COUNCIL OF EUROPE CONSEIL DE L'EUROPE

European Social Charter

European Committee of Social Rights

Conclusions XVIII-1 (Luxembourg)

Articles 1, 5, 6, 12, 13, 16 and 19 of the Charter

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" and 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 Conclusions[1].

The European Social Charter was ratified by Luxembourg on 10 October 1991. The time limit for submitting the 9th report on the application of this treaty to the Council of Europe was 30 June 2005 (reference period: 1 January 2001 to 31 December 2004 due to the fact that Luxembourg did not submit a report for the reference period of 1 January 2001 to 31 December 2002) and Luxembourg submitted it in several parts between 20 September 2005 and 6 June 2006.

This 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).

Luxembourg has accepted these articles with the exception of Article 6§4.

The present chapter on Luxembourg contains 26 conclusions[2]:

– 11 cases of conformity: Articles 1§1, 1§3, 6§1, 12§2, 12§3, 13§2, ;13§3, 19§1, 19§3, 19§5 and 19§9.
– 8 cases of non-conformity: Articles 5, 13§1, 13§4, 19§4, 19§6, 19§7, 19§8 and 19§10.

In respect of the other 7 cases, that is Articles 1§2, 6§2, 6§3, 12§1, 12§4, 16, 19§2, the Committee needs further information in order to assess the situation. It asks the Luxembourg Government to communicate the answers to these questions in the next report on the provisions concerned.

The next report will concern the following provisions:

– Article 2 (right to just conditions of work),
– Article 3 (right to safe and healthy working conditions),
– Article 4 (right to a fair remuneration),
– Article 9 (right to vocational guidance),
– Article 10 (right to vocational training),
– Article 15 (right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement)[3].

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

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

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

[3] It concerns the provisions of the first part of the "non-hard core" rights accepted by Luxembourg. The report will also concern Article 1§4 due to its links with Articles 9, 10, 15.

Article 1 – Right to work

Paragraph 1 – Policy of full employment

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 1§1 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

Employment situation

The Committee notes from Eurostat that the GDP growth rate stood at 2.5% in 2001 and at 4.2% in 2004.

The employment rate fluctuated from 63.1% in 2001 to 62.5% in 2004 which is slightly lower than the European average. As regards the unemployment rate, it went up to 5.1% in 2004 from 3.7% in 2003 which is significantly lower than the EU average of 9.1%. The Committee also notes from Eurostat that although the youth unemployment rate is lower than the European average, it has been increasing sharply since 2001 from 7.3% to 16.5% in 2004. The Committee asks that the Government comment on this development in the next report.

Long-term unemployment reached 21% of total unemployment in 2004, which is a significant decrease from 27.8% in 2001. This percentage is considerably lower than then EU average (45.3%).

In its previous conclusions the Committee asked about the unemployment situation among immigrants, but it notes that the report does not provide any information. Therefore it asks that this information be included in the next report. The Committee asks the same question in relation to persons with disabilities.

Employment policy

The report states that the employment policy in Luxembourg has been influenced by the European employment strategy which obliges the EU member states to present their annual action plans for employment. In 2003, the Council of the European Union addressed a recommendation to Luxembourg in which it indicated that the employment rate among older workers had not sufficiently increased notwithstanding the measures taken by the Government to stimulate the prolongation of professional life. In 2004, it amounted to 22.2% whereas the European average was 31.7%. The Committee notes from the report that the Government is planning to strengthen the incentives for prolonging professional life and to carry out pension reform. It wishes to be kept informed of the developments in this field.

The Committee notes from the Activity Report of 2004 of the Ministry of Labour and Employment that in 2001 around 2,210 persons participated in various active labour policy measures in the form of temporary contracts in private and public sector, as well as vocational training courses, such as SIE (*Stage d'Insertion en Entreprise*) and SRP (*Stage d'Insertion Professionelle*). In 2004, the number of persons involved in these measures was 3,182.

The Committee requests that the next report provide the activation rate – i.e. the average number of participants in active measures as a percentage of total unemployed. The Committee would also like to know what measures have been taken to combat youth unemployment.

The report does not contain the total labour market expenditure. The Committee requests that this information be contained in the next report.

The Committee underlines that for assessing whether the situation is in conformity with the Charter, it is important that the next report contains all information requested.

Conclusion

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

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

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 1§2 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

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 sex, 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, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52).

The Committee notes that according to the report Council Directives 2000/78/EC of 27 November 2000 establishing a general frame work for equal treatment in employment and occupation[1] and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of race or ethnic origin[2] are currently being transposed, which will increase the protection against discrimination in employment. The Committee therefore asks the next report to provide information on the following issues:

– how the concept of indirect discrimination has been defined and interpreted by the courts;
– how discrimination on grounds of age has been interpreted;
– whether exceptions to the general prohibition on discrimination are made for genuine occupation requirements, and in other cases to permit positive action measures;
– how the burden of proof in discrimination cases has been altered;
– whether associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that equal treatment within the meaning of Article 1§2 of the Charter is respected have the right to obtain a ruling that the prohibition of discrimination has been violated.

The Committee notes that during the reference period the burden of proof was altered in favour of the plaintiff in sex discrimination cases.

The Committee recalls that under article 1§2 of the Revised 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 for further information on the remedies in discrimination cases and as to the existence of upper limits to compensation.

As regards discrimination on grounds of nationality the Committee recalls that under Article 1§2 of the Revised 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 party 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 report states that occupations in the public service which involve the exercise of public authority are reserved for nationals. The Committee seeks more detailed information on the nature, type and number of the occupations concerned.

2. Prohibition on forced Labour

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[1] *Official Journal L 303,* 02/12/2000 pp. 0016-0022

[2] *Official Journal L 180,* 19/07/2000 pp. 0022-0026

Prison work

The Committee notes the information provided in the report on this issue. According to the report prisoners may be required to work, although in practice this does not occur, as there is not enough work. Prisoners work for the state. The maximum wage amounts to € 620 per month.

It invites the Government to reply to its question in the General Introduction on prison work.

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

It 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.

Part-time work

According to the information provided in the report the law on part-time work there is no discrimination between full-time and part-time employees as regards remuneration and conditions of employment.

4. Conclusion

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

Paragraph 3 – Free placement services

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 1§3 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

In response to a question previously asked by the Committee concerning the placement rate – i.e. the number of vacancies filled by public employment services (ADEM) as a percentage of total vacancies notified to them, the Committee notes from the report that the due to the complexity of accounting methodology, ADEM is not able to publish such statistics. The Committee notes from the Activity Report of 2004 of the Ministry of Labour and Employment that in 2004 14,040 vacancies were registered by ADEM, while in 2003 this figure corresponded to 12,456.

While noting that the situation continues to be in conformity with Article 1§3 of the Charter, the Committee nevertheless requests that reports contain all relevant statistics on the number of vacancies notified to the employment services, number of placements made and their share in total hiring in the labour market.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is it conformity with Article 1§3 of the Charter.

Article 5 – Right to organise

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 5 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee has previously considered the situation regarding the formation of trade unions and the right to join or not to join them (Conclusions XIV-1, pp. 490-492) and regarding trade union activities (Addendum aux Conclusions XV-1). Consequently, it will only examine recent developments in this conclusion.

Representativeness

In its last conclusion (Conclusions XVI-1, p. 383), the Committee took note of the proceedings initiated by the Luxembourg Association of Bank and Insurance Employees (ALEBA), whose application to register a collective agreement in 1999 had been rejected on the basis that it was not a nationally representative trade union (i.e. present in several sectors of the economy). The Administrative Court of Luxembourg had ruled, in a decision of 24 October 2000, that ALEBA was nationally representative within the meaning of the Act of 12 June 1965 on Collective Labour Agreements. The Committee asked to be informed of any legislative amendments introduced pursuant to this ruling.

The report states that legislation was enacted on 30 June 2004 on labour relations, the settlement of collective disputes and the national conciliation office. Section 4 of the Act authorises trade unions to claim national representative status if they have the necessary capacity and powers to assume the associated responsibilities and, in particular, deal with a major employment dispute at national level. Under Section 5, to be eligible for recognition as being nationally representative, at the most recent elections to the national employee representative bodies unions referred to in Section 4 must have obtained at least 20% of the votes of the two categories of employee referred to in Section 1 (private law non-manual and manual employees) and at least 15% for each category. The unions concerned must be active in the majority of the country's economic sectors. This is based on the results obtained by each union at the most recent elections to staff representative bodies preceding the date of the decision on whether to grant national representative status.

Sections 6 and 7 of the Act lay down representativeness conditions for unions active in sectors of the economy that are particularly important for private law non-manual and manual employees, namely ones with the necessary capacity and powers to assume the associated responsibilities and, in particular, deal with a major employment dispute in the relevant sector involving the employee category or categories concerned. Sectors considered particularly important for the national economy are ones that employ at least 10% of the country's private law non-manual and manual employees.

To be entitled to representative status in accordance with sections 6 and 7, unions must:

1. have presented lists and had representatives elected at the most recent elections to the relevant employee representative body or bodies;

2. have obtained:

– either 50% of the votes for the relevant grouping of the national employee representative body where the grouping matches precisely the scope of the collective agreement concerned;
– or, if the grouping does not precisely match the scope of the collective agreement concerned or the grouping is totally or partially composed of employees not covered by the Act, 50% of the votes at the most recent elections to the staff representative bodies of the sector concerned. In this case, only the votes received by candidates presented by the applicant trade union are counted. So-called neutral candidates' votes are excluded.

The Committee notes that under the Charter criteria of representativeness must be reasonable, clear, predetermined, objective and laid down in law, and must be subject to judicial scrutiny (Conclusions XV-1, France, pp. 240-250). It asks whether trade unions can appeal against decisions not to grant them representative status.

Personal scope

The situation in Luxembourg was previously found not in conformity with the Charter because only nationals and citizens of other European Union member states were eligible to sit on works councils, since "national law [did] not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality" (Conclusions XVI-1, p. 383).

According to the report, the law of 18 July 2003 reforming staff representation arrangements amended the Act of 18 May 1979 and extended eligibility for works councils to certain categories of non-Community nationals.

Under Section 9 of the 2003 Act, to be eligible to sit as staff representatives employees must:

1. be aged at least 18 on the day of the election;
2. have worked in the undertaking for at least one year without interruption on the day of the election;
3. be a Luxembourg citizen, a national of a party to the European Economic Area Agreement or a non-European Economic Area national holder of a type B or C work permit issued under the law and regulations governing the employment of foreign manpower. Non-European Economic Area nationals who are employed under a work permit other than types B or C may only constitute up to one-third of the membership of works councils. Those elected in excess of that percentage are replaced by Luxembourg citizens, nationals of European Economic Area nationals or non-European Economic Area nationals holders of type B or C work permits who were not elected but otherwise secured the greatest number of votes on the same lists.

The Committee finds that the new Act limits the eligibility of nationals of non-parties to the European Economic Area Agreement who are employed under a work permit other than types B or C, since they can only constitute up to one-third of the members elected to works councils. Foreign nationals are therefore not fully eligible to sit on works councils.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 5 of the Charter since national law does not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality.

Article 6 – Right to collective bargaining

Paragraph 1 – Joint consultation

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 6 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes that there have been no changes to the situation, which it has previously considered to be in conformity with the Charter. It wishes the next report to provide updated information on joint consultation between employees and employers at national, regional/sectoral and enterprise level in the private as well as the public sector, including the civil service.

The Committee concludes that the situation in Luxembourg is in conformity with Article 6§1 of the Charter.

Paragraph 2 – Negotiation procedures

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 6 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee understands that the Act of 12 June 1965 that previously contained the rules on collective agreements in the private sector had been repealed by the Act of 30 June 2004 on labour relations, the settlement of collective disputes and the national conciliation office. Sections 1 – 23 of the Act provide for the rules in connection with the negotiation and conclusion of collective agreements.

Pursuant to these provisions, collective agreements may be concluded between a particular enterprise, a group of enterprises having the same scope of activities or constituting an economic entity or one or several employers' associations on the one side and one or more trade unions on the other. Collective agreements contain rules on the different aspects of working conditions, such as remuneration, holidays, working hours, vocational training etc. Deviations from statutory provisions in collective agreements are only possible if they are advantageous to the employee.

As regards the trade unions authorised to participate in collective negotiations, the Committee notes from Section 3 of the Act of 30 June 2004 that only those being able to provide evidence that they are independent from the employer’s side as regards organisation and financing shall be able to enter into collective negotiations. The Committee examines according to Article 5 of the Charter of the representativeness criteria applying to trade unions at the national level and at the level of sectors particularly important for the economy as set out in Sections 4 to 7 of the Act of 30 June 2004. It notes that pursuant to Section 8 of the said Act, decisions on the representativeness of trade unions are taken by the minister responsible for labour who decides on the basis of a report established by the Labour and Mines Inspectorate.

Pursuant to Section 9 of the Act of 30 June 2004, a negotiation commission is established by collective agreement comprising the trade unions fulfilling the representativeness requirements according to Sections 4 to 7 of the same Act, i. e. at the national or sectoral level. The Committee asks the next report to specify on which occasion such collective agreement is concluded and what are the parties to it. The representative trade unions forming the negotiation commission may by unanimous decision admit or reject the participation of other trade unions in collective negotiations. Trade unions that have alone or jointly obtained 50% of the votes on the occasion of the most recent elections to the staff representative bodies in the enterprises or entities falling within the scope of application of the respective collective agreement have to be admitted to the negotiation commission. For determination of the 50% threshold, only the votes received by candidates presented by the applicant trade union are counted. So-called neutral candidates' votes are excluded. Requests to participate in the negotiation commissions have to be dealt with within seven days following receipt of the request. In the event such request is rejected, the case is transmitted to the minister responsible for labour affairs who takes a decision within two weeks on the basis of a report established by the Labour and Mines Inspectorate.

The Committee recalls that in order to render the participation of trade unions in the various procedures of collective bargaining efficacious, it is open to States party to require them to meet criteria of representativeness subject to certain general conditions. With respect to Article 6§2 of the Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in collective bargaining and should be objective, reasonable and subject to judicial review offering appropriate protection against arbitrary refusals. The Committee notes in this context that according to Section

23 of the Act of 30 June 2004 all decisions taken under its Title I may be appealed against with the administrative jurisdictions. It wishes the next report to specify whether this also applies to decisions on the representativeness of trade unions at the various levels as well as on their participation in the negotiation commission. The Committee also asks for further information on the criteria applied in practice to determine the participation of trade unions in the negotiation commission. Furthermore, it wishes to know whether representativeness criteria apply at the enterprise level and in the event a single trade union wants to initiate collective negotiations with the employer's side at enterprise, sectoral or national level.

Collective negotiations have to be initiated within thirty days following a corresponding request by the employee's or employer's side. However, within fifteen days following a request made by a trade union, the employer may ask to negotiate via an employer's organisation or together with other employers, in which case negotiations have to be started within sixty days following the request to negotiate. In the event the employer does not start negotiations after the sixty-days period he may be requested to negotiate alone within fifteen days following expiration of the 60 days period. In the event of an explicit refusal to negotiate, the party having requested the negotiations may have recourse to the conciliation procedure as described in the conclusion under Article 6§3 of the Charter.

Collective agreements are entered into for a minimum period of six months and three years maximum. They may be cancelled in total or partially with a notice period as determined in the collective agreement but which may in any event not be longer than three months to the end of its term. If no such notice is given, the agreement is deemed to be renewed for an indefinite period.

Collective agreements are binding on their signatories and apply to all employees of an employer who is bound by a collective agreement. Collective agreements are deposited with the Labour and Mines Inspectorate following their signature and the minister responsible for labour affairs will decide on the acceptance of such deposit upon recommendation of the Labour and Mines Inspectorate within 15 days following the deposit. If no decision is rendered within that period, the deposit is considered to be accepted. The collective agreement enters into force following acceptance of the deposit and is notified to the employees concerned.

Pursuant to Section 37 of the Act of 30 June 2004, any collective agreement may be declared to be generally binding on all employers and employees within the same profession, activity, branch or economic sector. A corresponding request may be made to the minister responsible for labour affairs by the employers' organisations active in the sector concerned or by a trade union considered to be representative at the national level or in a sector particularly important for the economy. The declaration of general applicability is made by means of a Grand Duke's decree on the basis of a proposal by the conciliation commission of the National Conciliation Office consisting of an equal number of representatives of the employer's and the employee's side (see conclusion on Article 6§3 regarding the composition and functioning of the National Conciliation Office).

In reply to the Committee's question, the report states that no data are available on the number of collective agreements concluded and the categories of employees covered. However, in accordance with the provisions of the Act of 30 June 2004, this information will be collected in the future and provided in the next report. The report further states that 66% of the total number of employees are covered by collective agreements.

The Committee notes that the new Act does not apply to public employees and civil servants and asks for updated information on the rules governing collective negotiation in respect of these categories of employees.

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

Paragraph 3 – Conciliation and arbitration

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 6 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

New rules on conciliation and arbitration have been introduced in the private sector by the Act of 30 June 2004 on labour relations, the settlement of collective disputes and the national conciliation office. Sections 24 – 40 of the Act provide for the rules on conciliation and arbitration procedures and the composition of the relevant conciliation and arbitration bodies.

The National Conciliation Office (NCO), established within the ministry responsible for labour affairs provides for conciliation in the event of collective labour disputes which are defined, *inter alia*, as collective disputes regarding working conditions to the extent they have an impact on the majority of the workers of an enterprise

as well as labour negotiations that have not led to the conclusion of a collective agreement. The refusal of an employer to start collective negotiations (see the Conclusion under Article 6§2) and disagreements on one or several provisions of a collective agreement are also considered as being collective disputes within the competence of the NCO.

The NCO consists of a commission of an equal number of representatives of the employer's and the employee's side. It is presided by the minister responsible for labour affairs who chooses a deputy from a list of three candidates established by the Government. The members of the conciliation commission are nominated by the minister responsible for labour affairs upon the respective proposal by the most representative employers' organisations (i.e. those being member of an employers' organisation at national level regrouping the majority of employers' organisations) on the one hand and the trade unions being recognised as representative at the national level on the other. The conciliation procedure is carried out jointly by the president and the members of the commission.

The Committee notes from Section 30 of Act of 30 June 2004 that referral of a collective dispute to conciliation is compulsory. The conciliation commission is convoked by the president upon written request of one of the parties to the dispute and has to have its first meeting at the latest on the first day of the sixth week following receipt of the request for conciliation. The commission may formulate a joint proposal for conciliation which is submitted to the parties. In the event such proposal is rejected by at least one of the parties to the dispute, the president of the NCO may make his own proposal for conciliation. The refusal of the president's proposal by at least one of the parties is regarded as failure of the conciliation procedure. The conciliation procedure ends either with the signature of a collective agreement, or a decision that the conciliation procedure has failed. If no agreement was reached within a period of sixteen weeks following the first meeting of the conciliation commission one or both parties to the dispute may declare the failure of conciliation.

The Committee notes that although participation in the conciliation procedure is obligatory for both parties, it appears that the conciliation proposals made by the conciliation commission or the minister may only have binding effect with the joint consent of the parties. It wishes the next report to confirm that this understanding is correct.

Within two weeks following a decision of failure of conciliation, each of the representatives of the employers' or the employees' side represented within the conciliation commission may call on the minister responsible for labour affairs to nominate an arbitrator in view of settling the dispute. The minister submits a corresponding proposal to the parties of the dispute within two weeks following receipt of such request. The parties have to make a decision on whether they accept the arbitrator proposed within two further weeks. Acceptance of the nominated arbitrator by the parties also means that they agree to be bound by the decision rendered by such arbitrator (Section 38 of the Act of 30 June 2004).

The Committee asks for confirmation that referral to arbitration is only possible with the joint consent of the parties as it appears from the aforementioned legal provisions.

The Committee further notes that the new Act does not apply to public employees and civil servants and asks for updated information on the rules governing conciliation and arbitration procedures in respect of these categories of employees.

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

Article 12 – Right to social security

Paragraph 1 – Existence of a social security system

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 12 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee recalls that it has previously considered that the social security system in Luxembourg covers an adequate number of branches (see most recent Conclusions XVI-1, p. 385). It further 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. In order to be able to assess the situation properly, the Committee asks that the next report provide figures relating to the reference period on the percentage of the total population effectively covered in respect of health care, sickness and family benefits and on the percentage of the active population effectively covered as regards sickness and maternity benefits, unemployment benefits, pensions, and work accident or occupational disease benefit.

Finally, 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 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. Consequently, the Committee asks that the next report contain detailed information on the level of all the benefits concerned, including in particular on the minimum levels applicable for each benefit.

The Committee observes in this respect that 50% of median equivalised income amounted to about € 1,135 per month in 2004.

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

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 takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 12 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes from Resolutions ResCSS(2003)25, ResCSS(2004)9 and ResCSS(2005)11 of the Committee of Ministers on the application of the European Code of Social Security and its Protocol by Luxembourg (the periods from 1 July 2001 to 30 June 2002, 1 July 2002 to 30 June 2003 and 1 July 2003 to 30 June 2004, respectively) that Luxembourg continues to give full effect to give full effect to the provisions of the Code and the Protocol. In so doing, Luxembourg maintains a social security system that meets the requirements of ILO Convention No. 102.

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

Paragraph 3 – Development of the social security system

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 12 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The report states that there have been no changes to the situation during the reference period.

As no detailed information on this provision has been available to the Committee since supervision cycle XVI-1 (Conclusions XVI-1, pp. 385-387), it asks that the next report contain detailed and up-dated information in reply to all the questions of the Form for Reports. In this regard the Committee recalls that in assessing any changes to the social security system and more particularly those changes which entail restrictions on the

right to social security as a result of economic and demographic factors, it takes into account the following criteria (listed in the General Introduction to Conclusions XIV-1, p. 11) on which information must be provided:

– the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, lengths, etc.);
– the reasons given for the changes and the framework of social and economic policy in which they arise; the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);
– the necessity of the reform, and its adequacy in the situation which gave rise to these changes (the aims pursued);
– the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
– the results obtained by such changes.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg 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 contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 12 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

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 party to the 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 States party to the Charter not covered by Community legislation the reports lists the bilateral agreements concluded by Luxembourg, however no information is provided on the precise subject-matter of these agreements and the extent to which they implement the principles guaranteed by Article 12§4. The Committee asks that such information be included in the next report. Moreover, the Committee notes that no agreements have been concluded with the following States party to the Charter: Albania, Andorra, Armenia, Azerbaijan, Georgia, Moldova and “the former Yugoslav Republic of Macedonia”. It therefore requests an explanation of how equal treatment and retention of accrued benefits is guaranteed in respect of these States party.

The Committee recalls that Luxembourg has ratified the European Convention on Social Security and considers that Luxembourg is thereby meeting the requirement of Article 12§4 as far as the aggregation of accruing benefits is concerned.

In this context, the Committee also recalls that States party 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 state party is entitled to the payment of family benefits on an equal footing with nationals of the state concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, States party 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 notes that no bilateral agreements exist with the following countries: Albania, Armenia, Georgia and Turkey, and asks whether it is envisaged to conclude them and in what time delay.

The Committee asks information on whether length of residence or employment requirements conditions are imposed on non-EU/EEA nationals of States party to the Charter or the Revised Charter for receipt of social security benefits.

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

Article 13 – Right to social and medical assistance

Paragraph 1 – Adequate assistance for every person in need

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 13 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

Types of benefits and eligibility criteria

The Committee has previously noted that the main social assistance benefit is the guaranteed minimum income (*revenu minimum garanti* – RMG). The RMG is payable to anyone over 25 and takes the form of an employment integration allowance, a supplementary allowance to cover the difference between the maximum level of the RMG and the household's total income, or the two in combination (section 1 of the Act of 29 April 1999 establishing entitlement to a guaranteed minimum income).

Since 1996 (Conclusions XIII-3), the situation in Luxembourg has been held to be incompatible with Article 13§1 of the Charter because section 2§1 of the 1999 Act, as amended, makes 25 (previously 30) the minimum age of entitlement to the RMG. The Committee has ruled that the other form of assistance for which young people might be eligible, namely emergency social assistance (the "*secours*"), is insufficient to meet the requirements of Article 13§1 and does not constitute an entitlement that claimants can enforce in the courts. The reasons for this conclusion are set out in detail in Conclusions XIII-3 (Addendum, pp. 71-73) and XVI-1 (pp. 389-390).

Emergency social assistance is governed by the Emergency Residence Act of 28 May 1897, which requires local authorities to make suitable arrangements for supporting persons in need. In each municipality, welfare offices, established under a regulation dated 11 December 1846 on the reorganisation and regulation of welfare offices, have specific responsibility for assisting the destitute and providing emergency support.

The report states that the 1999 Act was amended by legislation dated 8 June 2004, which made persons aged under 25 eligible for RMG if they were raising children for which they received family allowances, caring for a seriously infirm person requiring constant attention or unable to earn their living as a result of sickness or infirmity (section 2§3).

The Committee does not consider that this change remedies the breach of Article 13§1. As the report itself acknowledges, the legislation does not introduce a right to public assistance. As the Committee has emphasised since its initial conclusions, Article 13 "break[s] away from the old idea of assistance, which was bound up with the dispensing of charity. The expressions in the Charter reflect a new concept of assistance - the use of the words "person without adequate resources", for instance, instead of "the poor" and "want" instead of "poverty". ... under Paragraph 1 it is compulsory for those states accepting the article to accord assistance to necessitous persons as of right; the Contracting Parties are no longer merely empowered to grant assistance as they think fit; they are under an obligation, which they may be called on in court to honour" (general observations on Article 13, Conclusions I, p. 64). Moreover, albeit incidentally, the Government has never supplied the information necessary for the Committee to decide whether the financial support provided under the emergency social assistance arrangements offers those who are not eligible for the RMG a reasonable standard of living.

The 2004 Act makes eligibility for RMG conditional on willingness to accept and take part in measures to encourage entry into the labour market (section 6b of the 1999 Act).They must also sign an employment integration contract with the national social action department (section 8). Employment integration activities take the form of preparation for and assistance with the search for paid employment for a maximum of three months (section 10§1a), temporary employment in socially useful activities organised by the state, local authorities or other public bodies (section 10§1b) or short-term placements with employers (section 10§1c). The social action department may offer persons taking part in section 10§1 measures a social and occupational skills assessment and occupational guidance.

Applicants for RMG must also be available for employment and be ready to accept any job offered by the employment office (section 6).

Section 33 of the Act authorises anyone who has been refused RMG or had it withdrawn to lodge an appeal with an arbitration panel or the higher social insurance panel (see below).

Under sections 3§1 and 3§2, persons who refuse to accept such measures or drop out from them without proper justification will be refused RMG, in the case of first applications, or have their entitlement suspended. In deciding whether a refusal or drop-out is justified, the relevant body takes account of what has happened

up to six months before the application (section 3§2). A new application for benefit may be lodged after three months have elapsed from the date of refusal or suspension (section 3§3).

It is compatible with Article 13 to establish a link between social assistance and willingness to seek work or undertake vocational training, so long as the conditions are reasonable and fully consistent with the objective of providing a long-lasting solution to the individual's problems. However, reducing or suspending social assistance benefits is only compatible with the Charter if this does not deprive the individual concerned of means of subsistence (general observation on Article 13, general introduction to Conclusions XIV-1, p. 52; Conclusions XIV-1, France, pp. 271-273, Conclusions 2006, Estonia). There must also be a right of appeal against any decision to suspend or reduce benefits (Conclusions XIII-2, Denmark, pp. 124-126; Conclusions XIV-1, France, pp. 271-273).

To enable it to assess the situation in accordance with these criteria the Committee asks for information in the next report on:

– the conditions any offer of employment or placement must meet and what constitutes proper justification for refusing an offer;
– the means of subsistence to which persons for whom RMG has been refused or suspended are entitled.

Under sections 3§1 a, b and d of the 2004 Act, persons who have deliberately reduced or abandoned their paid employment, have been dismissed for serious misconduct or have lost unemployment benefit for refusing to accept a position offered by the employment office are not entitled to RMG. The Committee asks what means of subsistence persons refused RMG on these grounds are entitled to.

The Committee refers to its case-law according which individual need should be the only condition for entitlement to social assistance and that the only ground for refusing, suspending or reducing such assistance is that adequate resources are available (see, in particular, General Introduction to Conclusions XIII-4, p. 55; Conclusions XVII-1, Spain, Article 13§1). Accordingly the Committee considers that the link made between dismissal for serious misconduct and the right to social assistance is not in conformity with Article 13§1 and that the situation is not in conformity.

Level of assistance

To assess the situation during the reference period, the Committee takes account of the following information:

– basic benefit: according to MISSOC[1], the level of RMG in 2004 was € 999.35 per month for a single person, € 1,499 for a childless couple, € 1,589 for a couple with one child, € 1,680 for a couple with two children, € 1,771 for a family with three children; € 1,090 for a one parent family with one child and € 1,181 for a one parent family with two children. Family allowances were over and above these payments;
– supplementary benefits: family allowances are paid in addition. There is also a housing allowance of up to € 123, corresponding to the difference between the rent actually paid and a notional rent equal to 10% of the RMG;
– the Committee has previously noted that RMG recipients are automatically affiliated to the health insurance scheme and have access to health care under the Act of 27 July 1992 reforming sickness insurance and the health sector (Addendum to Conclusions XIII-3, pp. 71-73);
– 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: estimated at € 1,017.60 per month in 2003.

The Committee considers that the level of RMG is adequate with regard to Article 13§1 of the Charter.

Right of appeal and legal aid

Appeals may be lodged against decisions of the national social action department and the national solidarity fund, first to the arbitration panel and then to the higher social insurance panel. Appeals may then be lodged against the decisions of these two bodies to the Court of Cassation for breach of the law or failure to comply with procedural requirements. The Committee has previously found that these bodies offer sufficient safeguards (independence from the executive and the parties, and the authority to rule on any unfavourable decision concerning the award or continuation of assistance and on the merits of cases as well as points of law) to be deemed to be "tribunals" within the meaning of Article 13§1 (Conclusions XV-1 Addendum).

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

The Committee has previously noted that the Act of 18 August 1995 allows not just Luxembourg citizens but also foreign nationals authorised to reside in Luxembourg to claim legal aid if they lack sufficient resources. The Committee considers that this is compatible with the Charter.

Personal scope and repatriation

Since 2000 (Conclusions XV-1), the situation has been considered incompatible with the Charter because section 2§2 of the 1999 Act, as amended in 2001, makes entitlement to RMG subject to an excessive length of residence condition: five of the previous twenty years. Since the situation remains unchanged, the Committee maintains its conclusion.

Under Article 13§1, foreign nationals residing legally within the territory of another state party cannot be repatriated on the sole ground that they are in need of assistance. During their period of legal residence or regular work they must be granted equal treatment (general observations on Article 13, Conclusions XIII-4, p. 65 and Conclusions XIV-1, pp. 53-56, Conclusions XIV-1, Denmark, pp. 193-195). The Committee again asks for information on the situation in Luxembourg in this regard.

Conclusion

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§1 of the Charter on the following grounds:

– persons aged under 25 and in need are not entitled to adequate social assistance;
– persons who have been dismissed for serious misconduct are not entitled to the guaranteed minimum income (RMG);
– RMG is subject to an excessive length of residence condition.

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

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 13 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes from the Luxembourg report that the situation which it previously found to be in conformity with the Charter (Addendum to Conclusions XIII-3, p. 72 and Conclusions XIV-1, p. 506) has not changed.

The Committee concludes that the situation in Luxembourg 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 contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 13 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes from the Luxembourg report that the situation which it previously found to be in conformity with the Charter (Conclusions XIV-1, p. 506 and Conclusions XVI-1, p. 391-392) has not changed.

The Committee concludes that the situation in Luxembourg 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 contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 13 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee recalls that since Luxembourg submitted its first report (Conclusions XIII-3, 1996), it has not been able to assess the conformity of the situation with Article 13§4 and has deferred its conclusion.

The Committee recalls that those entitled to urgent social and medical assistance include, under Article 13§4, foreign nationals legally in the territory of a country but without residence status (this being stated in Article 13§4 itself combined with the Appendix concerning the personal scope) as well as foreign nationals unlawfully

in the territory of a country (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §32).

In order to comply with Article 13§4 States must provide assistance enabling those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing) (Interpretative statement on Article 13, General Introduction to Conclusions XIII-4, pp. 60-64). They are not required to apply the guaranteed income arrangements under their social protection systems. While individuals' need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this should not be interpreted too narrowly (Conclusions XIV-1, Netherlands, pp. 572-573).

The provision of urgent medical care must be governed by the individual's particular state of health (*ibid*. Conclusions XIV-1, Iceland, pp. 398-399).

The report states that the emergency assistance specifically offered to foreign nationals consists of emergency care or treatment and the price of their ticket to enable them to return to their country of origin. The Committee finds this information insufficient to assess the situation of Luxembourg in light of the above principles of interpretation of Article 13§4. Therefore it considers the situation not to be in conformity.

It also 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.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 13§4 on the grounds that the information provided by the Government does not allow the Committee to assess that foreign nationals are entitled to assistance to enable them to deal with an immediate state of need.

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

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 16 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

Social protection of the family

Housing for families

In its previous conclusion (Conclusions XVI-1, pp. 393-394), the Committee asked how many families were waiting for appropriate accommodation. In the absence of any reply, the Committee reiterates its question.

Childcare facilities

The Committee notes that a new regulation was adopted on 20 July 2005 on the approval of managers of child-care centres. This regulation reorganises care facilities for school-age children outside school hours and is aimed at encouraging municipalities to arrange flexible, temporary care for children and increasing what is on offer, as well as providing catering and childminding services, cultural and recreational activities, help with homework, special minding services for sick children, socio-educational support and parent training sessions. There were 87 centres of this type in 2005.

Family counselling services

The Committee notes that there are family advice and psychological support services available to families.

Legal protection of the family

The Committee notes that there have been no changes in the situation that it has previously considered (Conclusions XVI-1, pp. 393-394) to be in conformity with the Charter.

Economic protection of the family

Vulnerable families

The Committee notes that the residence requirement of six months' genuine, uninterrupted residence prior to obtaining a provisional residence permit has been replaced by a genuine, habitual residence requirement combined with the obligation to have a legal address. In Luxembourg, persons with a "legal address" are all those who are "authorised to live there and legally registered there and have established their principal residence there".

The Committee notes that the length of residence requirement and the obligation to have a legal address in Luxembourg apply both to nationals and to non-nationals (save where a derogation to this rule is allowed under a European or international legal instrument negotiated by Luxembourg). The Committee asks whether this change affects the situation of nationals of other States party to the Charter to whom the six months' uninterrupted residence requirement did not apply (Conclusions XVI-1, pp. 393-394).

Conclusion

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

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 contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes that the situation regarding free assistance and information services and measures to combat misleading propaganda about emigration and immigration, which it has previously considered to be in conformity with the Charter, has not changed.

However, the Committee would like to receive updated information on how assistance and information, for example on questions of employment, are currently being provided to migrant workers entering the country (whether this is still being done by the Government Immigration Office, or if advice centres for migrant workers have been set up). The Committee also wishes to know if information in print formats is available for migrant workers, and in the affirmative, on what topics and in which languages.

Whilst noting that there exist in Luxembourg a number of general laws (press, unfair competition, criminal law) which can theoretically be used to prevent the distribution of false information related to emigration and immigration, the Committee asks whether such laws have ever been used in practice to tackle the problem of misleading propaganda. Moreover, it asks whether the adoption of specific legislation on this subject has been considered or envisaged by the authorities.

Finally, the Committee would like to receive more detailed information in the next report on the currently existing measures to combat racism and xenophobia towards migrants.

Pending receipt of the information requested, the Committee concludes that the situation in Luxembourg is in conformity with Article 19§1 of the Charter.

Paragraph 2 – Departure, journey and reception

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

However, in the preceding cycles (see most recently Conclusions XVI-1, pp. 395-396) the Committee has deferred its conclusion because it wished to receive more detailed information on the functioning of Grand Ducal Regulation of 17 October 1995, which requires nationals of states not members of the European Union or parties to the European Economic Area who wish to carry out paid activities in Luxembourg to be free of any illness or physical or mental incapacity which could prevent them from carrying out the employment for which they have been recruited or which would lead to a prolonged hospitalisation.

The report reiterates that a person must be capable of exercising the profession he/she wishes to work in, and that if a person is suffering from an illness, it is unlikely that a work/residence authorisation will be granted. It also states that a person who has already been granted a work permit, and has exercised a professional activity in the country, shall be able to receive medical assistance.

The Committee however still considers that the information provided in the report does not clarify how the above provision is applied. It therefore asks the next report to explain how in practice the authorities check whether a person wishing to immigrate is free of any illness, in particular whether workers are subject to detection tests upon their arrival.

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

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

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

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

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

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

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee recalls that it has previously found the situation not in conformity under this provision, nor under Article 5 of the Charter, on grounds that only Luxembourg or European Union nationals were eligible for joint work councils (Conclusions XVI-1, p. 396).

The Committee notes that a new law of 18 July 2003 has extended the right to be elected to joint work councils to non-European Economic Area nationals, provided they hold a B or C type work permit which has been issued in accordance with the legal regulations in force. However, non-European Economic Area nationals who are employed under a work permit other than types B or C may only constitute up to one-third of the membership of works councils. Those elected in excess of that percentage are replaced by Luxembourg nationals, European Economic Area nationals or holders of type B or C work permits who were not elected but otherwise secured the greatest number of votes on the same lists.

Whilst the new law is an improvement as regards the previous situation, it still represents a discrimination towards non-European Economic Area migrant workers who are not in possession of a B or C type work permit, since they can only constitute up to one-third of the members elected to works councils (see also conclusion in respect of Article 5).

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§4 of the Charter on the grounds that certain categories of foreign migrant workers cannot be elected for joint work councils.

Paragraph 5 – Equality regarding taxes and contributions

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

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

The Committee concludes that the situation in Luxembourg is in conformity with Article 19§5 of the Charter.

Paragraph 6 – Family reunion

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee recalls that there is no legislation in Luxembourg which enables a migrant worker from a non-European Economic Area state to be joined by his/her family (this is not the case for nationals from a European Economic Area state, who do have the right to exercise family reunion under Council Regulation 1612/68).

Under the Committee's case-law, in the absence of a statutory right to family reunion, statistical information must be furnished in each cycle of supervision on the number of applications for family reunion on behalf of children of migrant workers, and on the number of residence permits granted (Conclusions XII-I, pp. 239-240, Sweden).

The report reiterates that the authorities are not able to provide detailed statistics on questions of immigration, including that of family reunion.

The report states that legislation on the right to family reunification will shortly be adopted as a result of transposition into national law of a European Union Directive on the subject, and that statistics on immigration

are likely also to be made available as a result of the application of a proposed European Community regulation. The Committee, however, considers that at present the situation does not fulfil the obligations under this provision.

As the Committee has no information to assess whether requests for family reunion have in practice been favourably considered by the authorities, it maintains its previous finding of non-conformity on this ground.

In its last conclusion the Committee asked whether applications to settle in the country in cases where the individual suffers from a drug addiction or mental illness were automatically refused or were examined on their individual merits. According to the report, such petitions do not automatically entail a refusal and they are decided on a case-by-case basis. The Committee therefore considers that the situation is in conformity with the Charter on this point.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§6 on the grounds that national law fails to recognise the right to family reunion for non-European Economic Area migrant workers and it is not possible to assess if in practice they have been able to be joined by their families.

Paragraph 7 – Equality regarding legal proceedings

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes from the report that the situation concerning equal treatment in respect of legal proceedings, which it has previously considered not to be in conformity with the Charter, has not changed. Under national law foreign plaintiffs, unless they come from a State which is party to the Hague Convention on civil proceedings of 1 March 1954, must furnish security for costs in proceedings brought before domestic courts (*cautio judicatum solvi*).

The Committee notes that given that not all States party to the Charter are part of this Convention, nationals from such countries will have to deposit a caution when bringing legal proceedings, whilst others will be exempt from this requirement.

The Committee concludes that the situation in Luxembourg is not in conformity with Article 19§7 given that migrant workers from States which are not party to the Hague Convention on civil proceedings of 1 March 1954 are discriminated against since they must deposit a *cautio judicatum solvi* when bringing proceedings before domestic courts.

Paragraph 8 – Guarantees concerning deportation

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

Grounds for expulsion

The Committee notes from the report that the grounds for the expulsion of migrant workers, which it has previously considered not to be in conformity with the Charter, have not changed. Thus, a foreigner may be expelled from the country for lack of legitimate means or if the person concerned is considered a threat to public health.

The Committee has previously considered that national legislations permitting the expulsion of a foreigner on grounds that they do not have sufficient legitimate means went beyond the grounds for deportation accepted by Article 19§8 (Conclusions V, pp. 138-139). Under this article, expulsion of a migrant worker is only permitted for reasons relating to national security, public interest or morality. As regards threats to public health, they can only amount to a breach of public order justifying expulsion if the individual concerned refuses to undergo appropriate treatment.

The only change that has taken place in the reference period is that as from 1 August 2004 the authority taking the decision on expulsion is the Minister of Foreign Affairs and Immigration, instead of the Minister of Justice. The remedies in place against a deportation order have not changed.

Accordingly, the Committee concludes that the situation in Luxembourg is not in conformity with Article 19§8 on the grounds that the expulsion of migrant workers provided for by legislation i.e. the lack of legitimate means of subsistence or a threat to public health, go beyond the grounds acceptable under the Charter.

Paragraph 9 – Transfer of earnings and savings

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

The Committee notes from the Luxembourg report that there have been no changes to the situation which it has previously found to be in conformity.

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

Paragraph 10 – Equal treatment for the self-employed

The Committee takes note of the information contained in the report submitted by Luxembourg. It recalls that in the previous supervision cycle Luxembourg did not submit a report on Article 19 and therefore Conclusions XVII-1 do not contain an assessment of the conformity of the situation with this provision. The reference period for the current report as regards Luxembourg is the following: 1 January 2001 to 31 December 2004. The conclusion below therefore relates to this entire period.

On the basis of the information contained in the Luxembourg 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§4, 19§6, 19§7 and 19§8, the Committee has concluded that the situation in Luxembourg is not in conformity with the Charter.

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