

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

March 2020

FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS

Findings 2019

This text may be subject to editorial revision

GENERAL INTRODUCTION

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, certain countries were exempted from reporting on the provisions subject to assessment in the framework of the Conclusions 2019. These countries were invited, instead, to provide information on the follow-up given to the decisions on the merits of collective complaints in which the Committee had found violations.

This document presents the findings of the Committee adopted at the 311th session in January 2020 concerning the follow-up of decisions. The following countries are concerned:

- CROATIA
- CYPRUS
- CZECH REPUBLIC
- THE NETHERLANDS
- NORWAY
- SLOVENIA
- SWEDEN

CROATIA

CROATIA

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Croatia was exempted from reporting on the provisions under examination in Conclusions 2019. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

The following decisions are concerned:

- Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010;
- *Matica Hrvatskih Sindikata* v. Croatia, Complaint No. 116/2015, decision on the merits of 21 March 2018.

The Committee's assessment appears below. It also appears in the HUDOC database.

Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010
[Resolution ResChS\(2011\)6](#)

1. Committee's decision on the merits of the complaint

1. The European Committee of Social Rights concluded unanimously that there had been a violation of Article 16 of the 1961 Charter read in the light of the non-discrimination clause, in respect of families who had been arbitrarily evicted from their housing during the conflict in the former Yugoslavia, and had clearly indicated their wish to return to Croatia, owing to:

- the slow pace of the housing programme and the lack of clarity as to when housing would be provided under the programme, appearing to overlook the needs of displaced families who wished to return to Croatia; and
- a failure to take into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

2. Information provided by the Government

2. The [report](#) submitted by Croatia indicates that the Central Office for Reconstruction and Housing is making significant efforts to provide housing for all returnees, displaced persons, refugees and other target groups in war-affected area. Housing is provided under Regional Housing Programme (RHP) and National Housing programme. Croatian nationals of Serbian ethnicity who are former tenancy rights holders may qualify for housing under both programmes. More specifically, if a person or a family has not been selected for one of the projects under the Regional Housing Programme (RHP), this person or family may exercise their right to housing under national housing programme.

3. All beneficiaries of the Regional Housing Program (RHP) are selected at the sessions of the Joint Working Group for the Selection of Beneficiaries (UNHCR and SDUOSZ), in line with the pre-established procedures defined by the Framework Agreement and the vulnerability criteria. Therefore, vulnerability level is one of the most important criteria for the selection of the project beneficiaries.

4. Housing activities are carried out in line with the Three-Year Housing Plan developed by the Central Office for Reconstruction and Housing for 2016, 2017 and 2018, which provides data on an approximate number of housing units available in the housing fund of the Central Office for Reconstruction and Housing. Plans defined for 2016 and 2017 were fully implemented and even exceeded. In the course of 2018, as provided for in the 2018 Annual Plan and in the Three-Year Housing Plan, the Central

Office for Reconstruction and Housing plans to secure housing for 1,150 families, applying different housing models. Regional housing programme is to be implemented until the end of 2021.

5. In terms of future activities, it should be noted that the Government adopted an Operational Programme for National Minorities 2017 - 2020. This Operational Programme contains measures and activities, the aim of which is to safeguard and improve the existing level of rights of all national minorities as well as operational programmes for Serbian, Italian, Czech, Slovak, Hungarian, Albanian and Roma national minorities.

6. The report states that Croatia is committed to complying with the provision of Article 16 of the European Social Charter and that it seeks to ensure that social rights may be exercised without any discrimination on grounds of nationality.

3. Assessment of the follow-up

7. The Committee takes note of the substantial efforts made to provide housing to all returnees, displaced persons, refugees and other target groups in the war-affected areas.

8. It notes that both the national and regional housing programmes are implemented within reasonable time frames and in line with legal procedures and the available financial resources. The level of vulnerability is one of the most important criteria for selecting beneficiaries.

9. The Committee also takes note of Final Resolution CM/ResDH(2018)238, adopted on 4 July 2018, in which the Committee of Ministers of the Council of Europe decided to close the examination of *Radanović v. Croatia*¹ (European Court of Human Rights' judgment, final on 21 March 2007). This case was similar to the complaint and it related to a disproportionate interference in the applicant's right to respect for her property because she was unable to repossess it for a long period owing to the national

¹ Radanović v. Croatia (No. 9056/02)

The applicant, Seka Radanović, is a Croatian and Canadian national who was born in 1939 and currently lives in Burlington (Canada). The applicant's flat in Karlovac where she lived until October 1991 when she left to live in Germany was taken over by the State Temporary Takeover and Managing of Certain Property Act and allocated to a third person. The applicant lodged proceedings to evict the temporary occupant and to regain possession of her flat. As the domestic authorities were unable to provide alternative accommodation for the occupant before December 2003 they did not bring any civil action to evict him and he was permitted to remain in her flat, effectively preventing her from using it for more than six years. The applicant complained that she was prevented from using her property for a prolonged period of time and that she had no effective remedy to her complaint.

The Court found that the applicant was forced to bear a burden – which should have been borne by the State – of providing the temporary occupant with a place to stay, a weight she eventually had to carry for more than six years. The Court considered that the Croatian authorities failed to strike the requisite fair balance between the general interest of the community and the protection of the applicant's right to property and held unanimously that there had been a violation of Article 1 of Protocol No. 1 (protection of property) and 6§1 (length of proceedings).

It also found that the remedies open to the applicant were ineffective and held unanimously that there had been a violation of Article 13.

authorities' failure to provide alternative housing for the temporary occupants of flats taken over under the 1995 "Takeover Act", together with the lack of a remedy to evict the occupants and of satisfactory compensation for the fact that she had not been able to use the flat and the excessive length of the eviction proceedings in some cases (Article 1 of Protocol No. 1 to the ECHR, Articles 13 and 6§1).

10. The Committee notes from the action report submitted to the Committee of Ministers (see document DH-DD (2018)315), that the Croatian authorities have put considerable funding into providing temporary occupants with other accommodation. Over the last 17 years they have invested €76 million in providing replacement housing for temporary occupants, making it possible for owners to recover their property. There are currently no pending eviction proceedings under the 1995 Takeover Act. Regarding compensation for losses resulting from confiscation, the Constitutional Court and the Supreme Court have adjusted their case law. Effective remedies have been set up for occupied property to be repossessed and for compensation for the losses arising from confiscation.

11. In view of the above, the Committee finds that the situation has been brought into conformity with the 1961 Charter and decides to bring its examination of the follow-up to the decision to an end.

Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, decision on the merits of 21 March 2018
Resolution [CM/ResChS\(2018\)10](#)

1. Committee's decision on the merits of the complaint

12. The European Committee of Social Rights found a violation of Article 6§2 of the 1961 Charter on the ground that the adoption in 2012 of the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) amounted to an unjustified interference in the collective bargaining process. Although the intervention complained of was prescribed by law and was justified by the Government in order to maintain the fiscal stability of the public service system, (i.e. the public interest), the Government provided little information on the economic situation prevailing in Croatia at the time of the adoption of the legislation.

13. The Committee found no violation of Articles 5, 6§1, Article 6§3, 6§4 of the 1961 Charter.

2. Information provided by the Government

14. In its response to the Committee of Ministers concerning the decision of the European Committee of Social Rights, the Government emphasised that all the conditions prescribed by the Article 31 were met at the time of the adoption of the contested measure. The suspension/withdrawal of the Christmas bonus was determined by the law which was adopted in normal legislative procedure in Croatian Parliament. The measure was necessary in order to protect the fiscal stability of the State which is definitely in the public interest. Namely, insufficient revenues or excessive deficit could have led to massive social inequalities in Croatian society. While many workers from the private sector suffered dismissals which led to increased budget for unemployment and social benefits, the workers in public sector did not face such problems. In order to make a balance in budget and to protect social justice the Government tried to make an agreement with trade unions from the public sector. Since it was not possible to reach an agreement the only solution was to pass the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012). The Act clearly represented a proportionate measure since it did not include dismissals in public sector and it did not diminish the salaries. Even if the arguments from the Government were too general and insufficient they did demonstrate excessive public deficit and huge problems with fiscal stability. Due to negative rating of the public finances Croatia was not able to finance additional debts. The global financial and economic crisis has had a belated effect on the Croatian economy, which was reflected in a considerable decrease in economic activity, a steady decline in the GDP and a constant increase in the rate of unemployment, with a subsequent decrease in the citizens' standard of living. As a conclusion Croatia strongly believes that the possibility of applying restrictions according to Article 31 of

the 1961 Charter was used within the scope of the Article in order to protect public interest and it was used proportionally to the aim pursued.

15. The authorities further stated that the Act on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) is no longer in force. It was a short-term measure that no longer produces any legal effects. Its effect was limited to the period of the economic crisis.

16. Meanwhile the Government signed a new collective agreement with trade unions representing workers from public sector. The new collective agreement contains all material rights which were suspended during the economic crisis. Therefore, the workers from the public sector are entitled to both Christmas bonus and bonus for holidays as agreed in the collective agreement. The Government respects all contractual obligations. Since 2017, the basic salary for all workers in the public sector was increased three times, each time by 2%.

3. Assessment of the follow-up

17. The Act of 2012 on Withdrawal of Certain Material Rights of the Employed in Public Services (Official Gazette No. 143/2012) which gave rise to the complaint in question, is no longer in force. Therefore, the Committee decides to bring its examination of the follow-up to the decision to an end.

CYPRUS

CYPRUS

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Cyprus was exempted from reporting on the provisions under examination in Conclusions 2019. Cyprus was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

There were no decisions concerned in 2019.

CZECH REPUBLIC

CZECH REPUBLIC

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the Czech Republic was exempted from reporting on the provisions under examination in Conclusions 2019. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

The following decisions are concerned:

- Association for the Protection of all Children Ltd - APPROACH Ltd v the Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015;
- European Roma and Travellers Forum (ERTF) v. Czech Republic, Complaint No. 104/2014, decision on the merits of 17 May 2016

The Committee's assessment appears below. It also appears in the HUDOC database.

Association for the Protection of all Children Ltd. (APPROACH) v. Czech Republic, Complaint No. 96/2013, decision on the merits of 20 January 2015
[Resolution ResChS\(2015\)11](#)

1. Decision of the Committee on the merits of the complaint

18. The Committee concluded that Article 17 of the 1961 Charter had been violated on the ground that not all forms of corporal punishment that is likely to affect the physical integrity, dignity, development or psychological well-being of children, were prohibited.

2. Information provided by the Government

19. In the [report](#) the Government indicates the latest changes in the legislation.

20. Firstly, it concerns the Act No. 250/2016 Coll., stipulating liability for misdemeanour and on proceedings concerning them which was adopted with effect from 1 July 2018. It defines a misdemeanour and determines an attempt to commit a misdemeanour.

21. Secondly, Act No. 251/2016 Coll., determines certain misdemeanours, effective as of 1 July 2017, with regard to protected interests such as health, personal rights and honour of an individual, interest in peaceful coexistence. Unlike the previous legislation, a misdemeanour was extended by other reasons of discrimination of selected groups of people (age and disability). To commit a misdemeanour, negligent fault is sufficient. Due to the principle of subsidiarity of criminal prosecution, an act will be considered as a misdemeanour on the condition that it is not a criminal offence under Section 146 (bodily harm), or Section 148 (negligent infliction of bodily injury) of Act No. 40/2009 Coll., Criminal Code, as amended.

22. The perpetrator of a misdemeanour may be any person who, by virtue of law, court decision or other decisive factors, is responsible for childcare, i.e. not only the parents, but also other persons responsible for child upbringing, school and pre-school staff, staff of institutional and protective education, staff for children requiring immediate help, etc.

23. Lastly, as of July 1, 2017, a misdemeanour committed by operators of facilities for children requiring immediate assistance under Act No. 359/1999 Coll., on social and legal protection of children, came into effect, and stipulates that the operator of the facility commits a misdemeanour if he/she does not follow the defined quality standards in the implementation of social and legal protection of children in childcare facilities requiring immediate assistance (Section 59g Subsection 1 k). A misdemeanour is punishable by a penalty of up to CZK 50, 000 (Section 59g,

Subsection 2). The provision is supplemented by the wording of Section 59 Subsection 1 h), which states that a natural, legal or an entrepreneurial natural person commits a misdemeanour by applying inadequate educational means¹ or restrictions to the child.

24. Furthermore, the prohibition on the use of inadequate means of education in the Czech legal order is explicitly defined in Act No. 247/2014 Coll., regulating the provision of child care, where Section 10 Subsection 2 determines: "It is forbidden to apply to a child any inadequate educational means or restrictions, or any educational means affecting the dignity of a child, or which in any way jeopardize the child's health, physical, emotional, intellectual and moral development."

25. The newly adopted legal regulations thus supplement the Act No. 109/2002 Coll., regulating the performance of institutional education or protective education in school facilities and on preventive educational care in school facilities and on change of other acts, by defining an explicit closed list of measures applicable in education (Section 21).

26. The scope of prosecution of corporal punishment remains in the criminal law in the full range:

- criminal offence of bodily injury according to Article 146 of the Criminal Code,
- negligent infliction of bodily injury (Article 148 of the Criminal Code), which in the qualified body implies a stricter punishment for the perpetrator who committed an offence to a child under the age of 15.
- the crime of abuse battering a person entrusted to his/her care according to the provisions of Article 198 of the Criminal Code. Such behaviour is considered as maltreatment of entrusted person which is perceived by this person as harsh sufferings;
- the criminal offence of battering a person in the same household under Article 199 of the Criminal Code.

27. Legal regulation in the area of criminal law affects effectively and comprehensively the crimes in the area of corporal punishment and is effectively enforced.

28. Prosecution of corporal punishment of children under civil legislation:

- The rights and duties of parents (other persons who are in charge of the child's education) to the child are governed in particular by Act No. 89/2012 Coll., Civil Code, as amended, in particular in the second part, which regulates the family law.
- The Civil Code defines education and educational means in Section 884, "Educational means are by no means understood only as the negative measures (sanctions), and especially not as corporal punishment. Educational means should be understood primarily as means of activation and prevention."

29. Special protection against domestic violence, which due to the high intensity of emotions among close family members is one of the most dangerous forms of aggression, is defined in Articles 751 to 753 of the Civil Code.

30. The court may, in accordance with Article 751-753, limit or prohibit the presence of the other spouse in the household for a specified period of time in order to prevent violence against the other partner or other members of the household up to six months, even repeatedly.

31. Act No. 99/1963 Coll., Code of Civil Procedure, in Article 76 a provides the child with procedural protection against corporal punishment and other negative conduct in the family and outside the family by means of a preliminary ruling by the court to place the endangered child into a suitable environment/facility or into foster care for a temporary period as necessary. A preliminary ruling can protect the interests of the child to the highest extent also in accordance with Article 76 b of Civil Procedure Code and can expel the abuser out of the common household and immediate neighborhood.

32. Finally, the report states that the Czech Republic is very attentive to the obligation resulting from Article 17 of the Charter. According to the authorities, although progress has been made to implement the decision previously taken by the Committee, further steps need to be taken to adapt the existing legal framework

3. Assessment of the follow-up

33. The Committee notes the developments of Czech legislation aiming at strengthening the protection of children against all forms of violence.

34. The Committee considers that the legislative amendments in 2017 and 2018 are a step forward, but they do not constitute a total, clear and explicit prohibition of all forms of corporal punishment of children that are likely to harm their physical integrity, dignity, development or mental well-being. National legislation does not

explicitly prohibit corporal punishment of children in the family home and of children in institutions. In its report the government does not dispute this situation.

35. The Committee recalls that it has already assessed the provisions of national law referred to in paragraph 26 and following in the context of the present complaint (see §§49 to 51 of the decision) and noted that they prohibit severe violence against children, and that national courts convict perpetrators of corporal punishment provided that they reach a certain threshold of seriousness.

36. The report cites no clear and precise case law that comprehensively prohibits the practice of corporal punishment. The Committee recalls that it has observed in particular that existing legislation could also be interpreted as distinguishing all forms of corporal punishment from the notion of “educational measures”, thus allowing corporal punishment for educational purposes, which is contrary to the Charter.

37. The Committee further notes that according to the latest report (April 2019) of the Global Initiative to End All Corporal Punishment of Children <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/CzechRepublic.pdf> corporal punishment is still not prohibited in the family home, in alternative care settings, day-care centres and penal institutions. Moreover, in its Concluding observations published on 6 December 2019, the UN Human Rights Committee’ invited the Czech Republic to take practical steps, including through legislative measures where appropriate, to explicitly prohibit corporal punishment in all settings, including the home.

38. Legislation on violence and abuse are not interpreted as prohibiting all corporal punishment. However, it should be possible for courts to apply various legislation to clearly and explicitly prohibit all forms of corporal punishment. The Committee invites the authorities to keep it informed of any legislative and jurisprudential developments that would redress the violation found.

39. Meanwhile, the Committee therefore considers that the situation has not been brought into conformity with the 1961 Charter.

European Roma and Travellers Forum (ERTF) v. Czech Republic
Complaint No. 104/2014 decision on the merits of 17 May 2016
[Resolution ResChS\(2017\)2](#)

1. Decision of the Committee on the merits of the complaint

40. The Committee found violations of Article 16 of the 1961 Charter on the ground of insufficient access to housing of Roma, poor housing conditions and territorial segregation and forced evictions.

41. In particular, it found that legislation permits the eviction of individuals and families without requiring the provision of alternative accommodation. Furthermore, not all legislation permitting evictions ensures the necessary safeguards required by Article 16 of the 1961 Charter, such as the prior consultation of affected parties, or the obligation to propose alternative accommodation.

42. The Committee also found a violation of Article 11 of the 1961 Charter on the grounds of exclusion in the field of health and of inadequate access to health care services.

2. Information provided by the Government

On the right to housing – Article 16

Concept of Housing

43. In 2016, the Government of the Czech Republic approved the Concept of Housing in the Czech Republic until 2020 which pays particular attention to people in vulnerable periods of life, such as during child care, care for other dependent persons, or the elderly. The main principles of the Czech Republic's housing policy are: economic adequacy, i.e. respect for elementary economic principles, sustainability of public and private finance, state responsibility for creating conditions that enable individuals to fulfil the right to housing. In the revised Housing Policy Concept, the basic strategic objectives were partially assessed and on this basis the current validity of the strategic objectives was assessed and new priorities and tasks for the second half of the validity period of the Housing Policy Concept. The analysis confirms that the achieved standard of both physical and financial availability of housing in the Czech Republic and the qualitative characteristics roughly correspond to the position of economic performance that the Czech Republic occupies within the EU 28. At present, housing is available for a significant majority of the population, where more than 94% of the Czech Republic's population is able to secure housing without the help of the state on a regular housing market, either in the segment of own property, co-operative or rental housing. Therefore, the goal of state housing policy is to

maintain the present trend. The strategic objectives of the Strategy are availability, stability, and quality.

Protection against eviction

44. Both the ownership, lease or sublease form of housing or accommodation are legally regulated so that owners and occupants of the apartment can protect themselves from inappropriate interference with their rights, especially against illegal evictions. Renting of the flat is comprehensively defined in the Civil Code. The new Civil Code, effective as of 1 January 2014, abolished the legislation that required providing housing compensation and generally allowing apartment clearance only after providing housing compensation. The reason for the cancellation was the disproportional constraint of the lessor's ability to actually terminate the lease if there are legitimate reasons to do so.

45. Furthermore, the Ministry of Labour and Social Affairs, in cooperation with Ministry of Justice, in order to carry out the above task from the Homelessness Policy Concept, considers further measures for prevention of housing loss.

46. As regards forced evictions and their legal safeguards under building regulatory framework, especially the Building Act, the Ministry of Justice is currently conducting a thorough analysis of the legislation and the practice in the light of the conclusions of the Committee (§§ 80–87 of the decision).

Measures to reduce spatial segregation

47. Instruments limiting segregation in housing are contained in the basic document for urban planning, which is the Urban Development Policy of the Czech Republic, adopted by the Government of the Czech Republic. The Urban Development Policy of the Czech Republic establishes general tasks for the following urban planning activities and for setting the conditions for the envisaged development plans with in order to increase their benefits and to minimize their negative impacts.

48. In 2017, the Ministry of Regional Development issued a methodical guideline "Guidelines for implementation of the national priorities set out in the Urban Development Policy". It contains explanations and description of the way of fulfilment of Article 15 Policies of the Territorial Development of the Czech Republic in the Urban Planning Activities of Regions and Municipalities.

Social Housing

49. In the Government Legislative Work Plan for the years 2019 - 2021 adopted in February 2018, the Ministry of Regional Development in cooperation with the Ministry of Labour and Social Affairs was tasked to prepare a draft law on social housing. The proposal thus in many ways extends the current right of families to social, legal and economic protection in the Czech Republic in the area of housing. If approved, the effective date of the act is expected to be 1 January 2021.

50. The programmes of investment support for social housing have been implemented by the Government of the Czech Republic since 2003. Information on how many Roma households use the housing that has been created with investment support is not registered by the Ministry of Regional Development, because renting is a private-law relationship. Lease contracts for starting apartments are signed chiefly by the municipality and the owners of the starting apartments, as the beneficiaries of the subsidies. The activities of the Ministry of Regional Development and the State Housing Development Fund Since 1998, the subsidies from the budget of the Ministry of Regional Development, or the State Housing Development Fund, have helped to create over 22,500 apartments intended for social housing of selected groups of socially vulnerable or endangered citizens.

Local projects

51. The Brno City Hall is cooperating on the Rapid Re-Housing Brno project NGOs. In 2016, the City of Brno also approved the Strategy for Ending Family Housing Emergency within its Social Inclusion Strategy. Since 2016, the results of various traditional and experimental approaches have been tested in Brno within the project “Housing First”. In total, 119 projects were supported, from which 646 social apartments should be provided. The target group of social housing are people in housing need, defined by the European typology ETHOS (European typology of homelessness and exclusion from housing in the Czech Republic). One of the eligibility criteria for supporting social housing projects is the non-segregation of target groups at risk of social exclusion.

52. However, the authorities indicate that despite several steps towards the implementation of the Committee’s decision, the Czech Republic is aware that some room for further progress in improving the current legal framework remains, in particular in terms of legal safeguards available in respect of forced evictions. The Czech Republic takes the obligation arising from Article 16 of the Charter with utmost gravity and is prepared to reassess the need for adopting additional measures to remedy the situation described in the Committee’s decision.

On the right to health care – Article 11

53. The health insurance system in the Czech Republic is based on the principle of solidarity. Health care is covered from public health insurance and must be available to all insured individuals in the Czech Republic equally. Illegal refusal of medical care, termination of care, but also failure to issue a report with reason for refusal of health care is an administrative offense within the meaning of Section 117 (3) of the Health Services Act, for which a fine of up to CZK 300,000 may be imposed by the administrative authority, which is responsible for the granting of the authorization for the provision of health services and CZK 100 000 by the regional authorities. Based on the above, it was shown that no group of people in the Czech Republic can be disadvantaged in terms of more difficult access to health care, including the Roma ethnic group. Cases of refusing medical care to anyone due to their Roma ethnicity are very rare. However, if they should happen exceptionally, they are strictly sanctioned.

54. The Czech Republic disagrees with the decision that the Czech Republic violates the obligations contained in the European Social Charter in terms of the right to health and access to health services. Due to the fact that the above mentioned procedure is set by law for all beneficiaries of public health insurance in the Czech Republic it is not possible to classify it as discriminatory. Provision of health care is based on the principle of equality. Health care can also be used by insured persons who are not employed, are not registered with the Labour Office and have not paid health insurance as self-payers. Non-payment of public health insurance premiums does not mean denying access to health care. Even assuming that for a particular person registered there is due health insurance debt, the provided health care is paid by the health insurance company. The start and end of health insurance of persons is governed by Section 3 of Act No. 48/1997 Coll., On Public Health Insurance. The loss of employment or removal from the register of for job seekers at the Labour Office does not exclude people from health care (the claim that “such persons are left without health coverage” is incorrect and cannot be applied to any group of people in the Czech Republic nor to the group of people who are subject of the collective complaint). For these reasons, it cannot be concluded that the provision of health care to the poor and vulnerable is not sufficiently guaranteed in the Czech Republic. Health care is provided free of charge to all population groups, including those that are inactive in primary prevention and people addicted to narcotic substances, alcohol or tobacco products.

Statistical data

55. The Czech Republic does not collect data on the number of treated patients of Roma ethnicity or other nationality or ethnicity for reasons of anti-discrimination legislation and these data are not included in statistical surveys. Socio-economic determinants, environmental conditions, worse lifestyle and its consequences are the main causes of the unfavourable health condition of Roma males and females living in socially excluded localities in the Czech Republic.

3. Assessment of the follow-up

On the right to housing – Article 16 violation

56. In its [report](#) the Government indicates numerous positive developments, mainly the adoption of the Concept on Housing and the local projects delivering positive results towards guaranteeing the housing right. However, the Committee notes that the right to housing is not clearly addressed in the Czech legislation. It also notes that the Social Housing Act has not yet been adopted.

57. The information provided remains general on needs in the housing field, targets or achievements to date (number of beneficiaries of loans subsidies, number of housing units, constructed or renovated etc.), and little concrete evidence has been provided that sufficient action has been taken or that measurable progress have been made in the field of housing for Roma.

58. According to FEANTSA, there is no national/regional homeless data-collection strategy. Several cities and regions carry out surveys, but there is no uniform methodology and data is not comparable (see <https://www.feantsa.org/download/cz-country-profile-2018473397835719963696.pdf>).

59. The Civil society monitoring report on implementation of the national Roma integration strategy in the Czech Republic, published by the European Commission in November 2018, indicates that "spatial and structural segregation in housing, along the lines of both ethnicity and social status, are intensifying and there exist no policy measures to address this fact. (...) Spatial segregation necessarily has negative impacts on mental and physical health due to time spent in socio-pathological environments featuring long-term stress over financial solvency, the need to perform manual or other dangerous labour, and inferior housing (see above) including lack of adequate bathing and toilet facilities, indoor mould and parasites, poor heating, insulation and ventilation, and lack of personal space. As a consequence, Roma men live 19 years less than non-Roma men in the Czech Republic, and Roma women live 17 years less for than non-Roma women on average".

60. The continued existence of “residential hostels” located on the outskirts of many municipalities and inhabited by an estimated 100,000 persons, including a disproportionately high number of Roma, attests to the segregation of Roma in marginalised communities (see Fourth Opinion on the Czech Republic adopted on 16 November 2015 of the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC/OP/IV(2015)004).

61. The Committee considers that there is evidence that there is still insufficient access to housing of Roma who also face poor housing conditions, territorial segregation and forced evictions.

62. Therefore, the Committee holds that the situation has not been brought into conformity with Article 16 of the 1961 Charter.

On the right to health – Article 11 violation

63. The Committee recalls its findings in its decision that as regards the situation of persons who have not registered with the Labour Authority or who have been excluded from the register of unemployed persons, such persons were left without health coverage (unless they paid the contributions themselves) given that eligibility for “non-contributory” state health coverage is linked to unemployed persons being on the Labour Authority register. The Committee found that there was no evidence that a person without resources requiring medical services would receive the necessary care.

64. In that connection the Committee takes note of the legal framework that guarantees that the loss of employment or removal from the register of for job seekers at the Labour Authority does not exclude people from access to health care.

65. However, the Committee reiterates its previous finding that there is evidence that Roma communities, in many cases, continue to live in unhealthy environments and thus the requirements of Article 11 §§ 1, 2 and 3 of the 1961 Charter in light of the Preamble are not satisfied.

66. More needs to be done to ensure that Roma families are not harmed by their environment and enjoy adequate access to health care and to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions.

67. The Committee considers that the situation has not been brought into conformity with Article 11 of the 1961 Charter.

THE NETHERLANDS

THE NETHERLANDS

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, the Netherlands were exempted from reporting on the provisions under examination in Conclusions 2019. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

The following decisions are concerned:

- European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014.
- Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014;

The Committee's assessment appears below. It also appears in the HUDOC database.

European Federation of National Organisations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014
[Resolution ResChS\(2015\)4](#)

1. Decision of the Committee on the merits of the complaint

68. The Committee found violation of Article 31§2 on the grounds that the legislation and practice of the Netherlands fail to ensure access to community shelter for the purpose of preventing homelessness and that the quality and quantity of shelters available to vulnerable groups do not fulfill the requirements of the Charter.

69. It also found violation of Article 13§1 and of Article 13§4 on the grounds the right to emergency assistance the right of adult migrants in an irregular situation and without adequate resources in the Netherlands is not guaranteed and that there is no right to appeal in matters concerning the granting of emergency assistance

70. The Committee found a violation of 19§4c on grounds there is no right to appeal in matters concerning the accommodation of migrant workers and their families.

71. Lastly, the Committee found a violation of Article 30 on the grounds of failure to provide shelter leading to poverty and social exclusion.

2. Information provided by the Government

72. The Government in its [report](#) registered on 30 October 2018, refers to the information submitted in its previous reports (2015 and 2016) and provided the following additional information:

73. In 2015, a special commission formulated an advice (“From supported housing in an institution to a supported home”) on how the protective housing and community shelter services could best be organized. The municipalities and other parties have subscribed to this advice and have been working on regional action plans. In these plans municipalities describe how homelessness can be prevented and – when homelessness still occurs – how they will provide good community shelter services. Special attention is given to regional problems of homelessness and the actions that need to be taken to ensure people can live on their own again or in a specific home care institution. Research in 2017 showed that every region was working on a plan, or already had a plan. Municipalities realize that there are still some topics that need further development. Municipalities want to work together on some of these topics and learn from each other. Those topics have been gathered in a special programme (the so-called Strategic Agenda for supported housing and community shelter). Four national ministries and eleven national organizations (such as the Association of

Netherlands Municipalities and the Federation of Shelters) have committed themselves to the program, and over 400 professionals and clients have contributed to the realization of this program. It contains topics such as debts, housing, and access to and quality of the community shelter. The programme supports regional organizations with the (accelerated) implementation of the advice of the special commission and the regional action plans.

74. In recent months special attention has been given to the access to community shelters. This was a result of the negative outcome of the assessment of the Netherlands Institute of Mental Health and Addiction (Trimbos Institute) in 2017 which showed that the access didn't improve enough since the last assessment in 2015. Concrete measures have been initiated. For example: a special commission has been established for dealing with conflicts between municipalities about the location of shelter, there have been several regional sessions with professionals about the access to shelter. On top of that, the State Secretary has spoken to 10 aldermen about access to shelter in their municipalities and the improvements that are needed. In 2018 a new assessment to the access to shelter will take place. In this way the organizations in the Netherlands work on prevention of homelessness and – when homelessness still occurs – providing good community shelter services.

3. Assessment of the follow-up

A) Access to shelter (violation of Article 31§2)

75. The Committee notes the positive measures taken to remedy the violation found. According to the information provided results showed that access to shelter has improved in the country. A set of quality standards for community shelter services, with specific standards for children and young people have been developed. Monitoring has been improved by local and regional authorities responsible for shelter keep track of information about the number of requests for shelter and the number of clients moving in and out of shelter.

76. However, the Committee notes from the Fourth overview of housing exclusion in Europe 2019 from Fondation Abbé Pierre and Feantsa that in 2016, Statistics in the Netherlands (CBS) estimated that there were 31,000 homeless people aged 18 to 65 years in the Netherlands. This covers people who have been registered as homeless by a local authority (people sleeping rough, people in short-term and emergency accommodation and people staying with friends or family in an ad hoc manner). 40% of this homeless population was concentrated in the main cities of Amsterdam, Rotterdam, the Hague and Utrecht (also known as the G4) see https://www.feantsa.org/download/oheeu_2019_eng_netherlands2573617061818251625.pdf. Considering the high number of homeless people as indicated above, the Committee finds that the situation has not been brought into conformity with Article 31§2 of the Charter.

77. As regards the violation of Article 31§2 on the grounds that the right to shelter of adult migrants in an irregular situation and without adequate resources in the Netherlands is not guaranteed, this issue is examined under the assessment of the follow-up of the decision on Complaint Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013. The Committee considers that the violation has been addressed and decides to close its examination in this respect.

B) Right to appeal in matters concerning the accommodation of migrant workers and their families (violation of Article 19§4c)

78. As there is no information on this issue in the report, the Committee asks the next report to provide information on the right to appeal in matters concerning access to shelter of migrant workers and their families, on the ground of which the Committee found a separate violation of Article 19§4c of the Charter.

79. In view of the absence of information, the Committee finds that the situation has not yet been brought into conformity with the Charter.

C) Emergency assistance of adult migrants in an irregular situation (violation of Article 13§1 and of Article 13§4)

80. As regards the violation of Article 13§1 and of Article 13§4 on the grounds that the right to emergency assistance of adult migrants in an irregular situation and without adequate resources in the Netherlands is not guaranteed, this issue is examined under the assessment of the follow-up of the decision on Complaint Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013. The Committee considers that the violation has been addressed and decides to close its examination in this respect.

D) Poverty and social exclusion (violation of Article 30)

81. The Committee in its decision considered that in light of the findings made under Articles 31§2, it followed that the legislation and policy concerning the access to emergency shelter has brought about a situation where homeless persons in need of shelter are not offered shelter, leading to poverty and social exclusion.

82. On the basis of the information available to it, in particular the high number of persons remaining homeless, the Committee is still unable to conclude that access to a shelter, including a shelter for the homeless, for the purpose of preventing homelessness is ensured and that the quality and quantity of shelters available to vulnerable groups fulfill the requirements of Article 30 the Charter concerning the right to protection against poverty and social exclusion.

83. The Committee finds that the situation has not been brought into conformity with the Charter.

Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014
[Resolution ResChS\(2015\)1](#)

1. Decision of the Committee on the merits of the complaint

84. The Committee found a violation of Article 13§4 on the grounds that adult migrants in an irregular situation (failed asylum seekers) without adequate resources are not guaranteed emergency assistance.

85. The Committee considered that, even within the framework of the current migration policy, less onerous means, namely to provide for the necessary emergency assistance while maintaining the other restrictions with regard to the position of migrants in an irregular situation, remain available to the Government with regard to the emergency treatment provided to those individuals, who have overstayed their legal entitlement to remain in the country. The Committee cannot accept the necessity of halting the provision of such basic emergency assistance as shelter, guaranteed under Article 13§4 as a subjective right, to individuals in a highly precarious situation.

86. The Committee also found a violation of Article 31§2. In light of the Committee's established case law, shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them. The Committee referred to its findings above under Article 13§4 and reiterated that the right to shelter is closely connected to the human dignity of every person regardless of their residence status. It considered that the situation, on the basis of which a violation was found under Article 13§4, also amounted to a violation of Article 31§2.

2. Information provided by the Government

87. The Government in its [report](#) registered on 30 October 2018 refers to the information submitted in its previous reports (2015 and 2016) and provides additional information.

88. The report reiterates that the current system ensures that no person irregularly present in the territory is forced to live in the street.

89. It states that the Government, in cooperation with the municipalities, seeks to improve the effectiveness of its return policy within the current system.

90. The Government has taken several measures to guarantee emergency assistance to migrants in an irregular situation:

Municipal Bed-Bath-Bread shelters (BBB's)

91. After the decision handed down in December 2014 by the Central Appeals Court, taken immediately after the decision of the Committee on the complaint submitted by the Conference of European Churches, various municipalities felt strengthened to offer shelter to undocumented migrants. Until 15 June 2015, 32 municipalities had offered shelter to 1.285 migrants in an irregular situation. These shelters were called Bed-Bath-Bread-shelters (BBB's). In December 2016 in total 37 municipalities hosted 1.435 persons and 25 families in BBB facilities. These BBB's have been financed partly by the municipalities themselves, partly by the Government of the Netherlands (by the Municipalities Fund, in Dutch: Gemeentefonds). In 2019, 27 municipalities were entitled to receive a financial contribution from this fund. The agreement between the Association of Municipalities (VNG) and the Government of the Netherlands to establish pre-Pre-Removal centres (in Dutch: Landelijke Vreemdeling Voorzieningen (LVV's) presented in November 2018 states that 'due to the establishment of LVV's, the need for municipal BBB's will gradually decrease'. Funding from the Municipalities Fund will be reduced accordingly.

Pre-Removal Centre - VBL placement

92. The "regular" restrictive accommodation (VBL) facilities already provide shelter to persons in an irregular situation. In the VBL facilities, they receive assistance in arranging for their departure. These facilities also provide food, medical care and other services. A condition for staying in a VBL facility is that the person concerned must make a genuine effort to arrange for his or her departure.

93. Under the current system, migrants who from the outset cannot be expected to leave the Netherlands within 12 weeks are not granted access to a VBL facility, even if their inability to leave is beyond their control (e.g. because of administrative obstacles in their country of origin). The authorities then lose track of migrants in this situation, even though they are willing to cooperate in arranging their departure. To overcome this problem, the Government has decided not to apply the 12-week deadline too strictly in cases where such flexibility might facilitate the migrant's departure. However, this explicitly does not imply that no time-limit will be set. If a migrant is not (or is no longer) making arrangements to leave the Netherlands, thus removing any prospect of voluntary departure, he or she will be required to leave the facility. Good case management on the part of the Repatriation and Departure Service (DT&V) will ensure that aliens in VBL facilities continue working towards their departure. If a migrant is unable to return to his or her country of origin even after

devoting considerable time and effort to this cause, he or she may be eligible for a residence permit on the grounds of the no-fault criterion.

Pre-VBL placement

94. Under the current system, migrants can only gain access to a VBL facility if they state in advance that they are willing to cooperate in arranging their departure. The Government has decided to modify this condition by introducing a preliminary phase. In practice, this means that migrants are initially given some breathing space, in which they only receive general information on return and are able to familiarise themselves with the facility. This is followed by a series of conversations aimed at encouraging them to cooperate in the return process. During these conversations, they are again informed about the prospects associated with their return. Migrants who are sincerely and demonstrably willing to return are transferred to the regular VBL facility in Ter Apel with a view to preparing for eventual departure.

New facilities for pre-VBL placement

95. Several municipalities have provided emergency reception facilities for migrants in an irregular situation, invoking their duty of care or their responsibility for maintaining public order. Migrants in an irregular situation who are housed in such facilities are now partially outside the state's purview, and as a result, they are not covered by the Government's return policy. In order to resolve this undesirable situation, pre-VBL placements will be made available in various locations. Besides Ter Apel, these facilities will be limited to the Netherlands' five largest cities: Amsterdam, Rotterdam, The Hague, Utrecht and Eindhoven.

96. Under the direction of the DT&V, central government and the municipalities will jointly provide reception facilities to aliens in these five locations with a view to encouraging their willingness to return. The length of this preliminary placement is limited to a few weeks in order to safeguard the effectiveness of the Government's return policy.

97. Migrants who are willing to arrange their departure can pursue this track in the regular VBL facility in Ter Apel. Long-term reception for migrants in an irregular situation in the pre-VBL phase is therefore not an option, as it serves as a preparation for the actual departure process in the regular VBL facility. Central government and the municipalities will share responsibility for the aforementioned facilities, and government funding will depend on the rate at which migrants are successfully returned to their countries of origin. Outcomes will be monitored on a monthly basis. After a year, an initial evaluation of the pre-VBL phase will be conducted to determine whether these facilities should continue operating.

Municipal referrals to the VBL

98. Thanks to the expanded scope for working towards (and coming to terms with) departure in a VBL setting, all municipalities will now have a practical option to refer migrants to one of these facilities as appropriate. If a municipality encounters migrants in an irregular situation, it can also notify the DT&V, which will collect and transfer the migrant to the pre-VBL facility in Ter Apel.

Investing in voluntary return

99. The best way to improve return outcomes is to increase the percentage of voluntary return. To support these efforts the Government will invest additional funds in activities promoting voluntary return.

100. The Government has earmarked €15 million from its general funds for the above-mentioned changes to the VBL facility and the introduction of a pre-VBL phase. In addition, it will invest a further €5 million from its general funds in the return process and return-related projects. The Ministry of Foreign Affairs' migration and development budget (€4 million) will continue to be used for return-related projects and will be increased to €10 million per year.

No Fault of their own' residence permit

101. Migrants in an irregular situation who cannot return can apply for a 'No Fault of their own' residence permit and can get access to general social security as soon as their request is accepted.

Deferral of removal for medical reasons'

102. Migrants can get access to the Asylum Centres (AZC's) during the time they are waiting for a decision on a request for 'deferral of removal for medical reasons' (Article 64), and during the first year that this Article-64-status has been granted. - It is estimated that annually 500 times an application for 'Deferral of removal for medical reasons' is approved.

National case law

103. In addition to this, the report refers to domestic case law of two highest Netherlands' administrative courts on shelter for persons in an irregular situation. On 26 November 2015 both the Central Appeals Court and the Administrative Jurisdiction Division handed down rulings on the reception of unlawfully residing persons.

104. The Administrative Jurisdiction Division's judgment concerns the question of whether the State Secretary can oblige persons to cooperate in their departure from the Netherlands as a condition for being allowed to stay in a VBL.

105. The Administrative Jurisdiction Division held that neither Article 8 of the ECHR nor the case law of the European Court of Human Rights (ECtHR) gives rise to a general obligation on the State to provide reception for a foreign adult residing lawfully or unlawfully in the Netherlands. Referring to the case law of the ECtHR, the Administrative Jurisdiction Division observed that in exceptional cases the State may be compelled under Articles 3 and 8 of the ECHR to provide accommodation for foreign adults residing unlawfully in the Netherlands.

106. The Administrative Jurisdiction Division concurred with the State Secretary's view that the consequences of a foreign adult's choice to refuse to declare him/herself willing to cooperate in his/her departure – namely that the State Secretary then refuses to allow access to a VBL – is in principle his/her own responsibility if the person in question is residing unlawfully in the Netherlands and under Section 61, paragraph 1 of the Aliens Act 2000 has a duty to leave the Netherlands of his/her own accord. However, from the point of view of due care, the State Secretary has to bear in mind that exceptional circumstances may apply which mean that he may not, a priori, attach the condition of cooperation in departure to the offer of accommodation. Such exceptional circumstances are present if it transpires that the person concerned cannot be held responsible for his/her refusal to cooperate on account of his/her mental state.

107. The Central Appeal Court's judgment concerns the question of whether the municipality of Amsterdam is permitted to refuse to grant reception facilities to unlawfully residing foreigners and refer them to a VBL for accommodation. In the judgment discussed in the previous paragraph, the Administrative Jurisdiction Division ruled that unless exceptional circumstances are present, attaching conditions to the provision of accommodation is not in breach of positive obligations under the ECHR and the European Social Charter to provide shelter. Consequently, in the view of the Central Appeals Court, the municipality of Amsterdam is not obliged to provide shelter under the Social Support Act. The Court pointed out that it is up to the State Secretary to decide, in line with the assessment framework as set out in the judgment of the Administrative Jurisdiction Division, whether in an exceptional case access to a VBL should be granted without imposing the condition of cooperation in that person's departure from the Netherlands.

108. On 29 June 2016 the Administrative Jurisdiction Division held that the municipality of Amsterdam is not under a legal or international obligation to provide shelter to unlawfully residing persons when the State Secretary of Security and Justice already offers accommodation in a so-called liberty restricting measure (VBL) facility.

The European Court of Human Rights' judgment *Hunde v. the Netherlands*

109. The report also refers to a decision of the European Court of Human Rights (ECtHR) in *Hunde v. the Netherlands* (17931/16)⁶. This case concerned a complaint from a failed asylum seeker under Articles 2 and 3 of the ECHR about the denial of shelter and social assistance. The applicant further complained that the requirement to cooperate in his own deportation in order to receive social assistance as an irregular migrant amounted to treatment contrary to his human dignity.

110. In its decision the Court noted that the Netherlands authorities have already addressed this in practical terms. In the first place, the applicant had the possibility of applying for a “no-fault residence permit” and/or to seek admission to a centre where his liberty would be restricted. It is furthermore possible for irregular migrants to seek a deferral of removal for medical reasons and to receive free medical treatment in case of emergency. In addition, the Netherlands have most recently set up a special scheme providing basic needs for migrants in an irregular situation living in their territory in an irregular manner. It is true that that scheme was only operational as from 17 December 2014, one year after the applicant had taken shelter in the Refuge Garage. However, it is inevitable that the design and practical implementation of such a scheme by local authorities of different municipalities take time. Moreover, the scheme was brought about as a result of a series of elements at the domestic level, including the applicant’s pursuit of domestic remedies in connection with his Article 3 claim. In these circumstances the Court concluded that it cannot be said that the Netherlands authorities have fallen short of their obligations under Article 3 by having remained inactive or indifferent.

111. The ECtHR declared the complaint manifestly ill-founded and inadmissible.

3. Comments of the Protestant Church in the Netherlands

112. The Committee takes note of the observations of the Protestant Church in the Netherlands submitted comments on the 12th simplified report registered by the Secretariat on 16 September 2019 relating to the Committee 's decision on this Complaint. In its comments, while recognizing the efforts made by the authorities, it points out that migrants in an irregular situation need to fulfil the entry-criteria of the BBB’s shelters. Access to Pre-Pre-Removal Centres (LKV’s) is conditional on migrants cooperating with finding a ‘durable solution’ according to the Local Cooperation Board (LSO). To get access, to the Pre-Removal Centre Ter Apel (VBL) irregular migrants have to cooperate with return as a condition for receiving shelter. The Protestant Church in the Netherlands indicates that failed asylum seekers in particular situations do receive emergency assistance.

4. Assessment of the follow-up

113. The Committee notes that immediately after its decision, the Central Appeals Court in decisions taken in December 2014 obliged municipalities to offer night shelter, shower and food to adult migrants in an irregular situation in their region.

114. The Committee recalls that it previously noted that some of the proposals outlined by the Government in their previous report may improve the situation of adult migrants in an irregular situation; the decision not to apply too strictly the 12 week deadline to leave the country, the establishment of pre - VBL facilities, for example, (see Findings 2016).

115. As indicated in the information submitted to the Committee, the Government has implemented the envisaged measures. A variety of solutions are made available to migrants in an irregular situation such as:

- access to Municipal Bed-Bath-Bread shelters (BBB's).
- migrants in an irregular situation who cannot return can apply for a 'No Fault of their own' residence permit and can get access to general social security as soon as their request is accepted.
- deferral of removal for medical reasons,
- Pre-Removal Centres are available to persons wishing to cooperate with return.

116. The Committee takes note of the Government's declaration that the current system ensures that no person irregularly present in the territory is forced to live on the street.

117. Therefore, the Committee finds that the situation has been brought into conformity with the Charter both in respect of Article 13§4 and 31§2 and decides to bring its examination of the follow-up to the decision to an end.

NORWAY

NORWAY

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Norway was exempted from reporting on the provisions under examination in Conclusions 2019. Norway was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decision is concerned:

- *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013.

The Committee's assessment appears below. It also appears in the HUDOC database.

Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013
[Resolution ResChS\(2013\)17](#)

1. Decision of the Committee on the merits of the complaint

118. In its decision, the Committee concluded that there was a violation of Article 24 of the Charter on the ground that Section 19, paragraph 1, subsection 7 of the Seamen's Act enables dismissal directly on grounds of age and does therefore not effectively guarantee the seamen's right to protection in cases of termination of employment.

119. In addition, it found that there was a violation of Article 1§2 of the Charter on the ground that the age-limit set out in Section 19, paragraph 1, subsection 7 of the Seamen's Act amounts to discrimination on grounds of age and constitutes a violation of the effective right of a worker to earn one's living in an occupation freely entered upon, as provided for under Article 1§2 of the Charter.

2. Information provided by the Government

120. The Government refers to the previous [simplified report](#) on the follow up submitted on 16 December 2015. Reference is also made to Norway's [15th report](#) dated 11 April 2018 which includes information on the Norwegian social insurance scheme, including the right to old-age pension.

121. The Committee recalls that Section 19, paragraph 1 of the Seamen's Act of 30 May 1975 (No. 18) was repealed by the Act of 21 June 2013 (No. 102) relating to employment protection etc. for employees on board ships (Maritime Labour Act) (*Lov om stillingsvern mv. for arbeidstakere på skip*), which entered into force on 20 August 2013.

122. Pursuant to Section 5-12, paragraph 1 of the Maritime Labour Act, employment may first be terminated when the employee reaches 70 years of age. By exception, a lower age limit than 70 may be determined, provided that such differential treatment meets the requirements set out in Section 10-3, paragraphs 1 (just cause; no disproportionate intervention in relation to the person so treated; necessity for the performance of work or profession) or 2 (necessity for the achievement of a just cause; no disproportionate intervention in relation to the person so treated; no contravention to the prohibition against indirect discrimination, discrimination on the basis of age or discrimination against an employee who works part-time or on a temporary basis) of the Maritime Labour Act.

123. The Committee further recalls that the general age limit set out in Section 15-13a, paragraph 1 of the Working Environment Act was increased to 72 as of 1 July 2015.

124. The Government explains that the age limit of 70 years at that time, i.e. in 2013, corresponded to the general age limit in the Working Environment Act. The justification for the adaptation of an age limit of 70 years was that the old age limit of 62 years was not justified, and had to be abolished. The decision was made to put in place a limit of 70 years as it would make the age limit in the Maritime Labour Act the same as for the rest of the general work force in Norway. The intention was to harmonize the Maritime Labour Act with the Working Environment Act.

125. According to the Government there was no need for a special consideration on what grounds could justify this limit as the limit in the Working Environment Act had been the same for several years. It is generally considered that the age limits in Norway is within the limits of anti-discrimination on the basis of age. This assessment is made taking into consideration the systems of benefits workers are entitled to as they reach the age limit.

126. However, the Government acknowledges that subsequently changes were made to the age limit for the protection against dismissal on the grounds of age in the Working Environment Act. As noted above, in 2015, the general age limit was raised to 72 years.

127. The Government finally states that it has not yet been considered to raise the age limit in the Maritime Labour Act, but it is possible that this will be included in an upcoming evaluation of certain age limits in the labour market.

3. Assessment of the follow-up

128. The Committee recalls that in its previous finding (Findings 2017) it considered that no specific evidence had been submitted about the reasons/ justifications for the adoption of 70 as the age when employment may be terminated for seamen, which is two years earlier than the mandatory retirement age set by the Working Environment Act. It asked for comprehensive information in this respect and meanwhile reserved its position.

129. The Committee takes notes of the explanations provided and finds that the age limit of 70 years for seamen under the circumstances can be regarded as compatible with Article 24 and 1§2 of the Charter, in particular in the light of the health and safety considerations that may apply to the seamen's occupation. It also takes into account that consideration may be given to raising the age limit for seamen in the near future.

130. On this basis, the Committee therefore finds that the situation in this respect has been brought into conformity with Article 24 and 1§2 of the Charter and decides to bring its examination of the follow-up to the decision to an end.

SLOVENIA

SLOVENIA

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Slovenia was exempted from reporting on the provisions under examination in Conclusions 2019. Slovenia was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee found a violation.

The following decision is concerned:

- European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 08/09/2009.

The Committee's assessment appears below. It also appears in the HUDOC database.

European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009

[Resolution ResChS\(2011\)7](#)

1. Decision of the Committee on the merits of the complaint

131. The Committee found a violation of Article 31§1 due to the revoking of acquired legal titles to homes following denationalisation, increasing the cost of dwelling and reducing the possibilities of acquiring adequate dwelling, thus encroaching upon acquired security of tenure; a violation of Article 31§2 in that the effect of the measures taken in respect of the vulnerable group in question was to provoke evictions and increase homelessness; a violation of Article 31§3 on the grounds of the failure to provide affordable housing; a violation of Article E in conjunction with Article 31§3 on the grounds of discrimination between former holders of a “housing right” and tenants of flats that were transferred to public ownership; and a violation of Article 16 and Article E in conjunction with Article 16 on the grounds of discrimination between former holders of a “housing right” and tenants of flats that were transferred to public ownership.

2. Information provided by the Government

132. In the [15th report](#) on the implementation of the Charter (2015), the Government informed the Committee of its activities to eliminate non-compliance and emphasised that, with respect to appropriate protection and solutions, the tenants in denationalised dwellings had brought an action against the Republic of Slovenia before the European Court of Human Rights. In the case of *Berger-Krall and Others v. Slovenia*, the Court rejected all the tenants' claims and on 12 June 2014 issued a judgment finding that the rights of the tenants in denationalised dwellings guaranteed by the European Convention on Human Rights had not been violated. The judgment became final in October 2014.

133. In its Findings 2016, the Committee stated nonetheless that the situation in Slovenia was not in conformity with the Charter, raised questions and requested statistical data on tenants in denationalised dwellings.

134. In the [16th report](#) on the implementation of the Charter, the Government explained that it had no required statistics available and pointed out that the measures described in the 15th report of the Republic of Slovenia on the implementation of the Charter had adequately regulated the situation of tenants in denationalised dwellings. Focus was again put on the judgement in the *Berger-Krall and Others v. Slovenia* case

and the finding of the European Court of Human Rights that rights of the tenants in denationalised dwellings had not been violated.

135. In its Findings 2017, the Committee again noted that the situation in Slovenia was still not in conformity with the Charter, raised questions and requested statistical data on tenants in denationalised dwellings.

136. In [the present report](#), the Government reiterates that the situation of the tenants in denationalised dwellings - former holders of specially protected tenancy - is appropriately regulated. In reply to the questions asked in the Findings 2017, the Government provides the following explanations and data available from administrative sources.

137. The Government explains that after denationalisation previous holders of specially protected tenancy were given the following options:

1. rent the housing unit in which they lived for an indefinite period and for a non-profit rent; or
2. acquire a non-profit municipal housing unit; or
3. purchase the housing unit in which they lived with State support, provided the owner agreed to sell it; or
4. purchase another dwelling or build a house with State support.

138. In any event, former holders of specially protected tenancy and their spouses or cohabiting partners had - and still have - the right to rent the housing unit in which they lived for an indefinite period and for a non-profit rent. According to the most recent data from the property sales register kept by the Surveying and Mapping Authority of Slovenia, there were 656 former holders of specially protected tenancy living as tenants in the denationalised dwellings on a not-profit rent in July 2018.

139. Following denationalisation, other tenants - previous holders of specially protected tenancy - solved their housing problem by acquiring non-profit municipal housing units or purchasing housing units with State support. Within five years of the decision on denationalisation becoming final, they could exercise their right to purchase the housing unit in which they lived, provided the owner agreed to sell it, or their right to purchase another housing unit or to build a house. In the case of purchase (options 3 and 4), the tenant had the right to compensation that amounted to 36 percent of the value of the housing unit and was paid in cash by the Slovenian Sovereign Holding, while an additional 25 percent was paid by the Slovenian Sovereign Holding in bonds and 13 per cent paid by Slovenia in

securities. The tenant could request the Housing Fund of Slovenia to approve a loan to the level of the purchase price of a suitable dwelling at a price that the Housing Fund of Slovenia recognised for the calculation of a loan.

140. In the period from 1994 - when the law provided tenants in denationalised dwellings the option to solve their housing problem themselves - to the end of 2018, the Ministry of the Environment and Spatial Planning received 3,162 requests; this is the number of the previous holders of specially protected tenancy that opted to solve their housing problem through purchase of homes supported by the State grants and favourable loans offered by the Housing Fund of Slovenia.

141. The Government reiterates that appropriate arrangement was put in place for individual previous holders of specially protected tenancy, as is evident from the paragraphs above. According to the information provided by the ministry responsible for the environment and spatial planning, none of the previous holders of specially protected tenancy were evicted from their dwellings nor became homeless, because they all had the right to remain in the dwelling in which they lived or still live, together with their spouses or cohabiting partners, and for which they pay a non-profit rent. If the household income is not sufficient to cover the non-profit rent, the tenant can apply the competent social work centre for rent subsidy, which is means-tested and granted to any individual whose income is not sufficient to cover the rent, under the conditions laid down by the Exercise of Rights to Public Funds Act (Official Gazette of the Republic of Slovenia [Uradni list RS], Nos 62/10, 40/11, 40/12 - ZUJF, 57/12 - ZPCP-2D, 14/13 56/13 - ZStip-1, 99/13, 14/15 - ZUUJFO, 57/15, 90/15, 38/16 - CC's Decision 51/16 - CC's Decision 88/16, 61/17 - ZUPS, 75/17 and 77/18).

142. The Government points out that non-profit rent subsidies ensure appropriate access to housing for the most disadvantaged, while grants and favourable loans ensure appropriate access to housing for other previous holders of specially protected tenancy who opted to solve their housing problem by purchasing a housing unit. Unfortunately, the Government does not have statistics available on the total number of denationalised dwelling units, the total number of previous holders of specially protected tenancy or the number of people who solved their housing problem through one of the above-mentioned four options (lifetime rent, rent of non-profit municipal housing, purchase of the dwelling unit they lived in or purchase of another dwelling).

3. Assessment of the follow-up

143. The Committee recalls that in its last Findings (Findings 2017) it noted the developments in the situation which were positive, however the Committee needed further information on measures to ensure that all those who held a "housing right" in a flat restored to its previous owners are not rendered homeless, for example, information on the number of tenants of denationalised dwellings who have not yet been rehoused, number of persons on waiting lists etc. The Committee takes note that

according to the information provided by the Ministry responsible for the Environment and Spatial Planning none of the previous holders of specially protected tenancy were evicted from their dwellings nor became homeless, because they all had the right to remain in the dwelling in which they lived or still live, together with their spouses or cohabiting partners, and for which they pay a non-profit rent.

144. The Committee concludes that according to the information at its disposal as regards former holders of a “housing right” over flats that had been restored to their private owners, there have been sufficient measures for the acquisition or access to a substitute flat, allowing them to effectively exercise their right to housing.

145. Former holders of a “housing right” have the possibility to:

- rent the housing unit in which they lived for an indefinite period and for a non-profit rent; or
- acquire a non-profit municipal housing unit; or
- purchase the housing unit in which they lived with State support, provided the owner agreed to sell it; or
- purchase another dwelling or build a house with State support.

146. The Committee therefore finds that the situation has been brought into conformity with the Charter and decides to bring its examination of the follow-up to the decision to an end.

SWEDEN

SWEDEN

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, Sweden was exempted from reporting on the provisions under examination in Conclusions 2019. It was instead invited to provide information on the follow-up given to decisions on the merits of collective complaints in which the Committee had found a violation.

The following decision is concerned:

- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013.

The Committee's assessment appears below. It also appears in the HUDOC database.

Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on the merits of 3 July 2013

[Resolution ResChS\(2014\)1](#)

1. Decision of the Committee on the merits of the complaint

147. The Committee found that there had been a violation of Article 6§2 of the Charter on the ground that, with regard to posted workers, legislative restrictions and limitations did not promote the development of suitable machinery for voluntary negotiations between employers' and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

148. It held that there was a violation of Article 6§4 of the Charter on the ground that Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination Act, do not adequately recognise the fundamental right to collective action.

149. The Committee found that there had been a violation of Article 19§4a of the Charter on the ground that in respect of remuneration and other working terms and conditions, the legislation does not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

150. Lastly, the Committee concluded that there had been a violation of Article 19§4b of the Charter on the ground that the lack of statutory provisions or regulations providing the requirement for foreign employers to appoint in Sweden a contact person entitled to negotiate and conclude agreements with Swedish trade unions does not secure for foreign workers lawfully within the territory of Sweden treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.

2. Information provided by the Government

151. With regard to the violation of Article 6§2 of the Charter, the Government states in its present [report](#) that in 2018 it decided to appoint a commission of inquiry to make proposals on how Directive 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services should be implemented in Swedish law.

152. The Government does not provide further new information, but refers to information previously submitted, which may be summarised as follows:

153. The Government had indicated in its previous report that the legislation in force did not sufficiently safeguard the role of collective bargaining agreements, which might lead to unfair conditions in terms of competition, wages and employment conditions.

154. The committee of inquiry regarding the posting of workers, which evaluated the amendments to the Foreign Posting of Employees Act (1999/678) after the judgment of the Court of Justice of the European Union (Grand Chamber) of 18 December 2007 (Case No. C-341/05, Laval un Partneri Ltd./Svenska Byggnadsarbetareförbundet et al.) was invited to consider possible legislative amendments to strengthen the role of collective agreements with regard to posting of workers. Proposals made in its report of 30 September 2015 include the appointment of a representative authorised to negotiate and conclude collective agreements upon request by a workers' organisation; permitting industrial action to negotiate a collective agreement for posted workers containing minimum conditions under applicable sectorial agreements or collective agreements containing special legal provisions for posted workers.

155. The Government indicated that they were currently considering these proposals. It announced that it would propose a bill on the new regulations on the posting of workers in January 2017. It would submit additional information on this issue in due course.

156. In the Budget Bill for 2017, the Government stated that Swedish wages and conditions shall apply to all persons working in Sweden and that this legislation must be designed so as to promote the implementation of the terms agreed upon by the social partners in collective agreements. In this context, the government is working on reviewing and strengthening the Foreign Posting of Employees Act and implementing Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Directive concerning the posting of workers).

157. The Government welcomed the European Commission's intention to present a Labour Mobility Package including a revision of the Directive concerning the posting of workers. They believed that an amendment of that Directive could enable a substantial revision of current legislation, with a view to safeguarding the role of collective bargaining agreements; Swedish wages and conditions applying to all persons working in Sweden; and legislation promoting the application of terms agreed by the social partners in collective agreements. The Government was currently holding discussions with EU member States and the European Commission to that effect.

158. The Government does not provide specific new information on the follow-up in respect of the violation of Article 6§4, 19§4a, and 19§4b, but reference is made to the information provided above concerning the violation of Article 6§2 of the Charter.

3. Assessment of the follow-up

A. Violation of Article 6§2 of the Charter

159. Although the present Swedish report provides no specific information in this regard, the Committee notes from another source (*Utstationeringsdirektivet och det svenska genomförandet*, SOU 2019:25) that certain changes to the system for enforcing collective agreements in respect of the posting of workers were introduced on 1 June 2017 (inter alia on the basis of a previous inquiry report, *Översyn av lex Laval*, SOU 2015:83).

160. Following these changes, Section 5a of the Foreign Posting of Employees Act no longer prohibits collective action where the employer can prove (*bevisregeln*) that the posted workers already enjoy working terms and conditions which are similar to those demanded by way of the collective action. However, the nature and level of the terms and conditions in respect of which collective action can be taken are still subject to the limits laid down by the initial *lex Laval* (and which the Committee in its decision found were contrary to the Charter). Furthermore, collective action can only be taken in respect of employers established in the EEA or in Switzerland.

161. In addition, the 2017 amendments now provide (Section 5c of the Foreign Posting of Employees Act) that where a collective agreement is concluded between a Swedish trade union and a posting employer, the posted worker has a right to invoke the terms of the agreement even if that worker is not a member of the Swedish trade union party to the agreement. This is however limited to such terms as are stipulated by Section 5a of the Act.

162. On the basis of the information at its disposal, the Committee does not consider that the 2017 amendments are sufficient to bring the situation into conformity with the Charter. It reiterates that the statutory framework, notably Section 5a of the Foreign Posting of Employees Act, by circumscribing *ex ante* the terms and conditions that the unions may bargain for, imposes substantial limitations on the ability of Swedish trade unions to conduct free collective bargaining and to take collective action in the context of such bargaining and that this is not in conformity with the Charter (see in particular §112 and §123 of the decision).

163. Since the previous report by Sweden summarised above, Directive 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services was adopted. The

Committee notes that against this background the Government tasked a commission of inquiry with submitting proposals as to how the Amending Directive should be implemented in Swedish law. Under the commission's terms of reference, one of its objectives was to achieve equal treatment, as far as possible, between posted (non-resident) workers and resident workers while respecting the free movement of services.

164. The Committee notes that the commission of inquiry published its report (SOU 2019:25) in May 2019 containing a series of proposals concerning the scope for collective bargaining and collective action by trade unions in respect of posted workers. The commission proposes that the proposed legislative amendments shall enter into force by 30 July 2020.

165. The Committee further notes that the proposals put forward by the commission would appear to increase the scope for collective bargaining and collective action to enforce demands for remuneration (as opposed to a "minimum rate of pay") and certain allowances/reimbursements, and in particular to increase the scope for enforcing collective agreements on terms and conditions in respect of long-term postings. Other proposals include equal treatment of posted temporary agency workers, the right of trade unions to certain documents and the employer's obligation to provide information in a certain case. However, the Committee can only make a definitive assessment of these various proposals if and when they have been enacted in law and implemented in practice. It therefore asks that the next report on the follow-up contain detailed information in this respect.

166. Meanwhile, the Committee finds that during the period under consideration the situation has not been brought into conformity with the Charter.

B. Violation of Article 6§4 of the Charter

167. The Committee refers to its remarks above on the follow-up in respect of the violation of Article 6§2 and finds that during the period under consideration the situation has not been brought into conformity with the Charter on the ground that Sections 5a and 5b of the Foreign Posting of Employees Act, as well as Section 41c of the Co-determination Act, do not adequately recognise the fundamental right to collective action.

C. Violation of Article 19§4a of the Charter

168. The Committee refers to its remarks above on the follow-up in respect of the violation of Article 6§2 and finds that during the period under consideration the situation has not been brought into conformity with the Charter on the ground that in respect of remuneration and other working terms and conditions, the legislation does

not secure for posted workers the same treatment guaranteed to other workers with permanent employment contracts.

D. Violation of Article 19§4b of the Charter

169. The Committee refers to its remarks above on the follow-up in respect of the violation of Article 6§2 and finds that during the period under consideration the situation has not been brought into conformity with the Charter on the ground that Sweden does not secure for foreign workers lawfully within the territory a treatment no less favourable than that of Swedish nationals in respect of the enjoyment of the benefits of collective bargaining.