (two in 1998).

Infant and maternal mortality
According to Eurostat data, in 1998 the infant mortality rate (2.6 deaths per 1,000 live births) was the lowest in the European Union and European Economic Area although the average rate for the reference period (4.2 for the 1994-98 period) was comparable to that in other countries.

The maternal mortality rate has been zero since 1991.

Health care system

Access to health care
Iceland has a system of universal health care available to everyone resident in Iceland. The system is collectively financed, mainly from taxes. Primary health care is provided by 83 health centres. The 23 hospitals are all public (run by the state or the regional councils).

According to the aforementioned OECD data, total health expenditure amounted in 1997 to 8% of GDP. Public expenditure accounted for 83% of total health expenditure in 1997.

The patient pays a proportion of the cost of consulting a general practitioner: the charge is between 700 and 1,600 kronur (ISK) according to the time and place of the consultation. The patient share of the cost of consulting a specialist comes to 1,400 ISK plus 40% of the remaining amount, up to a ceiling of 5,000 ISK. There is an annual ceiling on the patient share of medical costs of 12,000 ISK for an adult and 12,000 ISK for the children (taken together) of the one family. The patient does not bear any hospital costs. Essential regularly taken medicines are wholly paid for by the system. The patient share of the cost of other medicines is 1,200 ISK per medicine plus 60% (category I) or 80% (category II) of the remaining amount up to a ceiling of 2,400 ISK or 3,800 ISK according to category. Amounts are lower in the case of patients under 18 years of age, pensioners, people with disabilities and long-term unemployed.

According to OECD data, the average reimbursement rate[50] for out-patient medical care has fallen, amounting to 54.2% in 1997 (as compared with 59.3% in 1992), one of the lowest rates in European OECD countries. However the Committee takes into account the measures on behalf of those under 18 years of age, pensioners, people with

[47] *Highlights on Health in Iceland* (Internet site of the WHO European regional office: www.who.dk).
[48] OECD, *Health Data*, 1999.
[49] Eurostat Yearbook: *A statistical eye on Europe,* 1988-98 data.
[50] The proportion of total expenditure generally borne by the authorities.

disabilities and the long term unemployed and the fact that hospital treatment is free. The average reimbursement rate for pharmaceuticals likewise fell (it was 64.7% in 1997).

The Committee notes from the aforementioned WHO report that waiting lists have been introduced for hospital care. The report states that waiting time is particularly long for orthopaedic and ENT treatment and for psychiatric services for young people, a situation which apparently results from spending cuts. To assess the situation, and referring to Council of Europe Committee of Ministers Recommendation No. R (99)21 on criteria for the management of waiting lists and waiting times in health care, the Committee requests information on the reasons for the waiting lists and on how they are managed (admission criteria and monitoring).

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

Previous reports state that health education in schools is compulsory both at primary and secondary levels. Among topics mentioned are food hygiene, sex education, drug addiction, alcoholism and smoking.

The Committee would like detailed information on how health education is actually delivered in schools, whether there is systematic health education throughout schooling, and what funding is provided.

Public information and awareness-raising

The Committee notes from the 2000 report to the World Health Organisation (WHO)[1] that in 1994 Iceland launched a health promotion project based in particular on the WHO health-for-all objectives. The project currently comes under the Ministry of Health, involves health centres and various governmental and non-governmental organisations and has given rise to community, hospital, school, workplace, etc. initiatives. Health promotion priorities include action on smoking, control of diabetes and AIDS prevention. During the reference period the Icelandic Nutrition Council launched a campaign to promote eating of fruit and vegetables, and a campaign to encourage physical exercise was conducted with the National Association for the Prevention of Heart Disease and the Icelandic Cancer Society.

Consultation and screening

Children and adolescents

Health centres have special consulting arrangements for pregnant women and children from birth to age two and a half. The Committee wishes to know if consultation is free.

The rest of the population

Previous reports state that the free national screening programmes for cervical and breast cancer are for women aged 20 to 69 and 40 to 69 respectively. The Committee noted from the 6th report that there were plans to introduce screening for colon and rectal cancer. It would like to be informed of developments.

Conclusion

The Committee concludes that the situation in Iceland is in conformity with Article 11 para. 2 of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

Categories of services

The Committee notes the information on the various social services, in particular social counselling, social assistance in the home, services for children and adolescents, services for the elderly and the disabled, services related to alcohol and drug abuse and services for women victims of domestic violence.

[1] *Highlights on Health in Iceland* (Internet site of the WHO European regional office: www.who.dk).

Social assistance in the home is aimed at those who are unable to take care of the running of the home and of their personal hygiene without assistance due to reduced capacity, family circumstances, illness, childbirth or disability. It covers all forms of assistance in the running of the home, personal hygiene, social support and childminding. The Committee observes from a statistical appendix that the number of households receiving assistance in the home has been increasing since 1994. In 1997, a total of 1,904 households received assistance of which almost 80% were households of elderly people.

Under the Social Services Act, it is the duty of the social services committees, in collaboration with parents, guardians and others responsible for the up-bringing, education and health care of children and adolescents, to protect their well-being and their interests in every respect. The Committee notes the information on nursery schools, subsidised daycare and leisure activities. It also notes that the Child Welfare Act No. 58/1992 provides for various forms of support for children and their families, including parent counselling, personal supervision, support families, daycare, employment or leisure activities. In addition to the above-mentioned social services committees, the report makes mention of child welfare committees, the Child Welfare Council and the Child Welfare Agency (the latter set up under the Child Welfare Act). The Committee requests clarification of the respective roles of these various bodies.
Finally, the Committee notes the services made available to victims of domestic violence or sexual abuse. In addition to the general services provided for under the Social Services Act, services for this target group are provided for by four main institutions with public funding: Women's Refuge, the Women's Counselling Service, the Emergency Reception Centre for Rape Victims (operated by the Reykjavik Hospital) and *Stígamót*. Women's Refuge is a non-governmental organisation which offers emergency accommodation as well as nursery and junior school facilities. In 1997 396 women came to the refuge with 115 children. The Women's Counselling Service gives legal and social advice by telephone or through personal interviews, generally related to divorce matters, but also cohabitational problems, including violence. *Stígamót* is an association fighting against sexual abuse of women and children. It provides individual counselling based on interviews and carries out information and publicity work. Since its foundation in 1992 until the end of 1997, 2,420 individuals had applied for the services of *Stígamót*. The Committee notes that legislative measures to combat domestic violence are currently under consideration. It wishes to be informed of developments in this respect.

Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 14 para. 1 of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 2 – Public participation in the establishment and maintenance of social welfare services]

In reply to questions raised previously by the Committee, the Icelandic report describes measures taken to encourage voluntary or other organisations to participate in the creation of social services.

The report states that institutions active in the sphere of social services receive various contributions from the state, both in the form of fixed allocations on the budget and irregular funding, these consisting particularly of donations in the gift of the cabinet ministers. The National Centre and Hospital of Addiction Medicine (*SÁÁ*), the Women's Refuge and *Stígamót* receive fixed allocations on the Icelandic State Budget every year. In addition, contributions totalling 36.4 million ISK in 1998 were made to a number of institutions and organisations in this field.
The report states that under the Income Tax and Property Tax Act No. 75/1981 as amended, individual gifts and contributions to recognised charities may be deducted from the income of legal persons and the income of individuals derived from independent business activities or connected with such activities. Regulations No. 240/1995, on deductions from taxable income due to investments in business operations, state the activities that may be considered as charities in the sense of Section 31 of Act No. 75/1981. Included are all forms of recognised charity activities such as the building and operation of hospitals, health clinics, old people's homes, infants' care centres, children's homes, institutions for alcoholics and the disabled and other comparable institutions. If possible the Committee wishes to have an estimate of the amount of funding raised through the tax deduction scheme for social services.

The Committee notes the examples with details of the social services carried out by various organisations, primarily on the basis of state contributions. It notes in particular the important role of *SÁÁ* in combating alcohol and drug abuse, the existence of 14 independent assistance centres for people with alcohol or drug problems, as well as the activities of Women's Refuge, the Women's Counselling Service and *Stígamót* aimed at alleviating the consequences of domestic violence and sexual abuse. Finally, it notes that private individuals and organisations provide specialised home nursing care for the elderly paid for by the public Social Security Institute.

Pending receipt of the information requested, the Committee concludes that the situation in Iceland is in conformity with Article 14 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in Public Care
A Child Protection Committee can issue a ruling depriving one or both parents of custody of a child in circumstances laid down by the Children and Youth Protection Act No. 22/1992 as amended by Act No. 58/1995, for example the child has been mistreated, sexually abused, or the child's physical or mental health is seriously at risk. A ruling to remove a child from custody shall only be issued should it not be possible to apply other measures to improve the situation or if other such measures have already been thoroughly pursued without sufficient success (Article 25 of the Children and Youth Protection Act).

A child removed from its family may be placed with a foster family or in an institution. Foster homes may be of two types, temporary or permanent. The Children and Youth Protection Act lays down detailed regulations governing foster homes. A child placed in a foster home without the consent of its parents has the right to visit them and other persons close to him unless there are exceptional circumstances.

The Committee wishes to receive information in the next report on the number of families in receipt of child support measures, the number of children removed from their families and placed in a foster home, or in an institution.

The Committee wishes to receive information on the types of institutions that exist, including the State Institution for Maladjusted Youth.

The Child Protection Committee supervises the activities, facilities and treatment of homes and institutions, which operate in its districts. If the treatment or activities are in any way improper, the Child Protection Committee shall attempt to rectify the situation. If this is not possible it shall inform the Government Agency for Child Protection which may revoke authorisation for the continuing operation of the home or institution.

The Committee wishes to be informed whether there is any specific procedure for complaining about care or treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to him.

Protection from ill treatment and abuse
Child protection committees are *inter alia*, responsible for protecting children from ill treatment, neglect and abuse. These are organised at the municipal level and are under the supervision of the Government Agency for Child Protection, which coordinates child protection work. The Ministry of Social Affairs is ultimately responsible for these bodies. The Children and Youth Protection Act No. 58/1992 as amended by Act No. 22/1995, regulates child protection activities.

The ill treatment, neglect or abuse of children is punishable by law. It is also an offence not to notify a child protection committee where ill treatment of a child is suspected.

The Committee notes that corporal punishment (and mental punishment) is prohibited in homes and institutions for children and youth (Section 53 of the Children and Youth Protection Act). However it wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in the home and elsewhere.

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

Ireland

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee takes note of the entry into force in Ireland of the Protection of Young Persons (Employment) Act, 1996.

The Act introduced certain changes in the law relating to the employment of children and young persons. It sets out a broader definition of a child for the purpose of employment than was the case previously by including all persons under the age of 16 years or, if higher, still subject to compulsory schooling. The limits on working time for children aged 14 and 15 are set at 7 hours per day and 35 hours per week, outside of the school term. Only children who have reached the age of 15 may work part-time during the school term for up to 8 hours per week. Children are not permitted to work between 8pm and 8am.

The Committee concludes that the situation in Ireland is not in conformity with Article 7 para. 3 of the Charter since the mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education, and children employed by a close relative are not afforded the protection required by this provision of the Charter.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Ireland is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

The Committee first recalls that in Conclusions XIII-4 (p. 73) it asked a general question on the proportion of fixed-term contracts, excluding specific or traditional cases justifying use of such contracts. The Committee reiterates that use of this type of contract is not in itself contrary to Article 8 paras. 1 and 2. However, the fact remains that expiry of a contract during maternity leave renders the rules on suspension of the contract devoid of force and allows the employer to withold, from the date of termination of the contract,.the maternity benefits payable by law. The Committee notes that the number of insecure employment contracts is generally increasing and that this phenomenon has implications for the protection of maternity required under Article 8 para. 1. It wishes to know whether and in what way use of insecure contracts is regulated and, in particular, whether the granting of successive fixed-term contracts entails their transformation into an indefinite contract. The Committee would also like to know the total number of persons employed under insecure contracts, the proportion of women in this total, and, where the use of such contracts is permissible by law, employer policy concerning their renewal.

1. Right to maternity leave

The Committee notes that, with regard to the right to maternity leave, the situation of female employees has not changed since the previous supervision cycle.

Under the Maternity Protection Act, 1994, the minimum maternity leave entitlement is fourteen weeks, at least four of which must be taken before confinement and four after.

Reiterating that the Charter requirement is at least six weeks' compulsory post-natal leave, the Committee concludes that Ireland is not in conformity with Article 8 para. 1 in this respect.

2. Right to adequate benefits

Conditions of entitlement
Benefits are payable to employees who have contributed to the social security scheme for at least thirty-nine weeks during the twelve months preceding the first day of maternity leave, or at least thirty-nine weeks since they first started work, and have thirty-nine weeks of contributions credited for the fiscal year preceding the year in which they take maternity leave. In this connection, the Committee wishes to know whether periods of unemployment are taken into account in calculating the required period of affiliation.

In reply to a question asked by the Committee in its previous conclusion, the Irish Government confirms that employees in the agricultural sector qualify for maternity benefits under the social security scheme, as do public sector employees recruited since 1995. The situation of other public-services employees is even more favourable since they receive their full salary during maternity leave. On the other hand, employees whose weekly earnings are below 30 Irish punts (IEP) and members of the armed forces are excluded. The Committee wishes to know what type of payment is made to women members of the armed forces and stresses that, under Article 8 para. 1, this category of employees has the same rights as others, regardless of any considerations relating to national security requirements.

Lastly, the report states that all employees not receiving maternity benefit are nonetheless entitled to the Supplementary Welfare Allowance where they are unable to support themselves during maternity leave.

Amount paid
The Committee notes that employees entitled to maternity benefit receive 70% of their gross weekly earnings below the legal ceiling, which is equivalent to almost 100% of net earnings. The current minimum rate of benefit is IEP 82.30 and the maximum IEP 162.80 (respectively IEP 90.70 and IEP 172.80 from May 2000).

In reply to a question from the Committee the report states that 43% of employees entitled to maternity benefit receive the above-mentioned maximum rate. However, it is not specified what proportion of women have earnings in excess of the legal ceiling. In this connection, the report states that, in many instances, the employer covers the difference between the amount of benefit paid and the woman's salary, although there are no statistics on the number of women receiving such payments. The Committee asks that the next report indicate what proportion of women among the 43% receiving the maximum benefit have earnings in excess of this maximum rate.

Regarding the Supplementary Welfare Allowance payable to employees not receiving maternity benefit, the report specifies that this allowance currently amounts to IEP 76 per week, plus IEP 13.20 per dependent child. Since this is close to the minimum rate of maternity benefit, the Committee regards this allowance as sufficient with regard to the requirements of the Charter.

Pending receipt of the information requested, the Committee defers its conclusion on this point.

[Article 7 — The right of children and young persons to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous work for women workers]

Prohibition of the employment of women in certain dangerous, arduous or unhealthy types of work (Article 8 par. 4b)
In its previous conclusion the Committee noted that all the regulations on protection of the safety and health at work of women who were pregnant, had recently given birth or were breastfeeding complied with Council Directive 92/85/EEC of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding[51], as well as the requirements of the Charter. However, in view of the fact that all women, in particular those of child-bearing age,

[51] Official Journal N° L 348 of 28/11/1992 pp. 1 – 8

come within the scope of Article 8 para. 4, it asked what measures had been taken to protect them. Having received no reply from the Irish Government, the Committee reiterates its question.

The Committee also noted that Irish law did not prohibit the employment of women in underground extraction work and in mines.

Since no change in the law has been reported on this last point, the Committee concludes that the situation in Ireland is not in conformity with Article 8 para. 4*b* of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

In reply to the Committee's request for detailed information on social welfare services for elderly people, the disabled, children and adolescents, the report explains that the Department of Social, Community and Family Affairs does not provide social services directly, but supports organisations in civil society that provide services for the target groups concerned. Activities are funded on a case-by-case basis and cover all socially deprived areas, rural as well as urban. Support is made available through a range of grant schemes and it appears from the report that expenditure on these schemes has grown steadily since the mid-1990s.

The Committee notes that activities include home management programmes, counselling and advice services, self-development programmes, community education, health programmes, parenting skills, literacy programmes, anti-money lending and financial advice, self-help, leadership skills and community development. It asks that the next report furnish more details on the services provided for the above-mentioned target groups, including on the number of beneficiaries and on expenditure. In the latter respect the Committee notes from another source[52] that expenditure on the scheme of Community Support for Older People decreased by about 40% from 1998 to 1999. The Committee asks that the next report indicate the reasons for this reduction in expenditure, its impact on the standard of service to older people and whether any additional measures have been taken to avoid hardship.

Finally, the Committee asks what measures have been taken to ensure and inspect the quality of social services provided by voluntary organisations, community groups and other civil society providers.

Pending receipt of the information requested, the Committee concludes that the situation in Ireland is in conformity with Article 14 para. 1 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Establishment of Parentage and Adoption
As regards the establishment of parentage, the Committee notes from other sources[53] "that there is no procedure for naming the father in the birth registration of a child born of unmarried parents" and that this may disadvantage such children. The Committee wishes to know whether this situation has been amended.

Adoption is governed by the Adoption Acts 1952-1998. Ireland operates a system of full adoption (*adoptio plena*). Only Registered Adoption Societies and the Health Boards are entitled to place children for adoption. All applications for adoption orders are made to the Adoption Board, an independent statutory body. The legislation clearly defines which children are eligible for adoption and those who are eligible to adopt.

The Committee notes that following the judgement of the European Court of Human Rights in the case of *Keegan v Ireland*,[54] the Adoption Act 1998 was introduced. The Adoption Act 1998 provides a legally protected right for natural fathers to be consulted in matters of adoption of their children. The Act sets out a formal procedure for consulting the natural father, if known, or any person who believes that he is a father of a child born out of wedlock,

[52] Statistical Report on Social Welfare Services 1999.
[53] Concluding observations of the Committee on the Rights of the Child : Ireland 04/02/98. CRC/C/15/Add.85.
[54] ECHR case of Keegan v Ireland judgment of 26 May 1994, Series A No 291.

before a child is placed for adoption, so as to allow the father an opportunity to exercise his right to apply for guardianship and/or custody of the child.

Children in Public Care
The Health Boards provide substitute care for those children who are not receiving adequate care and protection at home. Children may be received into the care of a Health Board either with parental consent of by virtue of a care order made by a court under the provisions of the Child Care Act 1991.

According to a survey of children in the care of the Health Boards carried out in 1996, there were 3,668 children in care on 31 December 1996. [55] This did not include children awaiting adoption or children in private foster care. 76.2% of these children were in foster care, and 16 % were in residential care.

The Committee notes that a Social Services Inspectorate was established for the purposes of inspecting residential care centres run by the Health Boards in 1999, as required by the Child Care Act 1991. The first round of inspections was carried out in 2000. The Committee notes with interest the Report of Findings Relating to Inspection of Children's Residential Centres.[56]

Residential care centres run by the voluntary sector for the Health Boards must be registered and inspected by the Health Boards. In 1999 there were 106 children's residential homes, 49 run by the Health Boards and 57 by the voluntary sector. They provide places for just over 700 children and young people.[57]

There are other various residential establishments for young people, such as industrial schools, reformatory schools, centres for children with disabilities, which are not subject to inspections by the Social Services Inspectorate. The Committee wishes to know whether there is any body charged with monitoring care in these institutions, and to receive information on any specific procedure for complaining about the care and treatment in all institutions. It also wishes to be informed for all institutions and residential establishments, on the conditions under which a child's property, mail, personal integrity and right to meet with persons close to him may be subject to restriction.

The Committee wishes to receive information on measures taken to assist homeless children.

Protection of children from ill-treatment
As noted above, the Health Boards are under a statutory duty to promote the welfare of children who are not receiving adequate care and protection.

Each Health Board is required under the Child Care Act 1991 to establish a Child Care Advisory Committee to advise the Health Board on the provision of child and family support services in its area and to monitor the provisions of child-care services at the local level.

According to Ireland's first report submitted under the UN Convention on the Rights of the Child,[58] child abuse in Ireland is recognised as a significant social problem. The Health Boards now receive almost 5,000 reports of alleged abuse each year, of which about 1,500 are confirmed. The Child Care Act 1991 was introduced to improve protection for children and was due to be fully implemented by 1996. The Committee asks whether the legislation is in fact fully operational.

Child Abuse Prevention Guidelines have been in force since 1987. Additional procedures have been developed in order to clarify the circumstances in which suspected cases of child abuse should be notified between the Health Boards and the police and to provide a uniform framework for dealing with such cases. Child Abuse Prevention Programmes have also been established in schools.

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[55] www.doh.ie /statistics /health
[56] www.issi.ie
[57] *ibidem.*
[58] www.unhcr.ch/tbs/doc.nsf CRC/C/11/Add.12

The Committee notes that there is presently no mandatory reporting of child abuse, but that the issue is under consideration. It notes that in 1998 the Protection for Persons reporting Child Abuse Act was enacted, which provides protection from civil liability to persons who report child abuse in certain circumstances, and provides protection to such persons from penalisation by their employer.

The corporal punishment of children in schools is prohibited. The Committee wishes to know whether corporal punishment is prohibited in institutions caring for children.

There is a common law immunity, which permits parents and other persons *in loco parentis* to use reasonable and moderate chastisement in the correction of their children. The Committee refers to its general observations on Article 17 in the General introduction on this issue. It decides to defer its conclusion on this point pending information as to whether the Government intends to remove this immunity and prohibit all corporal punishment of children.

Conclusion
The Committee defers its conclusion pending information requested on corporal punishment, and pending information on the situation of young offenders in detention.

Italy

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee notes from the Italian report that Act No. 9 of 20 January 1999 extended the duration of compulsory schooling from eight to ten years. The Committee also notes the adoption, outside the reference period, of Legislative Decree 345/99 (see conclusion under Article 7 para. 1).

The report describes in more detail the draft legislation referred to in the previous conclusion under this provision for the establishment of child protection centres within each education district. The Committee wishes to be informed of any progress with this initiative in the context of the first Italian report under Article 17 para. 2 of the Revised Charter.

The situation in Italy has been found to be in violation of this provision of the Charter for a considerable period of time, on the basis of wide and repeated infringements of national law. As noted under Article 7 para. 1, the estimated number of children who work despite national law and this provision of the Charter is considerable. The Committee therefore considers that the situation in Italy is not in conformity with Article 7 para. 3 of the Charter.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Italy is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. Right to maternity leave
Under the Italian Law No. 1204 of 30 December 1971 on protection of working mothers, women wage earners are entitled to two months' maternity leave immediately before the birth and three months' maternity leave immediately afterwards.

In the absence of information on the practical application of this legislation the Committee notes that the situation on this point is in conformity with Article 8 para. 1 of the Charter.

2. Right to adequate benefits

The Italian report does not answer the Committee's question about the conditions governing entitlement to maternity benefits. From scrutiny of Law No. 1204 of 30 December 1971, however, it is apparent that payment of maternity benefits is not subject to any particular condition relating to the social security system, size of earnings or length of service with the employer. The sole condition is that the claimant be in paid employment.

A woman working in the public sector is entitled to 100% of her pay. A woman working in the private sector is entitled to 80% of her average daily pay in the four-week period or the month immediately preceding her stopping work (Section 15 of Law 1204). The amount concerned is paid by the employer, who deducts it from insurance contributions. Average daily pay is calculated annually by the national social-security institution (the INPS) or, in the case of some categories of wage earner, including domestic staff, is laid down by ministerial decree. The legislation does not refer to any ceiling to which maternity benefit is subject.

On the position regarding female domestic employees, who, when dismissed during pregnancy, are not entitled to maternity benefit, the report gives the following information:

On 16 July 1996 a national collective agreement was signed which laid down regulations on domestic service. Section 25 prohibits dismissal of female domestic employees during the period of compulsory maternity leave. As they cannot be dismissed, female domestic employees are to be regarded as, like other women wage earners, entitled to maternity benefit. Unlike other women wage earners they are required to have contributed for a minimum of one year in the two years preceding their stopping work or for a minimum of six months in the year preceding their stopping work.

According to the report, the 1996 collective agreement applies to 90% of female domestic employees.
Female domestic employees who do not meet the preconditions are not entitled to maternity benefit. The INPS nonetheless pays them so-called maternity cheques. From Law No. 448 of 23 December 1998 the Committee notes that "maternity cheques" are paid to "women with Italian citizenship" whose total annual income, calculated on the basis of a three-person household, is lower than 50 million ITL. The maternity cheques amount to 200,000 ITL and cover a maximum period of five months (300,000 ITL as from July 2000).

The Committee also notes that the draft Act on the 2000 Budget extends entitlement to maternity cheques to all foreigners having a residence permit.

The Committee observes that the situation has improved during the reference period. However, it asks that the next report confirms that maternity cheques are allocated to all foreigners, including nationals of Contracting Parties to the Charter.

Pending receipt of this information, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

The Committee points out that, under Section 2 of Law No. 1204 of 30 December 1971 on protection of working mothers, a woman cannot be dismissed during the period of compulsory maternity leave (the two months before and three months after the birth).

In the event of illegal dismissal, she is entitled to reinstatement in her job.
The prohibition on dismissal ceases to apply where the woman is guilty of misconduct warranting termination of employment, where the firm ceases its activities or where the employment period specified in the employment contract expires.

The situation as described is not contrary to Article 8 para. 2 of the Charter.

The Committee nonetheless noted, as early as the first supervision cycle, that female domestic employees did not come within the scope of Law No. 1204, and its conclusion has since been that Italy does not comply with Article 8

para. 2. In 1994 the Committee of Ministers issued a recommendation to Italy that it bring the situation into line with the Charter (Recommendation No. RChS(94)4).

The present report states that dismissal of female domestic employees during the compulsory period of maternity leave is now prohibited by Article 25 of the national collective agreement of 16 July laying down regulations governing domestic employment. The prohibition is not a total one and dismissal still remains possible where there is "good reason".

The Committee observes that this constitutes an improvement in the situation.
In order to be able to assess the situation, it nevertheless asks that the next report give examples of situations where a domestic employee has been dismissed for "good reason".

Furthermore, as the collective agreement mentioned only covers about 90% of all domestic employees according to the report, it asks what is the situation of women who are not covered by the collective agreement.

Pending receipt of the information requested, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

The Committee points out that, under Section 10 of Law No. 1204 of 30 December 1971 on protection of working mothers, women wage earners are entitled to two paid breastfeeding breaks per day, which may be run together, until the baby's first birthday.

In the third supervision cycle the Committee noted that neither women in domestic service nor women working at home were covered by the law. Its conclusion has since been that the situation in Italy was not in conformity Article 8 para. 3 of the Charter. In 1994 the Council of Europe Committee of Ministers issued a recommendation to Italy that it bring the situation into line with the Charter (Recommendation No. R ChS(94)4).

The present report does not indicate any change in the position.

The Committee notes, in the report of the Governmental Committee (13th report (IV)), a statement by the Italian delegate that, in practice, women working at home have breastfeeding breaks by virtue of the very nature of their work.

The Committee acknowledges that it is not necessary to provide breastfeeding breaks for employees working at home. It nevertheless considers that time spent on breastfeeding should be remunerated.

It accordingly concludes that the situation in Italy does not comply with Article 8 para. 3 in that breastfeeding time during work at home is unpaid. In addition, domestic employees do not have paid breastfeeding breaks.

[Article 8 – The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy of arduous work for women workers]

1. Regulation of night work for women in industrial employment (Article 8 para. 4*a*)
The report likewise refers to the Law of 5 February 1999, Section 17 of which replaces Section 5 of Law No. 903 of 9 December 1977 on equality between men and women with regard to work. Section 17 prohibits night work by women between midnight and 6 am from confirmation of pregnancy until the child's first birthday. In addition a female wage earner with a child under three years of age cannot be required to perform night work (and nor may wage earners of either sex with a handicapped person dependent on them).

In the light of this information, the Committee concludes that the situation in Italy complies with Article 8 para. 4*a* of the Charter.

2. Prohibition of the employment of women in certain dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)

The report states that Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding has been transposed into domestic law. Section 3 of Legislative Decree 645 of 25 November 1995 widens the scope of Law No. 1204 of 30 December 1971 on protection of working mothers and adds underground mining work to the list of dangerous, arduous or unhealthy work which women who are pregnant, have just given birth or are breastfeeding are not allowed to perform.

The Committee points out that the prohibition in Article 8 para. 4*b* on employing women in underground mining applies to all women and not just women who are pregnant, have just given birth or are breastfeeding. It accordingly takes the view that the situation remains contrary to Article 8 para. 4*b* of the 1961 Charter.
With regard to other dangerous, unhealthy or arduous work which women in a maternity-related situation are not allowed to perform, the report gives the following information.

Under Legislative Decree No. 645 of 25 November 1996, women must not be assigned to dangerous, arduous or unhealthy work as from confirmation of pregnancy and until the seventh month following the birth. Appended to the legislative decree is a non-exhaustive list of substances and working conditions which render work dangerous, arduous or unhealthy. The list includes ionising radiation and "lead and derivatives of it, insofar as there is a risk of absorption into the human organism".

The Committee accordingly notes that there is now a prohibition on assigning pregnant or breastfeeding women to work in which they are exposed to ionising radiation as well as to lead or derivatives of it.

The report does not give any information on work which exposes women to benzene. The Committee insists that the next report also provide information in this respect.

The Committee concludes that the situation during the reference period (1997-1998) in Italy did not comply with Article 8 para. 4*b* insofar as there was no prohibition on employing women in underground mining.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee notes the information given in Italy's report on the Charter and the 1998 report transmitted to the World Health Organisation (WHO)[59].

State of health of the population – general indicators

Life expectancy and principal causes of death
The Committee observes from the OECD data[60] that life expectancy at birth has risen slightly, the 1996 figures being 81.3 years for women and 74.9 years for men, above the average for the countries of the European Union and the European Economic Area.

The Committee observes that that the number of diagnosed AIDS cases (morbidity) per year has fallen considerably during the period under review, decreasing from 5,659 in 1995 to 2,343 in 1997. It notes that in 1995 the death rate due to Aids was among the highest in the countries of the European Union and the European Economic Area. The Committee noted from the previous report that 60% of sufferers were drug addicts. In order to gain a better idea of the trend in the situation more, and especially of the policy on control of drug addiction, the Committee asks to be informed of the new cases of HIV infection.

Infant and maternal mortality
According to the Eurostat data, the infant mortality rate in Italy has continued to decline since the last reference period, ie. from 7. 9 deaths per thousand live births in 1992 to 5.5 in 1997.

[59] *Highlights on Health in Italy* (WHO European regional office website: www.who.dk).
[60] *OECD Health Data*, 1999.

The Committee observes that the average maternal mortality rate stood at 6.3 for the period 1990-1993, and wishes to receive up-to-date information on this.

Health care system

Access to health care

In 1979 a national health service (SSN) was set up to ensure universal availability of care, a principle modified by several reforms. The administration of the system is decentralised by delegation to the regions and the local health centres (USLs) which are responsible for the distribution of primary health care. The entire population is covered. Funding of the SSN is based principally on contributions.

According to the OECD data, total expenditure on health amounted to 7.6 % of the GDP in 1997. The public spending component of total expenditure on health has decreased, representing 70% in 1997 (compared to 76.3% in 1992).

Admission to hospitals certified by the USLs and consultations with approved general practitioners are free of charge.

For consultations with specialists – on referral by the general practitioner - a personal share of the cost is stipulated, amounting to 6,000 ITL (lire) for each referral, plus 50% for each additional item of service up to a maximum of 70,000 ITL. Depending on its category, the cost of medication is either reimbursed in full (Group A, for the most serious complaints) or reimbursed at a rate of 50% (Group B, serious complaints) or fully borne by the insured person (Group C). Several low-income population categories are exempted from this cost-sharing, as are children up to six years of age. A patient's contribution of 4,000 ITL per prescription is required (6,000 ITL where two items are prescribed), only totally incapacitated persons and medicines for the treatment of very serious illnesses being exempted[61].

According to the OECD, the average rates of reimbursement for out-patient medical care and pharmaceuticals were 72% and 65% respectively.

Health professionals and equipment

The Committee notes that, according to the aforementioned OECD data, the total number of hospital beds has decreased slightly since the last reference period (372,352 in 1996) and that the density of beds per thousand inhabitants is in the lower range of the average for European countries belonging to the OECD (6.5 beds). The proportion of psychiatric hospital beds is low compared to the other European countries, representing 8.3% of total beds in 1996, 30% less than in 1986. Private hospital provision represents about 20% of the hospital bed total.

The Committee observes from the Eurostat data that in 1996 there were 569 doctors per hundred thousand inhabitants, the highest density in the European Union and the European Economic Area. There were 0.5 dentists and 1 pharmacist per thousand inhabitants.

Conclusion

Subject to the requested information, the Committee concludes that the situation in Italy is in conformity with Article 11 para. 1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education is chiefly the responsibility of the local health centres (USLs). There is no general co-ordination at national level.

[61] European Commission, *Social protection in the member states of the European Union*, situation on 1 July 1999 and evolution, MISSOC.

Health education in schools

It appears from the initial reports that an important function in health education is conferred on the school system. The Committee has noted that health education at school involves the USLs, teachers, parents' associations and staff known as "health educators" specially trained at the Perugia University centre for experimentation in health education. The Committee enquires whether the situation has changed as regards the parties involved. It especially wishes to know whether information and consultation centres have been set up in schools as the previous report announced.

Regarding the topics covered, the previous report mentioned the involvement of the Ministry of Education in the organisation of educational activities and in teacher training on the dangers of alcohol, tobacco and drugs. AIDS prevention has also received special attention.

The Committee requests more definite information as to whether health education is provided all through the school career and whether it is prescribed in school syllabuses. In fact the Committee needs to know whether health education at school has the object of systematically addressing the dangers of tobacco, alcohol and drugs, sex education including prevention of sexually transmissible diseases, and promotion of a healthy diet.

Public information and awareness-raising

The previous report shows that information campaigns at national level have been regularly conducted concerning the dangers of tobacco, alcohol and drugs, as well as in connection with AIDS prevention. The Committee asks to be advised by future reports of any further information and awareness campaign to guard against the major public health problems in Italy.

Counselling and screening

Children and adolescents

According to an earlier report, each USL has a service specialising in mother and child welfare. The Committee enquires whether there are other specialised structures. The current report indicates that in 1997 the experts in the field of mother and child welfare totalled 2 386. The Committee wishes to know what underlies this figure: whether it signifies the total numbers of staff working in the USL specialised services, or of specialists working elsewhere. The Committee has also noted in its conclusion relating to Article 11 para. 1 that no personal contribution to medical expenses incurred in respect of a child up to six years of age is required.

Conclusion

Pending receipt of the information requested, the Committee defers its conclusion.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

In the meantime, the Committee regrets that the report does not contain the up-dated information requested previously on social services available in each region (number of services, spheres of activity, number and qualifications of staff, number of beneficiaries and expenditure). It insists that this information be contained in the next report. It also requests more information on how the level of quality is ensured in practice throughout Italy under the licensing system mentioned above. Finally, it wishes up-dated information on access to social services and any conditions pertaining and notably on appeals possibilities for persons who have had requests for social services refused.

Pending receipt of this information, the Committee concludes that the situation in Italy is in conformity with Article 14 para. 1 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in Public care
The Committee wishes to be informed how many children receive assistance while remaining within their family, how many are removed from their families, and of these how many are placed with a foster family (or foster type placement), how many are placed in an institution and how many are placed for adoption.
It further wishes to be informed as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in them, and on the conditions under which an institution may interfere with a child's property, mail, personal integrity and the right to meet with persons close to him.

Protection from ill treatment and abuse
If a child's health or development is at risk, a judge may if necessary terminate the parent's authority over the child, and if serious grounds exist order that the child be removed from its family. Should the conduct of the parents not justify forfeiture of their authority, the judge may nevertheless decide to impose such measures as are appropriate, including removal of the child from the family.

The Committee wishes to receive information on the bodies responsible for detecting and protecting children from ill treatment and neglect.

Provisions of the Penal Code deal specifically with sexual offences against children, two pieces of legislation entered into force during the reference period strengthening the protection of children from sexual offences.
The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.
Children and the law

The Committee wishes to know the minimum marriage age.

[Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex]

Situation in law and practice
The Committee deferred its previous conclusion due to the lack of information in respect of a number of questions enumerated in the conclusion.

The Committee now notes that pursuant to Section 15 of Act No. 125 of 1997, with respect to any action interfering with the provisions prohibiting discrimination based on sex as regards access to employment, equal treatment, attribution of qualifications, tasks and promotion, etc., an employee or a trade union organisation acting on their behalf can apply to the local magistrate acting as a labour judge who can issue an immediately enforceable order directing the person guilty of the unlawful act in question to cease and desist and cancelling its effect. The order can be replaced by an immediately enforceable judgement in case there is an objection to the order. There are penal sanctions against anybody who does not comply with an order or a judgement.

Thus, apparently Italian legislation provides for protection against retaliatory measures on the part of the employer, including reinstatement. From reading the text of Section 15, however, the Committee is uncertain as to the extent of this protection. Section 15 refers to Section 1 of the Act, which appears to deal exclusively with access to employment and training, etc. The Committee also refers to Section 5 relating to night work. The Committee therefore asks, whether the protection provided for in the Act covers also discrimination in terms and conditions of employment, including remuneration and promotion, etc. It asks that the next report indicate the legal sources applicable in such cases.

As regards the basis on which wage comparisons are carried out in relation to claims for equal pay, the present report refers to Section 2099 of the Civil Code. From this provision, which concerns the employer's obligation to pay wages, it appears that wages must be determined in order to comply with professional standards in the "location" concerned. If there are no such standards and no agreement between the parties, it is for the judge to determine the

wage. He may then take the view of professional organisations into account. Workers can be paid entirely or partly through participation in the cost of benefits, through commission, or in nature. It thus appears to the Committee that all component parts of the remuneration are taken into account in wage comparisons and that salary comparisons outside the enterprise are in principle possible.

The Committee regrets that the present report, like the previous report, contains very few figures on the employment situation of women in Italy. The Committee recalls that it requested detailed information in each report covering the reference period on the proportion of women and men in the labour market, the proportion of those working part-time, the proportion of women in senior or managerial posts, etc. It also wishes to receive information on women's participation in vocational training.

However, from its latest conclusion under Article 1 para. 1 of the Charter, the Committee observes that the total employment rate of was almost twice as high for men (55,8%) as for women (29%) during the reference period 1997-1998 (Conclusions XV-1, p. 354). It also notes that women's share of total part-time employment was 71,1% in 1997. According to the report 15,6% of all female wage earners work part-time as opposed to 3,5% of male wage earners. The share of part-time work is increasing, as is the share of atypical employment in which female employees also form the majority.

The report contains figures relating to the proportion of women in managerial posts in the public sector, from which it appears that there has been an increase in the number of women in managerial posts over the last five years (19,7% in 1994, 20,2% in 1997 and 22,4% in 1999). However, in senior managerial posts the proportion of women was only 13%.

The Committee refers to the questions asked in its previous conclusion under Article 1 para. 2 of the Charter (Conclusions XV-1, p. 355) on the biennial reports on the personnel situation of men and women workers, which employers are required by law to submit to the authorities and on the number of women on mobility lists in regional employment agencies.

In addition, the Committee repeats its request for information on wage differences between men and women in the various sectors of the labour market and on differences remaining with respect to their working conditions. In this context it also asks for information on the situation in law and practice of part-time workers.

Positive action
In reply to its question concerning measures of positive action for equal opportunities that have been carried out; action plans, their financing and practical impact, the Committee observes that between 1991 and 1998, 465 projects have been approved, the total budget being 68.850.000 million ITL. Out of these, 386 projects are or are about to be completed. The remainder has been renounced by the enterprises concerned, often because of mergers or other changes in the running of the enterprise, or have been revoked by the authorities for various reasons. The Committee asks to continue to be kept informed about the measures of positive action undertaken by the Italian Government.

Conclusion
Pending receipt of the information requested, in particular on protection against retaliation following claims for equal remuneration, etc., the Committee defers its conclusion.

Luxembourg

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes from report of Luxembourg that new legislation entered into force on the sexual exploitation of children (the Act of 31 May 1999). The Act amends the Penal Code and, *inter alia*, makes the possession of pornographic material featuring children a criminal offence. It also contains provisions which strengthen the protection of children from exploitation by making it a criminal offence to assist, facilitate, encourage or incite a

person less than 18 years of age to engage in prostitution. The Committee wishes to receive information on any system of supervision that exists.

The Committee concludes that the situation in Luxembourg is in conformity with Article 7 para. 10 of the Charter.
[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]
As a preliminary point, the Committee requests to be informed on the situation in Luxembourg of part-time female workers with respect to Article 8 para. 1 of the Charter.

1. Right to maternity leave
The Committee notes the amendments made to the Maternity Protection in the Workplace Act of 3 July 1975 by the Act of 7 July 1998.

Under the 1998 Act, pregnant workers and workers who have recently given birth are not permitted to work, respectively, in the eight weeks immediately prior to their estimated delivery date and the first eight weeks after giving birth. The Act also extends the period of post-natal leave to twelve weeks in the case of premature delivery, multiple births, and breastfeeding.

The Committee also notes that female employees not wishing to return to work at the end of their maternity leave are not required to pay compensation to their employer. Moreover, for a period of a year, they have a priority entitlement to be re-employed in a post requiring the same skills as their previous post and under the same conditions as before.
The Committee concludes that the situation in Luxembourg is in conformity with Article 8 para. 1 on this point.

2. Right to adequate benefits
The Committee notes that female employees who have been affiliated to the social security system for at least six months in the year preceding the start of their maternity leave are entitled to a cash maternity benefit equivalent to 100% of their average gross earnings in the three months prior to maternity leave.

In its previous conclusion, the Committee noted that in 1992 maternity benefit was subject to a ceiling of 202,681 Luxembourg francs (LUF). It would like the government to confirm whether or not such a ceiling still applies and, if so, to indicate its present level. It also asks whether the affiliation period is calculated in calendar months or working days, and whether periods of unemployment are included in the calculation.

The Committee also notes that female employees who at the start of their maternity leave have not been affiliated for at least six months are nonetheless entitled to a flat-rate maternity allowance which rose from 6,584 LUF per week in 1998 to 6,917 LUF per week as of 1 January 2001.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 8 para. 1 on this point.

[Article 8 — The right of employed women to protection; Paragraph 2 –Illegality of dismissal during maternity leave]

In its previous conclusion, the Committee considered that the situation in Luxembourg was not in conformity with the requirements laid down by Article 8 para. 2 of the Charter insofar as female employees wrongfully dismissed while on maternity leave were not normally reinstated and insofar as the protection afforded by the financial compensation system operating in Luxembourg was not sufficient.

The Committee notes that legislation has been significantly improved in this respect. Under the Act of 7 July 1998, which amended the Act of 3 July 1975, a female employee may not be given notice of dismissal while on maternity leave, and any notice of dismissal given in breach of this ban is considered “null and void” and entitles the employee to submit a simple request to the President of the Labour Court to have the dismissal declared void and to be reinstated in her post. Under Section 14 of the 1998 Act, employers who fail to comply with these provisions risk criminal proceedings and prison sentences of between eight days and six months.

The Committee asks whether this new rule has already been tested in court and, if so, what position has been adopted by the Labour Courts on this matter.

The Committee asks whether, in cases where employees who have been wrongfully dismissed are not reinstated in their jobs, the law provides for a form of compensation that is sufficient both as a deterrent for the employer and as compensation for the employees and, at all events, at least equivalent to the salary due until the end of the protection period.

Pending receipt of the information requested, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 3 –Time off for nursing mothers]

The Committee notes that under Section 7 of the Act of 3 July 1975, as amended by the Act of 7 July 1998, female employees are entitled, upon request, to take two forty-five minute breaks per day for breastfeeding. These are to be taken at the beginning and end of their normal daily working hours.

If the working day is broken up by a rest period of less than an hour, the two breaks may be combined to form one ninety minute break for breastfeeding.

Section 7 also provides that breaks for breastfeeding are to count as ordinary working hours and consequently give rise to payment of an ordinary wage.

The Committee notes that Luxembourg legislation is unchanged with respect to the other points which it has already considered to be in conformity with the Charter. It therefore concludes that the situation in Luxembourg is in conformity with Article 8 para. 3 of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information in the Luxembourg report and in the 2000 report of the European Observatory on Health Care Systems.[62]

State of health of the population – General indicators

Life expectancy and principal causes of mortality

The Committee observes from Eurostat statistics[63] that life expectancy at birth rose from 78.5 years in 1992 to 79.8 in 1997 for women and from 71.9 in 1992 to 74.1 in 1997 for men, but these rates remain lower than the average for the European Union and the European Economic Area (80.9 and 74.6 respectively in 1997).
The Committee notes that the number of AIDS cases diagnosed (morbidity) annually dropped during the reference the period, from 15 in 1995 to 9 in 1998.

Infant and maternal mortality

According to Eurostat statistics, the infant mortality rate in Luxembourg declined sharply, from 8.5 per thousand live births in 1992 to 4.2 in 1997, which is below the European average (5.3 in 1997).
According to OECD statistics[64], the maternal mortality rate was 18.5 per 100,000 births in 1995. The Committee notes that this is one of the two highest rates in the European countries of the OECD and by far the highest among the countries of the European Union.

The Committee considers that maternal mortality is an avoidable risk which states must deal with if they are to comply with Article 11 of the Charter. Considering in particular the level of development of the Luxembourg health

[62]Health Care Systems in Transition Profile (www.observatory.dk).
[63]Eurostat yearbook, *A statistical eye on Europe,*1988-1998 data.
[64]OECD Health Data 1999.

care system, it holds that all necessary measures should be taken in order to bring the risk as close as possible to zero.
According to the previous report, measures were adopted in 1995 with a view in particular to improving the monitoring of pregnant women during the pregnancy and in the postnatal period. The Committee asks that the next report provide information on any results obtained in order that it may assess the efficiency of the measures taken at the next examination of Article 11.

Health care system

Access to health care

Health care considered "necessary, useful and dispensed in the most economical manner" is financed by the statutory health insurance that covers 99% of the population. The Committee notes that almost all health care is provided within the scope of statutory health insurance. Health insurance is financed by contributions from the state (40%), employers (about 30%) and the insured (about 30%). The contributions paid by the insured are proportional to their income up to a ceiling of five times the guaranteed minimum wage; persons who earn less than the guaranteed minimum wage do not contribute[65].

According to OECD statistics, the proportion of health spending accounted for by the public sector - 91.8% in 1997 - is among the highest in the OECD countries. Total health spending increased by 0.5% compared with the previous reference period and totalled 7% of GDP in 1997.

80% of the cost of first house calls by GPs is reimbursed. Subsequent house calls within 28 days are reimbursed at a rate of 95%. The reimbursement rate for emergency consultations and those with specialists is also 95%. For pre- and post-natal health care the rate is 100%. Health insurance covers dental treatment up to 1334 Luxembourg francs (LUF) per year and, beyond that amount, 80% of the regulated cost. Insurance also covers hospitalisation and the daily charge for a second-class room, subject to a patient charge of 219 LUF per day.[66]

According to OECD statistics, the "average reimbursement rate"[67] for hospital costs and out-patient medical care in 1997 was 88% and 90% respectively.

The cost of "normal" medicines (ie most medicines) is reimbursed at a rate of 80%. The rate is 100% for medicines for serious or long-term illnesses, and 40% in the case of comfort medicines. There is no reimbursement of contraceptives, vitamins, etc. According to OECD data, the average reimbursement rate for medicinal drugs is among the highest in Europe (84%).

Health professionals and equipment

The Committee notes that according to OECD statistics the total number of hospital beds has decreased considerably since the previous reference period (3,400 beds in 1997 compared with 4,400 in 1992). The same applies to beds in psychiatric establishments, of which there were half as many (414) in 1997 as in the early 1990s. While noting that the density of beds per thousand inhabitants in 1997 (8.1 beds in all hospitals and 1 bed in psychiatric hospitals) is about average for the OECD's European countries, the Committee requests that the government explain this trend. It would also like to know the proportion of beds in private hospitals.

[65] Aforementioned European Observatory report on health care systems.
[66] European Commission, *Social Protection in the Member states of the European Union, situation on 1 July 1999 and evolution*, Missoc.

[67] The proportion of total health care expenditure (or expenditure on hospital care, expenditure on outpatient services, pharmaceutical expenditure) which is covered under public programmes and which is actually paid from public sources of financing (*OECD Health Data* 1999).

The number of doctors – GPs and specialists - in activity has increased and totalled 2.4 per thousand inhabitants in 1997. The Committee requests the breakdown of GPs and specialists. The number of dentists per thousand inhabitants remains steady at 0.5. The number of pharmacists has decreased to 0.8 per thousand inhabitants.

Conclusion
Pending receipt of the information requested, in particular as regards measures taken to decrease the maternal mortality rate, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools
Previous reports indicated that, in secondary education, health education is included in the syllabus in biology, moral or religious instruction, physical education and in certain special classes in technical secondary education. The purpose of health education is to enable pupils to take enlightened decisions concerning their health. They also learn how the body works, its needs, how it interacts with its environment and how to stay healthy. Health education is dispensed by teachers, but school doctors and psychologists can occasionally provide support and assist in the general health education effort.

Several secondary schools are members of the European network of health promoting schools set up by the World Health Organisation (WHO), the European Commission and the Council of Europe. Other schools organise health days or weeks on specific subjects, workshops, exhibitions, etc.

The Committee would like the government to provide more detailed information on the subjects addressed in health education in schools and to state whether the following subjects are systematically taught: preventing drinking and smoking, the benefits of a healthy diet and a healthy environment, sex education, road safety.

Public information and awareness
A disease prevention and health promotion department was set up in the Ministry of Health in 1980. The work of this preventive and social medicine department falls within the scope of the health programmes defined in the WHO's "Health for all" strategy. Information campaigns are conducted in the following fields: the dangers of smoking, drinking and drugs, and of exposure to the sun, AIDS prevention, promoting healthy dietary habits and domestic accident prevention. The beneficial effects of breastfeeding has also been the topic of a large information campaign. The Committee would like to know what efforts are made to foster public awareness of the need to protect the environment.

Counselling and Screening

Children and adolescents
Medical supervision of pregnant women and young babies is governed by the Act of 20 June 1977 as amended. The examinations listed below are covered by the sickness insurance funds, or by the state when people are not insured. Five medical examinations (general obstetrics and screening for specific diseases) and one dental check-up are carried out during pregnancy. A previous report indicated that provision also existed for additional consultations with midwives, but that the Grand-Ducal implementing regulations had not yet been adopted. The Committee requests that the next report state whether there has been any change.

Two perinatal tests (with screening for phenylketonuria, hypothyroidism and cystic fibrosis) are carried out on babies and four further check-ups are made by paediatricians before the child's second birthday. The Act of 15 May 1984 introduced systematic check-ups for children from 2 to 4 years of age (two medical and two dental check-ups). Children are also screened for hearing and sight deficiencies from the age of 6 months.

School medicine is regulated by the Act of 2 December 1987. It concerns all pupils. School medical teams comprise medical and paramedical staff. Children in infant and primary school systematically undergo measurements, checks and tests every year (tuberculin, weight, height, eyesight, ability to express themselves, urine, vaccinations).

Systematic medical and dental check-ups, and social audits where necessary, are also carried out at regular intervals from infant school through to higher education.

Rest of the population

An early screening programme for breast cancer was implemented in 1992 for women from 50 to 64 years of age. Screening for sexually transmissible diseases and cervical cancer is also organised in family planning centres, for example. Anonymous screening for AIDS is also available free of charge. Having learned in the previous report that screening for insulin-dependent diabetes was a government priority, the Committee would like to know how the situation has progressed.

Conclusion

The Committee concludes that the situation in Luxembourg is in conformity with Article 11 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Establishment of parentage and adoption

The establishment of parentage is regulated by the Civil Code. The Committee notes that children born of incest are not in principle entitled to have their filiation established. It asks whether the child may establish the identity of its mother. It further asks whether, in cases where the mother decides to conceal her identity after giving birth, the child may take an action to establish the identity of the mother, this not being clear from previous reports.

As regards adoption, the situation is in conformity with the Charter.

Children in Public care

Children may be taken into care in a number of situations: following conviction for a criminal offence (see below), where they constantly fail to attend school, engage in immoral behaviour, are at risk from prostitution, begging, criminal activity, or where their physical or mental health, their education or their social and moral development is threatened. There is also the possibility to place a child in care for a short period if the parents are unable to care for it due to unforeseen circumstances, such as serious illness.

The Committee wishes to receive information as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care or treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him. In particular, it requests information on the circumstances in which contact and communication between a child in care and its family may be restricted.

The Committee notes from other sources[68] that a number of children are placed in care institutions outside the state due to lack of facilities in Luxembourg. It wishes to know how the care and treatment of these children is adequately monitored.

Protection from ill treatment

The Committee notes from other sources[69] that Article 40 of the Penal Code which deals with acts of violence and neglect committed against children is only applicable to children under 14 years. It asks whether the Government intends to alter this situation.

There is a general legal obligation to report all incidences of child abuse. Suspected child abuse must be notified to either the juvenile court or the Public Prosecutor's Office, which will order the requisite investigations. If necessary a temporary care order in respect of the child may be made.

[68] Concluding Observations of the Committee on the Rights of the Child : Luxembourg. CRC/C/15/Add.92 , www.unhcr.ch/tbs/doc.nsf.
[69] *Ibid*.

A number of bodies in Luxembourg are concerned with the prevention, detection and treatment of child abuse; the National multi-purpose social assistance service, Kanner-Jugendtelefon (hotline for children and young people), family planning and rape information service, Luxembourg Association for Preventative Action and Children's Services (ALUPSE) and the Central Social Assistance Service. The number of inquiries made at the request of the juvenile courts in respect of children whose physical or mental health, education or social or moral development is at risk increased in 1995 as did the number of cases dealt with by the ALUPSE.[70] The Committee wishes to receive similar information for the next reference period.

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Children and the law – Young offenders
The Committee recalls the rule which stipulates that the property of a child born outside marriage is placed under the supervision and administration of a guardianship magistrate, even where both parents have recognised the child. The Committee notes that according to the report, the purpose of this rule is to protect the property of the child. As this rule may treat mothers differently solely on account of the birth status of the child, the Committee requests information on the manner in which it operates.

Malta

[Article 7 — The right of children and young persons to protection; Paragraph 1 – Minimum age of admission to employment]

The report of Malta indicates that no child may be employed or self-employed unless granted an exemption from school attendance by the education authorities – Regulation 3 of the Work Place (Protection of Young Persons) Regulations, 1996. It adds that no exemptions are granted to children under 15 years.

The Committee takes note of the information submitted on the prosecution of parents for failing to ensure school attendance. It asks to be informed in the next report under this provision of the activities of the authorities in ensuring that children are not engaged in illegal employment.

The Committee concludes that the situation is in conformity with Article 7 para. 1 of the Charter.

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee takes note from the Maltese report of the terms of the Work Place (Protection of Young Persons) Regulations 1996 which entered into force in Malta during the reference period, and of the amendments made in 1996 and 1998.

Regulation 3 paragraph (2) provides that no young person still subject to compulsory education may be employed or given work unless they have been granted an exemption by the education authorities. However, the Committee observes that Regulation 5 concerns the working time of young persons of compulsory school age, who may be employed for up to four hours per school day. It considers that children permitted to work this long on a school day cannot enjoy the full benefit of their education.

The Committee further notes the terms of Regulation 4 paragraph (3) subparagraph (b), according to which young persons may not be employed between 2 a.m. and 6 a.m. on the Monday of any week in which they are required to attend full-time education. The Committee requests clarification as to whether the effect of this provision is to allow young persons still subject to compulsory education to work at night, or whether it concerns only students at a later stage in their education.

[70] Luxembourg's report submitted under the UN Convention on the Rights of the Child CRC/C/41/Add.2

The Committee concludes that the situation in Malta is not in conformity with Article 7 para. 3 of the Charter because the length of daily working time allowed on a school day for young persons subject to compulsory education is such that the benefit of their education is not ensured.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

As the report of Malta fails to reply to the questions in the Form for reports for this provision, the Committee requests updated information in the next report.

The Committee asks whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

Pending receipt of the information requested the Committee concludes that the situation in Malta is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

As a preliminary point, it recalls that in Conclusions XIII-4 (p. 73) it raised a general question concerning the proportion of fixed-term contracts outside the specific and traditional instances justifying their use. Since the report says nothing about this, the Committee considers that a clear statement of its position would be in order. It therefore points out that the actual principle of using fixed-term contracts is not contrary to the requirements of Article 8 paras. 1 and 2. Nevertheless, the expiry of a fixed-term contract during the maternity leave may remove the very object of the suspension system applicable in such circumstances. It is then not impossible that maternity benefits be denied by the employer starting from the date of the termination of the contract. The Committee notes a general phenomenon of multiplication of insecure contracts and its effects on the protection of maternity as prescribed by Article 8 para. 1. It wishes to know whether and how the use of insecure contracts is regulated and, in particular, whether the use of successive fixed-term contracts entails a contract of indefinite duration. The Committee also wishes to know what is the total number of workers employed on the basis of insecure contracts, what is the proportion of women concerned and, where the use of such contracts is legal, what is the employers' policy concerning their extension.

1. Right to maternity leave

Maltese legislation grants female employees thirteen weeks of maternity leave, eight to be taken before confinement and five afterwards - a situation which the Committee has found contrary to Article 8 para. 1 in so far as this provision provides a compulsory period of six weeks for postnatal leave. In its report the Maltese Government states that since 1 January 2001, female employees have been entitled to an additional week of leave which they may use at their own discretion either before or after confinement.

The Committee takes note of this measure, but observes that it falls outside the reference period and does not formalise the compulsory character of the six-week postnatal leave.

In its previous conclusion, the Committee concluded that the situation was not in conformity with the Charter because female employees who do not give their employer three weeks' notice prior to the commencement of maternity leave are only entitled to five weeks' leave beginning on the date of confinement. The Committee takes note of the Maltese Government's intention to alter this situation[71] but observes that the report does not indicate any relevant change in the legislation.

The Committee also notes that Malta's regulations on maternity leave cover home-workers, domestic employees and, since 1996, part-time workers. However, it does not apply to employees who are related to the employer, thus denying them the protection secured by Article 8 para. 1.

[71] Governmental Committee, 13th report (IV), p. 73.

The Committee concludes that Malta's position regarding the right to maternity leave is not in accordance with the provisions of the Charter, in the following respects:

– the compulsory character of the six-week postnatal leave period is not enforced;

– employees who have not given their employer three weeks' notice prior to the commencement of maternity leave are entitled to it only as from the date of confinement and for the five subsequent weeks;

– employees related to the employer are not entitled to maternity leave on the same terms as other employees.

2. Right to adequate benefits

The Committee notes that the report does not reply to any of the questions and observations raised in its previous conclusion.

On the one hand, these questions and observations concerned the inadequacy of the social security benefits for employees not entitled to maternity allowances or required to refund them to the employer on deciding not to resume their jobs after maternity leave. On the other hand, they drew attention to the fact that female employees from the other Contracting Parties did not receive the same guarantees as Maltese nationals or foreigners with Maltese husbands.

The Committee notes that the Maltese Government nonetheless replied to all the above criticisms in the Governmental Committee's report on Conclusions XIII-4.[72] The Government states that social security benefits for women not entitled to maternity allowances have increased significantly, but does not specify the figure. It further confirms that, with few exceptions, the situation is unchanged for nationals of other Contracting Parties to the Charter. It finally stresses that there is draft legislation aiming to abolish the requirement that female employees not wishing to resume their jobs following their maternity leave refund the allowances received to the employer.
The Committee wishes to be informed about the action taken on this bill, and the amount of the increase in the social security benefits intended for female employees not qualifying for maternity allowances. It re-emphasises the importance of ensuring that Maltese employees and nationals of other Contracting Parties receive equal treatment, and asks the Maltese Government how it proposes to bring the situation into conformity with the Charter in this matter.

In anticipation of the aforementioned legislative reform and the requested information, the Committee concludes that, where the right to adequate benefits is concerned, Malta does not meet the requirements of the Charter for the following reasons:

– social security benefits for female employees not entitled to maternity allowances are inadequate;

– employees must refund the maternity allowances to the employer if they decide not to resume their jobs following the maternity leave;

– employees who are nationals of other Contracting Parties do not benefit from the same guarantees as Maltese employees or foreigners married to Maltese citizens.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

The Committee takes note of the information in the report of Malta, but finds that it does not reply to most of the questions and observations raised during the previous supervision cycles.

The first question (Conclusions XIII-4, p. 73) related to the proportion of fixed-term contracts outside the specific and traditional instances justifying their use, and their effects on the protection secured by paragraphs 1 and 2 of Article 8 to women employees while on maternity leave.

Article 8 para. 2 which prohibits giving a woman notice of dismissal during her absence on maternity leave or at such time that the notice would expire during such absence, does not prohibit the termination of a fixed-term contract at the time of its natural expiry. Nevertheless, the expiry of such contract during the absence on maternity leave will

[72] Governmental Committee, 13th report (IV), p. 73.

remove the prohibition of dismissal required for the protection of maternity. The Committee notes a general phenomenon of multiplication of insecure contracts and refers to its questions under Article 8 para.1.

Prohibition of dismissal
Aware that the 1952 Conditions of Employment and Regulation Act prohibits the dismissal of female employees during maternity leave, the Committee requested details of the scope of the Act and the extent of the protection secured by it to female employees.

It enquired whether female employees related to the employer received the same protection as others against dismissal during maternity. According to the report, these employees do not come within the scope of the 1952 Act. Moreover, the report does not give any information on the situation of part-time female employees who are outside the scope of the 1952 Act.

Consequences of an unlawful dismissal
The Committee requested information on the conditions under which unfairly dismissed female employees are reinstated and, if not reinstated, the amount of compensation which they can claim. The Committee notes[73] that the competent courts are indeed empowered to order the reinstatement of an unfairly dismissed employee or, where reinstatement is impossible, to award her compensation. In this respect, it recalls that reinstatement must be the rule and payment of compensation an exception. Moreover, compensation should be sufficient to deter the employer and to compensate the employee and, in any case at least equivalent to the salary due until the end of the protection period. It therefore wishes to know what criteria of judicial practice govern the choice of either solution, and which parameters enter into the calculation of the compensation.

Conclusion
The Committee concludes that the situation in Malta is not in conformity with Article 8 para. 2 in that female employees who are related to the employer, part-time and female employees, are not protected against dismissal during maternity leave.

[Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

Regulation of night work for women in industrial employment (Article 8 para. 4.a)
The Committee takes note of Legal Notice 92/2000 on the *Protection of Maternity at Work Places Regulations*, which regulates night work for women in part.

Employers may not assign an employee to night work during pregnancy, following confinement or while nursing, if she produces a medical certificate to the effect that night work may have ill-effects on the child, the course of her pregnancy or her personal health. This prohibition applies for twenty-one weeks as from the eighth week preceding the expected date of confinement.

The Committee acknowledges this development, while emphasising that Legal Notice 92/2000 was issued outside the reference period.

It considers that the above-mentioned steps are in conformity with the Charter, but wishes to receive the information already requested in its previous conclusions. It therefore asks that the next report specify the conditions under which night work is performed and particularly how the hours are fixed, including breaks during work and rest periods following spells of night work. It also enquires whether night work is authorised strictly in view of specific production requirements and having regard to workplace conditions and work organisation.

Pending receipt of the information requested, the Committee concludes that, on this point, the situation in Malta is in conformity with Article 8 para. 4 of the Charter.

[73] Governmental Committee's report on Conclusions XIII-4.

Prohibition of the employment of women in certain dangerous, arduous or unhealthy types of work (Article 8 para. 4.b)

According to the report, Legal Notice 92/200 prevents an employer from assigning an employee while pregnant, following delivery or while nursing to work which may pose hazards for the course of her pregnancy and her own or the child's physical and mental health. The report states that an Annex to Legal Notice 92/2000 contains a non-exhaustive list of agents, processes and conditions classed as dangerous.

Employers are also required to carry out an assessment of potential risks and bring it to the attention of female employees or their representatives at the workplace. They must also organise tasks in such a way as to obviate these risks and, if necessary, assign the female employee concerned to other jobs, on terms no less favourable than those stipulated in the employment contract. Where these measures cannot be taken, the employer must grant the employee an extension of her maternity leave until such time as the working conditions are no longer considered dangerous. The Committee takes note of this development which occurred outside the reference period.

The Committee wishes to be kept informed of any legislative development in this area. It also wishes to know whether Legal Notice 92/2000 covers exposure to lead, benzene and ionising radiation.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 — The right to protection of health; Paragraph 1 – Removal of causes of ill-health]
The Committee takes note of the information provided on the Maltese Ministry of Health website[74] and in the 1999 report of the European Observatory on Health Care Systems.[75]

State of health of the population – General indicators

Life expectancy and principal causes of death
In 1996 life expectancy at birth was 79.8 years for women, which was less than the average for the European Union and the European Economic Area (80.6 years), and 74.9 years for men, which was higher than the European average. Cardiovascular disorders were the main cause of death (35%), followed by cancer (25%). The Committee notes that the rate of breast and cervical cancers was on a level with some of the highest recorded in the European Union member states.

The Committee notes that three cases of AIDS were diagnosed and three AIDS-related deaths were recorded in 1997.

Infant and maternal mortality
The infant mortality rate in Malta was 10.7 deaths per 1,000 live births in 1996. However, this rate cannot not be compared with those of the other Contracting Parties as the definition of infant mortality in Malta appears to be broader.

The Committee notes that the mean mortality rate for mothers at childbirth was 4 per 100,000 in the period 1991-1996.

Health care system

Access to health care
The national health service, centrally organised and tax-funded, covers the whole population. Most types of care and treatment are available and certain highly specialised forms of care not available in Malta are provided in the United Kingdom.

[74] www.magnet.mt
[75] *Health Care Systems in Transition Profile* (Observatory website: www.observatory.dk).

Inside the national health service most treatment is dispensed free of charge in the eight health care centres, and in local clinics and hospitals. However, only holders of the pink social assistance card have free access to dental and eye care. Medicines are free of charge for holders of pink cards and yellow cards (issued to those suffering from listed chronic diseases) and when prescribed during hospital treatment. In other cases patients must pay for their medicines in full.

Private health care is paid for by the patients themselves, who can take out private insurance cover. The Committee asks what proportion of primary health care is carried out in the private sector.

In 1996 total spending on health care amounted to 6.4% of GDP and public health care accounted for 60% of that total, amongst the three lowest levels in all the Contracting Parties to the Charter.

The Committee would like to know if any studies have been carried out to determine whether the cost of medical care is so high that it effectively limits access to health care for most people.

Health professionals and equipment

The density of hospital beds for short-term patients was 3.9 beds per 1,000 inhabitants in 1997, compared with an European Union average of 5.

Private hospitals account for about 15% of total beds. The Committee observes that the proportion of psychiatric hospital beds is high (30% of all hospital beds are for psychiatric patients) and asks the Government to explain this situation.

There is one public general hospital for short-term treatment (Saint Luke's Hospital) and three private general hospitals for short-term treatment.

According to the aforementioned report of the European Observatory on Health Care Systems, the beds available at Saint Luke's Hospital are insufficient for the needs of the population, especially in winter. The situation could improve with the opening of a new hospital, the structural reorganisation of the hospital sector and the introduction of a suitable bed management policy. The Committee asks to be kept informed of any new developments and of the results obtained.

There were 2.6 doctors per 1,000 inhabitants, fewer than in most European countries.

Conclusion

Pending receipt of the information requested on access to health care the Committee defers its conclusion.

[Article 11 — The right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

Malta is part of the European Network of Health-Promoting Schools set up by the European Office of the World Health Organisation (WHO), the European Commission and the Council of Europe.

The Committee requests that the next report contain more detailed information: whether health education is on the school syllabus, whether it is provided throughout schooling, what methods are used and what subjects are addressed.

It also wishes to know what follow-up there has been to the draft global school programme prepared by the health education unit that was mentioned in a previous report, and to the project on new health education methods in primary schools mentioned in the current report.

Public information and awareness-raising

Malta's earliest reports indicated that various public information and awareness campaigns had been organised on the subjects of smoking, nutrition, AIDS, drinking, diabetes and oral hygiene. According to the latest report, information campaigns were organised during the reference period with a view to encouraging people to stop smoking and to promote a healthy diet.

Counselling and screening

Children and adolescents

Some health centres provide special services for infants. The Committee requests more detailed information on medical care for young children from birth to school age (whether it is free, the frequency of check-ups, the presence of qualified staff).

Previous reports have stated that school medical services are provided free of charge in all state schools and that an oral hygiene programme exists in schools. All schoolchildren have access to free dental treatment. School doctors and nurses regularly examine pupils and offer advice on hygiene and treatment. The Committee requests that the next report provide more detailed information on school health care: frequency and content of medical check-ups during schooling, proportion of pupils examined, staff levels.

Rest of the population

Health centres provide a glaucoma screening service to people over 45 years of age or to those over 35 who have a history of diabetes or whose families have a history of glaucoma. Screening for cervical cancer may also be carried out in the health centres upon request. The Committee asks if other types of screening exist.

Conclusion

Pending receipt of the information requested on health education, on medical check-ups during schooling as well as on screening the Committee defers its conclusion.

[Article 17 — The right of mothers and children to social and economic protection]

The Committee recalls that it has previously requested information from the Maltese Government on several issues. The current report fails to provide this information. The Committee again requests that the next report supply information on all issues where it is sought. In particular, the Committee recalls that new legislation on issues concerning children was to be submitted to Parliament, and asks to receive a copy of the legislation as enacted.

Establishment of parentage and adoption

As regards the establishment of parentage and adoption, the Committee previously considered the situation to be in conformity with the Charter. It asks for information on any changes in the legal situation.

Children in public care and protection from ill-treatment

The Social Welfare Development Programme, mainly the Domestic Violence Unit and the Child Protection Unit, is responsible for investigating the suspected ill-treatment of children. Doctors are obliged to notify the police and Department of Family Welfare where a child is suspected of being physically or sexually abused or neglected. Voluntary organisations run a 24-hour telephone service for children in crisis, or adults who know of such children. Where a child has been ill treated, neglected or abused, the Department for Family Welfare may issue a care order, which must be signed by the Minister for Social Welfare under the Children and Young Persons (Care Orders) Act 1980. The Children and Young Persons Advisory Board appointed by the Minister monitors children in care and ensures that they receive the necessary care and assistance. Children may also be put into care by their parents where they are unable to adequately provide or care for them.

The Family and Fostering Services Unit of the Department of Family Welfare assists families in difficulty. 41 children were subject to a care order in 1999. According to another source,[76] there were 11 new care orders in 1995 and 8 new orders in 1996. The same source indicates that the concept of fostering in Malta is underdeveloped and that there are few children in foster families. Most children in the care of the state are placed in institutions. Efforts have been made to promote fostering as an alternative to institutional care. The Committee requests information on developments in this area. It underlines that adoption and foster care should be regarded as the most desirable alternative care measures for children deprived of a family environment.

[76] Report of Malta submitted under the United Nations Convention on the Rights of the Child CRC/C/3/Add.56.

The Committee wishes to receive information on the number of care orders in force for each year of the reference period, the number of children in care placed with a foster family and the number placed in an institution, as well as the total number of children in institutions. It also wishes to receive information on the types of institutions that exist. The Committee wishes to receive information on the monitoring of care in institutions, whether there is any specific procedure for complaining about care and treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet persons close to him.

The Committee asks whether legislation prohibits all forms of corporal punishment of children, in the home, in schools, in institutions, and elsewhere.

Children and the law
The Committee recalls that it has previously considered the situation in Malta not to be in conformity with the Charter on the ground that children born outside marriage are discriminated against in matters of succession, and inequalities also exist between children of a first and second marriage. As there has been no change to this situation, the Committee again concludes that the situation in Malta is not in conformity with Article 17 of the Charter.

The Netherlands

[Article 7 — The right of children and young persons to protection ; Paragraph 1 – Minimum age of admission to employment]

In addition to the various different kinds of work that children are allowed to perform from the age of 13 years onwards, children aged 14 or more are allowed to assist with the carrying out of light work of a non-industrial nature within the context of their education. However this is only possible where a work placement agreement has been drawn up or if the Municipal Executive has approved the request for alternative compulsory education. If the child is working within the context of a work placement agreement or alternative compulsory education, he or she is not allowed to perform any other work during the week or weeks in question.

The Labour Inspectorate supervises and enforces the regulations relating to the employment of children through inspections in branches with special risks for children or young persons and in branches which employ children and young persons, and through complaints.

As regards enforcement, the policy is determined in consultation with the Public Prosecutions Department. There is a standard procedure with two phases; the first phase consists of issuing a warning, while the second involves the compilation of a prosecution report which is passed to the public prosecutor. There is also a procedure for serious or repeat offences. Since November 1999, it has also been possible for the Labour Inspectorate to fine employers.
The Committee wishes to receive further information on the work of the Labour Inspectorate, for example the number of inspections carried out, number of breaches detected, number of warnings issued and the number of prosecutions.

The Committee concludes that the situation in the Netherlands is in conformity with Article 7 para. 1 of the Charter.

[Article 7 — The right of children and young persons to protection ; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee recalls that it previously considered the situation in the Netherlands not to be in conformity with the Charter because:
– children of compulsory school age and over 15 years could work throughout the school holidays for up to 8 hours a day and 40 hours per week
– children of compulsory school age and over 15 years could deliver newspapers from 6 a.m. onwards on school days.

As regards the first ground, the Committee notes that the Working Hours Act (ATW) and the Child Labour Regulations provide that children aged 13 and 14 years may work for up to 4 weeks per year, but not more than 3 weeks consecutively. Children aged 15 may work for up to 6 weeks per year, but not more than 4 weeks consecutively. School holidays last for eleven weeks.

The Committee considers that the main purpose of school holidays is to let children rest in order to benefit from school after the holidays. It refers to its case-law that the period of rest must at least cover half the holiday period for children still subject to compulsory education. Despite the above-mentioned limitations to the number of weeks children may work annually, the Committee observes that it can exceed half of the holiday period, which is not in conformity with the Charter.

The Committee considers that the hours that may be worked by children aged 15 (8 hours per day, 40 hours per week) are long, but as they only apply during part of the school holidays they do not constitute a violation of Article 7 para 3 of the Charter.

As regards the situation whereby young persons of compulsory school age and over 15 years can deliver newspapers from 6 a.m. onwards on school days, the Committee notes that there has been no change. It considers that 6 a.m. represents a very early start for children, who may work for 2 hours per day before school starts, 5 days per week. The Committee notes from an appendix to the report[77] that the Dutch Ministry of Social Affairs and Employment states that the delivering of newspapers in the mornings is not considered to fall within the legal concept of "light work of an non-industrial nature", since it "can be an arduous task for a child of 15 in view of the fact that it has to be done very early in the morning before school and also due to the fact that it involves lifting heavy bundles of newspapers".[78] The Committee finds in these circumstances that the situation is not compatible with Article 7 para 3.

The Committee concludes that the situation in the Netherlands is not in conformity with Article 7 para. 3 of the Charter

– As the limits on mandatory rest period during school holidays for children aged 15, still subject to compulsory education is not sufficient to ensure they fully benefit from such education;

– As it is possible for children aged 15, still subject to compulsory education, to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school.

[Article 7 — The right of children and young persons to protection ; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in the Netherlands is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. The right to maternity leave

Under Dutch law, all insured female employees are entitled to 16 weeks' compulsory maternity leave, including the 4 weeks before the birth and 8 weeks after it (Labour Act of 1919, as amended).

In its previous conclusion, the Committee found the Netherlands to be in breach of Article 8 para. 1 of the Charter here, inasmuch as employees in private households working for less than 3 days a week are not entitled to maternity benefit nor, consequently, to maternity leave.

The report states in this regard that all female employees are insured from the day they start work. However, certain categories, notably women working in private households and in the public health services for less than 3 days a week, constitute an exception to the rule. Because they are not regarded as employees and therefore are not insured, these women have no entitlement to either maternity leave or maternity benefit.

[77] *Child and juvenile labour bound by strict rules*, Ministry of Social Affairs and Employment.
[78] *Ibidem*.

According to the report, this situation has arisen because the women concerned do not wish to be insured, because the financial burden on their employers would be too great and because making insurance compulsory would reduce the market for this type of work.

The Committee considers that denying the right to maternity leave to a category of workers is not in conformity with Article 8 para. 1 of the Charter.

Moreover, it requests that the next report include information on the penalties for breaches of the law on compulsory maternity leave, as well as notification of any breaches detected by the Labour Inspectorate.
The Committee concludes that the situation in the Netherlands is in breach of Article 8 para. 1 inasmuch as women working in private households and in the public health services for less than three days a week are not regarded as employees and are not insured. This means that they have no entitlement to maternity leave.

2. The right to adequate social security benefits
The Dutch report states that there is no qualifying period for entitlement to maternity benefit and that women other than those in the above-mentioned categories are thus covered from their first day at work.
The level of maternity benefit is equal to 100% of wages, up to a ceiling of 286.84 Netherlands Guilders (NLG) per day (as of 1 January 1994). The report notes that most collective labour agreements provide for employees earning more than the limit to receive a supplement from their employers. This brings the total up to the full level of their wages. The report does not provide information with regard to the number of women earning wages above the ceiling; the spread of earnings above the ceiling; or the average monthly earnings of women in executive positions.

The Committee notes that the material circumstances of employees on maternity leave must be such that they do not need to work and can thus get proper rest. This requirement can be met only by continuing to pay the employee her salary or granting her a benefit equivalent to, or worth not substantially less than, her salary. Nonetheless, the Committee considers that in the case of salaries above the ceiling, a substantial reduction in earnings during maternity leave is not, *per se*, contrary to Article 8 para. 1 of the Charter. In order to assess the situation and satisfy itself that the reduction in earnings in reasonable, the Committee takes various factors into account, including the level of the ceiling, where it lies on the earnings scale and the number of women whose salaries exceed it.

In the Netherlands' case, the Committee regards the ceiling as relatively high and notes that many of the women whose earnings exceed it receive their full salaries under collective agreements. It therefore takes the view that there is no problem of compliance with the Charter in this regard.

Replying to a question asked by the Committee, the report also states that the privatisation of sickness insurance will not affect maternity benefits. All insured female employees are, in fact, entitled to maternity leave and benefits for a period of 16 weeks. If, after that period, a woman is unable to return to work as a result of her pregnancy or the delivery of her child, she is entitled to sickness benefit, equivalent to 100% of her wages, for up to 52 weeks.

The Committee concludes that the maternity benefit situation in the Netherlands is in breach of Article 8 para. 1 inasmuch as women working in private households and in the public health services for less than three days a week are not regarded as employees and are not insured. This means they have no entitlement to maternity benefit.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal
The Committee notes that female employees in the Netherlands are protected from dismissal during pregnancy and then for six weeks after the end of maternity leave.

Replying to questions by the Committee, the report states that:
– protection from dismissal applies to pregnant women generally even if they have taken leave for reasons of health and safety;
– women working in agricultural undertakings, other than plantations, and in private households are protected during pregnancy by the Dutch Civil Code in the same way as other female workers;

during the 1997-1998 period there were no cases of an employee on maternity leave being dismissed "on urgent grounds". The Committee notes that, under Section 1639p of the Civil Code, "urgent grounds" can include cases where "[the worker] substantially lacks the ability or aptitude to carry out the work for which she was taken on". It asked whether this provision could be applied to women on maternity leave. The report replies that such a situation would only occur in "exceptional circumstances" and that, in any event, there had been no case of a woman on maternity leave being dismissed. The Committee now asks that each report include information about any cases of dismissal on these grounds. The Committee asks once more that the next report provide information on this matter and give examples of the "exceptional circumstances" mentioned above.

Consequences of unlawful dismissal
The report includes no information on this aspect of Article 8 para. 2.

The Committee points out that reinstatement must be the standard remedy in cases of unlawful dismissal. The aim of Article 8 para. 2 is not only to guarantee financial security for women employees who become pregnant but also to secure their jobs. Payment of compensation is an acceptable remedy only in exceptional cases where reinstatement is not possible (for example because the company has ceased its business) or not wished for by the worker. In such cases, the Committee verifies that the level of compensation is sufficiently dissuasive as far as the employer is concerned and that it affords the employee sufficient reparation.
For these reasons, the Committee asks that the next report review this aspect of the situation.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

According to the Dutch report, the Working Hours Act (ATW), which came into force in 1996, explicitly provides for working women to have paid breaks for breastfeeding. The timing of the breaks shall be fixed in consultation with the employer.

The Committee takes note of this improvement and concludes that the situation in the Netherlands is in conformity with Article 8 para. 3 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

1. Regulation of night work for women in industrial employment (Article 8.4*a*)
The Working Hours Act (ATW) requires employers to implement an in-house risk-assessment policy, paying particular attention to specific groups of employees including pregnant women and those who have recently given birth or are breastfeeding.

Accordingly, if night work represents a risk to the health or safety of a pregnant woman who has notified her employer of her pregnancy, or to a worker breastfeeding her baby, the employer must take steps to eliminate or reduce the risk. Failing that, the employer must offer the woman day work. Should this not be feasible, she must be allowed to take leave. Thus, pregnant women and those who have recently given birth or are breastfeeding cannot be obliged to do night work.

The Committee recalls that states are not required, under Article 8 para. 4*a* of the Charter, to prohibit night work for women, but to regulate it. The regulations, which may be general and applicable to both sexes, must strictly stipulate the conditions under which night work is possible, permitting it only where it is justified by specific production requirements and with due regard for the particular circumstances of the workplace and the way the work is organised. They must also set out the conditions under which women may do night work, such as Labour Inspectorate authorisation if necessary; set hours with fixed breaks and rest days after periods of night work; and the right to be transferred to day work should they experience health problems associated with working at night. The Committee further notes that the regulations must address the situation of pregnant women and those who have recently given birth or are breastfeeding.

The Committee considers that the regulations in the Netherlands take adequate account of the situation of pregnant women and those who have recently given birth or are breastfeeding. It also notes that night work is generally regulated inasmuch as it is defined and, in the case of shift workers, restricted, and that employees are entitled to be transferred to day work should night work constitute a threat to their health or safety.

The Committee asks that the next report include a review of the situation with regard to authorised night work (whether or not the Labour Inspectorate is the authorising body and whether night work is introduced under collective agreements at industry or company level) and of the conditions under which it is carried out (e.g. with provision for breaks and rest days after periods of night work).

Pending the information requested, the Committee defers its conclusion as regards Article 8 para. 4*a* of the Charter.

*2. Prohibition of the employment of women in certain dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)*

The Committee points out that Article 8 para. 4*b* includes a dual prohibition.

– The employment of women in underground mining must be prohibited by statute: this ban concerns only extractive work in the strict sense.

Women must be prohibited "as appropriate [from doing] all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature". The stipulation "as appropriate" has been taken to mean that the prohibition should apply only where necessary, such as to protect pregnant women and those who have recently given birth or are breastfeeding.

On the first point, the Committee recalls its conclusion that such a prohibition is irrelevant in the Netherlands because underground mining is no longer carried out there (Conclusions XIII-1, p. 184).

On the second point, the report explains that Dutch law does not prohibit any specific type of work for pregnant women, those who have recently given birth or are breastfeeding but, as indicated with reference to Article 8 para. 4*a*, it requires employers to assess the risks to which such women are exposed. The assessment must cover work hazards including the effects of chemical, physical and biological agents and industrial processes deemed to involve risk, as well as working conditions, including posture or movements that constitute a health risk, and mental and physical fatigue. The risks of exposure to lead, benzene, high temperatures or vibration must also be assessed.

If the results of the assessment show a risk to health or safety, the employer's first, provisional, step must be to alter the working conditions or hours of the employee concerned in order to avoid exposing her to the risk. Failing that, the employer must take the necessary measures to offer the employee an alternative. Should this be impossible, she must be permitted to stop work for as long as necessary in order to protect her health or safety.

The report also states that a system of penalties was introduced under the Working Conditions Act as amended in 1999. The Labour Inspectorate may fine any employer who has not drawn up a risk inventory and assessment covering risks to pregnant women and those who have recently given birth or are breastfeeding, who does not provide the women concerned with information about the potential risks, or who does not offer alternative work if necessary. The Committee requests that the next report state the level of fines and, if possible, the number of offences detected. It also asks whether the Working Conditions Act contains specific provisions on pregnant women and those who have recently given birth or are breastfeeding.

Lastly, replying to a question by the Committee, the report states that, with regard to exposure to ionising radiation, the limit values fixed under Dutch law, particularly in respect of pregnant women, are stricter than those proposed by the International Commission on Radiological Protection (ICRP).

On the basis of all this information, the Committee concludes that the situation in the Netherlands is in conformity with Article 8 para. 4*b* of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information provided in the Dutch report on the Charter and its appendices and in the 1997 report submitted to the World Health Organisation (WHO)[79].

State of health of the population – General indicators

Life expectancy and principal causes of death

The Committee notes from OECD data[80] that in 1997 life expectancy at birth was 80.5 years for women, which was lower than the average for European Union and European Economic Area countries (80.9), and 75.2 years for men, which was higher than the European average (74.6).

Diseases of the circulatory system are the main causes of mortality (39%), followed by cancer (28%). The Committee notes from Eurostat data[81] that the death rate from lung cancer among men is one of the two highest in the European Union and European Economic Area countries (96.8 deaths per 100,000 in 1995). As regards morbidity rates, the report states in reply to a question asked in the previous conclusion that the high incidence of cancer, especially breast cancer, stems from earlier diagnosis of the disease following the launch of the screening campaigns in the early 1990s and that the incidence of breast cancer decreased in 1995.

The Committee notes that the number of diagnosed cases of AIDS (morbidity) per year dropped sharply during the reference period from 525 in 1995 (the peak year) to 155 in 1997.

Infant and maternal mortality

According to Eurostat data, the infant mortality rate dropped significantly since the last reference period from 6.3 deaths per thousand live births in 1992 to 5 in 1997.

The Committee notes an increase in the average maternal mortality rate, which stood at 8.9 deaths per 100,000 live births between 1994 and 1996 (as against 7.1 between 1991 and 1993). In reply to a question asked in the previous conclusion on the high maternal mortality rate, the report states that most births traditionally take place at home and that average maternal age at the birth of the first child is rising, which increases the risk of problems at birth.

The Committee emphasises that maternal mortality is an avoidable risk that states must control in order to comply with Article 11 of the Charter. Given the Netherlands' highly developed health care system, it considers that all possible steps must be taken to achieve a result a risk as close as possible to zero. Before reaching a conclusion, it asks the Government what steps it intends to take to improve the situation.

Health care system

Access to health care

The Netherlands' health care system is divided into three categories based on the insurance principle.
Firstly, "high medical risks" such as hospital stays exceeding one year or the placement of people with disabilities are governed by the Exceptional Medical Expenditure Act (AWBZ), which covers everyone living in the Netherlands and provides for funding by social security contributions deducted from income.

Secondly, the "general" scheme (Health Insurance Act, ZFW) based on compulsory insurance for persons below a certain income threshold (64% of the population) and voluntary private insurance (about 30% of the population). There is a special scheme for civil servants. Under the compulsory insurance scheme, insurance funds compete but are obliged to accept all applicants. An income-related social security contribution on all incomes is paid into two national funds, with refunding and compensation for insurers. Each fund then sets a uniform flat-rate premium

[79] *Highlights on Health in the Netherlands* (WHO European Regional Office website: www.who.dk).
[80] OECD, *Health Data*, 1999.
[81] Eurostat Yearbook: *A Statistical Eye on Europe*, 1988-1998.

reflecting the additional costs incurred by the fund in the management of compulsory benefits. Where private insurance is concerned, standard contracts provide for basic protection and maximum contributions are paid. Thirdly, insured persons can take out complementary insurance, for instance to ensure a more comfortable hospital stay.

In 1997, according to the above-mentioned OECD data, total health care expenditure accounted for 8.5% of GDP and public expenditure for 72.6% of total health care expenditure.

Under the compulsory health insurance scheme, insured persons do not have to advance fees for visits to the doctor. A system under which they bore a share of the cost, with a maximum of 200 Netherlands Guilders (NLG) per year, was introduced in 1997 but abolished in 1999. Where exceptional medical expenses are concerned, insured persons over the age of 18 are required to pay a share of the cost of care in health care establishments. This is not a requirement for hospital stays in lower-grade rooms with authorisation from the fund.[82]

According to the OECD data, the average rate for reimbursement of hospital care in 1997 was 82%, one of the two lowest among the OECD's European member countries. The average rate of reimbursement of out-patient medical care was 64%, also one of the three lowest among the OECD's European member countries.

Under the compulsory health insurance scheme insured persons pay 20% of the cost of pharmaceutical products, while the rest is refunded up to the prescribed limit for alternative products of the same type. The cost of supplements is borne by the insured person.[83] The Committee notes in the OECD data that the average rate of reimbursement of pharmaceutical products dropped sharply from 91.3% in 1992 to 88.8% in 1996 and 63.9% in 1997. It wishes to know the reasons for this trend.

In order to assess whether the cost of health care does not hinder access to care, the Committee asks for the next report to state whether there are measures to prevent health care costs from being an excessive burden on people with low incomes, such as exemption from the requirement to pay a share of the cost. It also asks whether waiting lists exist for access to hospital care.

Health care professionals and equipment

The Committee notes in the OECD data that the total number of hospital beds rose to 175,580 in 1997 (from 172,596 in 1992) and that the ratio of hospital beds per 1,000 inhabitants is among the three highest in the OECD's European member countries (11.3 beds).

The number of general practitioners increased by comparison with the previous reference period to 6,997 in 1997, i.e. about 0.5 doctors per 1,000 inhabitants, which remains the lowest density in the European Union and European Economic Area countries. The same applies to the density of specialists (one per 1,000 inhabitants) and to the density of pharmacists (0.2 per 1,000 inhabitants).

Conclusion

Subject to the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 11 para. 1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Development of a sense of individual responsibility

Public information and awareness-raising

As it is apparent from previous reports, national information campaigns are regularly conducted on the dangers of smoking, alcohol and drugs and on AIDS prevention. The Committee takes note of the efforts made during the reference period to bring home to young people the dangers of alcohol and drugs. As regards the prevention of drug

[82]European Commission, *Social security systems in the states of the European Union: situation on 1 July 1999 and evolution* , Missoc.

[83]*Ibidem.*

addiction in particular, campaigns have been carried out on cannabis and ecstasy, as well as a general campaign on "Going out and drugs" designed to put across a strong message using several media (e.g. television, posters, activities) in all the areas that make up young people's world (family, school and leisure).

Counselling and screening

Rest of the population
The report states that since 1990 women between the ages of 50 and 70 have been screened for breast cancer. Men also receive prostate cancer screening.

Conclusion
The Committee concludes that the situation in Netherlands is in conformity with Article 11 para. 2 of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

Categories of services
Social emergency care for those who have left their homes and temporarily cannot look after themselves without help is available at social refuge shelters of which there are currently 48. In addition, there are 38 special shelters for women who have fled their homes because of violence, abuse or other serious problems in their relationships.

The Committee wishes to receive information on social services aimed at certain vulnerable target group not directly addressed by the report such as drug and alcohol addicts, victims of violence and sexual abuse and ethnic minorities.
Supervision and quality of services

The Committee requests that the next report contain systematic information on measures and procedures instituted to guarantee and control the quality of all categories of social services. In addition, having noted the information on the number and the qualifications of staff providing certain social services, notably childcare, the Committee asks that such information be contained in each report on this provision of the Charter for all categories of social services.

Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in the Netherlands is in conformity with Article 14 para. 1 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in Public care and Protection from ill-treatment and abuse
A court may make a family supervision order or a divestment of parental responsibility order in respect of children whose mental or physical well-being is at risk. If a family supervision order is made, a family supervision agency is appointed to supervise the parents and children. If parental responsibility is removed then a guardianship agency may be appointed as guardian. Children in these circumstances may be placed in a home, institution or with a foster family.

The Committee wishes to receive information in the next report on the number of families in receipt of assistance and supervision, the number of children removed from their families and placed with a foster family, in a home or in an institution.

The Committee wishes to receive information on the types of institutions that exist.

It also wishes to be informed as to whether there is any body responsible for monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in institutions and on the conditions under which an institution may interfere with a child's property and mail, affect personal integrity, as well as the right to meet with persons close to him.

The Committee notes the information contained in the report on the facilities for homeless children.

Child abuse reporting centres were established in 1997 in order to, *inter alia*, receive reports on child abuse, provide counselling, refer to social services, help with investigations, etc. These centres co-operate with the office of the child abuse counsellor in the region, the Childcare Protection Board and the police's juvenile and vice squads.

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Conclusion
The Committee concludes that the situation in the Netherlands is in conformity with Article 17 of the Charter.

Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The Committee took note of the information contained in the report of the Netherlands.
Situation in law and practice

The Committee notes that the report of the Netherlands answers the questions raised in its previous conclusion exhaustively. In particular, it notes that Article 7:646 of the Civil Code stipulates that employers in the private sector may not differentiate between men and women in regard to terms and conditions of employment, including remuneration. This Article also lays down that any clause that is contrary to this provision is null and void. Section 1a of the Equal Opportunities Act (WGB) lays down the same principle for public sector employers.

The Equal Treatment Act (AWGB), which covers all areas of discrimination and not just sex discrimination, prohibits (in Section 5) differentiation with regard to terms and conditions of employment in the public and private sectors. As a result of its open wording, this provision applies also to others involved in the terms and conditions of employment, such as the collective bargaining parties. Section 9 of the AWGB stipulates that clauses that are contrary to the Act are null and void.

The report underlines that Article 7:646 of the Civil Code, Section 1a of the WGB and Section 5 of the AWGB prohibit not only differentiation with regard to terms and conditions of employment but also differentiation when entering into an employment contract or upon appointment as a public servant, and with regard to training opportunities, promotion and termination of a contract of employment. Any clause in an individual employment contract or a collective agreement that is contrary to this is null and void in accordance with the above mentioned provisions.

Furthermore, the Committee notes that, pursuant to Section 8 of the AWGB and Article 7: 647 of the Civil Code discriminatory termination of the employment relationship, in both the public and the private sector, is subject to annulment if the employee appeals against it within two months. If the court declares the notice given to be null and void, the employment contract is still valid and there is no need for reinstatement.

The report further states that no "nullity sanction" applies if the employee suffers other disadvantages than dismissal on account of an appeal to the law. Protection is, however, offered in such situations by the general rules of civil law on tort and good faith.

In reply to a question asked by the Committee, the report states that failure to respect the WGB and Article 7:646 of the Civil Code may result in civil as well as criminal sanctions.

With respect to wage comparisons, the report states that Section 9, sub-section 2, of the WGB stipulates that account shall be taken of elements of wages other than cash in accordance with the market value that can be assigned to them.

The Committee observes, moreover, that in Dutch social security legislation no differences exist between men and women in social security matters or as regards unemployment, old age and survivors' benefit.
On 1 November 1996, the Equal Treatment (Working Hours) Act entered into force, providing for equal treatment of employees and public servants who do not have normal working hours. The Act makes it easier for an employee to

challenge unequal treatment based on the fact that he or she works part-time as it is no longer requisite to argue that this constitutes indirect sex discrimination.

An amendment to the WGB was made in March 1998 to implement the "Barber Directive" (Community Directive 96/97 of amending Community Directive 86/378 on the implementation of the principle of equal treatment for men and women in occupational social security schemes). Prohibition against discrimination between men and women is now provided in three areas: as regards categories of persons eligible for pension provision, the details of such provision, and the implementation of pension schemes. Article 7:646 of the Civil Code was also amended in that payments and entitlements under pension schemes are now also regarded as “terms of employment”.

As regards the employment situation of women, the Committee notes that the percentage of female wage earners in the Dutch labour force increased to 40% in 1998. Unemployment is somewhat higher for women than for men. The proportion of the workforce employed on temporary contracts is 10% (women 14% and men 8%). Women (60%) are also more often working part-time than men (10%).

Figures provided in the report show that in the past few years, there has been a steady increase in the number of women in management jobs in particular in trade, business services, health and welfare, culture and other services.

Research by the Labour Inspectorate in the Netherlands reveals that, on average, women still earn approximately 24% less than men. In all age groups, the average remuneration of women in nearly all economic sectors is lower than that of men. A significant proportion of the difference in pay observed can be explained by differences in job level (40%), part-time/full-time (11%), age (5%), experience (4%), etc. Once these factors have been eliminated there remains a pay difference of approximately 7%.

According to the report *o*ne of the explanations for lower pay for women may be that they work part-time more often than men. In the Netherlands, still about 15% of collective labour agreements do not apply to employees working “short part-time” (about less than 12-hours a week). Especially in the trade sector, individuals working part-time are not treated equally with their full-time colleagues. The Committee would like to find some examples in the next report of the differences in treatment that may exist and asks what measures are taken by the Dutch Government to improve the situation.

The Committee takes note of the list, appended to the report, of occupational activities and the training required for them, for which a person’s gender may be decisive.

Positive action

As to the measures of positive action undertaken by the Dutch Government during the reference period, the Committee refers to the description in its conclusion under Article 1 para. 2 of the Charter (Addendum to Conclusions XV-1, p. 82).

Conclusion
In the light of the information contained in the report and its appendices, the Committee concludes that the situation in the Netherlands is in conformity with Article 1 of the Additional Protocol.

Norway

[Article 7 — The right of children and young persons to protection ; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee takes note from the Norwegian report of the amendments made to the Working Environment Act of 1977 to the effect that children under the age of fifteen or subject to compulsory education may not work for more than 2 hours on a school day or 12 hours per week. On days when there is no school, they may work for up to 7 hours, and up to 35 hours per week during school holidays of more than one week’s duration. The Committee welcomes this improvement in the situation.

Children may not work between the hours of 8 p.m. and 6 a.m. The Committee recalls that it has previously held that children should not be permitted to do any kind of work before going to school in the morning (Conclusions VIII, p. 108) as such work may deprive them of the full benefit of their compulsory education. However, having noted in the past that Norwegian legislation forbids the employment of children so close to school hours that the child cannot get to school on time and sufficiently rested, the Committee seeks information on the supervision of this rule in practice by the appropriate authorities (labour inspectors, education authorities, social services). It further enquires as to the nature and extent of early morning work performed by children in accordance with Section 35 of the Working Environment Act. Pending clarification of whether the right of school-going children to benefit fully from their compulsory education is implemented in practice, the Committee reserves its position on this matter.

With respect to annual rest, the report recalls that children must be granted four weeks' holidays per year, half of which must take place during school summer holidays. The Committee considers that the main purpose of school holidays is to let children rest in order to benefit from school after the holiday. It has always held that the rest period must cover at least half of the holiday period for children still subject to compulsory education.
This not being the case in Norway, the Committee finds that the situation is not in conformity with this provision of the Charter.

The Committee concludes that the situation in Norway is not in conformity with Article 7 para. 3 of the Charter as the mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they benefit from such education.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Norway is in conformity with Article 7 para 10 of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in Norway's report on the Charter, the 1999 report submitted to the World Health Organisation (WHO)[84] and the 2000 report of the European Observatory on Health Care Systems.[85]

State of health of the population - General indicators

Life expectancy and principal causes of death
The Committee notes that life expectancy increased from 80.3 years in 1992 to 81 years in 1997 for women and from 74.1 years in 1992 to 75.4 years in 1997 for men. However, these increases were smaller than in other European Union and European Economic Area member states.[86]

The Committee observes that the number of new AIDS diagnoses per year fell during the reference period from 67 in 1995 to 36 in 1998.

Infant and maternal mortality
The infant mortality rate in Norway fell sharply in relation to the previous reference period, from 5.9 deaths per 1,000 live births in 1992 to 4 in 1996. During the previous reference period, the average rate of maternal mortality was very low (3.3 deaths per 100,000 live births). The Committee requests up-to-date information on this subject.

[84]*Highlights on Health in Norway* (Internet site of the WHO European regional office: www.who.dk).
[85]*Health Care Systems in Transition Profile* (Observatory Internet site: www.observatory.dk).
[86]OECD, *Health Data*, 1999.

Health care system

Access to health care
The Norwegian health care system covers the whole population.

Primary health care is the responsibility of the municipalities and is carried out in health centres, where doctors usually run group practices. Each county is responsible for the funding, forward planning and management of general and psychiatric hospitals as well as other specialised medical services.

The health care system is publicly funded, mainly through taxes but also through contributions to the national insurance scheme, to which everyone must be affiliated.

In 1997, 7.5% of GDP was devoted to health expenditure. The proportion of health care funded by the state is constantly falling, but remained around 82.2% in 1997.

Patients pay 92 NOK to visit a general practitioner and 185 NOK for a specialist consultation, although nobody should pay more than 1,290 NOK for health care in any one year. This maximum amount includes transport costs to the health centre and patients' contributions to the cost of some pharmaceutical products. The cost of any care or medicines above this figure is covered in full. Care relating to childbirth and the health care for children under 7 years old are also free. Finally, all hospital care is totally free.

According to OECD data, the average reimbursement rate for pharmaceutical products fell slightly to 58% in 1996, which is below average for European OECD countries. The Committee has no standardised figures on which to base a comparison of the average reimbursement rate for out-patient medical care with the rates of other Contracting Parties.

The Committee notes that, there is a waiting list system for access to hospital care. In 1990, in order to combat the persistently long waiting lists for non-emergency treatment, the authorities laid down a set of national standards for priority of admission and set up a national waiting time registration system. A maximum six-month wait was introduced for patients who do not need emergency treatment but who require care if serious complications are to be avoided. The Committee notes that, despite these measures, the number of patients on waiting lists and the number of cases where the maximum wait was not respected rose during the reference period and that 25% of patients had to wait more than three months to be admitted to hospital. Nevertheless, the Committee observes that several provisions introduced outside the reference period are said to have improved the situation, particularly the patient's right to choose a hospital, enshrined in the Act on Patients'

Rights which came into force in 2000. It would like to be informed of further developments and resolves to wait until the next report on Article 11 before passing judgment.

Health professionals and equipment
The total number of hospital beds is relatively stable, although it has been falling slowly since the early 1980s, reaching 64,773 in 1997. The number of beds per thousand inhabitants (14.7 in 1997) is thus the highest in any European OECD country. However, the proportion of chronic care and psychiatric beds is the lowest, representing 33% and 4.7% of all beds respectively. The few private hospitals account for only 0.1% of beds.
In 1997 the numbers of general and specialist physicians per 1,000 inhabitants were 0.8 and 1.9 respectively. These figures are average for European OECD countries, as is the ratio of dentists, which remains stable (0.9 per 1,000 inhabitants). The density of pharmacists (0.4 per 1,000 inhabitants) is lower than the European average.

Conclusion
Subject to the requested information on waiting lists, the Committee concludes that the situation in Norway is in conformity with Article 11 para. 1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools
The Committee noted from the third report that, as part of a nationwide basic education programme, schoolchildren of all ages receive health education lessons, some of which are compulsory, dealing with the following subjects: healthy living, alcohol, drugs, smoking, sex education, personal and dental hygiene. Teaching materials are provided by the Basic Education Council.

This information suggests that the situation in Norway is in conformity with Article 11 para. 2 as far as health education in schools is concerned. Nevertheless, the Committee requests that the next report contain an up-to-date summary of the situation and indicate how much funding is devoted to health education in schools.

Public information and awareness-raising
According to previous reports, information campaigns on major public health issues and public awareness programmes designed to promote healthy living are launched regularly. Surveys are carried out to determine the areas in which health promotion needs to be stepped up.

The Committee would like future reports to be more detailed and indicate which partners are involved, what methods are used and how much money is spent on this kind of prevention.

Counselling and screening

Children and adolescents
Family health services also offer antenatal classes, medical check-ups for pregnant women and advice on sexual matters. Specialist medical centres operate within universities.

Rest of the population
The Committee notes from the 2000 report by the European Observatory on Health Care Systems[87] that specific screening programmes for breast, colon and brain cancer are organised.

Conclusion
The Committee concludes that the situation in Norway is in conformity with Article 11 para. 2 of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

The Norwegian report contains information on services aimed at drug and alcohol abusers. Following a 1995 amendment to the Social Services Act a pregnant drug or alcohol addict may be placed in an institution without her consent throughout the pregnancy on condition that voluntary treatment is not adequate and it is deemed likely that the abuse will have a harmful effect on the child. The basis for the retention shall be reviewed by the social services every three months. In 1997, a total of 10 pregnant abusers were placed in institutions without their consent by a County Board and a further 18 women were placed in an institution pursuant to an interim decision by the social services. The corresponding figures for 1998 were 17 and 30, respectively.

According to the report considerable emphasis has been put on legal protection and human rights aspects in cases where drug abusers are subjected to compulsory placement. Various new measures in these regards have been adopted outside the reference period. The Committee asks that the next report contain more details on this point and on the development in the total number of compulsory placements. It also asks under which circumstances interim decisions on placement are made by the social services and whether such decisions are subject to confirmation by a County Board.

[87] *Health Care Systems in Transition Profile* (Observatory Internet site: www.observatory.dk).

In the light of the information provided, the Committee concludes that the situation in Norway is in conformity with Article 14 para. 1 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in public care
Children who are temporarily or permanently deprived of their family environment are the responsibility of the child welfare authorities pursuant to the Child Welfare Act 1992. The decision to transfer care is assigned to the county welfare boards. There is a right of appeal to the courts.

The Committee wishes to receive details on the types of institutions that exist.

The county is responsible for the establishment and operation of institutions that care for children. The county governor is responsible for continuous supervision of the institutions, if necessary with the assistance of a supervisory committee. The Committee wishes to receive information on the procedures available to children in institutions who wish to complain about the care or treatment in the institution. Further it wishes to receive details on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to him.

Protection of children from ill-treatment and abuse
Civil servant and relevant professional groups i.e. doctors, nurses, psychologists, etc. have a duty to report any suspected abuse or ill-treatment of children to the child welfare services.

The municipalities are responsible for protecting children from ill-treatment and abuse. The county social welfare boards have the competence to make decisions in cases involving the possible withdrawal of parental authority.

Child welfare emergency teams have been organised in a number of municipalities, in order to develop a close collaboration between the child welfare services and the police. There also exist confidential help lines that children can ring.

Section 30 of the Children's Act prohibits corporal punishment in connection with child rearing.
The Committee concludes that the situation in Norway is in conformity with Article 17 of the Social Charter.

[Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex]

Situation in law and practice
The Committee deferred its previous conclusion pending receipt of information on the protection of workers against retaliation by their employer in cases of alleged discrimination. The present report merely states that Working Environment 1977 gives workers full protection, also against retaliatory measures that may follow a claim under the Gender Equality Act No. 45 of 1978. The Committee observes that Section 60 of the 1977 Act protects workers from unfair dismissal. This would include dismissal resulting from a claim for equal pay or a claim relating to another form of discrimination based on sex. The Committee has previously asked about protection against other forms of retaliation than dismissal. The previous report answered that alteration of the terms of employment requires a valid reason and thereby limits the employers' access to retaliatory measures; as to measures not concerning the terms of employment it referred to the general comments on the Gender Equality Act.

The Committee wishes to have this last point clarified further. In particular it would like to be informed whether the 1977 Act provides protection also against retaliation other than dismissal and, if so, which provisions cover this issue. If the 1977 Act is not applicable, the Committee wishes to know whether another piece of legislation covers this issue.

The Committee repeats its request for information on the existence of sanctions against employers who discriminate on grounds of gender.

In reply to a question asked by the Committee and to Question F of the Form for Reports, the report states that social security matters, etc. are included in the scope of the Protocol. The Committee therefore asks whether differences exist between men and women in this respect.

The report states that very few occupations are reserved for one sex. It gives the example of fireman, which is only a male occupation and also mentions that shelters for women victims of domestic violence only have female employees.
The Committee notes from report that the Gender Equality Ombudsman deals with 200 grievances per year, whereas the Gender Equality Appeals Board makes final decisions in 10 to 15 cases per year. The cases concern mainly working life, recruitment, promotion, working conditions and pay.

The Committee takes note of the information provided in the report on the measures taken and machinery established to guarantee or promote equality of opportunity and equal treatment in the field of vocational guidance, training and rehabilitation. It notes the improvement in the educational situation for young women; according to the statistics referred to they are in majority at universities and state colleges and approximately 55% of graduate students are women. However, they choose traditionally female education programmes to a large extent. The Ministry of Education is therefore running a programme focusing on stimulating young men and women to choose within a broader range of educational and vocational possibilities to counteract a gender-segregated labour market.
When it comes to higher education, the report states that according to available statistics 35% of all Ph.D. students passing their exams in 1999 and 11% of professors in higher education in 1997 were women. In comparison, the figures for 1990 were 17% and 4% , respectively. Following a White Paper on research submitted in June 1999, the Government intends to take measures to increase the proportion of women in disciplines with few women and to increase the proportion of women in permanent posts, particularly at the level of professor.

As regards the general situation on the labour market the report indicates that 66% of women and 76% of men in the ages 16 to 74 belong to the labour force. The Committee also observes that a sharp rise in employment has boosted the female participation rate,[88] the number of women working full-time is increasing, also as regards women with small children.

According to the report, the fact that Norway has few women in leading positions is a concern of the Government and the Confederation of Business and Industry. The percentage of women in top management is about 7% in the private sector and 20-26% in the public sector. However, there is an increase of women in middle-management jobs, both in the private and the public sector. The report states that the labour market is also less segregated in this respect among the younger employees as opposed to the older ones.

The Committee observes that the over-all wage-gap has been relatively stable, with a difference of approximately 20% in hourly pay between men and women working full time. The report states that structural changes in the labour market and gender segregation of the labour force neutralises the positive effects of a rising educational level among women. Differences in position is an explanation, and a considerable part of the wage differences can be traced back to the wage at the time of appointment. Among women and men with similar backgrounds, women tend to have fewer promotions than men.

The centralised wage negotiations have in recent years had a low-wage and equal-pay profile, in both the private and the public sector. However, in the private sector the effects of local negotiations have to some degree neutralised or even counteracted these positive effects.

An agreement to improve the implementation of the plans for gender equality in enterprises was part of the wage agreement in the private sector in 1996. In the state sector the local negotiations have resulted in a reduced pay gap between men and women.

[88]OECD, Economic surveys, Norway, 1998.

The Committee notes that the report provides no information on the possible development of a new gender sensitive job evaluation proposed by a Governmental Committee in 1997; it therefore repeats its request on this point.
Positive action

The Committee takes note in particular of the possibility for the regional education authorities to use quotas between the sexes in the intake of students to courses and the distribution of apprentices in cases where there is an insufficient balance. It notes that quota regulations should only be used in cases where the applicants have got the same marks. Applicants belonging to the under-represented sex, shall in such case be given priority until 40% of the available places have been offered to the candidates from the minority group.

Conclusion
Pending receipt of the information requested on other forms of retaliation than dismissal, the Committee concludes that the situation in Norway is in conformity with Article 1 of the Additional Protocol.

Poland

[Article 4 — The right to a fair remuneration; Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration]

Article 33 of the Polish Constitution of 1997 guarantees, *inter alia*, the right of men and women workers to equal pay for work of equal value. Paragraph 2 of Article 33 provides: "Men and women shall have equal rights in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of similar value."

Article 11-2 of the Labour Code provides "Employees shall have equal rights resulting from the equal performance of duties of identical value, this shall apply in particular to the equal treatment of men and women in the area of work."

The report states that in practice there remains certain "extra-legal inequality" in wages between men and women, with women tending to work in sectors of the economy which are lower paid. New criteria for job evaluation are currently being developed. The Committee wishes to receive information on these and on the extent to which job comparisons are carried out in the next report.

In this respect it recalls that job evaluation systems must consider the features of the posts in question rather than the personal characteristics of the workers. Criteria such as willingness to work overtime or the emphasis on muscular effort alone to the exclusion of factors that put pressure on workers such as mental strain and stress can prove discriminatory in practice.

The Committee asks to be informed in the next report of the manner in which job comparisons may be made, and whether they are limited to the same workplace.

According to the report, an employee who believes that he or she has been discriminated against in terms of remuneration may, pursuant to Article 242 of the Labour Code, take a case to the Labour Court. If the Court finds that there has been discrimination, i.e. the principle of equal pay has not been respected, it will make an order remedying the situation, order compensation and/or oblige the employer to make up for the harm done.
The Committee wishes to know whether clauses of collective agreements or individual contracts which contravene the principle of equal pay for work of equal value are rendered null and void.

According to the Charter, a worker claiming equal pay must be protected against retaliatory measures. The Committee requests information on any such safeguards, such as sanctions or remedies. In cases where wage discrimination is proven, the Committee asks about the adequacy of compensation, i.e. whether minimum or maximum awards are laid down in law. Information on court practice on this point should also be included in the next report.

Lastly, the Committee wishes to receive information on the difference between men and women's earnings in practice.

Pending receipt of the information requested above, the Committee defers its conclusion.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee asks whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

Conclusion

The Committee concludes that the situation in Poland is in conformity with this provision of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. The right to maternity leave

The Polish report states that under existing legislation, all women in employment are guaranteed 16 weeks' maternity leave when their first child is born, 18 weeks for any subsequent births and 26 weeks in the event of a multiple birth (Chapter 8 of the Labour Code). The Committee requests information on the situation of domestic staff and employees working from home.

Maternity leave must be taken for 2 weeks before the expected date of confinement and for at least 12 weeks after the birth if the mother is entitled to 16 weeks' leave; 14 weeks after the birth if the mother is entitled to 18 weeks' leave; and 22 weeks after the birth if the mother is entitled to 26 weeks' leave. Any maternity leave not taken before the birth is entitled to be taken after the birth.

Post-natal leave cannot be less than 8 weeks under any circumstances. In addition, women may not forego, either in full or in part, their maternity leave entitlement, in particular the 8 weeks' post-natal leave.

The report also states that any employer breaching the relevant provisions of the Labour Code is liable to a fine of between 20 zlotys (PLZ) and 5,000 PLZ.

The Committee observes that the minimum fine for an infringement is not very high. In this connection, it notes from another source[89] submitted by Poland under the United Nations International Covenant on Economic, Social and Cultural Rights that "in Poland cases of violation of women's labour protection provisions, confirmed by the State Labour Inspectorate, are not very frequent. For a total number of 63,000 offences against workers' rights (in small and large establishments, in the public and private sector) less than 5% concerned the protection of women workers or juveniles or the termination of employment contracts in serious violation of labour law provisions." The Committee therefore requests that the next report include comments on this information and indicate, as far as possible, the number of breaches of legislation on maternity protection during the next reference period.

The Committee points out that under Article 8 para. 1 of the Charter, all women in gainful employment must be entitled to maternity leave for a minimum of 12 weeks, including 6 weeks' compulsory post-natal leave.

Pending receipt of the information requested, the Committee therefore concludes that the situation in Poland is in conformity with Article 8 para. 1 of the Charter in this respect.

2. Right to adequate benefits

The Polish report states that all women receive maternity benefits throughout their maternity leave, pursuant to the Act of 17 December 1974 on cash benefits in case of sickness and maternity (standard text: *Dziennik Ustaw* of 1983,

[89]Third report 1994/104/Add.13.

No. 30, item 143, with subsequent amendments). This right is not subject to any conditions regarding working hours or length of employment.

The allowance is equal to 100% of the worker's average monthly wage in the six months prior to the period of leave.

The Committee points out that under Article 8, paragraph 1 of the Charter, maternity leave must be remunerated in the form of adequate social security benefits or public funds covering the entire period of leave. The benefits awarded must be as near as possible to the worker's previous wage so that she is not forced to work during this period.

The Committee notes that the situation, as outlined above, does not pose any problems regarding compliance with the Charter. However, in order to have an overview and to make a proper assessment of the situation, the Committee requires the following information:

– are maternity benefits subject to a minimum level below which they are not awarded, and a maximum level above which the amount awarded is reduced?
– if so, what are these levels and do the women concerned receive any form of compensation?

Pending receipt of this information, the Committee concludes that the situation in Poland is in conformity with Article 8 para. 1 of the Charter in this respect.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal

The Polish report states that employers may not dismiss a woman who is pregnant or on maternity leave (Article 177 of the Labour Code). This applies to all women in an employment relationship, apart from those employed for a trial period of less than one month.

The prohibition is not absolute and may be lifted in the following cases:

– in case of misconduct by the employee in breach of her contractual obligations (Article 177 para. 1 of the Labour Code); in such cases, the consent of the establishment's trade union representing the employee is required;
– if the employer goes bankrupt or the firm goes into liquidation (Article 177 para. 4 of the Labour Code).

The Committee observes that these cases are in keeping with the situations in which it allows dismissal. However, it asks whether a breach of contractual obligations arising out of pregnancy may justify dismissal. It also asks what is the situation in enterprises without a trade union.

The report goes on to mention other cases in which employees' contracts may be terminated while they are pregnant or on maternity leave:

– if the employment relationship is based on an appointment which is subsequently annulled. In such cases, the appointing body is required to offer the employee another post corresponding to her occupational qualifications. If she refuses this post, her contract is terminated at the end of the notice period;
– if the terms of the employee's contract change for reasons "related to the enterprise", the employee rejects these terms and the employer is consequently unable to maintain her contract (Section 6, sub-section 1 of the Act of 28 December 1989);
– by the employee herself or by mutual consent, provided that the employee is aware that she is pregnant and knows her rights. Otherwise, the declaration requesting termination of her contract is deemed null and void.

The Committee observes that the above cases exceed the circumstances which it accepts under this provision of the Charter. It asks whether the workers concerned are protected against pressure from their employer.

The report also states that any fixed-term contracts or contracts for a specific task or a trial period of over one month which would otherwise have been terminated after the third month of pregnancy are extended until the date of confinement.

Consequences of unlawful dismissal
The Polish report fails to provide any information on the consequences of unlawful dismissal.

The Committee points out in this connection that reinstatement should be the norm in cases of unlawful dismissal, the purpose of Article 8 para. 2 being not only to ensure financial security for workers in the event of childbirth, but also to safeguard their jobs. Payment of compensation is only acceptable in exceptional cases, where reinstatement is impossible (e.g. if the business closes down) or the employee does not wish it. The Committee then checks whether the level of compensation is sufficient to discourage employers and to make good the damage suffered by employees.

The Committee therefore requests that the next report indicate whether provision is made for reinstatement in the event of unlawful dismissal. It also wishes to know how the compensation payable to employees in exceptional cases is calculated and what amount is paid.

Pending receipt of the information requested, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

The Polish report states that all employees who are breastfeeding are entitled to two half-hour breaks per day, which are included in the calculation of working hours and, accordingly, are paid (Article 187 of the Labour Code).
The Committee therefore concludes that the situation in Poland is in conformity with Article 8 para. 3 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

1. Regulation of night work for women in industry (Article 8, para. 4a)
The Polish report states that the term "night work" applies to work carried out between 9 p.m. and 7 a.m. Night workers are entitled to additional pay at a rate of 20% of the hourly minimum wage (Article 137 of the Labour Code).

The report states that night work is prohibited for pregnant women. In addition, women with a child under 4 years of age may only work at night with their consent (Article 178 of the Labour Code).
This ban entails an obligation on the part of the employer to transfer a pregnant employee to daytime work. Such work must, as far as possible, match the employee's qualifications and current wages. If not, she is entitled to a compensatory allowance.

The Committee points out that Article 8 para. 4*a* of the Charter does not require states to prohibit night work by women but to regulate it. Regulations may be general and apply to employees of both sexes, but must severely restrict the possibilities for night work, permitting it only where it is justified by specific production requirements, with due regard for appropriate working conditions and organisational procedures. They must also lay down conditions governing night work by women, such as permission from the Labour Inspectorate where necessary, working hours, breaks, rest days following periods of night work, and the right to be transferred to daytime work if night work causes health problems. The Committee also points out that such regulations must cater for the situation of women who are pregnant, have recently given birth or are breastfeeding.

In Poland's case, the Committee considers that the situation of pregnant women and women who have recently given birth or are breastfeeding is adequately catered for by the regulations in force. However, it observes that regulations on night work do not appear sufficient. Merely setting out what constitutes night work is not an adequate means of lessening the negative effects of night work on employees' health and family life or avoiding abuses. The Committee therefore requests that the next report specify the circumstances in which night work is permitted and the conditions governing it (whether permission is required from the Labour Inspectorate, regular medical check-ups, the right to be transferred to daytime work if night work causes health problems, etc.).

Pending receipt of the information requested, the Committee defers its conclusion in respect of Article 8 para. 4*a* of the Charter.

2. Prohibition of the employment of women in certain dangerous, unhealthy or arduous types of work (Article 8, para. 4b*)*

The Committee considers that Article 8, para. 4*b* provides for two distinct bans:

– a ban, by means of legislation, on employing women in underground mining; this applies only to mining activities in the strict sense of the term;

– a ban on employing women "as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature". The expression "as appropriate" is taken to mean that the ban applies only in cases where it is necessary, such as to protect women who are pregnant, have recently given birth or are breastfeeding.

With regard to the first aspect, the Polish report states that, in accordance with the Charter, women are prohibited from underground mining. Penalties in the event of an infringement are the same as for breaches of the regulations on maternity leave. The Committee requests that the next report indicate, if possible, the number of infringements recorded by labour inspectors.

With regard to the second aspect, the report states that the ban does not only apply to women who are pregnant, have recently given birth or are breastfeeding, but applies to all women (Article 176 of the Labour Code). A Council of Ministers regulation lists dangerous, unhealthy or arduous types of work that are prohibited for women. The regulation of 10 September 1996 lists the following types of work:

– work involving strenuous effort and transport of heavy loads;
– work in an environment with a low, high or changeable temperature;
– work in an environment subject to noise and vibrations;

work exposing employees to electromagnetic fields, ionising and ultra-violet radiation, and work at monitor screens (check);

underground work;

– work in conditions of low or high air pressure;
– work exposing employees to harmful biological agents;
– work exposing employees to harmful chemical substances;
– works exposing employees to serious physical or mental injury.

The report adds that firms' work regulations may include a list of other dangerous types of work that are prohibited for women.

On the basis of all this information, the Committee concludes that the situation in Poland is in conformity with Article 8 para. 4*b* of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the first Polish report on the application of the Charter, in the third report submitted to the United Nations Economic and Social Council on the application of the International Covenant on Economic, Social and Cultural Rights[90] and in the 1999 report of the European Observatory on Health Care Systems.[91]

State of health of the population - General indicators

Life expectancy and principal causes of death

The Committee takes note of the general indicators of the state of health of the Polish population. It notes that life expectancy for women is rising slightly each year, increasing from 75.7 years in 1992 to 76.8 years in 1996. However, men's life expectancy has remained stable since the end of the 1960's (67.8 years in 1998). Life

[90] E/1994/104/Add.13.

[91] *Health Care Systems in Transition Profile* (Observatory Internet site: www.observatory.dk).

expectancy in Poland is among the shortest in European OECD countries[92] and the difference between male and female death rates 60% greater than in West European countries.[93]

The Committee notes that AIDS is fairly rare compared to the other Contracting Parties, but that Poland is unusual in that the number of new cases is rising.

Infant and maternal mortality
The Committee observes that the infant mortality rate in Poland is of the second highest of all European OECD countries. The rate was 12.3 per 1,000 live births in 1996, compared to rates varying between 3.7 and 7.9 in the other Contracting Parties that are also OECD members. The high rate of premature births is a major reason for this.

Since the beginning of the 1990s, including during the reference period, the maternal death rate has fallen. Whereas in 1992 there were 9.9 deaths per 100,000 births, for example, the rate was down to 4.9 in 1996, below average for a European OECD country.

The Committee considers that the state of mother and child health is a key indicator as to whether the health system as a whole is functioning well or badly and that a particularly high infant mortality rate raises a problem over conformity with Article 11 of the Charter (Conclusions XIII-3, Turkey, pp.357-8). It therefore stresses that a fall in the infant mortality rate will be decisive in its assessment of Poland's conformity with Article 11 para. 1.

Health care system
Access to health care
The Ministry of Health and Social Welfare (*MZiOS*) is responsible for health policy and for the funding and supervision of highly specialised medical care. The voivodships, with 400 health centres, are responsible for basic and specialised health care.

The health care system is publicly funded. In 1997, 5.2% of GDP was devoted to health expenditure, almost 20% more than in 1994. More than 90% of all health care was funded by the state in 1997.

Health care (medical consultations, hospital visits, operations, etc.) is provided free of charge by the National Health Service for public and private sector workers, provided they visit an officially appointed doctor in the appropriate health centre or hospital. However, the Committee notes that 70% of doctors and 90% of dentists are private or semi-private and that patients must pay for all private health care. In this connection, it observes that some private clinics, offering a range of services from consultations to hospital treatment, have set up a health care scheme with different types of subscription for policy-holders and their families, varying in price from 100 PLZ for ten consultations per year to 2,000 PLZ for a year's comprehensive care.

Medicines are free for disabled ex-servicemen, some blood donors and the seriously and chronically ill. Otherwise, only medicines prescribed and administered in hospital are totally free. So-called basic medicines, considered vital for a person's recovery or survival, are sold at a fixed price, currently 1.50 PLZ Patients must also pay 30% of the price of other medicines available on prescription.

In the light of this information, the Committee detects some serious shortcomings, particularly concerning the cost and availability of health care for the unemployed.

However, due to the lack of standardised statistics enabling it to compare the average reimbursement rate in Poland with that of other Contracting Parties, and since the health care system was seriously overhauled outside the reference period, the Committee decides not to assess the conformity of the situation, at this time, concerning the accessibility of health care.

Health professionals and equipment

[92]*OECD Health Data*, 1999.
[93]Internet site of the National Institute of Hygiene (www.medstat.waw.pl).

The report indicates that there were 5.4 hospital beds per thousand inhabitants in 1997, a relatively low figure compared to other European OECD countries. Around 15% of these were in psychiatric institutions. Private hospitals accounted for only 0.2% of hospital beds in 1997 and 0.4% in 1998.

The Committee notes that the density of general practitioners and pharmacists (2.3 and 0.5 per 1,000 inhabitants respectively in 1997) is below average for a European OECD country. On the other hand, Poland has an above-average density of specialists, 1.7 per 1,000 inhabitants. In 1997, there were 0.5 dentists per 1,000 inhabitants, a figure around the European average.

Conclusion
The Committee notes that the situation in Poland with regard to Article 11 para. 1 of the Charter is poor in several respects relating to the people's state of health and the health care system. However, it resolves to wait until the next examination of Article 11 before assessing the situation and, meanwhile, defers its conclusion.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility
The Committee notes that health education is among the priorities of the 1996-2005 national health programme.

Health education in schools
The report states that significant efforts are being made to promote health education in schools. Until recently, there was no national health education programme. Now, however, all primary schools are targeted by a programme designed to develop a sense of responsibility among young people with regard to their health.
Initiatives to promote a healthy diet and personal and oral hygiene were also launched in schools during the reference period.

The Committee points out that prevention through health education in the sense of Article 11 para. 2 must also cover the prevention of smoking and alcohol abuse and sex education, especially the prevention of sexually transmitted diseases and AIDS. It asks whether these subjects are automatically tackled as part of the normal curriculum or separately.

Counselling and screening

Children and adolescents
Since 1992 all children and teenagers have had access to free prevention, care and rehabilitation services, including hospital treatment. The Committee asks whether specialised mother and child welfare services are available nationwide.

The Committee requests information on the resources devoted to school health (staff and budget).

Rest of the population
Since the report contains no information on screening services or screening campaigns, the Committee requests that the next report cover this question in full.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 17 — The right of mothers and children to social and economic protection]

Establishment of parentage and adoption
The Family and Guardianship Code does not stipulate a separate procedure for determining maternity. If necessary maternity may be established on the basis of the provisions of the Civil Procedure Code.
According to the Family and Guardianship Code, paternity may be established either through:
a presumption that the mother’s husband is the child’s father;
acknowledgement of paternity by the child’s father;

– a court determined paternity.

At the request of the mother (or where the child has reached the age of majority the child itself), the court may determine the paternity of a child. A public prosecutor may also bring an action for the determination of paternity.

The report states that the mother's consent is necessary for the child to be acknowledged. The Committee asks if this the case even where paternity is to be determined by the courts.

Child welfare
According to the report, mother and child protection is carried out through the organs of central government and local government. NGO's are also active in this field. The Committee wishes to receive more specific information on these organs and on the NGO's.

Children in public care
The Committee wishes to receive information as to whether there is any body responsible for monitoring care in institutions and whether any specific procedure exists for complaining about care or treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to the child. It also wishes to receive information on the procedures for reviewing placements in institutions.

Protection of children against ill-treatment and abuse
The law provides for measures to be taken against parents who do not properly discharge their duties towards children. As a last resort the court may suspend or divest parents of parental authority. In accordance with Article 109 of Family and Guardianship Code the court may also:
– impose upon the child's parents the obligation of appropriate conduct;
– determine certain activities that parents may not undertake without the court's consent;
– subject the parents to supervision;
– refer the young person to an organisation or institution for occupational training or other establishment caring for children;
– place the young person in care, or with a foster family.

The Penal code provides that those who commit crimes against, *inter alia*, children, such as abuse, ill-treatment, abduction shall be prosecuted and punished.

The Committee wishes to receive further information on the facilities available to children who are subject to ill-treatment, neglect or abuse.

It recalls from the information provided under Article 7 para. 10 that several measures were taken during the reference period to raise awareness and prevent violence within the family, with particular reference to alcohol related violence. Several programmes were specifically sought to protect children ("Physical and sexual violence towards children from communities threatened with alcoholism").

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Children and the law – Young Offenders

The age of majority is 18 years. Majority is also attained by a female who has reached the age of 16 if she marries. Women may marry at the age of 16 with the consent of their family and guardianship court, otherwise the age is 18 years. Men may marry at the age of 21 years unless they have the consent of the Guardianship Court.

The Constitution provides that there shall be no discrimination between children based on the status of their birth.

Statutory inheritance rights are the same for all children irrespective of whether their parents were married. A child from parents who were not married inherits, again irrespective of the manner in which paternity was established, in

exactly the same way as a child of married parents, both from his mother and the mother's relatives and from his father and the father's relatives.

It appears to the Committee from the report that the family court may start proceedings and impose a wide range of "educational" measures on young persons who demonstrate symptoms of "demoralisation" but have not necessarily committed a criminal offence. The Committee wishes to receive further information on this concept and on the number of persons subject to proceedings on this ground.

Conclusion
Pending the receipt of the information requested, the Committee defers its conclusion.

Portugal

[Article 7 — The right of children and young persons to protection ; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Portuguese report confirms that children under 16 years old who have not yet completed their compulsory schooling may not be employed, not even in light work.

In its previous conclusion, the Committee considered that the situation was not in conformity with the Charter since children aged 16 years old who have not completed their compulsory education may combine work with training for up to 40 hours per week. The report stresses that the work concerned is necessarily part-time work, since such children remain subject to compulsory education and must attend classes for part of the week. The Committee considers that this information permits it to revise its previous assessment.

The Committee takes note of the scheme set up under Joint Ordinance No. 123/97 of the Ministries of Education and Labour to provide education and training modules to children who either reach the end of compulsory schooling without a qualification, or who obtain the corresponding diploma but do not wish to continue their education. Under the Joint Ordinance, classes are provided to allow the former group obtain an educational qualification, and both groups to obtain a recognised vocational qualification.

As noted under Article 7 para. 1, a second survey of school children was carried out in October 1999, following up on the findings of the family survey conducted in September 1998 in co-operation with the International Labour Organisation (ILO). The Committee requests the results of the more recent survey, as well as the Government's comments.

The Committee concludes that the situation in Portugal is in conformity with Article 7 para. 3 of the Charter.

[Article 7 — The right of children and young persons to protection ; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Portugal is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. Right to maternity leave
The Committee recalls its previous conclusion (Conclusions XIII-5, p. 194) that, in the absence of a compulsory six-week postnatal leave period, the situation in Portugal did not conform to the Charter.

The report indicates that during the period under review (1997-1998) the situation remained unchanged, the maternity leave stipulated for all working women being of 98 days' duration, of which only 14 were compulsory; 60 days were to be taken following childbirth and the remaining 30 either before or after (Act No. 17/95).

The report nevertheless explains that Act No. 142/99, whose entry into force postdates the reference period, prescribes a compulsory leave period of 6 weeks following childbirth. Furthermore, there have been extensions of the total leave period, to 110 days (applicable from 1 January to 31 December 1999) and to 120 days with effect from 1 January 2000 (Act No. 18/98). The Committee welcomes this improvement, from which it infers that whereas under Section 10 sub-section 3 of the Act No. 17/95 of 9 June 1995 a mother could relinquish her leave to the father, this will now only be possible after the six weeks of compulsory leave.
The employer's non-compliance with these provisions is defined as a very serious offence, fineable at rates of 300,000 escudos (PTE) to 9 million PTE maximum (Section 9 of Act No. 118/99 of 11 August 1999). The Committee asks that the next report provide information on the application of the legislation in practice, particularly by stating if possible the number of breaches recorded by the labour inspectors.

The Committee recalls that Article 8 para. 1 requires the right to maternity leave to be secured by law to all gainfully employed women, with a minimum duration of 12 weeks including 6 weeks of compulsory postnatal leave.

The Committee concludes that the situation in Portugal is not in conformity with Article 8 para. 1 of the Charter on this point because, during the reference period in question (1997-1998), the postnatal leave of six weeks was not obligatory. In 1999, a statutory amendment which occurred outside the reference period nevertheless redressed the situation.

2. Right to adequate benefit
As the Committee noted in its previous conclusion (Conclusions XIII-5, p. 195) concerning Portugal, employed women irrespective of nationality who come under the general social security scheme qualify for maternity benefit. Its award is subject to completion of a six-month contributory period or the equivalent thereof (i.e. incapacity for work which entitles a claimant to sickness benefit; temporary incapacity due to an industrial accident or occupational disease entitling the claimant to compensation; periods of unemployment for which unemployment benefit is payable).

The benefit amounts to 100% of the insured person's earnings during the six months preceding the second month before the one qualifying her for benefit. The reports states that no ceiling applies to this reference remuneration.

The current report indicates that where the reference remuneration is below 50% of the minimum wage, because of part-time working for instance, the maternity benefit paid is equivalent to 50% of the minimum wage.

Pending the requested information, the Committee concludes that the situation in Portugal is in conformity with Article 8 para. 1 of the Charter in this respect.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

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

As the report contains no new information, the Committee concludes that the situation in Portugal is in conformity with Article 8 para. 2 of the Charter.

It requests that the next report continues to provide information on the situation in practice.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

The Portuguese report states that Law No. 142/99, which came into force outside the reference period, has amended Section 12 of Law No. 4/84.

The amendments are as follows:
– women are entitled to work breaks for breastfeeding (two separate periods of up to one hour) for as long as breastfeeding continues (entitlement was previously limited to one year);
– in the case of non-breastfed babies, the mother and father can decide that one or the other will take work breaks for feeding until the child is one year old;
entitlement to work breaks for feeding has been extended to part-time workers in proportion to the hours they work.

In the light of this information, and the fact that the entitlement entails no loss of earnings, the Committee concludes that the situation in Portugal is in conformity with Article 8 para. 3 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women workers]

*1. Regulation of night work for women in industrial employment (Article 8 para. 4*a)
The report of Portugal states that Act No. 73/98 of 10 November 1998 incorporated Community Directive 93/104 of 23 November 1993, concerning certain aspects of the organisation of working time, into the country's domestic law.

The employer is under obligation to make sure that employees on night work undergo regular medical check-ups to monitor their state of health. The employer must also, where possible, ensure that workers who have health problems as a result of night work are transferred to daytime work (Article 8 paras. 1 and 2 of Act No. 73/98).
"The conditions and guarantees governing the employment on night work of workers whose health or safety may be put at risk as a result shall be fixed by government order" (Section 9 of Act No. 73/98).

The previous report stated that, pursuant to Act No. 17/95 of 9 June 1995 on the protection of motherhood, pregnant women and women who have recently given birth or are breastfeeding are dispensed from night work for 112 days before and after birth. At least half of that period must be taken prior to the presumed birth date, and during the remainder of the pregnancy upon presentation of a medical certificate proving that dispensation is necessary to the worker's health or that of the unborn child.

The Committee points out that Article 8 para. 4*a* of the Charter does not require states to prohibit the employment of women on night work, but to regulate it. The regulations may be general and concern workers of both sexes, but they must strictly regulate the possibilities of night work, which must be authorised only because of particular production constraints and taking into account the specific workplace and work organisation conditions. They must also determine the conditions under which women may work at night, such as obtaining the authorisation of the Labour Inspectorate, fixing working hours, breaks and days off following periods of night work, entitlement to be transferred to a daytime job in the event of health problems linked to night work, etc. The Committee also recalls that the regulations must make allowance for pregnant women and women who have recently given birth or are breastfeeding.

In the case of Portugal, the Committee observes that the regulations make satisfactory allowance for pregnant women and women who have recently given birth or are breastfeeding. It also notes that night work by men and women is regulated insofar as working hours are fixed and provision is made for regular medical check-ups and for transfer to day work where night work gives rise to health problems. However, the information supplied does not say in what circumstances night work is authorised, whether Labour Inspectorate authorisation is required, for example, or whether provision is made for days off following periods of night work.

Pending receipt of the information it has requested, the Committee defers its conclusion. It also requests whether the draft Bill following the ratification in 1994 by Portugal of the International Labour Office Convention No. 171 of the regarding night work has been adopted.

*2. Prohibition of the employment of women in dangerous, unhealthy or arduous types of work (Article 8 para. 4*b*)*
The Committee points out that Article 8 para. 4*b* contains a dual restriction:

– it prohibits the employment of women workers in underground mining, a restriction strictly limited to actual extraction work and

– it prohibits the employment of women, "as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy or arduous nature", the expression "as appropriate" being understood to allow for the restriction to be limited solely to those cases where it is necessary, in particular to protect pregnant women and women who have recently given birth or are breastfeeding.

Concerning the former restriction, the Committee recalls that, in keeping with this provision of the Charter, Portuguese law prohibits the employment of women in any work in underground mines (Act No. 27891 of 27 July 1937 and Order No. 186 of 13 March 1973). The report states in this respect that Act No. 118/99 of 11 August 1999 provides for non-compliance to be punished by a fine, the size of which has increased and now ranges from 80,000 escudos (PTE) to 1,450,000 PTE. The report adds that during the reference period concerned (1997-1998) the Labour Inspectorate reported no violations of this rule.

Concerning the other restriction, the report supplements the information supplied in previous reports, stating that Order No. 229/96 of 26 June 1996, implementing Community Directive 92/85, also covers Appendices I and II of the Directive, which contain the non-exhaustive list of substances and working procedures and conditions prohibited to pregnant women and women who have recently given birth or are breastfeeding. They include such hazards as ionising radiation, mercury and lead and their derivatives which are likely to be absorbed by the human body.

The Committee requests that the next report state whether the Labour Inspectorate has identified any violations in this area. It points out that the penalties incurred are the same as for violations of the law prohibiting work in underground mining to women.

Pending this information, the Committee concludes that the situation in Portugal is in conformity with Article 8 para. 4*b*.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information in the Portuguese report on the Charter, the 1997 report to the World Health Organisation[94] and the Ministry of Health Internet site.[95]

State of health of the population – general indicators

Life expectancy and main causes of mortality

The Committee observes from the OECD statistics[96] that life expectancy at birth for women has risen from 78 years in 1992 to 78.8 in 1997 and for men from 70.7 in 1992 to 71.6 in 1997. However, Eurostat statistics[97] show that women's life expectancy remains below the average for the countries of the European Union and the European Economic Area (the European average was 80.6 in 1996) and that men's life expectancy is by far the lowest of these countries.

The Committee finds that, in contrast to the general trend in Europe, the number of diagnosed AIDS cases and the number of deaths from AIDS continued to rise during the reference period, before finally falling. The report notes that under an order of 1996, antiretroviral treatments are provided free of charge and without restrictions. The Committee hopes that these measures will have significant effects in the coming years and defers reaching a conclusion to the next examination of Article 11.

Infant and maternal mortality

According to the Eurostat statistics, the infant mortality rate in Portugal fell steeply during the reference period, from 9.3 per 1,000 live births in 1992 to 6.0 in 1998. The rate varies widely from region to region, with the highest rates

[94]*Highlights on Health in Portugal* (Internet site of the WHO European regional Office: www.who.dk).
[95]www.min-saude.pt
[96]OECD Health Data 99
[97]Eurostat yearbook - A statistical eye on Europe,1988-1998.

recorded in the Alentejo region. Nevertheless, the Committee notes that the rate remains higher than the average for the countries of the European Union and the European Economic Area (5.3 in 1997). Infant mortality is an avoidable risk, which countries must bring under control to comply with Article 11 of the Charter. It advises the Portuguese authorities that trends in the infant mortality rate will be critical for assessing the situation and strongly encourages them to pursue their efforts to secure an outcome as close as possible to zero.

The Committee notes that the rate of maternal mortality continues to decline (6.3 per 100,000 live births over the 1995-97 period, compared with an average rate of 8.3 for 1992-94), and that Portugal is now at the European average.

Health care system

Access to health care
Since 1979, there has been a national network of hospitals and health centres, the SNS, financed from taxes. In principle, it offers universal coverage. Civil servants and their dependents (about 13% of the population) are covered by their own health scheme, which is based on reimbursement and financed by the government, together with an employees' contribution (2.5% of salary). The banking and insurance sectors and a few public enterprises are also covered by specific contributory schemes. The SNS forms part of the Ministry of Health and for organisational, operational and management purposes is divided into regional and sub-regional authorities, which reflect the country's administrative divisions.

According to the aforementioned OECD statistics, total health spending represented 7.9% of GDP in 1997, compared with 7.2% in 1992. The proportion of total health spending attributable to the public sector, 60% in 1997, is by far the lowest of the OECD's European member countries.
Patients can choose their doctor from among the salaried health centre general practitioners in their local area. They must be registered on a particular doctor's list, which must include 1,500 patients. The Committee would like to know whether this list system guarantees universal access to a general practitioner.

The first report said that medical care was in theory free, but that this freedom from payment was relative since flat-rate charges were levied when patients used supplementary out-patient diagnostic and treatment facilities or medical care in hospital emergency units or health centres. Various groups of the population, such as children under 12, pregnant women and pensioners whose income is below the national minimum wage, are exempted from these payments.

There is no charge for persons admitted to the shared rooms (or individual rooms, if the doctor so recommends) of public hospitals, and other Ministry of Health approved establishments if there is a waiting list. However, patients who opt for an individual room or for a private hospital or clinic must bear the full cost.[98]

Depending on the type of illness, the SNS meets 100, 70 or 40% of the cost of medicines on the official health service list. The lower percentages are increased by 15% for pensioners whose income is below the national minimum wage.[99] According to the OECD statistics, the average rate of reimbursement of pharmaceutical products was 65% in 1997.

With reference to Recommendation No. R (99) 21 of the Committee of Ministers of the Council of Europe on criteria for the management of waiting lists and waiting times in health care, the Committee would like information on the reasons for waiting lists for admission to public hospitals in Portugal and on how these lists are managed (admission criteria and follow-up).

[98]European Commission, *Social Protection in the Member States of the European Union, Situation on 1 July 1999 and evolution*, Missoc.
[99]*Ibidem.*

Having noted in the aforementioned WHO report that private insurance systems are playing an increasingly important role, the Committee would welcome the Portuguese government's comments on the reasons for this trend and, if relevant, measures taken to ensure access to supplementary insurance.

Health professionals and equipment

The Committee observes from the OECD statistics that the total number of hospital beds continues to decline (40,700 in 1997) and that at 4.1, the bed ratio per 1,000 inhabitants is one of the lowest among the OECD's European countries. Acute hospital beds represent 82% of the total, and those allocated to hospital psychiatric care 17.5%. The private hospital sector has increased, representing around 22% of all hospital beds.

In 1997, the density of general practitioners and specialists per 1,000 inhabitants were 0.6 and 2.1 respectively. The density of dentists (0.3 per 1,000 inhabitants) is one of the two lowest among the OECD's European countries. The density of pharmacists (0.7 per 1,000 inhabitants) is in line with the European average.

In its previous conclusions, the Committee referred to significant regional variations in the provision of doctors and hospital beds. According to the OECD,[100] these variations are matched by regional variations in the state of health. During the XIII-5 supervision cycle, the government indicated that resolving these problems was a priority, that it had been decided to increase substantially state spending on health and that negotiations were under way with the various participants in the health sector to determine how the system's capacity to respond to needs could be increased. However, the Committee has not found anything in the report to suggest that a better geographical allocation of health facilities is one of the Portuguese government's priorities or that a general strategy to rectify the situation has been drawn up. It also notes that the public sector's share of total health spending has fallen since the last reference period (see above). The Committee stresses that this situation could cast doubts on the country's compliance with Article 11 para. 1 of the Charter and asks the government for its comments on this matter.

Conclusion

The Committee finds that certain indicators reveal negative developments in the health care system. However, it decides to defer its conclusion pending the information requested.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Developing a sense of individual responsibility

Health education in schools

According to the current report, during the reference period Resolution 15/98 of the Portuguese Assembly recommended that the government make sex education compulsory, that road safety education be incorporated into the curriculum and that an oral health promotion campaign be conducted among children and young persons.

The Committee considers that this information is too limited for it to assess the situation. It would therefore like the next report to include information on how, in practical terms, health education is taught in schools, whether it forms part of the curriculum throughout school life and how much is spent on it.

Public information and awareness-raising

The reports so far submitted show that campaigns to inform and educate either the public in general or specific target groups are conducted on the major problems of public health. In particular, the Committee takes note of the efforts to prevent drug abuse and smoking and to promote healthy life styles. It also notes that a sustained effort to prevent AIDS has continued with the inauguration in 1998 of a programme organised by the national anti-AIDS commission to increase people's knowledge of the disease and their sense of personal responsibility for preventing it.

Counselling and screening

Rest of the population

[100] *OECD Economic Surveys*, Portugal, 1998.

The Committee notes the following changes during the reference period: establishment of an anonymous AIDS screening centre, and the extension to the whole country of the 1989 campaign conducted by the Portuguese League against Cancer (LPCC), which used buses equipped with screening equipment to identify breast cancer. The Committee would like to know what other forms of screening have been carried out.

Conclusion
Subject to the information requested, the Committee concludes that the situation in Portugal is in conformity with Article 11 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in public care
According to the report there were approximately 13,500 children living in institutions in 1998. A study on this group of children, was carried out and showed, *inter alia* that this group of children were not receiving an adequate level of vocational training. Measures have subsequently been taken to remedy this. The Committee wishes to be informed of any other conclusions of the study on children in institutions, as well as information on the types of institutions that exist.

The Committee wishes to be informed as to whether the number of children in institutions mentioned above includes the children in institutions such as Casa Pia and the children in institutions in Lisbon.
The Committee wishes to be informed on how many children are removed from their families, how many placed with a foster family and how many placed in an institution for every year of the reference period. It also wishes to know the total number of children living in institutions (orphans, homeless children etc.).

It further wishes to be informed as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in them and about the conditions under which an institution may interfere with a child's property, mail, personal integrity and the right to meet with persons close to him or her.

Protection from ill-treatment and abuse
During the reference period a programme on the protection of children at risk was established. The Committee wishes to be informed of all developments arising from this programme.

The Committee recalls that an emergency help line exists for children ("SOS for abused children") subject to ill-treatment or sexual abuse. This help line is operational throughout Portugal.

The Committee notes the statistics supplied on the ill-treatment and sexual abuse of children. It notes that the number of cases of sexual abuse reported by hospitals increased again during the reference period as did the number of cases leading to interventions recorded by the emergency help line for children.

The Committee wishes to receive information on the different bodies, public and private responsible for protecting children from ill-treatment and sexual abuse, and how these services are coordinated.

The Committee wishes to know whether legislation prohibits all forms of corporal punishment of children, in schools, in institutions, in the home and elsewhere.

Slovakia

[Article 1 – The right to work; Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon]

The Committee takes note of the information contained in the Slovak report

1. Elimination of all forms of discrimination in employment

The report states that Articles 12 and 35 of the Constitution prohibit discrimination based on sex, race, colour of skin, language, religious belief and denomination, political or other views, national or social origin, membership of a national or ethnic group, property, lineage or other status.

With respect to *discrimination based on sex*, the report states that according to Article VII of the Labour Code women are entitled to the same status in employment as men and that they are guaranteed the same conditions. It also states that it follows from Article 270 of the Labour Code that in "cases of violation of the legislation, the employees appointed to carry out the controlling activities are authorised to request the public authorities and employers to eliminate these violations". The Committee requests further information on this, especially concerning cases in which this procedure has been used.

The Committee also requests that the next report provides detailed information on the following matters:

– how does national law ensure protection against discrimination in practice?

– are clauses in employment contracts or collective agreements which contravene the principle of non-discrimination null and void?

– Is there effective legal protection against retaliatory measures taken by employers against employees who seek to enforce the right to equal treatment between women and men? Is dismissal under such circumstances unlawful and is the employee reinstated ? Where such reinstatement is not possible, is there a financial compensation sufficient to deter the employer and compensate the worker ?

Pending receipt of the information requested, the Committee defers its conclusion with respect to the elimination of all forms of discrimination as employment.

[Article 3 – The right to safe and health working conditions; Paragraph 1 – Issue of safety and health regulations]

Regulations governing health and safety at work

The Committee notes that the protection of health and safety at work is a fundamental right guaranteed by the Slovak Constitution. It is also covered by a number of general provisions in the Labour Code, applicable to all workers, and by specific legislative and regulatory measures.

Constitutional provisions

Article 36 of the Constitution stipulates that all employees have the right to healthy and safe conditions at work and that this right shall be protected by law. In addition, Article 38 stipulates that women, young persons and people with disabilities shall enjoy more extensive health protection and special working conditions adapted to their situation.
[Article 1 – The right to work; Paragraph 3 – Non-discrimination between men and women workers with respect to remuneration]

The Slovak Constitution provides general protection for employees against discrimination. However, there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. The Committee recalls that under the Charter the right of male and female workers to equal pay for work of equal value must be expressly provided for in domestic law.

Article 4 para. 3 of the Charter also requires that all clauses in employment contracts or collective agreements which violate the principle of equal pay must be held to be null and void. Further, a court must have the power to waive the application of the offending clauses. Employees who claim their right to equal pay must be legally protected from all forms of retaliatory action. Where an employee is the victim of retaliatory action, there must be an adequate remedy, which will both compensate the employee and serve as a deterrent to the employer.

In the absence of specific legislation on the above-mentioned points, the Committee finds that the legal situation is not in conformity with the requirements of the Charter and urges the Slovak authorities to explicitly incorporate the notion of equal pay for work of equal value in domestic law.

[Article 7 - The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

– The Committee recalls that it has previously held that children should not be permitted to do any kind of work before going to school in the morning (Conclusions VIII, p. 108) as such work may deprive them of the full benefit of their compulsory education. It therefore asks that the next report indicate the nature of any work that children may perform before the school day begins, the duration of such work and the extent to which children perform such work in practice. It further requests that information on the activities of the appropriate authorities (labour inspectorate, social services, educational authorities) in ensuring that the right of children to benefit fully from their compulsory education is respected in practice.
– The Committee refers to its question under Article 7 para. 1 on the protection of children belonging to all of the minority groups in the state.
Pending receipt of the information requested, the Committee defers its conclusion.
[Article 7 - The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

According to other sources of information,[101] the United Nations Special Rapporteur on the sale of children, child prostitution, and child pornography has expressed concern that Slovakia has become a transit country for the transport of child victims for the purpose of child pornography, prostitution and sex tourism and that commercial sexual exploitation is rising in Slovakia. The Committee asks whether legislation prohibits the use of children in the sex industry and requests information on any supervisory system and sanctions that may accompany this prohibition. Information on the success of measures taken to protect children from such abuse should be included in the next report.

Pending the information requested, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

As a preliminary remark, the Committee recalls that, in Conclusions XIII-4 (p. 73), it posed a general question on the number of fixed-term contracts other than in those specific and traditional cases which warrant their use. The Committee notes that the use of this type of contract is not in itself at variance with the provisions of Article 8 paras. 1 and 2. The fact remains that, if the contract expires during maternity leave, the system relating to the suspension of contracts in these circumstances cannot apply and it is not impossible for the employer to refuse to grant maternity benefit after the termination of the contract. The Committee notes the increasing trend towards insecure employment contracts and its effect on the right to maternity protection for women set out in Article 8 para. 1. It wishes to know whether and, if so, in what way the use of insecure contracts is regulated and in particular, whether the use of successive fixed-term contracts entails a contract of indefinite duration. The Committee also asks the total number of workers employed on the basis of insecure contracts and the proportion of women concerned and, where the law authorises the use of these types of contract, what the policy is regarding their renewal by employers.

1. Right to maternity leave
Article 157 para.1 of the Labour Code provides that employees are entitled to 28 weeks' maternity leave. The period is increased to 37 weeks for single mothers or women who give birth to two or more children.

Under Article 159 of the Labour Code, maternity leave may under no circumstances amount to less than fourteen weeks, including six after the birth. Accordingly, even if an employee decides to forfeit part of her maternity leave, she is guaranteed leave of at least twelve weeks, including six weeks after the birth, as required by the Charter.
In view of this information, the Committee concludes that the situation in Slovakia is in conformity with Article 8 para. 1 of the Charter in this respect.

2. Right to adequate benefits

[101] E/CN.4/1999/71, www.unhcr.ch/tbs/doc.nsf

Under the Slovak social security scheme, payment for employees during maternity leave is governed by the legislation applying to health insurance.

Scope

The Committee wishes to know whether employees who are nationals of other Contracting Parties and are lawfully resident in Slovakia have the same maternity rights as other employees.

Conditions of entitlement to benefit

Maternity benefit is available to employees covered by health insurance for at least 270 days in the two years preceding the birth. The Committee wishes to know if periods of unemployment are taken into account when calculating the period of insurance and if employees who do not meet this requirement are granted some other kind of benefit.

Amount paid

According to the report, payments amount to 90% of the average net weekly wage of the employee, up to a ceiling of 350 Slovak koruna (SKK).

However, the Committee notes that under present circumstances 350 SKK is 70% less than the national average weekly wage, which, in 1998, amounted to some 2,500 SKK. The Committee therefore wishes to know whether and, if so, in what way the difference between the former wage and the statutory ceiling is offset for employees whose wage exceeds the ceiling.

The report also states that in other more specific cases (for example apprentices), maternity benefit takes the form of a lump-sum payment, but no information on the amount is given. The Committee wishes to know how much this lump sum comes to and what proportion of employees are concerned.

Pending receipt of this information, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection;Paragraph 2 – Illegality of dismissal during maternity leave]

As a preliminary remark, the Committee recalls that, in Conclusions XIII-1 (p. 172), it posed a general question on the number of fixed-term contracts other than in those specific and traditional cases which warrant their use. The Committee notes that the use of this type of contract is not in itself at variance with the provisions of Article 8 paras. 1 and 2. In its case law concerning Article 8 para. 2 the Committee accepts the fact that this provision, under which an employer may not give notice of dismissal to an employee while she is on maternity leave or on a date such that the notice expires during her leave, does not prevent termination of a fixed-term contract when its term expires. The fact remains that, if the contract expires during maternity leave, the ban on dismissal, laid down in respect of maternity protection, becomes meaningless. The Committee notes the increasing trend towards insecure employment contracts and reiterates the questions asked in this connection in its conclusion under Article 8 para. 1.
Illegality of dismissal

According to the report, Article 48 para.1 of the Labour Code prohibits employers from dismissing employees during maternity leave or when they are permanently caring for a child under 3 years of age. There are however a number of exceptions to this rule which depend on the employer’s situation or the employee’s conduct.

Exceptions related to the employer’s situation.

Article 46 of the Labour Code authorises dismissal of an employee in the event that the employer relocates or goes out of business or all or part of the employer’s activities are taken over by another party.
Going out of business is one of the exceptions that the Committee usually accepts.

Regarding relocation, the Committee considers that this can only be regarded as an exception if it is equivalent to going out of business on a total and permanent basis. In this connection, the Committee would like to know how the notion of employer relocation is interpreted in Slovak law.

As regards the transfer of all or part of a business's activities, the Committee considers that, as a rule, this should not be regarded as the equivalent of going out of business and hence does not justify dismissal during the protected period. In many legal systems, when a company transfers all or part of its activities, it transfers all of its assets, credit and liabilities to the purchaser, including the contracts with its employees. It is more a case of a change in the composition of the shareholders than a full cessation of activities. The Slovak Labour Code provides, nonetheless, that the exception only applies if the purchasing company cannot employ the employee under the same conditions as her original employer.

The Committee notes that the draft of the new Slovak Labour Code has removed this exception. It points out nonetheless that this draft has not yet been adopted and that for the reference period it was the current code which applied. It therefore wishes to know how the relevant courts have viewed the failure of a purchasing company to employ an employee under the same conditions as her previous employer, when the department in which the employee worked has not been dismantled following the take-over.

Exceptions relating to the employee's conduct

Article 8 para. 2 of the Charter not only forbids an employer to give a female employee notice of dismissal during her maternity leave, but also at such time that the notice would expire during such leave. In this latter case, the prohibition entails the suspension of the notice period during the entire maternity leave. The Committee recalls that such double prohibition is an imperative one and can only be lifted in the exceptional cases that it traditionally admits.

According to the report, pursuant to Article 48 para. 2 of the Labour Code when a period of notice given prior to maternity leave ends during that leave, such period of notice is suspended and shall start running again for an equivalent duration after the leave. The employee is however entitled to renounce on this suspension.

The Committee notes that, in this event, the fact that the employee has the right to renounce on the continuation of her employment is likely to reduce her protection under Article 8 para. 2 because she would be deprived of the share of her wages, contributions and length of service to which she would be entitled if her employment continued up to the proper date.

The Committee notes that the double prohibition set in Article 8 para. 2 may also be lifted under Slovak law in the event of misconduct by the employee. When notice has been given before maternity leave and the employee has been sentenced to prison for more than one year for an intentional criminal offence, sentenced to prison for at least six months for an intentional criminal offence connected with her job, or found guilty of serious professional misconduct, her employment is automatically terminated at the end of maternity leave without any possibility of an extension.

The Committee considers that no misconduct by the employee, other than serious misconduct in connection with her employment and recognized as such by labour courts, may justify the lifting of the double prohibition set in Article 8 para. 2. For this reason, the fact that an employee has been sentenced to prison for a criminal offence not in connection with her employment, no matter how serious such offence is, does not justify her dismissal during the absence on maternity leave or at such time that the notice would expire during such absence.

Consequences of unlawful dismissal

The Committee notes that the report does not include any information on the consequences of unlawful dismissal and requests that the next report contain a detailed reply on this point.

In this connection, it draws attention to the fact that, in the event of unlawful dismissal, reinstatement should be the rule and the payment of compensation the exception. Compensation should also constitute a sufficient deterrent for the employer and adequate compensation for the employee and should always amount to at least the equivalent of the wages due up to the end of the period of protection.

Conclusion

The Committee concludes that the situation in Slovakia is not in conformity with Article 8 para. 2 because:

– the relocation of the employer as well as the transfer of all or part of its business activities cannot be regarded as going out of business and cannot justify the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence;

– when notice has been given before a period of maternity leave, the employee is entitled to waive the suspension of the period of notice;
– a prison sentence for a criminal offence not related to her employment does not justify the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence.
[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

According to the report, Section 161 of the Labour Code provides that employers are required to grant mothers special nursing breaks in addition to normal work-breaks.

Full-time employees are entitled to two half-hour nursing breaks per working day until the child is six months old and one half-hour break per day for the following three months. Part-time workers also have the right to one half-hour nursing break per working day until the child is six months old but only if they work for at least half the normal working hours.

Section 161 of the Labour Code provides that nursing breaks are not regarded as working hours and are therefore not paid as such. They are covered by a specific allowance which is index-linked to the average wage but the report provides no details as to how this allowance is calculated.

Article 8 para. 3 of the Charter requires that all employees be given sufficient nursing breaks, irrespective of their working hours, and that these be paid as working hours. The Committee therefore wishes to know what type of nursing breaks are granted to employees working for less than half the normal working hours and the amount of the specific allowance covering nursing breaks in general.

Pending receipt of this information, the Committee defers its conclusion.

[Article 8 — The right of employed women to protection;Paragraph 4 – Regulation of night work and prohibition of dangerous unhealthy or arduous work for women workers]

Regulations on night work by women in industry (Article 8 para. 4a)
Until 1999, employers wishing to assign women to night work had to obtain prior authorisation from the Ministry of Labour, Social Affairs and the Family. With a view to establishing equal conditions for women and men, Act No. 297:1999 abolished this requirement. Since then, apart from a few exceptions relating to pregnant women and new or nursing mothers, regulations on night work have been the same for all employees.
Prohibition of the employment of women in certain dangerous, unhealthy or arduous occupations (Article 8 para. 4b)
According to the report, Section 150 of the Labour Code prohibits women from being employed in occupations which are physically unsuitable or dangerous for their health or pregnancy. In each branch of industry, the relevant authorities draw up lists of tasks and work areas which are prohibited to women, particularly pregnant women.

In particular, the aforementioned Section 150 prohibits women from mining or from operating machines underground or in mines. The only work they are authorised to perform in these conditions is administrative, supervisory, medical, social or research work. Under no circumstances are they permitted to perform manual labour.

The Committee notes that these measures meet the requirements of Article 8 para. 4 of the Charter but wishes to be provided with a copy of the lists, drawn up by the relevant authorities, of tasks and work places which are prohibited to women. It would also like to know whether these lists cover exposure to certain dangerous or unhealthy chemicals or physical agents, particularly lead, benzene and radiation.

Pending receipt of the information requested, the Committee concludes that the situation in Slovakia is in conformity with Article 8 para. 4*b* of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information given in the Slovak report on application of the Charter, in the national human development report (United Nations Development Programme (UNDP), Slovakia, 1998) and in the 2000 report of the European Observatory of Health Care Systems.[102]

State of health of the population - General indicators

Life expectancy and principal causes of death
The Committee notes that female life expectancy at birth increased from 74.3 years in 1980 to 76.7 years in 1998, and that the male figure rose from 66.8 years in 1980 to 68.6 years in 1998. Slovaks' life expectancy is one of the two lowest in Contracting Parties to the Charter. The Committee observes that the female mortality rate is one of the two highest among the OECD's European states, but notes especially that the deterioration which occurred during the nineties went against the general trend.

The Committee takes note from the UNDP report that the incidence of AIDS is lower than in the other Contracting Parties, with the epidemic apparently developing slowly. It nevertheless seems likely that the influence of AIDS will worsen in terms of mortality and morbidity, and that specific steps need to be taken rapidly to curb the problem. The Committee wishes to be informed of developments in this situation.

Infant and maternal mortality
The Committee notes that the infant mortality rate has declined sharply since the early eighties, falling from 20.9 deaths per 1,000 live births in 1980 to 9 per 1,000 in 1998 according to Unicef's figures.[103] This rate is still well above the average in the countries of the European Union and European Economic Area (5.2 in 1998). The mortality rate among children aged under 5 was 10, compared to rates in the other Contracting Parties ranging from 4 to 10. According to Unicef, the average maternal mortality rate is 9 per 100,000 births. The UNDP report states that the rate varies widely from one region to another and is higher in several regions experiencing serious problems of pollution.

The Committee emphasises that a fall in these rates will be crucial to the assessment of Slovakia's compliance with Article 11 para. 1.

Health care system

Access to health care
Under the Constitution, everyone is entitled to health protection, universal cover and free access to health services. Following the reform introduced in 1992-94, the health care system has been financed by a compulsory health insurance scheme. The population is affiliated either with the general state health insurance company or with one of the five private health insurance companies.

Dependent children, pensioners, persons caring for children or disabled persons, persons doing military service, prisoners, refugees and other inactive persons and the unemployed are insured at the expense of the state.
Each person is insured individually and the insurance does not extend to members of the family.

According to the OECD, total health expenditure in 1997 represented 6.1% of GDP (compared to an average in European OECD states of 7.7%).

General practitioners, paediatricians, gynaecologists and dentists provide primary care and, in principle, refer patients to specialist and hospital care. Most doctors are in private practice, whereas hospital care is mainly public.

[102] *Health Care Systems in Transition Profile* (Observatory Website: www.observatory.dk).
[103] Unicef, *The state of the world's children*, 2000.

Medicines are assigned to one of three categories: those in the first category (40% of medicines) are fully refunded, those in the second (27%) partly, and those in the third (8.7%, mainly vitamins and minerals) have to be paid for in full by the insured persons.

The Committee requests more precise information on the health care system:
– methods and procedures for the payment of health care expenses, hospital care and medicines;
– public expenditure as a proportion of total health care expenditure;
– the exact share of the population covered by health insurance.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Counselling and screening

Children and adolescents
In pursuance of the Rules of Medical Treatment Act, Act No. 98:1995, women are monitored during pregnancy on a monthly basis, and two dental checks are carried out. A subsequent examination is conducted six weeks after delivery.

Children are examined for preventive purposes nine times during their first year of life, re-examined at 18 months and examined again at the ages of 3, 6, 9 and 13. Subsequent medical examinations are carried out at the end of their compulsory schooling, or at the age of 15 at the latest, and when they start and leave higher education. Dental check-ups are conducted twice yearly up to the age of 18. The Committee notes that children and adolescents are subjected to sufficiently regular medical checks, but in order to reach a decision, it nevertheless needs more information about what the examinations entail.

Rest of the population
The Committee wishes to know what kinds of screening for diseases (including cancer, cardiovascular diseases, allergies, AIDS, etc) - free of charge and carried out on a systematic basis - exist for the rest of the population.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 — Right to protection of health; Paragraph 3 – Prevention of diseases]

Epidemiological monitoring
The Committee requests information enabling it to assess the ability to react to contagious diseases: the disease reporting and recording system, the specific treatment of AIDS cases, emergency measures to cope with epidemics, etc.

[Article 12 – The right to social security; Paragraph 1 – Establishment or maintenance of a system of social security]

The Committee notes that the Slovak social security system covers the nine traditional branches of social security: medical care, sickness and maternity benefits, unemployment benefits, old-age, disability and survivors' pensions, benefits in the event of occupational accident or disease, and family benefits. However, the report does not provide information on all these branches and the Committee has consulted other sources.[104]

[104] Comparative tables of social security schemes in Council of Europe member states – 8th edition (situation at 1 July 1996), Council of Europe publication. Guide to Social Security Programs throughout the World, 1999 by the United States Social Security Administration.

The Committee notes that the Slovak social security system is principally based on occupational insurance - except for family benefits, which are entirely financed by public funds - and that benefits are funded collectively.
The Committee recalls that apart from risks covered and the collective nature of financing, it considers that a social security system in the meaning of Article 12 para. 1 exists if it covers a significant part of the population and provides efficient benefits. The Committee makes an overall assessment of the social security system and examines compliance with these requirements as a whole.

[Article 13 – The right to social and medical assistance; Paragraph 1 – Social and medical assistance for those in need]

Regarding medical assistance, the report cites Article 40 of the Constitution, which provides for free health care and medical equipment, and Act No. 273:1994. As the Committee has noted in relation to Article 11 para. 1, the health service is accessible to all. The Committee requests confirmation that medical assistance is granted to non-nationals on an equal footing with nationals.

Pending receipt of the information requested, particularly on social assistance, the Committee defers its conclusion.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

The Committee takes note of the general description of these categories of services in Sections 15-39 of the Social Assistance Act, but it asks that the next report contain details on the various activities and notably on their nature (e.g. benefits, counselling, the balance between home care and residential care, supported housing, etc.), the number of beneficiaries, and their adequacy (e.g. the relationship between supply and demand, indicators used to assess adequacy). It also asks that the next report give information on any specialised services, in addition to the above, aimed at certain vulnerable target groups facing social problems, such as victims of violence, drug and alcohol addicts, ex-prisoners, homeless persons, the mentally ill, minorities and refugees, etc.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 16 – The right of the family to social, legal and economic protection]

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

Legal protection of the family
The report does not contain any information about equality between spouses (marital authority, financial relations – ownership, administration and use of property) or between parents, or about the settlement of family disputes, including whether there is a family mediation procedure and, if so, how it works. The Committee asks that information on all these matters be included in the next report.

Conclusion
The Committee concludes that Slovakia cannot be held to have a system of family allowances, the number of families entitled to such allowances being manifestly insufficient. It therefore concludes that the situation in Slovakia is not in conformity with Article 16 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Establishment of parentage and adoption
As regards the establishment of parentage, the Family Act contains no specific provision regulating the establishment of maternity - the *mater semper certa est* rule applies. The Family Act provides for three rebuttable presumptions of paternity. The Committee requests further information on these.

Children in Public Care
Article 41 of the Constitution provides, *inter alia*, that children have the right to parental upbringing and care. In certain circumstances however, a child may be removed from its parents in accordance with a court decision. The Committee asks for information on the precise grounds on which this may take place

The Committee also wishes to receive information as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in institutions. In particular, it requests information on any disciplinary measures which may be applied to children in care. The next report should also state the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to him.

Protection from ill-treatment and abuse
District and regional bodies are responsible for protecting children from ill-treatment. The Committee wishes to receive further information on the organisation and work of these bodies as well as information on any measures taken to prevent the ill-treatment of children, in particular children belonging to minority groups.

The Committee wishes to know whether legislation prohibits the corporal punishment of children in the home, in schools, institutions, and elsewhere.

Maternal welfare
The Committee asks that the next report indicate the measures taken to ensure the welfare of single mothers, especially in the form of specific allowances and appropriate social services.

Children and the law
The Constitution prohibits discrimination against children on the grounds that they were born outside marriage.

Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The Committee takes note of the information provided in the Slovak report on the implementation of the right of equal treatment between women and men in each of the areas stipulated in the text of the Article 1 of the Additional Protocol.

Situation in law
Concerning access to employment, the report refers to Article III of the Fundamental Principles of the Labour Code and to Articles 12 and 35 of the Constitution. The Committee observes that the provisions cited are general in nature, prohibiting discrimination on many grounds, including sex. On a more specific point, the report cites Section 122 sub-section. 1 of Act No. 292:1999, which prohibits discriminatory job advertisements. The Committee requests information on the application of this provision, in particular the applicable sanctions and any remedies which may exist for job applicants in such circumstances.
With respect to dismissal, the report refers to the protection of pregnant employees and parents who look after children under the age of 3 years (Sections 48 and 155 of the Labour Code). Apart from these specific cases, it appears that sex discrimination in dismissal is prohibited only on the basis of the general provisions referred to above. Similarly, concerning occupational reintegration, the report cites the right to return to work in certain circumstances, such as following maternity leave, or parental leave (Sections 127 and 147 of the Labour Code). Outside of these specific circumstances, there appears to be no other guarantee of equal treatment between women and men apart from the general provisions cited above.

In relation to sex equality in vocational guidance, training, retraining and rehabilitation, the Committee takes note of the information provided on the possibility for employees returning to work after a period of parental leave to undertake training at the request of the employer, which is paid as working time (Section 126 sub-section 3 of the Labour Code).

According to the report, equal treatment between women and men as regards working conditions is stipulated in Article VII of the Fundamental Principles of the Labour Code, which provides that they are entitled to "the same

position" in work. The report adds that part-time workers are entitled to equal working conditions with colleagues working on a full-time basis.

On the question of equal pay, the Committee refers to its conclusion under Article 4 para. 3, where it finds that the situation is not in conformity with that provision of the Charter, as there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. For the same reason, the situation is also not in conformity with Article 1 of the Additional Protocol.

Equal treatment in the matter of career development is ensured by the fact that a person's sex is not a permissible consideration in this area, according to the report.

By accepting this provision, states undertake to promulgate the rights concerned in legislation (Conclusions XIII-5, pp. 253-257). With respect to each of the above areas, the Committee considers that Slovak law sets out the right to equal treatment in very general terms only. The fact that, as the report itself states, there is no significant national case law in this area raises an appreciable doubt as to the adequacy of the legal basis for implementing this provision of the Additional Protocol. The Committee therefore requests further information in the next report under this provision in relation to the following matters:

– how does national law ensure protection against sex discrimination (direct and indirect) in each of the areas covered by Article 1 of the Additional Protocol?

– are clauses in employment contracts or collective agreements which contravene the principle of non-discrimination null and void as required by this provision? Are courts or other competent authorities empowered to waive the application of such clauses? The Committee considers it advisable for states to introduce measures likely to discourage employers from applying, even inadvertently, clauses which are null and void. These measures could take the form of the introduction of a statutory legal provision rendering any such stipulation null and void, the possibility for a court to declare this nullity by a decision applicable *erga omnes*, the introduction of a specific right for trade unions to take legal action in these matters, including the right to act as an intervener in individual litigation, or the possibility of class action on the part of persons in whose interest it would be to have this nullity declared (Conclusions XIII-5, p. 255). The Committee asks the Slovak authorities to provide information on the existence of any such measures or of any other mechanisms which may have a similar effect.

– Is there effective legal protection against retaliatory measures taken by employers against employees who seek to enforce the right to equal treatment between women and men? Under this provision, states must ensure that dismissal in such circumstances is unlawful and that the employee is reinstated and adequately compensated for any financial loss incurred during the intermediate period. Where such a remedy is not possible, financial compensation instead may be acceptable, but only if it is sufficient to deter the employer and compensate the worker. Legislation may also provide for other sanctions against an employer who is guilty of such discrimination (Conclusions XIII-5, 256).

– Is there an alleviation of the burden of proof in cases of alleged gender discrimination?

The report indicates that the Slovak authorities do not seek to exclude social security from the scope of this provision. It states, however, that there are several problems concerning the application of the right to equal treatment between women and men in the pension system. The Committee notes that substantial differences exist in the entitlement of men and women to survivors' pensions, both as regards eligibility criteria and the amount of the pension. It asks that the next report contain a full account of these differences, and describe the other problems referred to in ensuring equal treatment for women and men in social security.

Situation in practice

The Committee takes note of the information provided on the difference between average male and female earnings. It also notes the comments made in the report about preferential hiring of male candidates and "deep-rooted prejudice" in the labour market.

The unemployment rate among women is close to that of men in most regions of the country, according to the data supplied under Article 1 para. 1 of the report. The Committee asks that the next report under this provision indicate the number of male and female workers in part-time employment, the number employed on fixed-term contracts or other forms of temporary employment. The next report should also indicate the measures taken to promote equal treatment of women and men in vocational training. Regarding career advancement, the Committee requests information on the number of women occupying senior posts in the public sector, as well as the proportion of managerial or other senior posts occupied by women in the wider economy.

The Committee takes note of the brief information concerning the National Action Plan for Women, which covers the period 1997-2006, and which includes the monitoring of female wages. The same subject is covered by the Concept of Equal Opportunities of Women and Men, which also seeks to improve career development for women in managerial roles. The Committee requests further information on the implementation of these and any similar initiatives.

Conclusion
The Committee concludes that the situation in Slovakia is not in conformity with Article 1 of the Additional Protocol as there is no express statutory guarantee of the right of men and women to equal pay for work of equal value.

Spain

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee notes from the Spanish report that there have been no changes in the legal situation which it previously found not to be in conformity with the Charter. Referring to its conclusion under Article 7 para. 1, the Committee concludes that the situation is not in conformity with Article 7 para. 3 of the Charter, since Spanish law does not ensure that children who work within a family enterprise are not deprived of the full benefit of their education. Furthermore, since no minimum age is laid down for access to self-employment, the Committee concludes that on this ground too the situation in Spain is not in conformity with Article 7 para. 3 of the Charter.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes the information in the Spanish report on the measures taken to protect workers, those in a teaching relationship, etc., from sexual harassment.

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on the supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Spain is in conformity with Article 7 para 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. Right to maternity leave
The report from Spain states that Act 39/1999, which came into force outside the reference period, prescribes 16 weeks of maternity leave which the mother may elect to take before or after delivery. Six weeks are nevertheless to be taken obligatorily after delivery, during which time the mother is not allowed to work. This legislation is applicable to all categories of employees and to civil servants.

The report states that it is permissible under this new legislation, where both parents are employed, for all or some of the mother's postnatal leave to be relinquished to the father at the commencement of her maternity leave, unless her return to work would endanger her health. In such cases, the obligation to take six weeks of postnatal leave no longer applies.

The Committee reiterates that the purpose of Article 8 para. 1 is to afford women special protection in case of maternity, and to meet a more general interest of public health by protecting both mother and child. The twelve-week rest period, to be split into two parts preceding and following childbirth, should therefore be regarded as a minimum according to the letter of the Charter. The period of compulsory postnatal leave fixed at six weeks by the Committee (Conclusions VIII, p. 123) is also to be regarded as a minimum which cannot be waived.

The possibility for the mother to let the father take all or some of her six-week postnatal leave is therefore contrary to the Charter.

The Committee furthermore requests that the next report furnish information on the enforcement of the legislation in practice, indicating in particular the penalties prescribed for non-compliance and stating, if possible, the number of breaches recorded by the labour inspectors.

The Committee concludes that the situation in Spain was in conformity with this aspect of Article 8 para. 1 of the Charter during the reference period (1997-1998).

2. Right to adequate benefit

In Spain, the maternity allowance is payable throughout maternity leave to all women who are affiliated to social security when pregnant and have worked and paid contributions for 180 days during the five years preceding the time of delivery. The level of the allowance is 100% of the daily wage payable in the month preceding delivery. The Committee infers that no ceiling applies to the allowance.

In reply to a question from the Committee, the report indicates that women not fulfilling the aforementioned conditions and not entitled to maternity benefit nonetheless receive medical assistance during pregnancy and after delivery.

Article 8 para. 1 allows the right to payment of benefit to be subject to conditions such as a stipulated minimum period of contribution and/or employment. The Committee nevertheless reserves the right to verify the reasonableness of these conditions. In the present case it finds that a period of 180 days' contributions and employment during the five years previous to delivery is long and difficult to complete. This requirement may in effect deprive many women of the benefit of maternity allowances. The Committee therefore asks whether, apart from the medical assistance mentioned above, the workers concerned receive any other form of adequate benefit, and the applicable conditions. The Committee also asks if periods of unemployment are calculated as working time for the granting of maternity allowance.

Pending receipt of the information requested, the Committee defers its conclusion on this point.

[Article 8 — The right of employed women to protection; Paragraph 2 – Illegality of dismissal during maternity leave]

Prohibition of dismissal

The Spanish report indicates that according to the Spanish Constitution and consistent Constitutional Court case-law, dismissal on pregnancy-related grounds is discriminatory and therefore shall be deemed void.

It adds that Act 39/1999, which entered into force outside the reference period and which amends the Workers Statute, introduces new provisions according to which individual dismissal of female workers during their pregnancy and until the end of their maternity leave is prohibited (Title I, Article 7 para. 2 of the 1999 Act). The Committee requests that the next report clarifies what are the exceptions to this rule.

On the other hand, the report states that the provisions in question only prohibit individual dismissals. According to Article 51 of the Workers Statute, dismissals of pregnant women or of women in maternity leave, in the context of collective redundancy, are still not prohibited. Nevertheless such dismissals are only admitted following a previous administrative authorization.

The Committee takes note of the positive development concerning the prohibition of individual dismissal of women. However it notes that, contrary to the provisions of the Charter, pregnant women might be dismissed in the context of redundancy, no matter whether the undertaking has ceased to operate. In order to have a clear view of the situation, the Committee asks whether the company redundancy plan covers workers individually.
Furthermore, the report stresses that despite the absence of specific provisions in the Workers' Statute, the employer's right to terminate domestic workers' employment contracts, through "withdrawal" (*desistimiento*), before the normal expiry date and without alleging any motive, is subject to the same constitutional safeguards prohibiting

dismissals based on sex discrimination. The Committee considers that this situation is contrary to Article 8 para. 2 of the Charter and that domestic workers must be given the same protection as all other workers.

Consequences of unlawful dismissal
Pursuant to Article 7 para. 2 of the 1999 Act, an unlawful dismissal is deemed void. This situation complies with Article 8 para. 2.

The Committee requests that the next report indicate the amount of compensation owed to unlawfully dismissed female employees who do not go back to their post, either because they do not wish to do so or because the undertaking has ceased to operate. It recalls that payment of such compensation, which is admitted as an exception, must be sufficient to deter the employer and compensate the employee.

As the Spanish report does not contain information with regard to this point, the Committee asks that the next report address the matter.

Conclusion
The Committee concludes that the situation in Spain is not in conformity with Article 8 para. 2 since domestic workers are not given the same protection as all other workers.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

The Committee notes that women workers in Spain - including domestic employees, home-based workers and public employees - who breastfeed their babies are entitled, until the child is nine months old, to an hour-long work-break, which may be split into two periods (Section 37.4 of the Workers' Statute). The hour is regarded as working time and paid as such.

The technical amendments to this provision of the Workers' Statute under Law No. 39/1999 of 23 March 1995 do not affect this situation, which the Committee already considered to be in conformity with the Charter.

With regard to domestic workers, the report indicates that the relevant legislation is Royal Decree 1424/1985. In the absence of specific rules on breastfeeding in this decree, ordinary law (i.e. the Workers' Statute) applies "whenever this is compatible with the peculiarities stemming from the relationship's special kind". According to the report, this means that the entitlement to feeding breaks under the Workers' Statute extends to domestic workers.

The Committee repeats its request made in the last conclusion inviting the Government to indicate expressly within each report whether such incompatibilities had been noticed by the tribunals.

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 8 para. 3 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 4 – Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work for women]

*1. Regulation of night work for women in industrial jobs (Article 8 para. 4*a*)*
It notes from the present report that Act 31/1995 on the Prevention of Labour Risks introduced special rules on maternity protection. Risk assessment must include determining the nature, degree and duration of the exposure of pregnant women or women who have just given birth to agents, procedures and working conditions that may adversely affect the woman's or the foetus' health. If the assessment reveals a risk to the woman's health or safety, the employer must take the necessary steps to put an end to exposure to risk. These measures must include an end to night work and transfer to another work station. If this is not possible, sick leave must be granted.

The Committee considered in its previous conclusion that the regulations governing night work complied with this provision of the Charter. It notes that the regulations take satisfactory account of the situation of pregnant women, women who have recently given birth and nursing mothers. In order to have a full view of the situation, however, it

asks that the next report indicate the cases in which night work is permitted, whether the authorisation of the Labour Inspectorate is required, or if, before introducing night work, the employer must consult with worker representatives.

The Committee asks that the next report provide information on practice and specify the penalties prescribed for breaches of the legislation.

Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information in the Spanish report on the Charter and in the 1998 report to the World Health Organisation (WHO).[105]

State of health of the population – General indicators

Life expectancy and principal causes of death

The Committee notes from OECD statistics[106] that life expectancy at birth has increased slightly, reaching 81.7 years for women and 74.4 years for men in 1996. These levels are slightly above average for European Union and European Economic Area countries.

The Committee observes that the number of Aids cases diagnosed annually (morbidity rate) declined during the reference period from 7,197 in 1994 (a record total) to 3,713 in 1997. It notes, however, that the number of new Aids cases per million inhabitants is by far the highest among the European OECD countries (160 in 1997) and that in 1995, the mortality rate for Aids was nearly three times higher than the average for European Union and European Economic Area countries. The Committee will therefore pay close attention to developments in the situation and requests information on conditions of the access to antiretroviral treatment.

Infant and maternal mortality

According to Eurostat data, the infant mortality rate fell during the reference period, from 7.1 deaths per thousand live births in 1992 to 5.6 in 1997. The Committee notes, however, that the improvement in the situation over the past decade has been much less marked than in other European Union and European Economic Area countries and that the rate is now above the average (5.3 in 1997). The Committee emphasises that infant mortality is an avoidable risk, which countries must bring under control to comply with Article 11 of the Charter. It advises the Spanish authorities that trends in the infant mortality rate will be central to assessing whether the situation complies with the Charter, and strongly encourages them to pursue their efforts to achieve a result as close as possible to zero.

The Committee notes that the maternal mortality rate is still low (slightly over 3 deaths per 100,000 live births during the 1992-1995 period).

Health care system

Access to health care

The General Health Act 14/86 set up a national health service, which is run either by the Autonomous Communities or by the National Institute of Health (INSALUD) in those communities which have not yet been given responsibility for health matters. 99.5% of the population is covered by the health system. The system is mainly funded by taxes (80%).

According to the above-mentioned OECD statistics, total health expenditure represented 7.4% of GDP in 1997. The proportion of total health expenditure attributable to the public sector has declined and stood at 76% in 1997 (as against 78.9% in 1992).

[105]*Highlights on Health in Spain* (WHO European regional office website: www.who.dk).
[106]OECD, *Health Data* 1999.

Medical care provided under the national health service by registered general practitioners, medical centres and approved hospitals is free of charge to all persons resident in Spain who are covered by the general scheme or a special scheme.

Prescription medicine is refundable to a value of 60%. However, medicines on a special list are subject to a refund of only 10%, to a maximum value of 439 pesetas (PTA). The following categories are exempt from contributions: pensioners, hospital patients, residents over 65 years of age with insufficient resources and conscientious objectors performing social work.[107] According to OECD statistics, the average rate of reimbursement of pharmaceutical products was 75% in 1997.

The Committee wishes to know whether waiting lists have been introduced for hospital care, and, if so, would like information on how they are managed.

The Committee wishes to know whether evaluations of the functioning in practice of the national health service have been carried out and if so it asks to know the results.

Health professionals and equipment

The Committee notes from the aforementioned OECD data that the total number of hospital beds has continued to decline (154,644 in 1997) and that the bed ratio per 1,000 inhabitants (3.9) is one of the three lowest among the European OECD countries. Private hospitals account for approximately 30% of all beds.

The Committee notes from Eurostat statistics that in 1996, the number of doctors per 100,000 inhabitants was 421, one of the highest ratios among European Union and European Economic Area countries. The same applies to the number of pharmacists (one per 1,000 inhabitants), however, the ratio of dentists (37.9 per 100,000 inhabitants) is one of the lowest.

Conclusion

The Committee observes that the situation in Spain with respect to Article 11 para. 1 of the Charter presents several weak points both as far as the state of health of the population is concerned (mortality due to AIDS and infantile mortality) and as regards the health care system (low density of hospital beds). Nevertheless, it decides to wait until the next examination of Article 11 before assessing the situation and it meanwhile defers its conclusion.

[Article 8 — The right of employed women to protection; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

Under the Act governing the general education system, health education is compulsory in school curricula. Training sessions are arranged for teachers. The Committee notes that special attention is devoted to preventing drug addiction. It also wishes to know whether health education in schools deals systematically with the dangers of alcohol and smoking, sex education, including the prevention of sexually transmitted diseases, and the promotion of healthy eating.

Counselling and screening

Children and adolescents

The previous report stated that preventive medical check-ups are provided for children and adolescents: one check-up during the first month, three more in the first 3 months, one check-up every 6 months until the age of 2, two check-ups between the ages of 2 and 5 and three check-ups between the ages of 6 and 14. A dental check-up is also carried out every two years between the ages of 6 and 14. The Committee wishes to know what body is responsible for carrying out these check-ups.

[107]European Commission, *Social protection in the member states of the European Union: situation on 1 July 1999 and evolution*, Missoc.

Rest of the population
Cervical cancer screening is carried out every five years among women aged between 35 and 64 and breast cancer screening every two years among women aged between 50 and 75. Smokers and alcoholics are given a preventive examination for cardiovascular diseases every two years and men aged between 35 and 65 are screened for hypercholesterolaemia every two years.

Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 11 para. 2 of the Charter.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

The Spanish report states that the implementation of the Arranged Plan on Social Services Basic Allowances in Local Corporations continues and that two new services have been introduced: economic allowances and enhancement of solidarity – social cooperation.

However, the Committee observes that the report does not contain replies to the questions asked since supervision cycle XII-2 as to whether all the autonomous communities have adopted laws organising the social services and whether the whole population is covered by such legislation. It insists that the information be included in the next report. Moreover, it asks that the next report provide a detailed overview of social services provision in Spain in the meaning of Article 14, including up-dated and complete replies to the questions of the Form for Reports.

In the absence of the above-mentioned information, the Committee is unable to assess properly the situation and it therefore defers its conclusion.

[Article 17 — The right of mothers and children to social and economic protection]

Children in Public care
The report mentions that children removed from their families due to ill-treatment, neglect, etc. may be placed with a foster family, adopted or placed in residential care. The Committee wishes to be informed for the next reference period, how many children were removed from their families and placed with a foster family, placed in residential care or placed for adoption.

The Committee wishes to receive information on the types of institutions caring for children that exist.

It also wishes to receive information as to whether there is any body charged with monitoring care in institutions and whether there is any specific procedure for complaining about the care and treatment in institutions and about the conditions under which an institution may interfere with a child’s property, mail, personal integrity and right to meet with persons close to him.

Protection from ill-treatment
Organic Law No. 1/1996 imposes an obligation on every person to notify the competent authorities of suspected child abuse.

The protection of children who are ill treated, abused, etc. is the responsibility of the Autonomous Communities, which generally have procedures for the reporting of child abuse (in some communities the minor concerned may file his/her own report), including confidential telephone lines, procedures for intervention by the appropriate bodies (health, educational personnel, police, public prosecutors, protection services) and rehabilitation services.

The criminal law has been amended during the reference period in order to provide better protection of children from abuse and domestic violence.

The Committee notes from the Concluding Observations of the Committee on the Rights of the Child in respect of Spain's first report[108] under the Convention on the Rights of the Child, that Article 154 of the Spanish Civil Code provides that parents "may administer punishment to their children reasonably and in moderation". The Committee notes that this would permit the corporal punishment of children, which is in breach of Article 17 of the Charter and it refers to its general observations on Article 17 in the General introduction. The Committee wishes to know whether this provision of the Civil Code has been amended, and further whether legislation prohibits the corporal punishment of children in schools, institutions and elsewhere. Meanwhile, it defers its conclusion.

Children and the law – Young Offenders
The Committee wishes to receive information on the minimum age for marriage.

Conclusion
Pending the receipt of information on the corporal punishment of children, the Committee defers its conclusion.

Sweden

[Article 7 — The right of children and young persons to protection; Paragraph 1 – Minimum age of admission to employment]

The Committee takes note from the Swedish report of the amendments to the Work Environment Act (AML) that took effect as of 1 January 1996. Whereas previously the act did not extend to minors employed in the employer's household, this group is now subject to its provisions (Chapter 1, Section 4(2)). As the Committee had considered the exclusion of this group from the general statutory framework not to be in conformity with the Charter, it welcomes this development.

In reply to the Committee's general question on children employed in family businesses, the report indicates that they enjoy the same level of statutory protection and that such workplaces are subject to labour inspection.

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee concludes that the situation in Sweden is not in conformity with Article 7 para. 3 of the Charter as the mandatory rest period during school holidays for children still subject to compulsory education is not sufficient to ensure that they benefit from such education.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee notes that it is a criminal offence in Sweden to procure or attempt to procure casual sexual intercourse with a person under 18 by promising or giving consideration. The Committee notes that the sexual offences legislation is under review, and wishes to be kept informed of all relevant developments. The Committee asks whether legislation prohibits the use of children in the sex industry as a whole, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in Sweden is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. Entitlement to maternity leave
Women in Sweden are entitled to seven weeks' leave prior to confinement and seven weeks thereafter (Parental Leave Act No. 584 of 1995). This leave is not compulsory and remains at the mother's discretion.

[108]CRC/C/15/Add.28.

The report says that, while the leave is not compulsory, virtually all women take it in practice. They are also entitled to parental leave. Various forms of leave for mothers and fathers are in fact provided for in the Parental Leave Act. The report nevertheless states that the Parental Leave Act has been amended in order to bring the situation into line with Community Directive 92/85, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Thus, with effect from 1 July 2000, women will, in accordance with the directive, be obliged to take two weeks' leave, either before or after confinement.

The Committee recalls that the aim of Article 8 para. 1 is to ensure women have special protection in cases of maternity and to meet the general public health interest through the protection of mother and child. The period of 12 weeks of rest apportioned before and after confinement, is to be considered a minimum, as the text of the Charter itself states. The period of compulsory post-natal leave set at 6 weeks by the Committee (Conclusion VIII, p. 125) is also to be seen as a minimum period permitting no derogation. The Committee adds that even if in practice the majority of women enjoy post-natal maternity leave longer than the compulsory 2 weeks, this does not mean that all women enjoy post-natal maternity leave of 6 weeks. It considers it necessary that the relevant texts expressly provide for 6 weeks of compulsory leave after confinement.

The absence of 6 weeks' compulsory post-natal leave leads the Committee to conclude that the situation in Sweden is not in conformity with Article 8 para. 1 of the Charter on this point.

2. Right to adequate benefits

As Swedish legislation provides for virtually complete equality between mothers and fathers, there are no provisions specific to mothers.

In reply to the Committee's general question raised in Conclusions XIII-1, p. 172, the report indicates the parental benefit entitlement conditions. The benefit is paid for 450 days. Mothers may claim it for the 60 days prior to the presumed date of confinement, and one of the parents may claim up to the child's 8th birthday. Where both parents are looking after the child, they may divide between them the days in respect of which the benefit is paid, with the exception of the 30 days allotted solely to father or mother. In order to be entitled to this benefit, the mother or father must have been affiliated to the social security scheme for a continuous period of 180 days (around 6 months) prior to submission of the application. Mothers (or fathers) affiliated for 240 days receive the benefit at a higher rate. Periods of unemployment are taken into account for the calculation of entitlement.

The Committee asks that the next report give the conditions which apply to women working part-time.

Everyone who lives in Sweden is affiliated to the social security scheme. Parental benefit is thus paid to mothers or fathers, whether or not they are in work. The minimum rate of the benefit, paid to those not in work or in occasional work, is 60 Swedish Kroner (SEK) per day. Mothers or fathers in work whose income is greater than 8,800 SEK per year and have been affiliated to the social security scheme for a continuous period of 240 days receive a higher rate equivalent to sickness benefit, which is 80% of pay.

The Committee recalls that the closer benefits are to the previous salary, the more they maybe considered as satisfactory, and vice versa. It considers in the present case that the level of parental benefit is adequate.

Finally, in reply to a question from the Committee about the maximum rate of benefit, or ceiling, the report states, without specifying the rate, that 3.2% of all recipients of parental allowance in 1997 were women receiving the maximum rate, while 14.4% of all recipients were men being paid the maximum rate. It also states that there is no compensation for loss of earnings exceeding the ceiling. In order to be able to assess the situation, the Committee asks that the next report indicate the maximum rate of benefit.

In the meantime, the Committee defers its conclusion on this point.

[Article 8 — The right of employed women to protection; Paragraph 3 – Time off for nursing mothers]

Sweden's report again mentions the broad scope for extended leave and part-time work available to women following childbirth.

The Committee takes the view that this cannot be regarded as the equivalent of time off for nursing within the meaning of Article 8 para. 3, for the concept of "time off" implies that this is taken during work time.
It also points out that this time off, which counts as working hours, must be remunerated as such. Thus the absence of a guarantee of remuneration for time off for nursing is not in conformity with the requirements of the Charter.

The Committee notes from the Governmental Committee, 13th report (IV), p. 82, para 323, that a possibility exists for obtaining partial parental leave, for instance, two hours per day, the distribution of the leave being subject to agreement between the employer and the employee.

The Committee requests that the next report contain more detailed information on this possibility.
Meanwhile, it concludes that the situation in Sweden is not in conformity with Article 8 para. 3 of the Charter.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

Population's state of health - general indicators
Life expectancy and principal causes of death
The Committee takes note of the general indicators of the state of health of the Swedish population. It notes that life expectancy at birth increased significantly from 80.8 years in 1992 to 81.8 years in 1997 for women and from 75.4 years in 1991 to 76.7 years in 1996 for men. Life expectancy for men is higher in Sweden than in any other European OECD country.[109]

The Committee notes that the number of new AIDS diagnoses per year fell sharply during the reference period, from 192 in 1995 to 56 in 1998.

Infant and maternal mortality
The infant mortality rate in Sweden was lower than in the previous reference period, falling from 5.3 deaths per 1,000 live births in 1992 to 4 in 1996. The average maternal mortality rate, decreased from 5.3 deaths per 100,000 live births between 1998 and 1991 to 3.8 between 1993 and 1996.

Health care system
Access to health care
Health care in Sweden is available to the whole population. The health care system is funded through taxes, with each of the 25 general councils entirely financing its own medical services.

The health care system is split into primary, county and regional care. Primary care is the most important, comprising basic services such as child and mother health care centres, district health centres and care homes. Primary care is available in 288 municipalities. Hospital care is provided at county and regional levels.
In 1997, 8.6% of GDP was devoted to health expenditure. The proportion of health care funded by the state is constantly falling, but was still around 83.3% in 1997.

Patients pay part of the cost of out-patient medical and hospital care. Their contribution varies from 100 SEK to 140 SEK for a consultation, from 120 SEK to 250 SEK for specialist treatment and from 120 SEK to 300 SEK for emergency treatment. They pay a maximum of 80 SEK per day for hospital care. Dental care is free up to the age of 20, after which patients pay 1,300 SEK for a course of treatment.

Patients pay the full cost of medicines up to a maximum of 400 SEK per year, 50% of the cost between 400 SEK and 1,200 SEK, 25% between 1,200 SEK and 2,800 SEK, i.e. 400 SEK at the most, and 10% of the cost between 2,800 SEK and 3,800 SEK. In 1997 patients' contributions to the cost of medicines were limited to 1,300 SEK per year. Medicines are free for the chronically ill.

[109]OECD, *Health Data*, 1999.

According to OECD data, the average reimbursement rate for hospital care[110] fell from 99.5% in 1992 to 98% in 1997, whereas the average rate for pharmaceutical products rose from 70.6% in 1992 to 71% in 1997. The Committee observes that these rates are among the highest in European OECD countries. Meanwhile, the reimbursement rate for out-patient medical care fell sharply from 77.4% to 72%, which is about average for European OECD countries.

The Committee notes in the report under Article 4 of the Additional Protocol that there is a system of waiting lists for hospital care and primary care. A "care guarantee" was introduced in 1992 with the aim of reducing waiting lists and waiting times for access to hospital care. It applies to twelve different types of treatment which must be offered to a patient within three months. As from 1996, the care guarantee has been extended so as to include also access to primary care in order to guarantee that patients are able to contact primary care staff on the same day, to see a doctor within eight days and to see a specialist within four weeks after referral. The report states that waiting lists and waiting times were reduced, but the effect was of short duration and the county councils have difficulty in meeting the deadlines. Moreover, the care guarantee was criticised and several studies showed its insufficiency as far as patients with severe acute or chronic illnesses or terminal patients were concerned. An act came into force in 1997 laying down the guidelines for prioritisation in health care: human dignity, need and solidarity and cost-efficiency, in that order. It entails high priority for patients with serious or long-term illnesses and with reduced ability to make independent decisions and for terminal patients. A report evaluating the impact of this policy was drawn up by the National Board of Health and Welfare in 1999. The Committee would like to receive this report as well as any other relevant information on the management and the follow-up in respect of waiting lists for access to hospital care and primary care.

Health professionals and equipment
The number of hospital beds continued to fall, reaching 46,177 in 1997, only one-third of the number in 1975. Expressed in proportion to the population (5.2 beds per thousand inhabitants in 1997), this is one of the lowest among European OECD countries. The report states that this drop is the result of cost-cutting measures designed to promote outpatient care rather than overnight stays in hospital.

Psychiatric institutions accounted for 13.5% of all beds in 1997. The private sector continues to grow, with 23.6% of all beds compared to 6.5% at the beginning of the 1980s.

In 1995 there were 0.5 general practitioners per thousand inhabitants, a below-average figure for European OECD countries. The density of specialists, on the other hand, which was 2.2 per thousand inhabitants in 1996, is one of the highest, as is the density of dentists, which remained virtually unchanged from the previous reference period (0.9 per thousand inhabitants).

Conclusion
The Committee concludes that the situation in Sweden is in conformity with Article 11 para.1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility
The Committee noted in its previous conclusion that the main purpose of the National Institute of Public Health, a public body set up in 1992, is to provide health education for the whole population, targeting groups such as young people and teenagers. The Institute, which has ninety members of staff, supports local authority and independent public health initiatives, including in the education sector. Its tasks include monitoring developments in public health and drawing up prevention strategies, which might include promoting co-operation between the partners concerned. According to the previous report, the Institute's campaigns tackle the following areas: accident prevention, smoking, alcohol and drug abuse, sex education, especially AIDS prevention, promotion of healthy lifestyles and allergy prevention.

[110]The proportion of total expenditure usually paid by the state.

Previous reports indicate that health education is provided in all schools by class teachers and the school health services. The Committee would like more detailed, up-to-date information on the way in which health education is taught in schools and particularly whether there is a national health education syllabus, whether health education is taught at every level of school education and what financial resources are devoted to it.
The Committee would also like regular information on campaigns designed to inform the public about major public health issues in Sweden, on the partners involved, the means of action used and the budget devoted to this kind of prevention.

Conclusion
Pending receipt of the information requested, the Committee concludes that the situation in Sweden is in conformity with Article 11 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Establishment of parentage and adoption

The situation as regards adoption is satisfactory. Adoption orders must be made by the courts, the parent's consent must be obtained and no payment must be made or promised.

The Committee recalls that the guiding principle is that every child whether born of married, cohabitating or separated parents or parents who have never lived together, has the right to know his parents. In this respect it notes that a child born with the help of medically assisted reproduction techniques (donor insemination) is entitled, if it has achieved sufficient maturity, to be appraised of the particulars concerning the donor.

Children in public care and Protection of children against ill-treatment and abuse
The municipal social welfare committee is responsible for ensuring that children are not neglected or abused within the family. It may offer families in difficulty support and various types of assistance. It may also offer placement of the children away from the home. Parental agreement will be sought if possible. However, if agreement cannot be reached, the social welfare authorities can still intervene under certain conditions, with a care order. Care orders are made by the court and can be appealed.

The municipal social welfare committee may place a child in a foster family or in a children's home. Most children are placed in a foster family. The Committee wishes to receive information on the number of children taken into care and placed with a foster family or in an institution and on the types of institutions that exist. It also wishes to receive information on the number of children receiving support and assistance in the home.

The municipal social welfare committee and county administrative boards supervise foster families.
Institutions (residential homes) are supervised by the National Board of Institutional Care. The Committee wishes to receive information on the procedures available to children in institutions who wish to complain about the care or treatment in the institution. Further it wishes to receive details on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him.

According to the second Swedish report submitted under the United Nations Convention on the Rights of the Child,[111] if a child has been placed in care, normally legal custody remains with the parents although *de facto* custody devolves on the municipal social welfare committee. Legal custody may be transferred by court order if this is in the best interests of the child. According to the report, very few custody transfers of this kind actually occur.

If a parent fails to care for his/her child so that its health and development is at risk, the court may deprive the parent of custody.

The Code of Parenthood and Guardianship expressly provides that children may not be subjected to corporal punishment or other degrading treatment.

[111]CRC/C/65/Add. 3.

The Committee notes that the sexual offences legislation is currently under review. Changes to the law are being considered regarding the protection of young persons between the ages of 15 to 18 from being used for the production of pornographic images, and the recruitment of young persons for sex clubs. The Committee wishes to be kept informed of all development in this area.

Article 1 of the 1988 Additional Protocol — The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

The situation in law and in practice
The Committee refers to its general observation on Article 1 of the Additional Protocol (Conclusions XIII-5, pp. 255-257) and its conclusion for Sweden in that cycle of supervision.

With respect to vocational guidance and training, the Committee notes that according to Section 7 of the Equal Opportunities Act No. 433/1991, an employer shall, through training, skills development and other suitable measures, promote an equal distribution between men and women in various types of work and within different categories of employees. If the employer fails to comply with this, pursuant to Section 35 of the Act, the Equal Opportunities Commission may, at the petition of the Equal Opportunities Ombudsman, issue an order to the employer to fulfil the obligations, under penalty of a fine. It is not clear, however, whether the individual worker has recourse to legal action in matters of this kind. Recalling that states are obliged to ensure through legislation the right of workers to take legal action in matters covered by Article 1 of the Protocol, the Committee requests an explicit clarification on this point.

In its previous conclusion, the Committee noted that differences exist between part-time and full-time workers as regards possible entitlement to unemployment benefits and partial pensions and on those grounds raised the issue of possible indirect discrimination.

The Committee now notes that during the period 1995-1998, the proportion of women on the labour market was on average 48% and that of men 52%. During the same period, 83% of the part-time workers were women and 17% were men. From an appendix to the report,[112] the Committee notes that approximately twice as many women as men worked ”short” part-time in 1997 with a working time of less than 19 hours per week. Recalling that the benefit entitlements in question are contingent on a working week of at least 17 hours, the Committee notes that this in effect may operate to place women in a less favourable position than men. Noting that the Swedish report states that there are no statistics on the proportion of part-time workers who do not qualify for benefits, the Committee underlines the importance of this point and insists on finding this information in the next report.

In general, wage differentials between women and men have not decreased during the 1990s according to a Government circular (1999/2000:24) appended to the report. In 1997, women earned on average 83% of male wages. There were less differences in the private sector than in the public sector, with female workers in the private sector on average earning 89% of male wages. The most important wage differentials were to be found in the administration of the provinces (landsting) where female wages were only 71% of male wages. However, if the level of education, profession and age factors are taken into consideration, women on average earned 93% of male wages. The Committee takes note of the extensive measures taken by the Swedish Government to improve the situation. As regards differences in terms of employment and working conditions between women and men, an appendix to the report shows that current research is concerned with tools from an ergonomic perspective. The National Institute for Working Life will run a research project on ”Gender, Employment and Health” which is expected to continue for four or five years. The Committee asks to be kept informed of the results.

The Committee takes note of the information provided in the report on the conditions for being accepted to the police force, the fire and rescue services and the army. It also takes note of the figures supplied on the proportion of women employed in these services (17% of the police force, 0,1% of the part-time fire-fighters, 0,16% of the full-time fire-fighters, 2,4% of regular army officers and 0,7% of reserve officers). According to the report, the physical

[112]Women and men in Sweden, facts and figures 1998, Statistiska Centralbyrån, 1998.

demands are very exacting in the fire and rescue services and few women can meet them. However, work is in progress with a view to possibly altering the municipal rules of admission so as to facilitate the recruitment of women.

Positive action
The Equal Opportunities Act requires every employer to conduct, within the scope of the business operation concerned, target-referenced activities for the active promotion of equal opportunities at work. In addition, every employer with 10 or more employees shall draw up an annual plan of equal opportunities promotion. The plan shall chart conditions at the workplace and shall also include concrete targets and guidelines with respect to working conditions, recruitment, training, and competence development and pay questions. The Equal Opportunities Ombudsman monitors the drafting of equal opportunities plans.

Conclusion
Pending receipt of the information requested on the proportion of female/male part-time workers who do not qualify for unemployment and pension benefits, the Committee again defers its conclusion.

Turkey

[Article 7 — The right of children and young persons to protection; Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Turkish report indicates that the duration of compulsory schooling was extended in 1997 and is now eight years, i.e. until the age of 14. Children of compulsory school age are not permitted to work as apprentices or register with the Turkish Employment Agency. The Committee notes that this is an improvement of the situation. However, the Committee observes that no amendments were made to the Labour Act No. 1475 of 1971. While the Act prohibits the employment of children under the age of 15 years, it does not apply throughout the economy. In particular, firms with less than three workers and the agricultural sector, where the employment of children is most frequent, are beyond the scope of the legislation. The report recalls that workplaces not subject to the Labour Act are governed by the Act on the Protection of Public Health, Section 173 of which prohibits the employment of children under the age of 12 years. The Committee has consistently held this situation not to be in conformity with the Charter.

The Committee concludes that the situation in Turkey is not in conformity with Article 7 para. 3 of the Charter since children subject to compulsory schooling may nonetheless be employed in certain sectors of the economy, and since, during the reference period, a substantial number of such children were employed and therefore denied the benefit of their education.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information contained in the Turkish report and in the 1996 report of the European Observatory on Health Care Systems.[113]

State of health of the population – General indicators

Life expectancy and principal causes of death
The Committee notes from OECD figures[114] that life expectancy at birth has risen (1.1% variation between 1993 and 1997) on a par with other Contracting Parties to the Charter and the revised Charter (hereafter, Contracting Parties) and in 1997 stood at 70.8 years for women (as compared with 69.8 in 1993) and 66.2 for men (as compared with 65.1 in 1993). These levels remain the lowest among Contracting Parties.

[113] Health Care Systems in Transition profile (Observatory website: www.observatory.dk)
[114] *OECD Health Data*, 1999.

According to the report, heart diseases are the main causes of death (41% in 1995) followed by cancer (10.8%). 8.4% of deaths are due to unspecified causes, 5.4% to perinatal mortality and 1.6% to pneumonia. Enteritis, diarrhoeal diseases and typhoid fever are significant causes of death in comparison with other Contracting Parties. According to the Government this is mainly explained by the lack of hygiene and the poor supply of drinking water. The Committee observes that, according to the OECD, the results achieved by Turkey in the field of health are significantly worse than in many other countries with a comparable income level.

The Committee wishes to be given information on new cases of infection with the HIV virus and AIDS (morbidity) and deaths due to AIDS (mortality).

Infant and maternal mortality

The Committee points out that it previously concluded that the situation was not in conformity with Article 11 para. 1 as the measures undertaken were clearly inadequate to reduce the infant and maternal mortality rate and that the Committee of Ministers of the Council of Europe addressed a recommendation to Turkey on this matter (Recommendation No. R ChS (98) 4) to put pressure on the Turkish Government with a view to accelerating the process of bringing the situation into conformity with the Charter.

The report states that reduction in perinatal, infant and maternal mortality rates is a priority in public health policy and that the Turkish government has set itself the following objectives for the period 2001-2005: to bring down the infant mortality rate to 20 per 1,000, the under-5 mortality rate to 30 per 1,000 and to bring about a 40% reduction in the maternal mortality rate. The report refers to measures taken to improve the health of children and mothers: neonatal intensive care unit programme, health monitoring of children from birth, monitoring of acute respiratory infections and diarrhoeal diseases, accelerated immunisation programme, breast-feeding promotion programme, family planning programme to inform the population about contraception and responsible procreation etc. Priority is given to information campaigns in rural areas and the eastern part of the country. Efforts have also been made with regard to facilities and the training of health-care staff.

According to OECD figures, the infant mortality rate has continued its downward trend during the reference period, falling from 49.3 deaths per 1,000 live births in 1993 to 38.2 in 1997. According to UNICEF figures,[115] the under-five mortality rate (U5MR) was 42 per 1,000. These figures are by far the highest among the Contracting Parties (infant mortality ranged between 4 and 21 and the U5MR between 4 and 24 in 1998). According to OECD, there are still significant regional disparities and the infant mortality rate is much higher in eastern Turkey.[116]

The Committee does not have recent figures on maternal mortality and points out that according to the previous report it stood at 100 deaths per 100,000 births in 1992-1993. According to UNICEF figures, the maternal mortality rate in the other Contracting Parties ranged between 0 and 50. The Committee also notes that the proportion of births attended by qualified medical staff was estimated at approximately 80% during the 1990s. In the other Contracting Parties, this proportion was between 98 and 100%.

Health-care system

Health care is mainly provided by the public sector, and to a much lesser degree by the private sector. Health care under the public system is free. Primary health care provided by public health centres is based on patients charges and public hospital care is in principle free of charge. Those affiliated to a social security fund are entitled to reimbursement of all or part of the costs incurred for care in the private sector. A system of "green cards" has been introduced to ensure free access to certain forms of care and reimbursement of the cost of pharmaceutical products to persons on low-incomes, that is 8.5 million people during the reference period.

The public sector is the main provider of hospital care, given primarily by the hospitals coming under the Social Security Institute (SSK), and university and military hospitals funded by the general budget. Hospitals are concentrated in the country's three cities.[117] The number of private hospitals has risen and in 1997 accounted for

[115] UNICEF, *the State of the World's Children*, 2000.
[116] *OECD Economic Surveys*: Turkey, 1999.
[117] *OECD Economic Surveys:* Turkey, 1999.

5.2% of the total number of beds, which rose from 2.1 beds per 1,000 inhabitants in 1990 to 2.5. This figure is still very low compared with other Contracting Parties and falls below the objective laid down by the World Health Organisation (WHO) for developing countries (3 beds per 1,000). Moreover, according to the OECD, 10% of the population live in provinces where there is only 1 bed per 1,000 inhabitants.

The public sector is also the main provider of primary health care. The majority of doctors work partly in the public sector, attached part-time to an SSK hospital, and work simultaneously in a private capacity (in 1996, 15% of doctors worked exclusively in the private sector). Turkey has 1.2 doctors (general practitioners and specialists) per 1,000 persons, significantly less than the average in the OECD countries (2.7 per 1,000). Half of the general practitioners and a larger proportion of specialists are to be found in the three cities. Rural areas are catered for by public health centres which provide primary health care and preventive services. The Committee notes that the proportion allocated to public health centres out of total health expenditure has fallen since the last reference period, from 7% in 1992 to 3% in 1996.

According to OECD figures, total health expenditure remains significantly lower than in other Contracting Parties, in terms of both GDP (4% in 1997 as compared with 3,8% in 1992) and inhabitants (61 euros per inhabitant in 1996). The proportion of public expenditure out of total health expenditure has risen and accounted for 72.8% in 1997 (as compared with 67% in 1992), which compares with other Contracting Parties. Approximately one third of total health expenditure is financed by taxation, one sixth by insurance premia and half by patients' direct payments. The Committee notes that there are long waiting lists for access to ambulatory treatment (general medicine as practised in town) and hospital care even though the percentage of empty beds is very high (around 40%). According to the OECD, this is because, in response to budgetary constraints, each social security fund is attempting to limit its expenditure by means of care-provision contracts, using a limited number of public hospitals, doctors and pharmacists and, in the case of the SSK, by limiting its expenditure in its own hospitals.

The Committee noted in previous reports and in the statements of the Turkish representative on the Governmental Committee that the Turkish government was aware of these shortcomings and that a consensus had been reached on the need to introduce a thorough reform of the health-care system. The main aspects of the reform (primarily universal coverage) were set out in the outline plan for the health sector drawn up by the Planning Office in 1990 and in the planned health reform presented by the Ministry of Health in 1992. However, the Committee has no information on progress in the reform of the health-care system.

Conclusion

While acknowledging an improvement in certain indicators on the health of the population, in particular infant mortality, the Committee considers that the manifestly inadequate budget for health care and the inadequacy of equipment and health personnel do not guarantee access for the population, notably children, to health care of a satisfactory quality in the whole country.

The Committee concludes that the situation in Turkey is not in conformity with Article 11 para. 1 of the Charter.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities]

Encouragement of individual responsibility

Health education in schools

The report states that various programmes have been run during the reference period to promote health education in primary schools (School and Environment, Education of Girls, Education from Child to Child, etc) on a variety of subjects such as nutrition, family planning, diet, hygiene and the environment. A book entitled "Facts for Life" has been translated into Turkish and included in primary school curricula. Information on AIDS prevention is given in text books. The fight against drugs is also touched upon in primary and secondary schools. The Committee wishes to know whether health education is given in all schools in each province and whether teachers receive specific training for this.

Turkey is taking part in the European Network of Health-Promoting Schools, set up by the Europe office of the World Health Organisation (WHO), the European Commission and the Council of Europe, and which began in 1995. Only 25 schools in 22 provinces are involved, though.

The Committee wishes the next report to contain information on any progress made towards providing health education throughout schooling and to cover at least the following topics: combating smoking, alcohol and drugs, promoting a healthy diet, sex education, including the prevention of sexually transmitted diseases.

Public information and awareness-raising

The report states that information campaigns have continued on family planning, contraception, infant and child health – focusing in particular on the prevention of diarrhoeal diseases, respiratory diseases and tuberculosis, and the promotion of a healthy diet – and the health of pregnant women, women having recently given birth and nursing mothers. The Committee notes that all the documents drafted by the World Health Organisation on women's health have been translated into Turkish and that several guides have been made available throughout the country. A mother and child education programme has been in operation since 1993 in conjunction with UNICEF. However, in the period between 1993 and 2000 this was attended by only 5,523 mothers in 60 provinces.

Counselling and screening services

Mothers and children

Antenatal care is available for all women. According to the report, on average 67% of future mothers are given antenatal care (ranging from 38.1% in the eastern regions to 85.5% in the western regions). Checks on newborn babies and children up to the age of 6 are carried out. Preventive and monitoring checks on mothers and children are carried out at the 220 mother and baby clinics and at family planning clinics, of which there are some 3,000 (figures cover the period 1990-1991). The Committee wishes to know what types of antenatal examinations are available to all women in the public-sector facilities.

The Committee noted in its previous conclusions that general medical check-ups in schools had first begun in 1990. During the school year 1992-1993, 1.8 million pupils – the population under 15 years of age is around 20 million – were given a general medical check-up. Subsequently, on average 2.2 million pupils were given this check-up each school year. According to the report, this check-up covers general health (eyes, allergies, ear/nose/throat, orthopaedics, tuberculosis, etc), and mouth and dental health in particular. The Committee asks whether these items are systematically covered during each check-up and what is the frequency of medical check-ups during schooling.

Rest of the population

Home visits are carried out twice a year by medical staff to women between the age of 15 and 49. Screening campaigns for tuberculosis, including mobile screening and x-ray units, are carried out among the population at risk. There are also AIDS screening centres and centres for further tests.

The Committee would like to know the list of screening programmes which may be carried out at each public health centre.

Conclusion

The Committee notes that several measures have been taken to improve information on the health of mothers and children. However, the Committee does not consider it is in a position to assess Turkey's compliance with Article 11 para. 2 of the Charter with regard to most of the other aspects of this provision. Pending receipt of the information requested, it once again defers its conclusion.

[Article 14 — The right to benefit from social welfare services; Paragraph 1 – Provision or promotion of social welfare services]

Women's shelters offering accommodation as well as counselling, educational possibilities and rehabilitation for women victims of violence exist in seven major cities with a total capacity of 154 places.

[Article 17 — The right of mothers and children to social and economic protection]

Children in Public Care
The Committee wishes to be informed as to whether there is any body responsible for monitoring care in institutions, and whether there is any specific procedure for complaining about the care and treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity, and right to meet with persons close to him.

Protection from ill-treatment
Where parents fail to fulfil their obligations towards their children, neglect or ill treat them the courts may implement a range of measures, for example appoint a counsellor, remove the child or withdraw guardianship. The Social Services and Child Protection Agency are *inter alia*, responsible for the protection of ill treated children or children at risk of such treatment. The Committee wishes to receive further information on how the services for the detection and protection of children from ill-treatment are organised throughout the country.

The Turkish Penal and Civil Codes have provisions for the protection of children from physical and mental abuse, exploitation and other similar treatment by their parents. The Committee wishes to receive further information on these, especially national case law. In particular the Committee wishes to know whether legislation prohibits all forms of corporal punishment of children in the home, in institutions, in schools and elsewhere.

Maternal welfare
The Committee previously asked how the government planned to extend economic assistance before and after childbirth to women not covered by labour legislation. It also requested information on special financial support for single mothers. As the report does not address these issues, the Committee requests that the next report under Article 16 provide the relevant information.

Children and the law – Young Offenders
The minimum age for marriage is 18 years. This may be reduced in certain circumstances. The minimum age for marriage with parental consent is 17 years of age for males and 15 years for females. A judge may permit the marriage of a 15-year-old male with a 14-year-old female for important reasons and under exceptional circumstances. The Committee finds the ages of 14 and 15 years for marriage to be low and wishes to receive the Governments comments on this.

United Kingdom

[Article 7 — The right of children and young persons to protection*;* Paragraph 3 – Safeguarding the full benefit of compulsory education]

The Committee takes note from the report of the United Kingdom of the legislative amendments made during the reference period, in particular the Children (Protection at Work) Regulations 1998 and the Employment of Children Regulations (Northern Ireland) 1996.

Situation in Great Britain
The Committee recalls that it has previously held that children should not be permitted to do any kind of work before going to school in the morning (Conclusions VIII, p. 108) as such work may deprive them of the full benefit of their compulsory education. However, in the light of the restrictions applying (a maximum of one hour before school, not before 7 a.m., not in an industrial undertaking), the Committee wishes to know how these are supervised and it also asks to be informed of the nature and extent in practice of early morning work before school. Pending receipt of this information, the Committee reserves its position on this matter.

A mandatory rest period of 2 weeks during the summer holidays now applies to employed children. The Committee takes note of this improvement in the situation, but considers that this period of rest is insufficient. The Committee considers that the main purpose of school holidays is to let children rest in order to benefit from school after the

holiday. It refers to its case-law that the rest period must cover at least half of the holiday period for children still subject to compulsory education. This not being the case in the United Kingdom, the Committee finds that the situation is not in conformity with Article 7 para. 3 of the Charter.

Conclusion
The Committee concludes that the situation in the United Kingdom is not in conformity with Article 7 para. 3 of the Charter because the mandatory rest period during the school holidays for children still subject to compulsory education is not sufficient to ensure that they may benefit from such education.

[Article 7 — The right of children and young persons to protection; Paragraph 10 – Special protection for children and young people from physical and moral dangers to which they are exposed]

The Committee wishes to be informed as to whether legislation prohibits the use of children in the sex industry, and to receive information on any supervisory system and sanctions that may accompany this prohibition.

The Committee concludes that the situation in the United Kingdom is in conformity with Article 7 para. 10 of the Charter.

[Article 8 — The right of employed women to protection; Paragraph 1 – Maternity leave]

1. Entitlement to maternity leave
The report states that the regulations on maternity leave have been amended and that, since 15 December 1999, outside the reference period, the 14 week ordinary maternity leave has been extended to 18 weeks for all employees, including policewomen, regardless of length of service (*the Maternity and Parental Leave Regulations, 1999*). Of these 18 weeks, only 2 weeks have to be taken after the birth of the baby. For women factory workers this compulsory leave period lasts 4 weeks.

The report states that the 2 weeks' post-natal maternity leave are in line with the requirements of Community Directive 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. It also maintains that, in practice, where a woman is entitled to the basic 18 weeks' ordinary maternity leave, she starts her maternity leave 11 weeks before the expected date of childbirth and has 7 weeks after the birth of the baby. It states, finally, that it is for women to decide how to use their maternity leave and when to return to work after the birth.

The Committee recalls that the aim of Article 8 para. 1 is to ensure women have special protection in cases of maternity and to meet the general public health interest through the protection of mother and child. The period of 12 weeks of rest, apportioned before and after confinement, is to be considered a minimum, as the text of the Charter itself states. The period of compulsory post-natal leave set at 6 weeks by the Committee (Conclusion VIII, p. 125) is also to be seen as a minimum period permitting no derogation. The Committee adds that even if in practice the majority of women enjoy post-natal maternity leave longer than the compulsory 2 weeks, this does not mean that all women enjoy post-natal maternity leave of 6 weeks. It considers it necessary that national law expressly provide for 6 weeks of compulsory leave after confinement.

Consequently, in the absence of a compulsory period of 6 weeks' post-natal leave, the Committee concludes that the situation in the United Kingdom is not in conformity with Article 8 para. 1 of the Charter on this point.

2. Entitlement to adequate allowances
The Committee notes that the report makes no reference to any significant change in a situation which it has considered to be in breach of the Charter since the XI supervision cycle.

It recalls that, in the United Kingdom, women are entitled to statutory maternity pay (SMP). They must have worked for their employer for at least 6 months before the 15th week preceding the birth and have had average earnings in the 8 weeks preceding the 15th week before the birth such that they were paying national insurance contributions. During the first 6 weeks this maternity pay, which is not subject to any ceiling, is payable at 90% of the woman's average earnings (subsequently at a rate of 57.70 GPB per week (in 1998).

Women who do not satisfy the SMP qualifying conditions can receive maternity allowance for 18 weeks if they have worked and paid national insurance contributions for at least 26 weeks during the 66 weeks preceding the expected date of childbirth. There are two rates of maternity allowance: 57.70 GPB per week (in 1998) if the beneficiary was gainfully employed in the reference week for entitlement to the allowance; 50.10 GBP per week (in 1998) if the beneficiary was not working or was self-employed in the reference week for entitlement to the allowance.

The Committee asks if periods of unemployment are reckoned as working time for the granting of maternity allowance.

Finally, a woman who does not satisfy the conditions either for SMP or for maternity allowance is entitled to sickness benefit (amounting to 57.70 GBP per week) for six weeks before the birth and for fourteen days after.

The Committee again notes that the SMP is paid at an adequate rate (90% of the previous earnings) for only six weeks. Furthermore, a weekly allowance of 57.70 GBP (SMP or maternity allowance) paid for the following twelve weeks or for eighteen weeks cannot be considered adequate. The Committee recalls in this connection that in April 1999 the minimum wage was set at 144 GBP per week.

The Committee concludes therefore that the situation in the United Kingdom is not in conformity with Article 8 para. 1 of the Charter on this point.

[Article 11 — Right to protection of health; Paragraph 1 – Removal of the causes of ill-health]

The Committee takes note of the information in the United Kingdom report on the Charter, on the National Health Service (NHS) Internet site[118] and in the 1999 report of the European Observatory on Health Care Systems.[119]

State of health of the population – General indicators

Life expectancy and principal causes of mortality

The Committee observes from the OECD statistics[120] that life expectancy at birth has risen from 78.9 years in 1992 to 79.5 in 1996 for women and from 73.4 in 1992 to 74.3 in 1996 for men. Eurostat statistics[121] show that women's life expectancy in the United Kingdom is below the average for the countries of the European Union and the European Economic Area (the European average was 80.6 in 1996).

The Committee notes that the number of AIDS cases diagnosed halved over the reference period, from 1,740 cases in 1995 to 81 in 1998.

Infant and maternal mortality
According to the OECD statistics, the infant mortality rate in the United Kingdom continued to decline: from 6.6 per thousand live births in 1992 to 5.9 in 1997. The Committee observes that the rate remains higher than the average of the countries of the European Union and the European Economic Area (5,3 in 1997). It emphasises that infant mortality is an avoidable risk which States must control in order to comply with Article 11 of the Charter. It indicates to the British authorities that the evolution in the infant mortality rate will be central to assessing the conformity of the situation and it encourages the authorities to pursue its efforts to approach as close as possible to "zero risk".

The average maternal mortality rate remained stable in relation to the previous reference period.

Health care system

[118]www.nhsdirect.nhs.uk
[119]Health Care Systems in Transition Profile (www.observatory.dk).
[120]OECD Health Data 1999.
[121]Eurostat yearbook, *A statistical eye on Europe,*1988-1998 data.

Access to health care

The British health system offers universal, free and uniform health coverage. Nearly all care is provided under the NHS.

General practitioners, who are paid directly by the NHS, have a central role. In particular, it is they who direct patients towards specialist services. Under the 1991 reform, governed by the NHS and Community Care Act, health authorities and certain general practitioners, known as fund holders, were given responsibility for managing budgets for purchasing health services, to introduce competition between hospitals and clinics, which are grouped together into hospital trusts. In the 1997 white paper, *The New NHS, Modern, Dependable*, the incoming government launched a new approach based on collaboration between service purchasers and providers rather than competition. One of the main reforms to stem from this approach is the requirement for general practitioners to belong to primary health groups.

NHS financing mainly comes from taxes (84%).

According to the aforementioned OECD statistics, total health spending has remained stable since the last reference period, representing 6.9% of GDP in 1997. The proportion of health spending accounted for by the public sector also remained stable and was 84.6% in 1997.

Patients are not required to make any contribution to medical or hospital costs. For dental care under the general dental service, patients pay for 80% of the cost of treatment, up to 340 pounds sterling (GBP), but certain groups (pregnant women, young persons aged under 18 and persons in receipt of social assistance allowances) are exempt from payment. There is a charge of 5.80 GBP for prescribed medicines, again with exemptions for certain groups, in particular pregnant women, mothers with children under one year, persons aged over 60, young persons under 16 and persons in receipt of social assistance allowances, and for persons suffering from certain conditions.[122]

According to the OECD statistics, the average "reimbursement" rates for out-patient medical care, hospital costs and pharmaceutical products, respectively 88%, 99% and 90% in 1997, are among the highest in the OECD's European countries.

Waiting lists for hospital admission and appointments with specialists are a structural feature of the British health system, as a consequence of the fact that services are free. The Committee notes from another source than the report[123] that in England between 1990-1991 and 1995-1996 the average waiting time for admission to hospital increased from 35 to 45 days while the percentage of patients admitted after waiting for more than a year fell from 20% to 3%. In 1997, 74% of patients were admitted within 3 months and 87% were admitted within 6 months. In 1997 the new Government set itself the objectives of ensuring that waiting time in no case should exceed 18 months and in a second phase, 12 months, and that the total number of patients on waiting lists should be reduced. According to the above-mentioned report of the European Observatory on Health Care Systems, none of these objectives were attained during the reference period. On the contrary, the number of patients on waiting lists continued to increase. As regards waiting lists for an appointment with a general practitioner, the proportion of persons having obtained an appointment within 13 weeks diminished from 83% to 77% from 1997 to 1999. The total number of persons having waited more than 26 weeks for an appointment with a general practitioner nearly doubled from 1997 to 1999.

The Committee is aware that the fact that waiting lists are getting longer has more than one cause and may in particular reflect growing demand and expectations of the population. However, the Committee notes that the duration of waiting times is long in absolute terms, that the situation is not improving and that simultaneously the number of hospital beds continues to decrease (see below). It considers that on the basis of these data, the organisation of health care in the United Kingdom is manifestly not adapted to ensure the right to health for everyone. Nevertheless, before pronouncing itself on compliance with Article 11 para. 1 and referring to

[122]European Commission, *Social protection in the Member States of the European Union, situation on 1 July 1999 and Overview*, Missoc

[123]Research paper 99/60, House of Commons, Hospital waiting lists and waiting times.

Recommendation No. R Chs (99)21 of the Committee of Ministers of the Council of Europe on criteria for the management of waiting lists and waiting times in health care, the Committee requests information on the way in which waiting lists are managed (admission criteria and follow-up). The Committee underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life.

Health professionals and equipment
According to the OECD statistics, the number of hospital beds continues to fall (264,500 in 1996, compared with 310 500 in 1992), and at 4.5 per thousand population, bed density is one of the lowest among the OECD's European member countries. Of the total number of beds, 45.4% are in acute hospitals and 20% are allocated to psychiatric care. Private hospital beds accounted for 3.7% of the total in 1993.

The total density of doctors, general practitioners and specialists per 1,000 population is one of the two lowest in the European OECD countries (1.7 in 1996). The same applies to the density of general practitioners per 1,000 inhabitants (0.6 in 1996). The Committee notes that this situation is not compensated for by a higher rate of hospital posts. The density of dentists (0.4 per 1,000 inhabitants) is around the European average and the number of pharmacists (0.6 per 1,000 inhabitants is one of the lowest.

Conclusion
Pending receipt of the information requested, the Committee defers its conclusion.

[Article 11 — Right to protection of health; Paragraph 2 – Advisory and educational facilities

Developing a sense of individual responsibility

Health education in schools
The Committee has noted in previous reports that health education is part of the school curriculum and entails co-operation between teachers, school health staff and, sometimes, parents, and between local authorities and health services. The areas covered include, in particular, the prevention of smoking, alcohol misuse and drug taking, dental hygiene and healthy eating, and AIDS prevention.

Public information and awareness
Campaigns to inform and educate the public in general or specific target groups are regularly conducted in England and Wales by the Health Education Authority. Throughout the country, the information and public awareness strategy is based on a multidisciplinary approach involving local authorities, employers, schools, NGOs, the media and health services. The Committee particularly notes the sustained efforts to prevent drug abuse, smoking and alcohol misuse, encourage physical activities and prevent the spread of AIDS. It also notes that a telephone line, *NHS direct*, and a Web site, *NHS Direct On-line*, enable people to obtain general and specialised information and advice on health matters, twenty-four hours a day. Finally, the Committee notes the establishment of the Good Start programme for parents on their children's health.

Consultations and health screening
There are medical staff, either a doctor and nurse and just a nurse, in every school. School nurses monitor children's health and development from the age of five through hearing and eyesight tests and by measuring their height and weight. They are responsible for health promotion in schools, offer children and young persons health care and advice and are trained in specific aspects of juvenile health, such as sexuality, allergies and asthma. Pupils are then encouraged to initiate consultations themselves with the school doctor or nurse. Dental examinations are carried out annually on all school-age children and vaccinations are also administered in school.

The Committee asks whether childcare services offer paediatric consultation for children from birth up to school age.

Conclusion
The Committee concludes that the situation in the United Kingdom is in conformity with Article 11 para. 2 of the Charter.

[Article 17 — The right of mothers and children to social and economic protection]

Children in public care and protection from ill-treatment
Programmes entitled "The Quality Protects Programme" and the Social Services White Paper "Modernising Social Services" (both launched in 1998) set out eight social services objectives for children. They aim to make explicit what is in the Children Act and help to strengthen some of the planning provisions under the Act. The objectives include *inter alia*, to ensure that children are protected from emotional, physical and sexual abuse and neglect (significant harm). They focus on working with the most vulnerable children, for example children in public care. Extra money has been made available by the government to local authorities in order to enable them to improve the situation of the children in their care.

The Government has issued during the reference period revised guidance on how all agencies with child protection responsibilities – social services, the National Society for the Prevention of Cruelty to Children (NSPCC), police, health, education, probation and the voluntary sector should work together (Working Together to Safeguard Children). It sets out the role and responsibilities of different agencies and practitioners; outlining the way in which joint working arrangements should be agreed, implemented and reviewed through the mechanism of Area Child Protection Committees.

Children who have been ill treated or neglected, or who are at risk of serious harm, may be the subject of certain orders laid down in the Children Act 1989 such as care and supervision orders, emergency protection orders, etc. They may if removed from their family, be placed with a foster family, in residential care, lodgings or residential employment.

The Committee notes from the information provided in the report that out of 11 million children and young people under 18 years of age in England, approximately 350,000 are estimated to be in contact with social services and approximately 50,000 are looked after by local authorities (in public care). Of the 50,000 in care approximately 65% are placed with foster families, 13.5% are placed in children's homes and 4-5% are adopted.

According to the report, between 1994 and 1998, there was an 8% increase in the number of children in the care of local authorities. However, the number of children in residential care declined, while the number of children placed with foster parents, for adoption or placed with their parents on care orders increased.

The Committee wishes to continue to receive the above type of information for each reference period. It also wishes to receive similar information on the situation of children looked after by local authorities in Northern Ireland and Scotland.

The Committee recalls that the situation of children in residential care in England and Wales has been a matter of ongoing concern. Several reports and enquiries have taken place over the years. In 1997, the Government published the Review of the Safeguards for Children Living Away from Home, which had been conducted following reports of widespread abuse of children in care. The report revealed a "woeful tale of failure at all levels to provide a secure and decent childhood for some of the most vulnerable children", elementary safeguards were not in place or not enforced and many children in residential care were harmed. The report made 20 principal recommendations, in order to, *inter alia*, improve protection for children in foster and residential care, in schools and in the penal system; provide more effective avenues of complaint and to increase access to independent advocates. In 1998, the British Government published its response, the Children's Safeguards Review. In this response, it states that it will, *inter alia*, establish new regulatory bodies to regulate children's homes, independent fostering agencies, and local authority fostering services. The Committee notes that regulations have already been introduced which restrict the opportunities for those with criminal records for offences against children to be employed or considered for fostering or work in certain settings with children.

The Committee wishes to receive information on any new regulatory bodies. It also wishes to be informed whether there is any specific procedure for children to complain about care and treatment in institutions and on the conditions under which an institution may interfere with a child's property, mail, personal integrity and right to meet with persons close to him.

The Committee wishes to receive copies of any reports on local authority services for children carried out by the Social Services Inspectorate over the next reference period.

The Committee notes that most children leave care at 16 years of age, and that this has been an issue of some concern, as it is known that "the future of these children is precarious". [124]It notes that the Government undertook to introduce new measures to ensure that young people only leave care when ready to do so and to improve their life chances. The Committee wishes to be informed of these measures.

As regards corporal punishment, the Committee notes that it was prohibited in private schools by the School Standards and Framework Act 1998, with the result that corporal punishment is now prohibited in all schools. The Committee wishes to be informed whether legislation prohibits corporal punishment in other institutions caring for children. It notes that not all forms of corporal punishment are prohibited within the family. The Committee refers to its general observations on Article 17 in the General introduction and decides to defer its conclusion on this point pending more information from the British Government on the situation and on its intentions in this regard. It also wishes to receive information on the situation in Northern Ireland and Scotland.

[124]Review of the Safeguards for Children Living Away from Home, 1997.

E) Social Charter Monographs

Human Rights Social Charter Monographs - No.2 - Women in the Working World: Equality and Protection Within the European Social Charter

Social Charter Monographs describe the case-law of the European Committee of Social Rights by looking at the various supervision cycles. Social Charter Monograph No. 2 is a study of women in the working world, which covers equality between women and men in the employment field, the protection of working women who become mothers, and special protection for other working women in general. It is based upon an examination of the relevant rules laid down by the Charter in the light of the case-law (supervision cycles) of the Committee of Independent Experts. This Monograph was prepared as a contribution to the Fourth World Conference on Women, organised by the United Nations (Beijing, 5-15 September 1995). Included in this compilation are only the parts of the monograph that deal with reproductive and sexual health issues (footnotes have been omitted).

II. Special protection for working women who become mothers

72. The right of working women to protection is enshrined in Article 8 of the Charter. The first three paragraphs relate to the protection granted in the event of maternity,' namely: maternity leave, with appropriate payments (B); prohibition of dismissal during a set period (C) and time off for nursing mothers (D). Each aspect of this protection deserves to be dealt with separately, but certain rules are common to these protective provision as a whole (A).

A - The common rules applying to every aspect of this protection

73. These apply to the beneficiaries of this protection and to the requirement for legislation.

a. Beneficiaries of this protection

74. Three categories have been defined: women wage-earners; all working women who become mothers;
all working women who become mothers in the light of the Appendix to the Charter.

1. *Women wage-earners*

75. In the very first supervision cycle, "*Article 8 was interpreted by the Committee as applying solely to*
women in paid employment, and not to self-employed women". It explained the reasons for this: "*This interpretation is based on the following:*
- regarding all four paragraphs making up the article, on the expression 'employed women' used in the English text of the first sentence of the article,
- regarding more especially paragraphs 2 and 4, on the use in their text , of the word 'employer' or 'employment', which is fairly conclusive". This interpretation has always been confirmed.

2. *All employed women who become mothers*

76. It is the definition of beneficiaries which poses most problems for the Contracting Parties, for certain categories of employed women are frequently excluded from one or the other (or from all) of the protective provisions relating to maternity. The Committee did not, at the outset, expressly state this principle, but as Article 8 is not subject to the provisions of Article 33, 7 the Committee

has since the very first supervision cycle referred to "*expectant mothers in paid employment*". The Committee has given clear indications subsequently that no exception can be allowed; this is stated in every volume of Conclusions.

77. The Committee has felt the need to emphasise in this context one difference between the Charter and ILO Convention No. 103 (maternity protection) , Article 7 of which allows a number of exceptions: the Committee criticised one state which excluded from the application of Article 8 para. 2 household workers and domestic employees, commenting that: "*in order to justify these shortcomings, the Government again referred to ILO Convention No. 103, which is included in the form after this provision, in justification of its attitude*. *The Committee was unable to accept this argument since the Convention is referred to with the sole aim of helping governments to prepare their biennial reports without any suggestion that the personal and material scope of Convention No. 103 is the same as the Charter's. Moreover, the text of Article 8 clearly demonstrates that no limitation of the personal scope of its provisions is admissible and that its paragraph 2 is not among the provisions in the Charter in respect of which Article 33 authorises some of the beneficiaries to be excluded*." Consequently, when a state which has accepted Article 8 has taken advantage of the opportunities for permitted exceptions
when ratifying ILO Convention No. 103, the Committee makes sure that the working women thus excluded do enjoy protection in line with that guaranteed by the Charter.

78. The categories most frequently excluded are household workers and domestic employees, but exclusion may affect other categories, or be linked to length of service, etc. The first procedure relating to certain provisions which have not been accepted related *inter alia* to paragraphs 1 and 2 of Article 8. It was found that the main difficulty experienced by states in accepting these provisions was the exclusion of various categories of working women. The Committee strictly insists that there be no exceptions whatsoever and allows no exclusion, even if the number of women concerned is very small. Furthermore, as the payments intended to enable women to take maternity leave are very often social security benefits, the Committee has turned its attention to the conditions on which maternity benefits are granted and raised a general question on this subject under Article 8 para. 1:

> "*The Committee asked all states which have accepted Article 8 para. 1 to indicate in their next report under this provision if the payment of maternity benefits is subject to conditions as to the length of affiliation to a social security insurance scheme, a specified period of occupational activity or of employment with one or more employers (indicating whether periods of unemployment are counted as working time for this purpose) and/or a specified salary level*".

79. While aware that, where the prohibition of dismissal (Article 8 para. 2) was concerned, the nature of the work could pose certain problems (particularly for domestic employees), the Committee nevertheless "*considered that they were not sufficient to justify today discrimination directed against women workers in this category*" .

3. ***Foreign working women in the light of the Appendix to the Charter***

80. The Appendix to the Charter defines the protected persons as including foreigners "insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the
Contracting Party concerned". Thus the protection of working women in the event of maternity must cover foreigners, as defined in the Appendix to the Charter, as it does the nationals of the state concerned. Whenever it seems that only the nationals of a state enjoy the protection required

by the Charter, or that certain categories of foreign women do not have the same protection, the Committee puts questions with a view to finding out how foreign women who are nationals of Contracting Parties are protected, recalling the terms of the Appendix to the Charter.

b. Requirement for legislation

81. It was at a very early stage that the Committee laid down this requirement in relation to Article 8 para. 1, in a general observation:

> "*The Committee noted that by custom in certain countries women workers in practice enjoyed maternity leave. It nevertheless held that a right of such capital importance ought to be guaranteed by law. It was hence unable to accept the assertion that legislation is unnecessary when the customary rights in question are solidly based*".

82. The Committee confirmed this when the first procedure relating to certain provisions which have not been accepted was carried out: in one state, maternity leave and the prohibition of the dismissal of working women during such leave were regulated by means of collective agreements. It noted that, in respect of maternity leave, there was a "*need to remedy certain deficiencies in the current system by legislative means*", and where the prohibition of dismissal was concerned, the Committee stated that "*The points made by the Committee in connection with Article 8 para. 1 regarding the need to remedy deficiencies in the collective agreements by legislative means are, of course, equally valid here*". The Committee also drew attention to the need for legislation in the following words: "*Although in practice the question of a possible dismissal of a female civil servant in conditions which would contradict the provisions of paragraph 2 of Article 8, seems irrelevant, the Committee had nevertheless to note that from a strictly legal viewpoint, no law or regulation seems to provide protection in that respect*".

83. The Committee has also affirmed the need for **explicit** legislation, as some states argue that, under their Constitutions, lawfully ratified international treaties are part of their domestic law:

> "*The Committee noted that there was no provision prohibiting the dismissal of women seafarers which was contrary to Article 8 para. 2 of the Charter, though the report contended that they had the protection of ILO Convention No. 103 (ratified in 1962), Article 28 para. 1 of the Constitution providing that lawfully ratified international treaties were incorporated into domestic law and prevailed over any legal provision contrary to them.*
>
> *The Committee noted, however, that after the ratification of ILO Convention No. 103, the*
>
> *[..] authorities had adopted, in application of this Convention, new provisions which appear in Act 1483184, which provisions were extended by Presidential Decree in 1988 to include the public sector. As it had done in similar cases, the Committee asked that explicit provisions be introduced which secured to women seafarers the protection required by Article 8 para. 2*".

B - Maternity leave

84. Article 8 para. I guarantees that women will be provided with leave through adequate payments. The Committee has felt the need to justify the very existence of the protection for which Article 8 para. I provides because of tendencies in this field. "*Female employees have traditionally been considered [...] a category requiring special measures for their protection [...]. This approach appears today to be increasingly contested. Consequently, any regulations on women's work are*

now perceived as a form of disguised discrimination, having adverse effects on equality of opportunity in employment". Aware of the importance of this change in attitudes, the Committee stated that it "*has always been careful [...] to distinguish regulations that could be perceived as discriminatory from those having a social purpose likely to guarantee the effective protection of women in certain circumstances*". It placed Article 8 para. 1 among the latter, taking the view that "*the biological constraints inherent in maternity should nevertheless be taken into consideration*", and emphasising "*that the principle of non-discrimination, on which the Charter itself is based, should not be pushed to a point where the particular position of women with respect to maternity would be overlooked*".

85. The Committee has taken the view that the protection afforded by Article 8 para. 1 was "*a social right [...], benefiting both the mother and the child*", and not "*discriminatory vis-à-vis the interests of the woman worker*", and that this was a "*necessary and appropriate measure which can, on no account, be challenged on any ground relating to equality of treatment*".

86. It was in this spirit that the Committee specified the twofold obligation derived from this provision: providing maternity leave; providing such leave through adequate payments.

a. Right to maternity leave

87. The Committee has affirmed the existence of this right and specified the length and compulsory/optional nature of the leave.

1. *Existence of this right*

88. In the very first supervision cycle the Committee affirmed that this right existed: "*The Committee interpreted this provision as meaning that all Contracting Parties having accepting it are bound to ensure a twelve weeks' maternity leave*". It has constantly confirmed both that this was a right and that this right related to the leave itself. It felt the need to specify this latter point, an obvious one *a priori*, when a Contracting Party argued that "*the obligation deriving from this paragraph [Article 8 para. 1] was simply to make provision for one or other of the three forms of payment mentioned therein and not for a right to maternity leave*"; the Committee took the view that it was "*unable to accept this suggestion [...] for the following reasons: the wording of paragraph 1 of Article 8 clearly imposed the obligation [...] to provide [...] for women to take leave [...] of at least twelve weeks' and not merely to provide for allowances over that period of twelve weeks [...]*".

89. The Committee also found it necessary to affirm that the leave should be **maternity leave** in respect of one case in which the women concerned were granted only sick leave; the Committee stated that sick leave could not be regarded as maternity leave.

90. The Committee has made a very detailed analysis of the situations arising in order to make sure that a real right to maternity leave exists. Having noted that, in one state, female domestic staff could be dismissed between the end of their fifth month of pregnancy and childbirth (and that this state therefore failed to comply with Article 8 para. 2), it took account "*of the links between paragraphs 1 and 2 of this article*" and noted that "*in [national] law, a pregnant domestic servant could be legally dismissed and thus deprived of the right to paid maternity leave*". The Committee drew the conclusion that this state was also failing to meet its obligations under Article 8 para. 1. When it learned, in the following cycle, that such dismissed domestic staff did

receive adequate maternity benefits, it took the view that the situation was satisfactory in respect of Article 8 para. 1.

2. *Length of maternity leave*

91. The Charter is specific: "at least twelve weeks". No shorter period may be regarded as in keeping with the Charter, since this is a minimum: "*As the Charter makes clear, the twelve-week period of leave, partly before and partly after the birth, is to be regarded as a minimum, since it is important both to allow the mother sufficient time to prepare properly for her confinement and for her subsequent return to work, and to enable the special needs of the child to be met*". The purpose of this period is therefore "*both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - ie. the health of the mother and child*".

92. In most cases, legislation provides for this length of leave, and there are many cases where the leave is even longer, but details of the regulations may give rise to some cases, sometimes in marginal situations, where the period of twelve weeks of leave is not guaranteed. Since the Committee allows no exceptions to the protection provided by Article 8, the conclusion is inevitably negative in such cases. The cases concerned may involve premature childbirth, sometimes resulting in the impossibility, under the rules for the leave to be divided into periods before and after childbirth, of reaching the minimum of twelve weeks' leave; quite specific categories of women may also be concerned; in another case, the Committee "*observed that female employees who did not give their employer at least three weeks' notice of leave for reasons of pregnancy were only entitled to leave comprising the day of childbirth and the ensuing five weeks (Section 18, paragraph 1 of the 1952 Act), which is incompatible with the requirement of a minimum twelve weeks' leave*". When it learned in the subsequent cycle that this provision had never been applied, the Committee drew attention to a fundamental rule, namely "*that the fact that a rule contrary to the Charter was not applied was not sufficient to render the situation satisfactory*".

3. *Compulsory or optional nature of maternity leave*

93. The question arose as to whether maternity leave was compulsory or optional, especially because of the extension of the right to such leave, and whether it was compulsory or optional for working women and/or for employers. The Committee indicated its view by explaining in a general comment:

> *The provisions of Article 8, paragraph 1 of the Charter should be examined in the light, in particular, of developments in national legislation and International conventions. They were designed both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - ie. the health of the mother and child.*
>
> *In connection with the first point, the Charter prescribes a minimum of twelve weeks' leave entitlement, matched by adequate financial safeguards. With regard to the second point, the aim is to prevent any work which might be harmful to the health of the mother or the child.*
>
> *It should be pointed out, however, that the justifiable trend in most countries towards extending women's entitlement to maternity leave does not imply that the period for*

which they are prohibited from actually working must necessarily be the same as the period of leave to which they are entitled.

Having carefully studied the relevant national legislation and international conventions in force, the Committee considered that the two requirements mentioned above were reconcilable insofar as national legislation on the one hand allowed women the right to use all or part of their recognised entitlement to stop work for a period of at least twelve weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliged the woman concerned and the employer to observe within this total period, a minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks.

94. In short, the leave is optional for the woman, except in respect of the six weeks following birth; thus a post-natal period of six weeks' leave is compulsory for both employer and worker. This is the most controversial point and the one which causes states the greatest difficulty, because their national legislation (or collective agreements) does not make any part of the maternity leave compulsory, but leaves it completely optional, because leave is divided according to the wishes of the woman concerned, which fails to guarantee post-natal leave of six weeks, or because there is no prohibition of work following the birth, or, lastly, because the period of the prohibition is less than six weeks.

95. Where the optional part of the leave is concerned, the Committee regularly points out that although "*a part of this leave is not mandatory, this depends on the person entitled, who may elect not to avail herself the full entitlement over a part of the prescribed period (Conclusions VIII, p. 125), but may not be subjected to any reduction of this minimum period*." It has also emphasised the importance of prenatal leave by pointing out that the Charter provides for leave "before and after childbirth": "*The Committee hoped that on the occasion of the reform under preparation - which ought to entitle female employees, as regards Section 18 para. 1, to take full maternity leave, to be taken exclusively after the birth - the [...] authorities would also take into account the medical reasons for which it was highly desirable for female employees to be able, as provided for in Article 8 para. 1 of the Charter, to take both pre-natal and post-natal leave*".

b. Adequate allowances

96. Article 8 para. 1 of the Charter lays down that maternity leave shall be provided "either by paid leave, by adequate social security benefits or by benefits from public funds". The Committee has given its views on the choice of means of payment, the purposes of the allowances and the concept of adequate allowance.

1. *Choice of means of payment*

97. The Committee has always made it clear that the Charter provided a choice of means of payment, and has specified that it left it "*to governments to select, from a number of alternatives, the method best suited to national circumstances*". There may even be a combination of several methods.

98. In this respect, attention must be drawn to another divergence from ILO Convention No. 103, which does not provide that maternity leave may be guaranteed through paid leave, ie. at the employer's expense. Such cases are rare, but do exist.

2. *Purposes of the allowances*

99. The Charter states that the purpose is to ensure that women may have the leave for which it provides before and after childbirth. Hence, from the outset, the Committee has referred to "*allowances over a period of twelve weeks*" (the minimum period of leave). The Committee further specified this purpose by stating that the Charter involved the obligation "*to ensure that women are adequately compensated for their loss of earnings during the period of leave*"; it also refers to "*income maintenance*" and compares the allowances or benefits received to the woman's "*previous salary*".

100. The situation was reviewed in the context of the first procedure relating to the provisions of the Charter which have not been accepted. Referring to the protection of maternity regarded "*as a social right [...] benefiting both the mother and the child"* , the Committee pointed out that "*To ensure that this is really the case, the Committee has always insisted on the importance of income maintenance during the mother's absence on maternity leave as it is essential that the mother should not suffer prejudice in the form of a substantial reduction in her income, implying a kind of sanction on maternity, for this would constitute a socially harmful instance of discrimination*".

101. It is a fact that by guaranteeing that women receive an income close to their previous wage during their maternity leave, the Charter effectively enables them to benefit from their entitlement to leave in every respect. This was emphasised by the Committee, when it drew attention to the compulsory nature of post-natal leave of six weeks and stated that, prior to the birth, the woman was "*free to choose whether she wishes to continue working or stop work*" , adding: "*The level of benefit should however be such that it allows a true choice between these two options*". Other assertions confirm the Committee's position: having noted that the "*apparent inadequacy of such allowances*" meant that a working woman "*may be practically obliged to continue working throughout her pregnancy*", it concluded that the state concerned was not complying with Article 8 para. 1.

102. It is these purposes, acknowledged by the Committee for maternity allowances, which explain its constant concern to establish whether a pregnant worker "lawfully" dismissed retains her entitlement to maternity benefits. Where this is the case (and if the amount of the benefit is adequate) the Committee concludes that the situation is satisfactory.

3. *Concept of adequate allowance*

103. "*In connection with the amount of allowance, the Committee felt obliged to render an interpretation of the term "adequate benefit". [...] [The Committee felt it] inadvisable to make any absolute definition*". It deals with each case on its own merits, basing its decision on the purposes which it regards the allowances as fulfilling. The closer the allowances come to the worker's previous wage, the more satisfactory they are considered, and *vice versa*. Without laying down a hard and fast rule, the Committee, for example, took the view that a level of 70 % of the wage was inadequate and that 75 % was adequate . It is true that, in the latter case, a good number of working women receive the remaining 25 % from their employers in pursuance of collective agreements.

104. It is clear that the ideal situation is one in which working women receive an amount which is equal to their full wage. In this context, the Committee has paid attention to the reference wage,

since the percentage stated has a different relationship with the previous gross and the previous net wage received by the worker concerned. In the above-mentioned case, for example, where the amount was equal to 70 % of the wage, it was stated that "*the 70 % allowance related to gross earnings and that, in view of taxation procedures (which do not take the maternity allowance into account in respect of assessable income, but do take it into account in respect of the tax-free allowance), the income of female workers on maternity leave was close to 100 % of their net wage, which was satisfactory*".

105. Where the payments are social security benefits, it is not unusual for a maximum level to be set. Where this is the case, the level of the allowance represents only a low percentage of higher earners' wages. The Committee has started systematically to question states on this subject, asking them whether and how the allowance was supplemented so that the workers concerned received compensation during their maternity leave which was not too significantly lower than their previous salary. It should be emphasised that the maximum level of the allowance may not be very high.

106. It should not be forgotten that, in view of the purposes of the payments made to working women during their maternity leave, these should be paid for a minimum of twelve weeks, and should be at an adequate level throughout this period.

C - The prohibition of dismissal

107. Under Article 8 para. 2, it is unlawful for an employer "to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence". The content and scope of this prohibition has been specified in the case law of the Committee of Independent Experts.

a. Characteristics of the prohibition

108. The Committee has considered what is prohibited, namely dismissal, and the period of the prohibition.

1. *Dismissal*

109. Some states have maintained that the purpose of Article 8 para. 2 was to guarantee working women's financial security, with the result that they could be dismissed provided that adequate compensation was paid to them. The Committee has not shared this view, stating that: "*By prohibiting dismissal of a woman worker during her absence on maternity leave, the Charter seeks to protect her, not only against the economic effects of such action, but also against the psychological effects which normally accompany it*"; it has gone into more detail: "*[Article 8 para. 2] is intended to protect, not only the financial security of female workers, but also their security of employment*". The Committee consequently takes the view that a state which pays special financial assistance to working women does not comply with this provision of the Charter . Thus it is clearly dismissal itself which is prohibited, and no financial measure can take the place of job security.

110. Basing itself on the purpose of Article 8 para. 2, the Committee also draws the conclusion that in the event of dismissal in contravention of the prohibition, reinstatement must be the rule, this being the only way of guaranteeing job security. In this instance it applied the rule set out in relation to Article 4 para. 3: "*The Committee pointed out that the purpose of Article 8 para. 2*

was to safeguard the jobs of women workers during maternity leave and drew the [...] authorities' attention to its case law on Article 4 para. 3 on dismissal, which could be applied to this provision. In this regard, it is stated that reinstatement should be the rule and only in exceptional circumstances should compensation be the sole remedy and that the compensation should be sufficient to deter the employer and compensate the employee. It asked that the next report specify whether [...] legislation provided for reinstatement of women workers and, if not, whether this reinstatement was envisaged".

111. The Committee has also devoted attention, still in an effort to guarantee the job security of women on maternity leave, to the wrongful employment of women on the basis of fixed-term contracts, aimed to escape the prohibition of dismissal during maternity leave. The reply given by the government concerned led the Committee to go into greater detail: "*In its previous conclusion (Conclusions X11-2, p. 139), the Committee had asked to be kept informed of any measures taken to improve the protection of women (other than domestic employees) against dismissal during the period covered and to prevent employers circumventing the provisions of the law through fixed-term contracts. In this regard, the present report referred to an amendment to the 1979 Maternity Protection Act, adopted in 1992 (BGBI 83311992) and brought into force on 1 January 1993, under which the expiration of fixed-term contracts whose limitation in time was not provided for by law or was not objectively justified was ineffective up to the start of compulsory maternity leave (eight weeks before birth).*

The Committee asked whether this indeed meant that these contracts extended up to the beginning of maternity leave in order to allow the women concemed to benefit from maternity leave and benefits [...].

The Committee noted the examples given in the report of cases where fixed-term work contracts were considered justified. It asked whether the examples were exhaustive and what was meant by 'the interests of the employee' (which, according to the report, justified a fixed-term contract).

The Committee noted that the same amendment also provided that, in cases where employment was prohibited on an individual basis for the entire duration of pregnancy because of danger to the life of the mother or the child, the fixed-term contract ended on presentation of the corresponding medical certificate. The Committee wished to know whether this applied in the case of all fixed-term contracts (legal justified and unjustified), what was the reason for the rule and also the situation of women under contracts of unlimited duration who were unable to work during their entire pregnancy. The Committee [...] also asked whether, under [Austrian] law, this early termination of contract amounted to a dismissal". This last question shows that, while the Committee is very careful to check that the prohibition of dismissal is observed, it also ascertains that the case is really one of dismissal.

2. *Period of the prohibition*

112. The text of the Charter is clear: "during her absence on maternity leave or [...] at such a time that the notice would expire during such absence". Generally speaking, either states prohibit dismissal during this period or they make no provision. One state, however, caused a problem, since its legislation states that the prohibition of the dismissal of pregnant women "*does not apply [...] to [...] female domestic servants [...] between the end of the fifth month of pregnancy and childbirth. The Committee considered that this protection period was certainly not compatible with that required in Article 8 paragraph 2 of the Charter*". The Committee has taken the same attitude in respect of a state which has not accepted Article 8 para. 2 and which

submitted a report on this subject during the first procedure on the provisions which have not been accepted, describing an identical situation: female domestic workers could be dismissed from the end of the fifth month of pregnancy. The Committee took the view that this was not compatible with the requirements of Article 8 para. 2.

113. On the occasion of that procedure, the Committee voiced one regret: "*it would obviously have been better if the prohibition had covered the entire period of pregnancy*," but it tones down this regret by saying: "*it must be emphasised that no national legislation currently provides for such protection*" and "*the protection provided by the Charter concerns [...] the final, and often the more delicate, stages of pregnancy*". Two things have subsequently changed: on the one hand, some legislation does now provide for a prohibition of dismissal throughout the period of pregnancy; while on the other hand, maternity leave is longer than it used to be, which may make it difficult to maintain the prohibition.

114. In accordance with the terms of Article 8 para. 2, the Committee also ascertains that the notice does not expire during absence on maternity leave.

b. Scope of the prohibition

115. The Committee has defined this, saying that the prohibition is not absolute and specifying the length of the period of prohibition.

1. *Prohibition is not absolute*

116. The Committee expressed its view in the very first supervision cycle:

> "*This provision was interpreted by the Committee as not laying down an absolute prohibition which could be removed, for instance, in the following cases:*
>
> *1. If an employed woman has been guilty of misconduct which justifies breaking off the employment relationship.*
>
> *2. If the undertaking concerned ceases to operate.*
>
> *3. If the period prescribed in the employment contract has expired*".

117. It has always confirmed this interpretation, sometimes using different wording, since the expiry of a fixed-term contract should not ordinarily be regarded as dismissal.

118. The Committee nevertheless has no intention of rendering this prohibition meaningless, and it checks the reasons for dismissal for which legislation may provide during the period to which Article 8 para. 2 refers. In some cases the solution is obvious, such as when "*women workers are not protected against dismissal during maternity leave for other reasons, such as redundancy*", or when dismissal is permitted on the grounds of "*the suppression of [the woman's] job*": these grounds are not consistent with the cases allowed by the Committee. In general terms, the Committee has stated that, while the only limitation on dismissal is that a woman "*may not be dismissed on grounds of pregnancy or matters connected therewith*", such a limitation is insufficient in the light of Article 8 para. 2.

119. In other cases, the Committee may carry out a really detailed examination of the legislation and its application in order to ascertain whether the grounds on which dismissal is allowed coincide with those which it has accepted. It does this, for example, when legislation contains very general terms such as "*urgent reasons*" or "*objective reasons*" , etc. Where the explanations provided left room for doubt, the Committee "*asked to be informed of any cases of dismissal [...] during maternity leave, and the grounds therefor, for each reference period*".

2. *Length of the period of prohibition*

120. The text of the Charter defines the length of the period of prohibition. The Charter was drawn up at a time when maternity leave was frequently no more than the twelve-week minimum for which it provides. This situation has changed a great deal, and the Committee has noted that this could be problematic:

> "*However positive they may be, developments in certain States in the matter of maternity leave still raise certain problems with regard to the application of this provision of the Charter. There are certain cases in which the prolongation of maternity or, increasingly often, parental leave over a period of several months and sometimes more than a year may make it difficult to maintain the ban on dismissal. [...] This problem might be solved by making a distinction between maternity leave proper, lasting a period of weeks and giving the mother the time which she needs to recover her full working capacity, and parental leave, which is designed to assist the child and may last a considerable time.*
>
> *Thus, even if a long period of leave is granted, compliance with the Charter could be ensured if prohibition of dismissal were effective during a period (of a few weeks) to be considered as maternity leave proper*".

121. The Committee has given more detail of its opinion in respect of a state which felt that it could not accept Article 8 para. 2, because, in view of both the considerable extension of maternity leave and of the relatively long period of notice of dismissal, "*the protection guaranteed by the Charter would thus have to cover a period which might be well in excess of one year [...] and [...] employers could hardly be expected to accept this*". The Committee took the view that this legislation represented "*the culminating point of a recent trend in practice and thinking with regard to the protection of maternity and the efforts to eliminate all forms of discrimination between the sexes*". The Committee nevertheless "*cannot agree that the absence or abolition of protection of the mother against the risk of dismissal during at least a part of her absence on parental leave, is itself a socially progressive measure, having regard to the wide range of human, psychological, biological and social factors which are directly linked with the birth of a human being*". It did, however, accept that "*since social development depends to a large extent on economic development, it would not be advisable to push social protection beyond what is reasonable and possible*". It has endeavoured to reconcile both interests (maternity protection and economic development): "*without specifying a precise period [...] the prohibition on dismissal embodied in Article 8 Para. 2 should cover a reasonable period before and after the confinement*".

D - Time off for nursing mothers

122. There is less case law relating to time off for nursing mothers than to the other forms of protection covering maternity. Under Article 8 para. 3 "mothers who are nursing their infants

shall be entitled to sufficient time off for this purpose". The Committee has laid down how such time off is to be treated and the arrangements for it.

a. Treatment

123. The Committee imposes two requirements on the way in which time off for nursing mothers is to be treated: "*these periods are deemed to be hours of work and remunerated as such*". This implies that the women concerned must not be expected to make up the time which they take off for nursing and that the wage for that time must be paid. The Committee is strict in its supervision of both aspects. For example, "*in practice, many employers either required female employees to make up for any nursing time taken off work, or deducted an equivalent sum from their pay. [...] In this respect, the Committee drew attention to its case-law according to which such time off for nursing purposes must be treated as working time and paid accordingly. It therefore would like the [...] authorities to inform it of which steps have been taken to ensure the implementation of this provision in full*".

b. Arrangements

124. The Committee has given no general definition of "sufficient time off", assessing each situation individually. It has stated, for example, that this provision was complied with by legislation which provides that: "*1. Working women who feed their children (breast-feeding or mixed feeding) are entitled to two periods of rest a day for a year for the purpose of feeding; 2. In cases where the employer has not provided a crèche or nursing room for mothers, these periods of rest are of one hour each (otherwise one-half hour) and shall entitle the mother to leave the premises*". Also regarded as satisfactory was "*the necessary time off for the purpose [...] the time allowed was thirty minutes*", as was "*one hour per day for the purpose of nursing their infants up to the age of one year*", and "*one hour off per day for mothers of children under nine months; this time may be divided into two periods of half an hour or replaced by a reduction of half an hour in daily working hours*" .

125. The Committee has added two elements to its initial appraisals: firstly by taking into account the actual period during which working women nurse, which may exceed a year, and secondly by taking an interest in different forms of "time off for nursing mothers": "*The Committee also took note of the fact that it was possible to work part time (half-time or three-quarter time) for one year after childbirth, [the time not worked being] compensated financially by the parental allowance. In order to be able to assess whether this possibility could constitute a solution to the question of time off for breast-feeding, the Committee wished to know whether and how working time could be adjusted so as to allow for breast-feeding of a baby, and what was the level of the parental allowance compared with the woman's pay*".

Human Rights Social Charter Monographs - No.2 - Equality between Women and Men in the European Social Charter

This Monograph is a study that aims to increase understanding of the meaning and scope of the rights enshrined in the Charter. It consequently works from an analysis of the provisions of the Charter as interpreted by the Committee of Independent Experts in three areas: equality between women and men in a changing economy (Part One), developments in protection for women (Part Two) and equality between women and men in civil law (Part Three). This report describes the Committee's conclusions up to and including Supervision Cycle XIV.1 (1998). Included in this compilation are comments made with regards to sexual and reproductive health rights. (Footnotes have been omitted).

Part Two - Developments in protection for women: equality and the sharing of responsibilities

I. Limited interpretation of protection for employed women in certain cases

A. Restriction of material and personal scope

1. *Material scope*

b. The prohibition against employing women in certain jobs (Article 8 para. 4b)

i. The prohibition, as appropriate, of dangerous, unhealthy or arduous work

The Committee has also redefined the scope of the second part of clause 4b, which prohibits the employment of women, "as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature", and has concluded that the expression "as appropriate" permits states bound by this provision of the Charter to limit the prohibition on employment of women in such work "*to the sole cases where this is necessary, in particular to protect motherhood, notably pregnancy, confinement and the post-natal period, as well as future children*".

2. *Personal scope*

The Committee's teleological interpretation of the clause enables it to reconcile the requirement that women be given special protection in the areas addressed by Article 8 para.4 with the principle of gender equality. As regards the regulation of night work, it has adopted the same approach and stressed that the purpose of such protection is to safeguard women workers "*against the harmful physical (and sociological) effects of night work*". In this restricted context, the Committee has concentrated in particular on the situation in respect of maternity protection and asked specifically for "*the particular situations of pregnant women, women who have recently given birth or nursing mothers to be taken into account under [Article 8 para. 4a]*". By emphasising maternity protection in this way, it has brought the personal scope of Article 8 para. 4 more into line with the principle of gender equality. In consequence, its supervisory focus has shifted to the field of maternity. For example, during the thirteenth supervision cycle the Committee requested information on measures taken to guarantee the protection of workers against ionising radiation (cf the general question framed within its Conclusion on Article 3 para. 1 - the right to safe and healthy working conditions), specifically "*in so far as it applies to women, and more particularly to pregnant women [and] those having just given birth or who are breast-feeding*". Where pregnant women and women of child-bearing age are covered by legislation, the Committee has

reached a positive conclusion; where this is not the case it has concluded that the Charter undertakings are not being upheld.

Guaranteeing the enforcement of protection

2. *Prohibiting all employment of women workers in certain jobs*

118. The second part of para. 4b prohibits the employment of women workers, as appropriate, on all dangerous, unhealthy, or arduous work. Having decided that prohibition could be restricted to cases of maternity, the Committee has been stricter in such cases. It is especially concerned by activities involving exposure to lead, benzene and ionising radiation, to high temperature and vibration, or to viral agents. It has repeatedly declared the need for effective protection in this area, and checks compliance by examining measures taken to guarantee that the prohibition is enforced effectively, such as the "medical checks women of child-bearing age [receive] in the matter of risks relating to exposure to lead".

120. The revised Charter takes up these changes in the case law and enshrines them in its Article 8 on the right of employed women to maternity protection. The new para. 4 requires states to regulate the employment in night work of pregnant women, women who have recently given birth and nursing mothers. In addition, Article 2 para.7 guarantees workers of both sexes performing night work the benefit of measures which take account of the special nature of their work. In this respect, Article 8 para. 5 limits the prohibition against employing women in underground mining and all other dangerous, unhealthy or arduous work to pregnant women, those who have recently given birth and nursing mothers.

121. One further important change must be added to those enshrined in the revised Charter. It relates to maternity protection guarantees. The interpretation given to the Charter in this area is indicative of an approach which recognises maternity protection as an established social right while simultaneously giving full recognition to developments in the reconciliation of work and family life.

II. Maternity and reconciling work with family life

A. Maternity protection as a social right

122. Article 8 of the Charter establishes the right of employed women to protection. Paras. 1-3 relate to protection in the event of maternity and covers maternity leave with adequate benefits, the prohibition against dismissal during a given period, and time off for breast-feeding.

123. The Committee has interpreted each element of protection with two aims in mind: to reconcile motherhood with the demands of working life, and to avoid all discrimination linked to maternity by safeguarding women in employment.

1. *Reconciling motherhood with the demands of work*

124. This requirement applies both to para. 1, which guarantees women leave with adequate benefits, and to para. 3, which addresses the right of mothers nursing their infants to sufficient time off for this purpose.

a. The right to maternity leave

125. Under the terms of para. 1, the Contracting Parties undertake to " provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks".

126. The Committee considers maternity leave "*a social right [...] benefiting both the mother and the child*" and thus that "*the principle of non-discrimination, on which the Charter itself is based, should not be pushed to a point where the particular position of women with respect to maternity would be overlooked*". Article 8 para. 1 is hardly among those regulations which might be considered discriminatory; on the contrary, it is in the front line of provisions "*having a social purpose likely to guarantee the effective protection of women in certain circumstances*". It is in this light that the Committee has specified legislative provision for leave with adequate benefits as the means of ensuring such protection.

i. The right to maternity leave must be guaranteed by law

127. During the first supervision cycle the Committee declared that this provision obliged each state accepting it to grant maternity leave of 12 weeks to all expectant mothers in paid employment. During the third cycle, in response to the United Kingdom viewpoint that "*legislation is unnecessary when the customary rights in question are solidly based*", the Committee stated that "*a right of such capital importance ought to be guaranteed by law*".

128. The Committee voiced the same fundamental principle, that custom is no substitute for the existence of legislation, in the case of a law which was not enforced but which contravened Article 8 para. 1. Having noted that employed women in Malta "*who did not give their employer at least three weeks' notice of leave for reasons of pregnancy were only entitled to leave compensating the day of childbirth and the ensuing five weeks (Section 18, paragraph 1 of the 1952 Act)*", it concluded that this situation was incompatible with the requirements of Article 8 para. 1. It kept to this conclusion even though this provision of Maltese law was never enforced, maintaining that "*the fact that a rule contrary to the Charter was not applied was not sufficient to render the situation satisfactory*".

129. Furthermore, this right applies in respect of actual leave. This point arose from the Committee's response to the Irish Government, which had declared that "*the obligation deriving from this paragraph was simply to make provision for one or other of the three forms of payment mentioned therein and not for a right to maternity leave*". The Committee categorically rejected this interpretation on the following grounds: "*the wording of paragraph 1 of Article 8 clearly imposed the obligation 'to provide ... for women to take leave ... of at least twelve weeks'*" and "*the 'choice' referred to by the Irish Government did not [...] affect the fundamental obligation to establish entitlement to twelve weeks' maternity leave but concerned only the means of compensation for loss of earnings, namely (i) paid leave, (ii) social security benefits or (iii) benefits from public funds*".

130. Finally, the right relates to a period of *maternity leave*: the Committee was obliged to point this fact out to Greece, where maternity leave was considered as sick leave. The Committee concluded that Greece was not fully in compliance with the terms of Article 8 para. 1.

131. The Committee has sought hard to ensure that maternity leave is actually granted. To this end it has undertaken a thorough examination of the situation in different countries. During recent supervision cycles, for example, it has concentrated in particular on the effect of growing numbers of fixed-term contracts on the protection guaranteed in Article 8 paras. 1 and 2, since the obligations in these paragraphs can be circumvented by the unfair use of such contracts. In Spain, domestic employees did not in practice enjoy maternity protection because it was possible for their employers to terminate their employment contracts prematurely by "renunciation". On learning that "renunciation" applied only to fixed-term contracts, the Committee requested information on how the procedure could affect Spain's undertakings under Article 8 para. 11.

ii. Women's right to choose subject to public health considerations

132. It is in this light that the Committee has examined the issue of the minimum length of leave and whether or not it should be compulsory.

- The right to twelve weeks' leave

133. Article 8 of the Charter requires that maternity leave last a minimum of twelve weeks. The weight attached to this minimum period is "*designed both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - ie. the health of the mother and child*". The public health requirement means that no exceptions can be made to protection as guaranteed by Article 8. Accordingly, any domestic legislation which provides for a shorter period of leave, even if only for certain categories of employed women, is automatically ruled inadmissible under the terms of the Charter.

134. The Committee has stressed that a portion of maternity leave must be made compulsory. In other words, women are prohibited from working during part of the prescribed period of leave.

- Compulsory postnatal leave of six weeks

135. While accepting that "*the terms used in the first paragraph of Article 8 were such that it was nonetheless possible for such women to elect not to avail themselves of this right over a part of the twelve weeks' period in question*", the Committee considered that six weeks of the twelve should be made compulsory and gave the following justification:

136. Noting that the purpose of Article 8 para. 1 was "*to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - ie the health of the mother and child, [...] the Committee considered that the two requirements mentioned above were reconcilable insofar as national legislation on the one hand allowed women the right to use all or part of their recognised entitlement to stop work for a period of at least twelve weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliged the woman concerned and the employer to observe within this total period, a minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks*".

137. This minimum period of six weeks off work applies after childbirth and must be respected by both mothers and employers. The Committee systematically went into this during subsequent supervision cycles, and reiterated the case law which it had always applied in the matter, observing that "*this was the legal situation in the great majority of European countries*".

138. In certain countries, however, there are situations where maternity leave is not compulsory. This may be because women have the right to decide whether to make use of it or to opt instead for sick leave. Alternatively, there may be no compulsory postnatal leave, or its overall duration may be shorter than six weeks. Finally, special circumstances may prevail (such as the failure to give the employer notice of leave before it starts, or cases of premature confinement). The Committee has also examined the effect of parental leave on the six weeks of compulsory postnatal leave insofar as the former may replace the latter.

- Optional leave

139. This portion of maternity leave is optional only in the sense that the mother can waive it. The Committee regularly reaffirms this point, which arose during the eighth supervision cycle (see above, paragraph 136), in the following terms: "*although the Committee has considered that a part of this leave is not mandatory, this depends on the person entitled, who may elect not to avail herself of her entitlement over a part of the prescribed period (Conclusions VIII, p. 123), but may not be subjected to any reduction of this minimum period*".

140. The Committee has stressed that employed women should be offered the possibility of prenatal leave for medical reasons and thus welcomes all measures making it compulsory. However, it has pointed out that Contracting Parties making prenatal leave available are still fully bound under Article 8 para. 1 to provide six weeks' compulsory postnatal leave.

b. Income guarantees

i. Principle

141. Article 8 para. 1 not only provides for a period of maternity leave, but also stipulates that it must be accompanied by pay in the form of adequate social security benefits or benefits from public funds. The Contracting Parties can thus choose "*the method best suited to national circumstances*" for making over benefits. Various methods may be combined: for instance, a fixed social security payment may be augmented by employer contributions.

142. The principle of adequate benefits is a precondition for maternity protection to be effective. In referring to maternity protection as a social right, "*the Committee has always insisted on the importance of income maintenance during the mother's absence on maternity leave as it is essential that the mother should not suffer prejudice in the form of a substantial reduction in her income, implying a kind of sanction on maternity, for this would constitute a socially harmful instance of discrimination*".

ii. Purpose

143. The purpose of maintaining income is to enable women to choose whether or not to work during pregnancy. So that the choice can be freely made, benefits paid must be as near as possible to the worker's usual income and must cover the full term of leave, ie at least twelve weeks. In short, benefits must be adequate and must not be such as to compel women to continue working during pregnancy. If this is not the case the Committee concludes that they do not meet the requirements of Article 8 para. 1.

iii. Benefit levels

144. The Committee has made no definitive interpretation of the term “adequate”, and a benefit's adequacy is thus decided case by case in terms of whether it is such that women are not forced to continue working.

145. Generally speaking, the nearer benefits are to previous pay levels, the greater their acceptability, and the reverse is also true. For example, it was concluded that Irish maternity benefit levels calculated at 40% of weekly pay were insufficient “*to constitute an adequate income maintenance guarantee*”. After being raised to 80% of the average income for women (or 70% of the basic wage) the figure was ruled satisfactory. In order better to assess statistical data, the Committee takes account of the salary used as a reference, since the percentage can vary according to whether the reference is a gross or a net amount. In the above case, noting that the calculation of 70% was made on gross pay and that income on maternity leave was thus roughly 100% of a worker's pay after tax, the Committee considered that the situation satisfactorily met the requirements of the provision in question.

146. Where income is provided in the form of social security benefits, the Committee pays particular attention to two elements which may determine whether or not they are adequate. These are the social security ceiling and the criteria for the award of benefits.

147. As regards the first element, the Committee has noted that maternity benefit is frequently subject to a ceiling which directly affects the amount received or limits the salary level used as the basis for calculation. It has therefore systematically requested information from the Contracting Parties on this matter,' in particular with regard to the methods used to supplement benefit received by women earning more than the ceiling. It has also asked them to indicate how many women earn more than the ceiling and in what salary range (or at least the average monthly income of female executives), how the ceiling is calculated and how it is adjusted.

5. The second element was addressed by a general question during the first part of the thirteenth supervision cycle: “*The Committee asked all states which have accepted Article 8 para. 1 to indicate in their next report under this provision if the payment of maternity benefits is subject to conditions as to the length of affiliation to a social security insurance scheme, a specified period of occupational activity or of employment with one or more employers (indicating whether periods of unemployment are counted as working time for this purpose) and/or a specified salary level*”.

149. After evaluating the information submitted to it, the Committee adopts a negative conclusion if the level of benefit is insufficient for all or part of the period of leave.

c. Nursing breaks (Article 8 para. 3)

150. Under para. 3, the Contracting Parties undertake “to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose”.

151. The Committee has defined the status of nursing breaks and specified how they are to be provided.

i. Status

152. The Committee has identified two principles in Article 8 para. 3: nursing breaks must be "*deemed to be hours of work*" and they must be "*remunerated as such*". Accordingly, women should not have to work overtime to make up the time taken off for breast-feeding, and nor should the pay corresponding to this time be withheld. The Committee strictly checks that both principles are upheld. In the case of the Netherlands, for example, it concluded that "*the legislation on time off for breast-feeding indicated neither whether such time was considered as working time, nor whether it was paid*", and that this situation was remedied neither by collective agreements nor in practice: "*collective agreements did not comprise any provisions explicitly ensuring that breaks in work for nursing purposes were included in working hours and remunerated as such, and [...] in practice many employers required women to make up for any time taken off for breast-feeding or refused to pay them the salary corresponding to this time*".

ii. Conditions

153. The Committee has given no general definition of "sufficient time off" but examines each case on its merits. The variety of legislation which it has ruled compliant with the obligations of Article 8 para. 3 includes: two daily nursing breaks for a period of one year, to last 30 minutes if the employer provides a crèche or feeding room, or a full hour if this is not the case (the mother being entitled to leave the premises); daily one-hour breaks for mothers of children under twelve months; daily one-hour breaks for mothers of children under nine months ; two daily non-consecutive breaks of not more than one hour until the child is weaned or reaches its first birthday; and two 45-minute breaks to be granted if nursing mothers so request at the start and end of their working day.

iii. Time limit

154. The Committee has also considered limits, where they apply, to the period during which nursing breaks are permitted, and the various possible ways of giving "time off". For example, it assessed the compatibility of the possibility of extended leave and part-time work during the year following childbirth with the requirements of Article 8 para. 3. It concluded by declaring that such a system "*could not be regarded as time off for breast-feeding within the meaning of Article 8 para. 3, because the very concept of 'time off' implied that the breaks occurred during working hours*".

2. *Avoiding all discrimination linked to maternity. the guarantee that the woman will keep her job*

155. Article 8 para. 2 makes it unlawful for an employer "to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such time that the notice would expire during such absence".

a. Principle and scope of the prohibition against dismissal during maternity leave

156. Protection thus extends only to the period of maternity leave and not to the duration of pregnancy. The Committee has expressed regret at this limitation, and the revised Charter redefines the period during which dismissal is prohibited as being from the time the employer is notified of pregnancy until the end of maternity leave.

157. With an eye on developments in the way maternity leave is granted, the Committee has stipulated how long this prohibition should last. Having noted that "*there are certain cases in which the prolongation of maternity or, increasingly often, parental leave over a period of several months and sometimes more than a year may make it difficult to maintain the ban on dismissal*", it has concluded that "*this problem might be solved by making a distinction between maternity leave proper, lasting a period of weeks and giving the mother the time which she needs to recover her full working capacity, and parental leave, which is designed to assist the child and may last a considerable time*". Thus, "*compliance with the Charter could be ensured if prohibition of dismissal were effective during a period (of a few weeks) to be considered as maternity leave proper*". "*The prohibition against dismissal should cover a reasonable period before and after the confinement*".

158. In its Conclusions XIII-4, the Committee made a general observation clarifying the meaning of the second part of Article 8 para. 2 - the prohibition against dismissal "at such a time that the notice would expire during [...] absence [on maternity leave]":

159. "*Job security for a worker on maternity leave means that the contract of employment must not be terminated during this period. This is guaranteed by the prohibition on giving notice of dismissal at such a time that the period of notice would expire during the absence on leave. The giving of notice during maternity leave initiates the period of notice and, where appropriate, the interview, consultation or conciliation procedures to be carried out during this period. The Committee felt that, given the purposes of maternity leave and the unlawfulness of dismissal during this period, notice of dismissal as such was not incompatible with the Charter provided that the period of notice and any procedures were suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures during maternity leave must apply in the event of notice of dismissal prior to maternity leave, irrespective of the length of the period of notice*".

160. This principle of prohibition complements that of the protection of maternity *per se* (Article 8 para. 1). The Committee has stressed that "*by prohibiting dismissal of a woman worker during her absence on maternity leave, the Charter seeks to protect her, not only against the economic effects of such action, but also against the psychological effects which normally accompany it*". Furthermore, Article 8 para. 2 "*is intended to protect, not only the financial security of female workers, but also their security of employment*".

161. However, the Committee has interpreted this provision "*as not laying down an absolute prohibition [but one] which could be removed, for instance, in the following cases:*

1. If an employed woman has been guilty of misconduct which justifies breaking off the employment relationship,
2. If the undertaking concerned ceases to operate,
3. If the period prescribed in the employment contract has expired".

162. The Committee has kept to this interpretation during more recent cycles. Consequently, when examining the grounds given by the Contracting Parties to justify dismissal, it has taken account of the exceptions allowed under its own case law. It criticises the use of very broad terms such as "*urgent reasons*" or "*objective reasons*" to describe grounds for putting an end to an employment contract. When considering grounds for dismissal which are not admissible in respect of Article 8 para. 2, it takes two further elements into account: firstly, whether the period of notice runs over

into the period of maternity leave (see paragraph ... above), and secondly, whether adequate procedural guarantees exist.

163. The Committee's supervision does not end at superficial compliance with this provision of the Charter. Since women's right to keep their job requires *effective protection*, any measure which might aim to circumvent the prohibition against dismissal during maternity leave is investigated thoroughly. In this respect, the Committee has stressed that the protection provided for under this provision applies to fixed-term as well as to permanent contracts. Accordingly, it examines the grounds for awarding fixed-term contracts so as to determine whether they are in fact used for the purposes of such circumvention.

b. The consequences of unlawful dismissal

164. The Committee has stated that, in cases where dismissal contravenes this provision, the worker concerned must be reinstated . It interprets Article 8 para. 2 in the same way as Article 4 para. 3, as requiring that reinstatement should be the rule in cases of unlawful dismissal and that compensation, when awarded by way of exception, must be sufficient to deter the employer and indemnify the worker.' Where reinstatement is provided for by law and it is left to the courts to decide whether the circumstances are appropriate, the Committee has examined the practical enforcement of legislation by asking which criteria influence the courts' decision. This information enables it to appraise the powers of the presiding judges and assess whether reinstatement is an effective approach .

165. Given the principle of equal opportunities and treatment in employment, maternity cannot validly constitute grounds for terminating an employment contract. During maternity leave pregnant workers must know that their continued employment is guaranteed. Similarly, after such leave they must be able to resume their job or at least to return to work. The protection of women and of their right to employment applies not only during pregnancy, but also after childbirth. Rather than the principal or central purpose of a woman's life, maternity must be seen as just one stage (the importance of which is recognised by the special protection provided under Article 8 of the Charter). At the end of this stage, the difference which arises in connection with the process of childbirth may not be sustained and used as grounds for discrimination. For this reason, in addition to a definition of the material and personal scope of Article 8, the principle of equal opportunities and equal treatment requires that women may not be prevented in practice from taking up employment or compelled to give up work because of their family responsibilities. The Committee has made full use of this rule, which also affects family law - and its interpretation of Article 16 (the right of the family to social, legal and economic protection) is therefore extremely significant. The revised Charter marks yet another step in the process by enshrining in a new article (Article 27) the right of workers with family responsibilities to equal opportunities and equal treatment. This is an article which responds to the needs of workers and reflects developments in the principle of equality, which, "having once chiefly involved the furtherance of women's rights, is now more concerned with protecting women and men on the same terms, whether in working or family life". These developments, moreover, have helped to shape the Committee's case law.

Human Rights Social Charter Monographs - No. 7 - Social Protection in the European Social Charter

Social Charter Monograph no.7 is a study that intends to contribute to a better understanding of the Social Charter's role in social protection. In order to achieve this aim, the Committee's interpretation of the Charter's norms is examined. What is included in this compilation are just the comments in the Monograph that refer to sexual and reproductive health rights. (Footnotes have been omitted).

Part One - the right to social security

I) Conditions related to social security system content

b. Features specific to certain branches of social security

2. *Maternity branch*

68. Article 8 establishes the right of employed women to protection. The first paragraph acknowledges the right to twelve weeks' maternity leave with pay in the form of "adequate social security benefits or benefits from public funds". Here the Committee has underlined the importance of this assurance of a source of income as it gives women the option of continuing in employment during maternity. In this area it examines the appropriateness of the payments, especially in the case of social security benefits.

II) The Right of Foreigners to Social Security

b. Equality of treatment in certain branches of social security

2. *Maternity branch*

166. Generally speaking, when examining first reports the Committee seeks to establish whether the protection of working women in the event of maternity apply in the same conditions to foreign women as defined in the appendix to the Charter. Where foreign workers appear to enjoy less protection in this respect under Article 8 para. 1, the Committee attempts to establish exactly what the situation is, for example with regard to international social security arrangements.