



European Social Charter

European Committee of Social Rights

Conclusions XVIII-1 (Greece)

Articles 1, 12, 13, 16 and 19 of the Charter

The text of the conclusions may be subject to editorial revision.

Introduction

The function of the European Committee of Social Rights is to judge the conformity of national law and practice with the European Social Charter. In respect of national reports; it adopts “conclusions” in respect of collective complaints, it adopts “decisions”.

A presentation of this treaty as well as general comments formulated by the Committee figure in the General Introduction to the Conclusions¹.

The European Social Charter was ratified by Greece on 6 June 1984. The time limit for submitting the 16th report on the application of this treaty to the Council of Europe was 30 June 2005 (reference period: 1 January 2003 to 31 December 2004) and Greece submitted it on 14 October 2005.

The report concerned the rights forming part of the “hard core” provisions of the Charter:

- Article 1 (right to work),
- Article 5 (right to organise),
- Article 6 (right to bargain collectively),
- Article 12 (right to social security),
- Article 13 (right to social assistance),
- Article 16 (rights of the family),
- Article 19 (rights of migrants).

Greece has accepted all of these articles, with the exception of Articles 5 and 6.

The present chapter on Greece contains 22 conclusions²:

- 11 cases of conformity: Articles 12§1, 12§2, 12§3, 13§2, 13§3, 13§4, 19§2, 19§3, 19§4, 19§7 and 19§9.
- 8 cases of non-conformity: Articles 1§1, 1§2, 12§4, 13§1, 16, 19§6, 19§8 and 19§10.

In respect of the other 3 cases, that is Articles 1§3, 19§1 and 19§5, the Committee needs further information in order to assess the situation. It asks the Greek Government to communicate the answers to these questions in the next report on the provisions concerned.

The next Greek report will concern the following provisions:

- Article 2 (right to just conditions of work),
- Article 3 (right to safe and healthy working conditions),

¹ The conclusions as well as states reports can be consulted on the Council of Europe’s Internet site (www.coe.int) under Human Rights.

² The 22 conclusions correspond to the paragraphs of the articles forming the hard core accepted by Greece with the exception of Article 1§4, which is examined with Articles 9, 10 and 15 due to the links between these provisions.

- Article 4 (right to fair remuneration)
- Article 9 (right to vocational guidance),
- Article 10 (right to vocational training), and
- Article 15 (right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement) of the Charter¹.

It concerns the reference period 1 January 2001 – 31 December 2004.

The report will also concern two Articles of the Additional Protocol of 1988 (reference period 1 January 2003 to 31 December 2004) :

- Article 2 (right to information and consultation), and
- Article 3 (right to take part in the determination and improvement of the working conditions and working environment).

The report should be submitted to the Council of Europe before 31 March 2006.

¹ It concerns the provisions of the first part of the “non-hard core” articles accepted by Greece. The report will also concern Article 1§4 due to its links with Articles 9, 10 and 15.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information contained in the Greek report. In assessing the situation, the Committee also referred to the National Action Plan for Employment 2004.

Employment situation

The GDP growth rate in Greece remained above the EU average in the reference period: in 2003 it amounted to 4.7% while in 2004 it fell somewhat to 4.2% according to Eurostat. The employment rate was on the rise and stood at 59.4% in 2004 which is still lower than the EU average (63.3%). The female employment rate was 44.3% in 2003 compared to 56.1% of the EU average. In 2004 it increased to 45.2%.

Despite the overall slight improvement in both employment and the participation rates during 2003-2004 Greece is still lagging behind the European objectives for employment which aim at attaining a total employment rate of 67% for 2005 and a female employment rate of 57%. As regards the youth employment rate, it amounted to 26.8% in 2004 whereas the EU average was 36.8%

The unemployment rate reached 10.5% in 2004 and the gap between female and male unemployment remained large. Female unemployment in 2004 was 16.2% as compared to 9.2 % EU average.

The rate of female unemployment was also very high. In 2003 the youth unemployment rate amounted to 26.8% while the EU average for 2003 stood at 16.3%.

As regards long term unemployment, the Committee notes from Eurostat that there was a significant increase in 2003 when it stood at 54.9% while the EU average was only 44.8%. In 2004 long term unemployment in Greece amounted to 53.1 %.

The Committee notes from the report that 84% of persons with disabilities are economically inactive (i.e. do not look for a job) which is significantly higher than the same indicator for the whole population (58%). Of those persons with disabilities who are economically active, 8.9% are unemployed.

Employment policy

Greek Government's main priorities for the labour market in the reference period were to facilitate integration into the labour market, to strengthen women's professional progress and to improve the quality of jobs offered.

To achieve these goals the government started implementing several subsidy programmes for enterprises, professional development measures, subsidy schemes for businesses and new entrepreneurs, schemes of work experience acquisition (STAGE). In 2004 new programmes were launched by the Centres of Promotion of Employment (CPEs) which are better tailored to the needs of each individual participant.

The Committee notes from the report that the Law 2643/1998 provides for priority recruitment of persons with disabilities to public and private posts. The results of the survey which was undertaken by authorities concerning persons with disabilities have revealed that the economic inactivity of this group has several reasons, of which the feeling of being excluded is not an important one. The largest category reports to be satisfied with their pension and does not need a job. Only 0.3% believe that there would be no jobs for them.

The Committee takes note of measures implemented in relation to the elderly. During 2003-2004 the Hellenic Manpower Employment Organisation (OAED) launched a subsidy programme worth 85 million euros of which 29 million have already been spent resulting in the employment of 4151 individuals. There are other similar subsidy programmes underway.

Following the question asked by the Committee in the previous conclusion, the authorities provide information on the situation with regard to young persons, women and the elderly. The previous Action Plan for Employment (2002) referred to these categories as to 'unexploited labour tanks'. In fact, 35.6% of persons under these categories did not look for a job because they did not wish to work for various personal reasons- such as family responsibilities for women, educational reasons for young persons and retirement benefits for the elderly. These persons are, by definition, outside the labour force and therefore cannot be considered as unemployed. Therefore, the real issue in this regard is a relatively low level of economic activity among these groups. The Committee notes from Eurostat that in general, the activity rate in Greece is lower than the EU average – 65.2% in Greece in 2003 while 70.1% in the EU on average. The activity rate is on upward trend, but the female participation rate, according to the National Action Plan remained low at 51.1%. In the next report the Committee wishes to know what policy measures the government has taken to encourage the participation of women, young persons and elderly persons by making employment offers more attractive and facilitating different forms of employment.

In reply to the Committee's question in the previous report concerning the activation of the age group 45-64 through providing vocational training facilities to them, the report mentions several programmes which fall under the "Employment and Professional Training" initiative which foresee special measures for support and incorporation of older workers in the labour market. The report gives the data for the second trimester of 2003 according to which 23,607 persons from this age group attended a training programme, which constitutes only 0.9% of the total number of persons aged 45-64. It should also be noted that 95% of those who attended were already in employment.

The Committee also notes the information about the evolution of the part-time job market in Greece. The report particularly mentions the new Law 3250/2004 which concerns the recruitment of 25,000 persons from vulnerable groups with private-law contracts for part-time employment in the public sector. This initiative reinforces part-time employment and at the same time the participation of the vulnerable groups in the labour market. In addition, the government is undertaking a study of factors that impede part-time employment and which will also come up with policy proposals for improving this segment of labour market. The Committee would like to be informed further about these measures and their results.

The Committee observes from the report that out of 142,415 long-term unemployed only 15,834 have participated in the employment reinforcement programmes in 2003, which constitutes 11%. The Committee would like to be informed of the reasons for such a low activation rate. The report also describes employment programmes of OAED which now focus more closely on individual needs. These programmes prioritise persons who have been unemployed for more than 12 months.

As regards the total public expenditure on active and passive measures, the Committee notes that despite a series of new programmes that have been initiated by the OAED and are underway, public spending on both active and passive measures has in fact been decreasing. In 2003 total expenditure on labour market policy reached 0.52% of GDP which reveals a downward trend from 0.67% in 2001. The same indicator for the EU is 2.13%. Spending on active measures is down to 0.11% from 0.20% in 2002.

The Committee observes that so far the outcomes of employment programmes are not clear and there has not yet been any significant impact on the overall situation on the labour market, nor on the level of overall public expenditure. Therefore the Committee wishes to be informed further on the total numbers of the unemployed by age and gender who have participated in all these measures (activation rate) and percentages of those who have found a job afterwards with a special emphasis on the long-term unemployed.

Pending receipt of the information requested, the Committee concludes that the situation in Greece is not in conformity with Article 1§1 of the Charter on the grounds that despite a number of employment programmes launched, the public policy measures in favour of full employment are inadequate.

Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The Committee notes the information provided in Greece's report

1. Prohibition of Discrimination in employment

The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Where a state party has accepted Article 15§2 of the Charter the Committee will examine legislation prohibiting discrimination on grounds of disability under this provision.

Legislation should cover both direct and indirect discrimination, in the context of indirect discrimination the Committee recalls that it has stated that in the context of Article E of the Revised Charter: "Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all" (*Autisme Europe v. France*, Collective Complaint No 13/2000, decision on the merits of 4 November 2003, §52).

As regards gender discrimination the Committee notes that Law 3103/2003 abolished the quota of women permitted to attend Police training colleges. It notes that this remedies a situation found previously by the Committee not to be in conformity with the Charter (Conclusions XVI-1, pp. 278-280).

The report provides details of recent measures taken to promote gender equality in employment. New legislation prohibiting discrimination on grounds of race nationality, religion or other beliefs, disability, sexual orientation gender and age, inter alia in employment was adopted during the reference period; Law 3304/2005 "Application of equal treatment principle regardless of nationality, race religion or other beliefs, disabilities, age or gender". The legislation prohibits both direct and indirect discrimination on the prohibited grounds.

The Committee seeks information on how the concept of indirect discrimination has been interpreted by the courts as well as information on how the concept of age discrimination has been interpreted during the next reference period.

The prohibition applies to all areas of employment including recruitment, dismissal and training.

Exceptions to the prohibition are made for positive action measures, and genuine occupational requirements as well certain exceptions for differences in treatment on grounds of age.

Persons who believe that they have been the victim of discrimination on prohibited grounds may take their case before the courts.

The legislation provides for an alteration of the burden of proof in favour of a plaintiff in all discrimination cases.

The Committee notes that the new legislation on discrimination provides for criminal and administrative sanctions to be imposed on persons found to have breached the prohibition of non-discrimination.

The Committee recalls that under Article 1§2 of the Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of pre defined upper limits to compensation that may be awarded not to be in conformity with the revised Charter as in certain cases these may preclude damages from being awarded which are commensurate with the loss suffered and not sufficiently dissuasive.

The Committee asks whether there are limits to the amount of compensation that may be awarded in discrimination cases, including in cases where the employee is dismissed as a result of making a claim of discrimination.

The Employment Inspection Body (SEPE) with the assistance of a support unit is empowered to examine complaints of discrimination, to facilitate conciliation between the parties, to prepare findings in the event of failure of the conciliation procedure. If there is reason to believe that an offence has been committed it may forward its findings to the Public Prosecutor of the Magistrate Court. The SEPE has powers to conduct investigations, examine witnesses and request documents.

The Committee wishes to know whether the Equal Treatment Committee has any powers or competencies in relation to employment.

According to the report interested groups (legal entities whose aim is linked to promoting equality) have the right to represent persons who believe they have been the victims of discrimination before the courts.

As regards discrimination on grounds of nationality the Committee recalls that under Article 1§2 of the Charter, while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States parties in general from occupying jobs for reasons other than those set out in Article 31; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The only jobs from which foreigners may be banned are therefore these that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

The Committee recalls that the previous conclusion found that the situation was not in conformity with Article 1§2 on the grounds that there was a nationality requirement for access to civil service posts and related activities; these are only open to nationals or EU nationals, with certain exceptions. The Committee previously found that the restrictions imposed on non EU nationals went beyond that permitted by Article 31, as there were restrictions to posts not involving the exercise of public authority.

According to the current report non-EU nationals may work in health, education and welfare sectors. It further states that 80% of jobs in the Greek public administration are open to non-nationals; only 20% are restricted to EU nationals on the grounds that they involve the exercise of public authority. The Committee asks for further clarification of the situation; are foreigners (non EU nationals) only permitted to work in health, education and welfare sectors or may they be employed in other sectors of the civil service/public administration where the post does not involve the exercise of public authority and if so what posts are reserved to EU nationals and or/Greek nationals on the grounds they involve the exercise of public authority.

Pending receipt of this information the Committee maintains its previous conclusion of non-conformity.

2. Prohibition on forced labour

The Committee noted in its previous conclusion that the length of the period during which career officers in the armed forces could not leave the service (25 years) (a ground invoked in *International Federation of Human Rights v. Greece* Collective complaint no 7/ 2000 decision on the merits 5 December 2000) had been reduced by Law 3257/2004. The text reduces the length of service which career officers must complete before they may leave the services. Where officers have been educated/ trained to a university standard by the armed forces or sent abroad to be trained they are obliged to remain in the services for a period at least double the years spent studying. According to the previous report this would reduce the maximum obligatory period from 25 years to 10 years. The Committee finds that this period to be in conformity.

Prison work

It invites the Government to reply to its question in the general introduction on this issue.

3. Other aspects of the right to earn one's living in an occupation freely entered upon

The Committee invites the Government to reply to its question in the General Introduction to these Conclusions as to whether legislation against terrorism precludes persons from taking up certain employment.

Service in place of military service

Since the case of *Quaker Council of European Affairs v. Greece* collective complaint No 8/2000 decision on the merits 25 April 2001 Greece has been found to be in breach of Article 1 §2 on the grounds that the length of service alternative to military service is

excessive. The legal regulations governing alternative military service have been amended over the years, although in its previous conclusion the Committee noted that the length of alternative service was still excessive in that it usually represented more than double the length of compulsory military service.

New legislation¹ on this issue has again been introduced during the reference period; those who serve alternative civilian service instead of the average military service (or unarmed military service) are now liable to serve 23 months, instead of 30 months as was set previously (those who who serve reduced armed service of nine months are now liable for 17 months instead of 25; those who who serve reduced armed service of six months are now liable for 11 months instead of 20 and those who who serve reduced armed service of five months are now liable for 3 months instead of 15). The length of full-armed military service is set at twelve months.

The Committee notes that the new legislation provide for a significant reduction in the length of alternative service; however it recalls that under Article 1§2 the duration of alternative service may not exceed one and half times the length of military service and consequently the situation in Greece can not be considered as being in conformity with Article 1§2 of the Charter.

Part time work

According to the information provided in the report there is no discrimination between full time and part time employees as regards leave and access to training.

4. Conclusion

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

- non EU nationals are prohibited from access to a very wide range of posts in the civil service and public administration; and
- the length of alternative military service remains excessive.

Paragraph 3 – Free placement services

The Committee takes note of the information concerning the organisation of the public employment service in Greece.

The Committee notes from the report that unemployment services in Greece continue to be provided by both public and private employment agencies. Public services are free of charge for all, whereas for private services there has been no change since the last reference period, where employers who hired a person through a private employment agency were obliged to pay the agency the equivalent of up to 10% of the worker's annual wage.

The report describes a number of new programmes (New Employment Posts Programme or new Entrepreneurs Programme etc) which are being implemented by the Manpower

¹ Law 3257/29-7-04 and Ministerial Decision F.420/76/81249/S.227/09-09-04.

Employment Organisation's (OAED) and on 72 Centres for Promotion of Employment (CPEs). The Committee has already taken note of these programmes under Article 1§1 of the Charter. Most of these programmes however concern subsidised jobs.

Significant technical upgrading was done during 2003-2004 and CPEs have a capacity to provide services to 80% of all registered job-seekers. There are 6 labour offices for vulnerable groups with special employment consultants who draw up individual action plans to meet the special needs of individual job-seekers.

In the framework of the above mentioned programmes 23,524 working posts were created in 2003 of which 23,082 were filled by unemployed persons of whom 6,430 were less than 25 years old. In 2004 4,017 individuals were placed in the labour market through these programmes.

As regards private employment services, there are two categories – private counselling services and temporary employment companies. The former already had 53 offices in Greece by the end 2003 and made 7215 placements during 2003-2004 within a wide professional range. Temporary employment companies have placed 14,232 persons. As regards the management of vacancies, the Committee notes the new information tools that are now used to improve the quality of registering as well individual profiling. The existing offer-demand information system has also been upgraded.

The Committee notes that even though the information provided in the report does not convey a full picture of employment services in Greece, it is noteworthy that some progress has been made in better running these services. There are as well many new initiatives financed through the European Union funds. The Committee requests that the next report provide more accurate information about the real placement rates for unemployed as well as for those already in employment, by age and gender. The information should also include total number of vacancies notified to the public employment service by employers, total number of vacancies filled by the public employment services and the market share – placements made by public services as a share of total hirings in the labour market.

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

Article 12 – Right to social security

Paragraph 1 – Existence of a social security system

The Committee takes note of the information provided in the Greek report.

The Committee notes that social security system covers an adequate number of branches. It is also based on collective funding as it is funded by contributions (employers, employees and the state) and also by the State budget.

The Committee recalls that, under Article 12§1, the social security system should protect a significant proportion of the population in the following branches: health care, sickness, unemployment, old age, employment injury, family, and maternity. According to the information provided in the report, in 2003, almost the entire population was insured with a social security organization or the State. The number of people insured with the organizations for which the Ministry of Employment and Social Protection is responsible was around 5.8 million for health, 3.8 million for the primary pension, 2.6 million for auxiliary pension, and 1.1 million for welfare. The Committee asks the next report to provide figures in percentages, for the period of reference, for the active population insured as regards maternity benefits, unemployment benefits, and work accident or occupational disease benefits.

The Committee notes from MISSOC¹ that health, sickness and maternity benefits are part of the compulsory social insurance scheme for employees. As regard sickness benefits, there is no statutory obligation for the employer to continue payment of wages; benefits amount to 13.50 € per day for the first 15 days of incapacity of work, and to 24.80 € per day afterward. The total duration of the benefit depends on the length of the contributory period – the shortest being 100 days of contributions during the previous year of the first 12 months of the 15 months preceding the illness - and varies between 182, 360 and 720 days.

The Committee examines maternity benefits according to Article 8 (Conclusion XVII-2, Greece, Article 8, p. 305).

In reply to its question, the Committee notes from the report that the unemployment insurance scheme of the OAED (Manpower Employment Organisation) provides for a flat-rate benefit to employees. First time entitlement is subject to the condition of 80 working days per year in the two years preceding the loss of employment, of which 125 in the last 14 previous months. Second time entitlement is subject to a 125 days condition. Additional conditions for receiving unemployment benefit are: being registered with the employment office; being fit and available for work; being unemployed. Unemployment benefits last a minimum of 5 months and a maximum of two years.

According to MISSOC, unemployment benefits are suspended when the beneficiary does not respond after three calls for a job offer or an employment opportunity. The Committee wishes to receive further clarification of the situation, i.e. whether there is an initial period where jobseekers may refuse to take up an offer of a job on the grounds that it does not meet his/her occupational requirements or experience without risking losing his/her unemployment benefits.

¹ European Commission publication, MISSOC, Social Protection in the 25 Member States of the European Union, in the European Economic Area, and in Switzerland, Situation on 1 May 2004, Comparative Tables, www.europa.eu.int/comm/employment_social/missoc/missoc2004_may_en.pdf.

The Committee recalls that Article 12§1 of the Charter requires that social security benefits are adequate, which means that, when they are income-replacement benefits, their level should be fixed such as to stand in reasonable proportion to the previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. During the reference period, the basic unemployment benefit amounted to 311.20 – 329.20 € per month, increased of 10% for each family member. The Committee notes that the level of the benefit stands in between 40% (294.4) and 50% (368) of the median equivalised income. It also notes that a 10% increase for each family member is available. It therefore concludes that the situation is in conformity with the Charter for a worker with family; but not for single workers unless other supplements exist. Accordingly, it reserves its position on this issue and asks for the relevant information.

Special unemployment aids are available for seasonal workers, youngsters and persons who have exhausted their entitlement to unemployment benefits.

Old-age pension, invalidity pension and survivors' pension are compulsory social insurance schemes with contribution-related benefits. Old-age pensions are provided by the different organizations, the principal one being IKA-ETAM (Social Security Institute). Insurance funds provide for supplementary pensions to their subscribers. Low pensions are differentially integrated by the Social Solidarity Benefit for Pensioners (EKAS). The payable amount of EKAS is income-related and, in 2004, varied between 35.30 and 141.20 €.

When the calculated pension (old-age, invalidity and survivors') of pensioners is below the minimum pension amount, they are entitled to the minimum pension. This is not income-related and it is paid out of the State budget. The report indicates that, in 2004, the minimum pensions for old-age and disability from the Social Security Institute (IKA) and the complementary insurance (TEAM) were 411.70 € and the minimum pensions for survivors were 370.50 €. The amounts of old-age and disability pensions are increased for the spouse (30.80 €) and children (20.50 € each). The report further explains that no minimum pension paid out by the Main Insurance of Salaried Workers Fund can be lower than the IKA amount mentioned above. The Committee considers the level of the benefits adequate in relation to the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value, which was 368 € per month in 2004.

Finally, there is no work accident and occupational diseases insurance scheme in Greece since the risk is covered under sickness, invalidity and survivors' schemes by specific regulations. The Committee notes from the report and Resolution Res CSS(2005)8 of the Committee of Ministers on the application of the European Code of Social Security by Greece (period from 1 July 2003 to 30 June 2004) that the question of re-establishing the right to long-term benefit at a reduced rate for victims of employment injury with incapacity less than 50% is still pending. It asks to be informed about the development on the issue.

The Committee recalls that the scope and level of family benefits are assessed under Article 16.

Pending receipt of the requested information, the Committee concludes that the situation in Greece is in conformity with Article 12§1 of the Charter.

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 notes of the information provided in the Greek report. Resolution Res CSS(2005)8 of the Committee of Ministers on the application of the European Code of Social Security by Greece (period from 1 July 2003 to 30 June 2004) that Greece continues to give full effect to the parts of the Code which it has accepted (medical care, sickness benefit, old age benefit, employment injury benefit, maternity benefit, invalidity benefit and survivors' benefit). In so doing, Greece maintains a social security system that meets the requirements of ILO Convention no. 102.

The Committee concludes that the situation in Greece is in conformity with Article 12§2 of the Charter.

Paragraph 3 – Development of the social security system

The Committee takes note of the information provided in the Greek report.

During the reference period, Act No. 3144/2003 unemployed persons who are not elsewhere insured and who attend vocational training, as well as long-term unemployed persons aged 55 years and over, were included under Social Security Institute (IKA) coverage for medical-pharmaceutical care.

Act No. 3232/2004 aimed at amending various aspects of Act No. 3029/2002 on pensions, in particular as far as persons with disabilities, farmers, divorced persons, professionals and civil servants are concerned. Pensioners in receipt of an invalidity pension are also entitled to the minimum pension of Social Security Institute (IKA) and the complementary insurance (TEAM). Act No. 3232/2004 also dealt with supplementary pension funds, funds for self-employed people, and the OGA scheme (Agricultural Insurance Organisation).

The report indicates that pensions have been readjusted yearly during the reference period. The Committee asks whether this occurs every year taking into account developments in wages, prices, and the economy.

The Committee concludes that the situation in Greece is in conformity with Article 12§3 of the Charter.

Paragraph 4 – Social security of persons moving between states

The Committee takes note of the information provided in the Greek report.

The Committee notes that relations with the other member states of the enlarged EU in the field of social security are governed by Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72. During the reference period Regulation (EC) No. 859/2003 entered into force. The Committee notes that this regulation makes Regulation No. 1408/71 applicable to third country nationals, as well as to their family members, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects within a single Member State (Article 1). This means that EU member States must guarantee to at least those nationals of other States parties to the Charter and to the revised Charter equal treatment with respect to social security rights provided they are legally resident. The Committee asks the next report to provide information about the extension in practice of the equal treatment principle.

As regards the other Parties to the Charter or to the Revised Charter not covered by Community legislation, there is no information in the report on bilateral agreements guaranteeing equal treatment, retention of accrued benefits and aggregation of insurance or employment periods existing, during the reference period, with the following countries: Albania, Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Georgia, “the former Yugoslav Republic of Macedonia”, Moldova, and Turkey. The Committee recalls from its previous conclusion (Conclusions XVII-1, p. 245) that an agreement existed with Romania. The Committee asks for up-to-date information on existing agreements and recalls that Contracting Parties can comply with their obligations not only through bilateral or multilateral agreements, but also through unilateral measures.

As regards the payment of family benefits, the Committee considers that according to Article 12§4, any child resident in a defined country is entitled to the payment of family benefits on an equal footing with nationals of the country concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state Parties are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. In other words, imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix. However since not all countries apply such a system, states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle. The Committee therefore asks the next report to indicate whether such agreements exist or are planned with the following countries: Albania, Armenia, Georgia and Turkey.

The Committee recalls from its previous conclusion (Conclusions XVII-1, p. 245) that, in the absence of any agreement, nationals of other Parties on “permanent stay” enjoy similar social security treatment as Greek nationals. It therefore asks for how long non-EU/EEA nationals of States party to the Charter or the Revised Charter must be resident in Greece to obtain “permanent stay” and thereby equality of treatment with respect to social security benefits. As regards family benefits, the Committee refers to its conclusion under Article 16 for this same reference period.

In reply to its question, the Committee notes from the report that exportability of pensions for nationals of other Parties who are not covered by Community regulation or any agreement is possible. The Committee finds that the situation is in conformity with the Charter and asks whether exportability is allowed also for the other social security benefits.

The Committee recalls that in its previous conclusion (Conclusion XVII-1, p. 246) it found that, in the absence of agreement, aggregation of insurance or employment periods was not guaranteed to the nationals of other of other states party to the Charter and to the Revised Charter and that the situation was therefore not in conformity with Article 12§4. The report indicates that the situation did not change during the reference period. The situation therefore is not in conformity with the Charter.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 12§4 of the Charter on the following grounds:

- the legislation does not provide for the aggregation of insurance or employment periods completed by the nationals of states party not covered by Community regulations or bound by agreement with Greece.

In accordance with Article 21-1§3 of the Committee's Rules of Procedure, a dissenting opinion by Mr Jean-Michel BELORGEY, joined by Mr Nikitas ALIPRANTIS, Mrs Csilla KOLLONAY-LEHOCZKY and Mr Lucien FRANÇOIS, is appended to this conclusion. A dissenting opinion by Mr Tekin AKILLIOGLU is also appended.

Article 13 – Right to social and medical assistance

Paragraph 1 – Adequate assistance for every person in need

The Committee takes note of the information provided in the Greek report.

The situation in Greece has been found to be not in conformity with Article 13§1 of the Charter since Conclusions X-1 (1987) because there is no general social assistance scheme in the country that ensures that everyone has a legally enforceable right to assistance for which the sole criterion is need (Interpretative statement on Article 13, Conclusions I, p. 64).

The report states that an action plan on social inclusion was approved in 2003 and several laws have come into force, including Act 3106 of 10 February 2003, which reorganises the social care system.

The Committee finds that these changes have not altered the basic structure of the system, whereby only certain particularly vulnerable groups of the population, such as Roma, asylum seekers, refugees, the victims of natural disasters and Greeks returning to the country, receive welfare assistance and there is still not a general social assistance scheme that meets the conditions specified above.

The Committee concludes that the situation in Greece is not in conformity with Article 13§1 of the Charter on the grounds that there is no general social assistance scheme in the country that ensures that everyone has a legally enforceable right to assistance for which the sole criterion is need.

Paragraph 2 – Non-discrimination in the exercise of social and political rights

The Committee notes that according to the Greek report there have been no changes in the situation.

However, the Greek Government has never provided an exhaustive description of the situation concerning Article 13§2.

Under Article 13§2, persons receiving assistance should not suffer as a result any diminution of their political or social rights. Any discrimination against persons receiving assistance which might result from an express provision must be eliminated (Interpretative statements on Article 13§2, Conclusions I, p. 64 and General Introduction to Conclusions XIII-4, p. 58-59).

The social rights concerned must at least include those embodied in the Charter, starting with the right to assistance itself. For example, confining eligibility for social services in general and assistance in particular to holders of identity documents or certificates of residence in a particular municipality could be incompatible with Article 13§2 as it might prevent persons without the resources necessary to establish a fixed place of residence from seeking assistance (aforementioned statements, Conclusions XIII-4, pp. 58-59; Conclusions 2006, Bulgaria).

The political rights concerned extend beyond those covered by the European Convention on Human Rights (Conclusions XVIII-1, Malta). They include, for example, access to civil service posts and the right to vote (Conclusions XIII-4, Denmark, p. 196).

The Committee asks for a description of the situation in the next report in the light of these principles of interpretation.

Pending receipt of the information requested, the Committee concludes that the situation in Greece is in conformity with Article 13§2 of the Charter.

Paragraph 3 – Prevention, abolition or alleviation of need

The Committee takes note of the information provided in the Greek report.

The Committee has recently found that eligibility for general social services meets the requirements of Article 14§1 (Conclusions XVII-2, pp. 317-322). The general social services are responsible for the provision of assistance and advice to persons in need, within the meaning of Article 13§3. The Committee therefore considers that the situation is in conformity with this provision.

The Committee concludes that the situation in Greece is in conformity with Article 13§3 of the Charter.

Paragraph 4 – Specific emergency assistance for non-residents

The Committee takes note of the information provided in the Greek report.

The Committee has previously noted that nationals of the other states party to the Charter lawfully within Greek territory without residing there who do not have sufficient resources may request social assistance through the general system (Legislative Decree No. 57/1973), in the form of accommodation, food and emergency care (Conclusions XV-1, pp. 361-362).

Equally, in accordance with decision No. A3/7485 of 1981, all foreigners present in Greece who experience financial difficulty are entitled to receive medical care and medicines from public hospitals and dispensaries on the basis of a certificate issued by their embassy (Conclusions XIII-4, p. 205-206).

Regarding the repatriation of persons in need of assistance, the Committee has previously noted that the provisions of the European Convention on Social and Medical Assistance were introduced into domestic legislation by Legislative Decree No. 4071/1959 (Conclusions XIV-1, p. 361-362).

The Committee asks whether there have been any changes to the situation described above. It invites the Government to reply to its question in the general introduction to these Conclusions on the social and medical assistance to which foreign nationals unlawfully in the country are entitled.

Pending receipt of the information requested, the Committee concludes that the situation in Greece is in conformity with Article 13§4 of the Charter.

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

The Committee takes note of the information provided in the Greek report. It also asks for informations about the social, legal and economic protection of all vulnerable families.

Social protection of the family

Housing for families (Follow-up to Complaint No. 15/2003 by the European Roma Rights Centre against Greece)

The Committee points out, with regard to access to housing for Roma families, that Greece is required to take all the necessary steps to rectify the violations of Article 16 highlighted on 8 December 2004 in the decision on the merits following the complaint mentioned above.

The Committee found a violation of Article 16 on three grounds in its decision on the collective complaint: the insufficient number of permanent dwellings of an acceptable quality to meet the needs of settled Roma, the insufficient number of stopping places for Roma who have chosen to follow an itinerant lifestyle or are forced to do so and the systematic eviction of Roma from sites or dwellings unlawfully occupied by them.

The Committee notes that the implementation of the Intergrated Action Plan (IAP) for the Social Integration of Greek Roma is ongoing. Further that the Government has amended parts of the IAP to ensure more effective coordination between all partners (including local authorities) and continues to evaluate it.

In particular, the Committee notes the extension of the housing loans programme for Roma; that steps have been taken to grant 9,000 property loans to homeless Greek Roma living in temporary accommodation. These loans, amounting to a maximum of 60,000 € for each applicant to be repaid over a period of 22 years, are designed to help Roma to buy land, construct houses or complete building work. According to the statistics in the report, out of the 15,944 loan applications filed in 2005, 5,111 were approved, 1,051 were rejected and 258 were to be re-examined. The rest are pending.

Under another new government resolution, simplified, faster procedures have been introduced for local authorities to transfer ownership of municipal land to Greek Roma citizens living in their municipalities. Recipients are selected according to predetermined social criteria giving priority to people in disadvantaged situations (such as single-parent families with or without children or persons with disabilities).

However, the Committee considers that the information provided by the Government has not shown sufficiently that the situations found to be in breach of Article 16 in the above mentioned collective complaint have been remedied or that there has been measurable progress in ensuring the right of Roma to adequate housing. In particular, it notes from other sources¹ that not an insignificant number of Roma continue to be evicted from settlements without being offered alternative housing.

The Committee considers that the situation has not been brought into conformity with Article 16 of the Charter.

¹ Commissioner for Human Rights of the Council of Europe, follow up report on the Hellenic Republic (202-2005), CommDH(2006)13, 29 March 2006; Greek Helsinki Monitor, Amnesty International Report 2005

Childcare facilities

In its previous conclusion (Conclusions XVII-1, p. 249), the Committee asked whether Roma had access to childcare services. In the absence of any reply, the Committee reiterates its question.

Legal protection of the family

Mediation services

In its previous conclusion (Conclusions XVII-1, p. 249), the Committee asked whether mediation services are offered during divorce proceedings.

The report provides information on the role that the courts are expected to play, under Article 602 of the Code of Civil Procedure, in attempts to reconcile spouses in the process of divorcing, either of its own motion or at the request of one of the parties. However, it is no longer compulsory for divorce proceedings to include an attempt at mediation, as Articles 593 to 597 of the Code of Civil Procedure, which required such a process, have been repealed by section 5 of Act no. 1250/1982.

Domestic violence against women

Legal protection of the personal and sexual freedom of women is enshrined in Articles 322 and 336 of the Criminal Code. A bill on the prevention and elimination of domestic violence is also under consideration. The Committee wishes to be informed of progress on this bill.

The Committee notes that, in practice, there are advice, support and rehabilitation centres for victims of violence in Greece.

Advice centres are run by a government body, the General Secretariat for Equality (GSE), which is also in charge of the branches of the Research Centre for Equality Issues (KETHI) operating in the country's five largest cities – Athens, Thessaloniki, Patras, Iraklion and Volos.

Local authorities provide psychological, social and legal support services for women who are victims of violence. Both the Greek Department of the European Women's Network and the National Centre for Direct Social Assistance (EKAKB) run a telephone helpline offering psychological, social and legal support. Some institutions, such as the voluntary organisations working with the GSE and the City of Athens or the EKAKB (in the regions of Attica and Thessaloniki), provide shelters for women who are victims of violence, together with psychological support, financial and legal aid, medical care and help finding work.

The GSE also runs awareness-raising campaigns in co-operation with non-governmental organisations.

In its previous Conclusion (Conclusions XVII-1, p. 249), the Committee found that Roma families were often discriminated in practice with respect to access to social services and benefits and thereby are exposed to social inequality. This often followed from their non-fulfilment of eligibility requirement (citizenship or permanent residence) due to the lack of identity papers or birth certificates. The Committee considered that the situation amounted

to a *de facto* lack of legal status for many Roma people. Accordingly this situation was in breach of the Charter, since it implied that insufficient legal protection for Roma families.

The report reiterates that Roma are regarded as Greek citizens but highlights localised cases of hostility vis-à-vis Roma. It also refers to the agreements negotiated between government and the municipal authorities to register Roma at local level and points out that one of the measures proposed by the 2002-2008 Action Plan for the Social Integration of Roma was to simplify procedures for the issuing of official documents. The Committee does not, however, see any evidence of any real progress in practice. Consequently, it reiterates its conclusion of non-conformity in this respect.

Economic protection of the family

Family benefits of a sufficient amount

In its previous conclusion (*ibid.*), the Committee considered family benefits to be inadequate because they failed to provide a sufficient supplement to families' incomes.

According to MISSOC¹, the average monthly general child benefit for salaried workers (which is paid up to the age of 18, or 22 where the child continues studying) was 8.22 € for families with one child, 24.65 € for families with two children, 55.47 € for three children and 67.38 € for four children. An additional 11.30 € is paid for each following child. According to Eurostat data, the monthly median equivalised net income in 2003 was 676.60 € and average child benefit amounted to some 4.5% of that income. The average child benefit paid to a family of three children amounted to 8.19% of that income whereas it was only 1.9% in the previous reference period. Taking account of this substantial increase, the Committee considers that family benefits, as well as supplementary benefits outlined in the previous conclusion, provide a sufficient supplement to families' incomes.

Vulnerable families

To be entitled to family benefits in Greece, it is necessary to live in Greece or another European Union country. The residence requirement implies having a fixed address. With regard to Roma families, the Committee noted that the report provided little information on specific measures taken to secure the legal equality of Roma in practice. As a result of the housing problems also described, not all Roma families have often a fixed address. In theory therefore, they cannot satisfy the residence requirements that have to be met to be entitled to family benefits. In the absence of any detailed information on measures taken to ensure equal treatment for Roma families, the Committee is unable to assess the situation and so it asks for the next report to contain such information.

On the question of the amount of family benefits paid to non-salaried workers who contribute to insurance organisations, the report refers only to the case of self-employed workers. The Committee considers that the description of the situation in Greece is incomplete and so it requests further information.

Conclusion

¹ Publication of the European Commission, MISSOC, Social Protection in the EU Member States, the European Economic Area and Switzerland, Situation on 1 May 2004, comparative tables (http://europa.eu.int/comm/employment_social/missoc/missoc2004_may_en.pdf).

The Committee concludes that the situation in Greece is not in conformity with Article 16 of the Charter for the following reasons:

- there is still a shortage of housing suited to the size and the needs of Roma families (Follow-up to Collective Complaint no. 15/2003 by the European Roma Rights Centre against Greece);
- Roma families still do not have sufficient legal protection.

Article 19 – Right of migrant workers and their families to protection and assistance

Paragraph 1 – Assistance and information on migration

The Committee takes note of the information in the Greek report.

Assistance and information on migration

The authorities published in 2003 the "Immigrant's Guide", which is a handbook containing information on procedures concerning legal entrance, residence, work permits and family reunion. It also describes the rights and obligations of immigrants, as well as prohibitions, restrictions and sanctions envisaged in legislation. The provision of information to foreigners on questions such as those addressed in the said handbook is precisely one of the obligations stemming from this paragraph. Hence, the situation is in conformity on this point.

Measures to combat racism and xenophobia

In the previous cycle, the Committee deferred its conclusion mainly because of a lack of information on whether the authorities were taking effective measures to combat racism and xenophobia (Conclusions XVII-1, pp. 254-255). The Committee notes from this report that the authorities have conducted special information campaigns to combat prejudice against immigrants, via the organisation of regular conferences with the participation of immigrant communities and representatives of the public administration.

The report also mentions that public servants working for the Directorate of Aliens and Immigration received special training in 2003, in particular on questions related to the legal framework on immigration, racism and xenophobia. Moreover, given that the Constitution lays down the principle of non-discrimination, the breach of this principle by a civil servant can lead to the use of disciplinary measures against the person concerned.

The Committee notes from other sources that a number of shortcomings still exist in the area of effective protection against racial discrimination in Greece. The report of the Greek National Commission for Human Rights¹ considers that a reinforcement of anti-racism legislation is necessary in the country. It also expresses concern as regards discrimination and violence against Roma by local indigenous populations and law enforcement personnel.

The Committee therefore asks whether any new specific measures have been taken to combat racism and xenophobia, over and above the transposition into national law of Council Directives 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and 2000/78/EC establishing a general framework for equal treatment in employment and occupation².

The Committee also reiterates its question of whether measures to combat female immigration for the purpose of prostitution have been introduced in the country.

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

¹ Updated summary report of the Greek National Commission for Human Rights (2000-2004), <http://www.nchr.gr>

² Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal L 180*, 19/7/2000, and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, *Official Journal L 303*, 2/12/2000.

Paragraph 2 – Departure, journey and reception

The Committee takes note of the information in the Greek report.

The report refers to information it has submitted in earlier reports, and further states that there are seven reception centres in the country to assist asylum seekers and refugees. These centres provide, *inter alia*, social assistance, legal support, language teaching and health care services. The report also indicates that once immigrant workers are legally residing in Greece, they enjoy the right to freely move or return to their country of origin.

The Committee notes that there has been no change in the situation regarding measures to facilitate the departure, travel and reception of foreigners wishing to immigrate to Greece, or of Greek nationals wishing to emigrate, which it has previously found to be in conformity with the Charter (Conclusions XVI-1, p. 298).

The Committee concludes that the situation in Greece is in conformity with Article 19§2 of the Charter.

Paragraph 3 – Co-operation between social services of emigration and immigration states

The Committee notes from the Greek report that there have been no changes to the situation which it has previously considered to be in conformity (Conclusions XV-1, p. 312) with the Charter.

The Committee concludes that the situation in Greece is in conformity with Article 19§3 of the Charter.

Paragraph 4 – Equality regarding employment, right to organise and accommodation

The Committee notes of the information in the Greek report.

The Constitution lays down the general principle of equal treatment between aliens and Greek nationals (Article 5). It also establishes that employment is a right protected by the State, and that all workers, regardless of their gender or based on any other discrimination, are entitled to equal pay for work of equal value (Article 22§1).

The report also mentions that aliens who reside permanently in Greece enjoy the same insurance benefits as Greek nationals, and that social protection likewise extends to them. Hence, whilst noting that the situation in the law as regards equal treatment in employment is in conformity with the Charter, the Committee nevertheless wishes to receive details on how these constitutional provisions and related domestic acts are implemented. In particular, it wishes to know whether problems have been identified as regards migrants' access to employment and the level of their remuneration in comparison to nationals.

In the area of access to housing, the Committee takes note of the Workers' Housing Organization, an institution funded by workers' and employers' contributions, which ensures equal treatment between Greek nationals and migrant workers who are insured with a major social security institution.

According to the report, migrant workers who fulfill basic requirements can benefit from the different programmes of the Workers' Housing Organisation (ready built

house, loan for house purchase or building, loan for repairing, extension or completion, special programs for exceptional housing to families with many children or people with disabilities, single mothers, beneficiaries who have serious social and financial needs, rent subsidy etc.). Given that immigrant families frequently are composed of several members, they can benefit from special programmes aimed at families with many children. On the basis of this information, the Committee believes the situation in this respect is in conformity with the Charter.

Pending receipt of the information requested, the Committee concludes the situation in Greece is in conformity with Article 19§4 of the Charter.

Paragraph 5 – Equality regarding taxes and contributions

The Committee notes of the information in the Greek report.

The report refers to information in earlier reports. The Committee recalls that it has previously previously considered the situation to be in conformity but, in the preceding cycle, deferred its conclusion pending the receipt of information on why the Ministry of Finance had not yet granted refugees the right to tax exemption for the purchase of a first residence under Act No. 1078/1980 (Conclusions XVII-1, p. 256). This situation was considered by the Greek National Commission for Human Rights to be in breach of Article 29.1 of the Geneva Convention of 28 July 1951 relating to the status of refugees, and is why the Committee requested information on this point.

The report confirms that by virtue of an opinion of the State Council, political refugees are not exempted from real estate transfer tax when purchasing their first family house. According to the State Council such an exemption can only be applied to Greek citizens in application of a constitutional provision which aims at facilitating their acquisition of houses. Moreover, the Government argues that Article 29 of the Geneva Convention on the status of refugees imposes an obligation of equal treatment only as regards tax burdens, but not tax exemptions.

The Committee notes that the report states that the tax exemption in question is only applicable to Greek citizens, but subsequently in the text indicates that “nationals do not benefit from any tax exemption for the purchase of their first family house”. The Committee considers this information as contradictory and asks whether Greek nationals benefit or not from such an exemption. In the event that is so, the Committee wished to know whether migrant workers legally residing in Greece also benefit from the tax exemption in respect of the acquisition of their first family house on an equal footing with nationals.

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

Paragraph 6 – Family reunion

The Committee takes note of the information in the Greek report.

Family members taken into account

The Committee recalls that one of the grounds on which Greece was found to be not in conformity with the Charter in the previous conclusions (Conclusions XVII-1, pp. 256-258) was because children of migrant workers between eighteen and twenty-one years were not entitled, either by law or in practice, to benefit from family reunion.

The report reiterates that legislation does still not enable children between eighteen and twenty-one years to benefit from family reunion, and that there are no plans to amend this

legislation with a view to increasing the age limit permitting the entry of migrant children up to twenty-one years. The report states that in Greece the age of adulthood is set at eighteen years, and family reunion is conceived only for minor children who are in need of parental protection.

The authorities state that their legislation is in line with the requirements of the revised Charter (which sets the age limit for family reunion in respect of dependent children at the age of majority). The Committee underlines that Greece has not ratified the revised Charter and that as long as the 1961 Charter is applicable to Greece, it should comply with the requirement of enabling family reunion for children up to twenty-one.

Length of residence requirement

In the previous cycle, the Committee also found that Greece did not comply with Article 19§6 because it imposed a length of residence period of two years before a migrant worker could request family reunion. The report does not make reference to any developments on this question. Hence, the Committee considers that the situation continues to be not in conformity with the Charter.

The Committee reiterates its request for information on how many migrant workers satisfy the additional requirements imposed by domestic law for the exercise of family reunion, namely, having sufficient and stable income, appropriate accommodation and medical care insurance.

The Committee concludes that the situation in Greece is not in conformity with Article 19§6 of the Charter on the grounds that:

- children of migrant workers between eighteen and twenty-one years of age can not benefit, either by law or in practice, from the right to family reunion;
- the requirement that a migrant worker has lived for a period of two years in Greece before being able to exercise family reunion is excessive.

Paragraph 7 – Equality regarding legal proceedings

The Committee takes note of the information in the Greek report.

The report indicates that law 3226/2004 on the ‘Granting of legal assistance to persons of low income’ was adopted in the reference period. The law stipulates that the persons entitled to legal assistance are Greek nationals, European Union nationals and citizens of third countries legally residing in a European Union state, provided they are of low income. The Committee also notes that the granting of legal assistance to foreigners is no longer based on the principle of reciprocity.

The Committee understands that under the new law access to legal aid is provided to migrant workers, including those which are nationals from States parties to the Charter and to the revised Charter, on the basis of equal treatment to nationals. It asks if this interpretation is correct. In the meantime, it considers that the amended legal framework does not significantly change the situation which it has previously found to be in conformity with the Charter.

The Committee concludes that the situation in Greece is in conformity with Article 19§7 of the Charter.

Paragraph 8 – Guarantees concerning deportation

The Committee takes note of the information in the Greek report.

Grounds for expulsion

In its previous conclusion the Committee came to a conclusion of non-conformity under this paragraph because under the Immigration Policy Act, No. 2910/2001 foreign nationals could be deported when the "presence of the individual concerned threatened public order" (Conclusions XVII-1, pp. 259-260).

The Committee reiterates that it considers this as too vague a criteria, which can lead to arbitrary decisions on the expulsion of aliens, as the person concerned might be expelled without having actually committed an offence, or without representing any real threat to "public interest". The Committee therefore concludes that the situation continues not to be in conformity with the Charter given expulsions on grounds of threat to public order.

As regards breaches of the Immigration Policy Act, No. 2910/2001, which can constitute the basis of an expulsion, the report provides examples of which violations of this Act can result in deportation: firstly, when an alien is arrested illegally entering or leaving the country, and, secondly, when an alien is arrested for illegal trafficking of immigrants. The Committee considers that expulsion may be justified on these grounds, and that this practice is in conformity with the Charter.

Remedies

Under Law 3068/2002 aliens have a right of appeal against administrative deportation before the administrative court of first instance. Judgments of the administrative court can subsequently be appealed before the State Council. In response to the Committee's question in the last conclusion, the report explains that all administrative acts and court judgments (including those dealing with deportation) are issued in Greek. However, it seems that aliens are informed in writing of the reasons of their deportation in their own language or a language which they understand. The Committee underlines that the fact that the migrant is actually informed of the reasons in such a language is sufficient to be in conformity with the Charter, with a view to permitting migrants to exercise their right of appeal.

Conclusion

The Committee concludes that the situation in Greece is not in conformity with Article 19§8 of the Charter on the ground that legislation permits the expulsion of foreigners when "their presence in Greece poses a threat to public order", which is too vague a criteria and can lead to the arbitrary expulsion of migrant workers.

Paragraph 9 – Transfer of earnings and savings

The Committee takes note of the information in the Greek report.

The Bank of Greece Governor's Act 2535/2004 on 'Fund movement and current transactions' was codified and amended in the reference period. All previously applicable acts in this area have now been abolished. The new act sets no obligations or limitations for the transfer of funds between residents and non residents of Greece (regardless of the amounts transferred, the currency of the transaction or the country of destination).

The Committee concludes that the situation in Greece is in conformity with Article 19§9 of the Charter.

Paragraph 10 – Equal treatment for the self-employed

On the basis of the information contained in the Greek report, the Committee notes that there continues to be no discrimination between migrant employees and self-employed migrant workers.

However, in the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 9 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs applies to self-employed workers.

In its conclusions under Article 19§6 and 19§8, the Committee has concluded that the situation in Greece is not in conformity with the Charter.

Accordingly, the Committee concludes that the situation in Greece is also not in conformity with Article 19§10 of the Charter.

Dissenting opinion by Mr Jean-Michel BELORGEY, joined by Mr Nikitas ALIPRANTIS, Mrs Csilla KOLLONAY-LEHOCZKY and Mr Lucien FRANCOIS

Under Article 12§4 a of the European Social Charter, the parties undertake: "*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 Contracting 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 Contracting Parties;*"

These provisions should not be interpreted in the light of the European Code of Social Security, reference to which is confined to Article 12§2. Article 12§2 requires parties' social security systems to be maintained at a level at least equal to that necessary for ratification of the Code.

Admittedly, the appendix to the Charter concerning Article 12§4 states 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*". The distinction between contributory and non-contributory systems is not only clearly outdated. It also cannot be superimposed on the alternative, albeit related, distinction between systems based on the principle of the residence of the beneficiary and ones based on the status of worker of the beneficiary - a distinction that if not outdated is at least ambiguous and not provided for in the Charter.

This means that it is directly incompatible with both the letter and the spirit of the Charter:

1. to conclude that the length of residence to which the payment of benefits may be subject must comply with the conditions laid down in the European Code of Social Security;
2. when determining whether or not states are in compliance with their undertakings, to base the assessment on:
 - a distinction between systems based on the principle of the residence of the beneficiary and ones based on the status of worker of the beneficiary;
 - and the conclusion of bilateral or multilateral agreements which are considered to be the only instruments to ensure equal treatment between nationals of each of the parties when the co-existence of the two kinds of systems mentioned-above creates a possibility that members of a single family dispersed over several countries will be eligible for overlapping benefits.

This patent violation of the spirit and letter of the Charter is simply exacerbated when, on the grounds that the admission of new countries to the Charter cannot be followed immediately by the conclusion of appropriate agreements, a transitional period (of indeterminate length) is accepted, period in which states are exempt from any obligation to deal with the cases of nationals of new member states who find themselves in the position of claiming family benefits.

It should also be added that the principle of equal treatment is not satisfied by bilateral or multilateral agreements providing for the payment, by the countries of residence of all or part of separated families whose head is resident in another country, of benefits that are the same as those of these countries of residence but below those of the country where the head of family resides. The negotiators' scope for initiative must be considered to be circumscribed by the Charter.

Besides, the Charter is designed not for governments' convenience but to confer rights on their citizens. States must take full account of any consequences of these conferred rights in their dealings with each other.

Ultimately, States are not allowed by the Charter to thwart non-citizens or non-residents, particularly ones from poorer countries; and this can go as far as to imply a revision of the principles on which their social security system lies— employment/residence or contributory/non-contributory (distinctions which at any event are meaningless in mixed systems financed partly from contributions from income and partly from taxes). The Court of Justice of the European Communities and the European Court of Human Rights have also penalised the application of such distinctions based purely on expediency, as in the case regarding disabled persons' allowances. The fact that, for the purposes of the Human Rights Convention's provisions on property rights, the ECHR draws a distinction between so-called contributory benefits, which give rise to a body of property rights, and other social rights is a quite different matter.

At all events, the importance of the Charter lies in its multilateral nature, with no reciprocity condition. If this principle is breached, its articles concerned with social protection might just as well be repealed.

Moreover, accepting length of residence conditions over and above the minimum necessary to complete administrative formalities for ordinary run-of-the-mill benefits other than minimum income and pensions, particularly family benefits, means that it is not just nationals of other Charter parties who are being penalised but also nationals who have left the country for a certain period of time and then come back.

For all these reasons, the reversing of the Committee's previous case-law on Article 12§4 regarding the exportability of benefits, and an unjustifiable level of tolerance regarding residence conditions are legal mistakes and a blow to the spirit of the Charter, and to the Charter itself. They also represent:

- an unseemly concern for the interests of governments at the expense of individuals, whose rights under the Charter are being denied by those same persons whose duty it is to ensure they are enforced;
- an outdated and politically counterproductive conception of the relationship between the heart of Europe and its periphery.

Dissenting opinion of Mr Tekin AKILLIOĞLU

Conclusion relating to Article 12§4

I do not agree with the majority for the following reasons:

The majority have just reversed the Committee's case-law for no valid reason, other than to give credence to the notion of the non-exportability of non-contributory rights under social security systems.

The Committee refused to accept the non-exportability principle for more than thirty years, on the grounds that the notion was a political and regional one (relating specifically to the Nordic countries) and as such could not take precedence over the respect of equal treatment, which is one of the pillars of the Charter.

There were two aspects to the Committee's previous case-law under Article 12§4a on child benefits. The first was that any residence condition had to be reasonable. The second was that non-resident children could not be totally excluded from eligibility for the benefit in question.

In other words, the Committee acknowledged that a permanent residence condition for children constituted indirect discrimination, since immigrant workers were those most affected by the difficulties (incidental or intended) of securing family reunion.

Now, according to the new approach adopted by the majority, "imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix". However, since they recognise that this is incompatible with the spirit of Article 12§4, the majority seek to make the effect of their decision more acceptable by adding: "states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle". According to the majority, countries that are unable to take unilateral measures must settle the problem "within a reasonable period of time" by resorting to bilateral or multilateral agreements. In other words, they are encouraging states to reach agreement on matters that fall entirely within their own discretion. The result is that their concern to enforce the principles of equal treatment and non-discrimination is effectively nullified by an inherent contradiction, namely that resorting to international agreements also leaves open the possibility of not concluding an agreement, since this is entirely at the discretion of the states concerned.

Yet the majority are supposed to be aware of those obligations of states that flow directly from the wording of Article 12§4, namely that of ensuring "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". Article 12§4, on the one hand, takes into account the movements on the Parties' territories of the persons concerned, and, on the other hand, applies to all rights, with no distinction between ones that are and ones that are not exportable, since it requires equal treatment between countries' nationals and those of other parties.

This equal treatment requirement means that where there is no agreement between parties, each country concerned must take unilateral measures to prevent any

indirect discrimination under the guise of equality. This has been the Committee's approach until now.

It has now been overturned by the majority, with their emphasis on bilateral and multilateral agreements. States that fail to take steps to eliminate indirect discrimination (for they are not obliged to do so) may conclude an agreement! This implies that:

- Article 12§4 leaves it entirely to states' discretion to choose between unilateral measures and international agreements,
- international agreements are preferable, since they are subject to reciprocity.

According to the majority, states cannot be required to pay child allowances to nationals of states party when there is no corresponding entitlement. This is incompatible with the principle that equal treatment cannot be made subject to exceptions or reciprocity conditions.

Finally, this reversal of its case-law is hardly consistent with the seriousness of purpose expected of the European Committee of Social Rights. The Committee's original case-law has been much appreciated by various international forums, including the European Parliament, which has lent its weight to precisely the principle the majority has destroyed: "[the European Parliament] deplores the fact that a large number of Member States (Austria, Belgium, Germany, Luxembourg, Ireland, Spain and Greece) refuse to pay family allowances in cases where dependent children of migrant workers do not live on their territory or have a minimum period of residence or employment requirement which places non-nationals at a disadvantage"¹.

Finally, I should add that the majority have failed to take account of judgments of the major European courts, which have reached the same conclusion as our now defunct case-law. To quote just a few: *Sürül v. Germany* and *Eila Päivikki Maaheimo v. Finland* of the Court of Justice of the European Communities and *Gaygusuz v. Austria* and *Koua Poirrez v. France* of the European Court of Human Rights, all of which give absolute precedence to equal treatment.

¹ PR\498934EN.doc PE 329.88 Draft report on the situation as regards fundamental rights in the European Union (2002) (2002/2013(INI)) Part I, 4 June 2003, European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Rapporteur: Fodé Sylla PE 329.881 2/20 PR\498934FR.doc. PR\498934FR.doc 3/20 PE 329.881.