

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



23 March 2012

**SECOND REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

CYPRUS

EXAMINATION OF THE NON-ACCEPTED PROVISIONS

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002¹ decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

As Cyprus ratified the Revised Charter on 27 September 2000, the procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Cypriot ministries in Nicosia between 31 January and 1 February 2006.

Following this meeting, the European Committee of Social Rights delegation at the time concluded that acceptance seemed possible in respect of seventeen provisions (Articles 2§3, 2§6, 4§3, 7§7, 8§4, 8§5, 13§1, 17§1, 17§2, 22, 25, 26§1, 27§1, 27§2, 29, 31§1 and 31§2). In respect of a further nine provisions (Articles 4§2, 4§5, 13§4, 16, 21, 23, 26§2, 30 and 31§3) it found that acceptance might also be possible.

The meeting served as a basis for the Cypriot authorities to carry out an analysis of what additional provisions could be accepted, in consultation with the social partners.²

With a view to carrying out the procedure for the second time in 2010 the Cypriot authorities were invited to provide written information on the non-accepted provisions. In reply, they informed the Secretariat that the legislative procedure for the ratification of eleven additional provisions was underway.

This process culminated in Cyprus making a notification to the Secretary General – registered on 5 October 2011 and formally deposited during the celebrations of the 50th Anniversary of the Charter – whereby it accepted nine additional provisions. The provisions concerned are Articles 2§3, 2§6, 4§5, 7§7, 8§5, 22b, 25, 27§2 and 29. These provisions entered into force in respect of Cyprus on 1 December 2011.

The Committee very much welcomes the positive cooperation that has taken place with the Cypriot authorities over the past years, leading to the ratification of the above-mentioned additional provisions. It remains at the disposal of the Cypriot authorities to continue the fruitful cooperation, and encourages the authorities to consider acceptance of the remaining non-accepted Charter provisions (namely from

¹ Committee of Ministers decision of 11 December 2002.

² See "Report on the meeting with representatives of the Cypriot Government on provisions of the Revised European Social Charter not accepted by Cyprus", 12 April 2006, at www.coe.int/socialcharter

the group of seventeen provisions identified in 2006 as posing no problems for acceptance).

The next examination of the provisions not accepted by Cyprus will take place in 2015.

The Committee uses the opportunity of this Report to draw the attention of States Parties to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (Appendix 2).

APPENDIX 1

CYPRUS AND THE EUROPEAN SOCIAL CHARTER

Situation of Cyprus as of March 2012

Ratifications

Cyprus ratified the European Social Charter on 07/03/1968 and the Revised European Social Charter on 27/09/2000, accepting 63 of its 98 paragraphs. In October 2011 Cyprus accepted to be bound by 9 additional provisions of the Revised Charter, bringing the total of accepted provisions to 72 of the 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 06/08/1996, but has not yet made a declaration enabling national NGOs to submit collective complaints.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22 ¹
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3						Grey = accepted provisions				

1 Sub-paragraph b. accepted

The Charter in domestic law

Once published in the official Gazette, treaties concluded in accordance with the Constitution take precedence over any domestic law (including the Constitution), on condition that such treaties are applied by the other party (Arts 169 and 179 of the Constitution).

Reports *

Between 1970 and 2011, Cyprus submitted 21 reports on the application of the Charter and 8 on the application of the Revised Charter.

The 8th report, submitted on 23/02/2011, concerns the accepted provisions of the Revised Charter by Cyprus relating to Thematic Group 4 "Children, families, migrants" (Article 7§§1, 2, 3, 4, 6, 7, 8 and 10, 8§§1, 2, 3 and 5, 19, 27§§2 and 3 of the Revised Charter). Conclusions in respect of these provisions were published in January 2012.

The 9th report concerns the accepted provisions of the Revised Charter by Cyprus relating to Thematic Group 1 "Employment, training and equal opportunities"

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18§4),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

Conclusions in respect of these provisions will be published in December 2012.

___* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Situation of Cyprus with respect to the application of the Revised Charter

Examples of progress achieved in the application of social rights under the Social Charter³

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Abolition of criminal sanctions and other coercive measures as "disciplinary occupational measures" for seafarers (Act of 11 June 1976 amending the Merchant Shipping Act)
- ▶ In 2003, incorporation of *acquis communautaire* on equal treatment of men and women in employment.
- ▶ Act 113(I)/1999 on Education and Training of Children with Special Needs and its 2001 implementing regulation place emphasis on the education of the large majority of children with special needs within mainstream schools. In its decision dated 31 October 2006, the Cypriot Equality Body criticised this law holding that it introduced indirect discrimination on the ground of special needs in the field of education and asked the Attorney General to revise the law.
- ▶ Law No. 127(I)/2002 guarantees that persons with disabilities are equally treated with other employees by their employer as regards the procedure for application for employment, recruitment, promotion, dismissal, compensation, training and other terms and conditions of employment. A 2004 amendment of the law also provides for the prohibition of any direct and indirect discrimination

Thematic Group 2 "Health, social security and social protection"

- ▶ Regulation of health and safety in agriculture and extension of the Labour Inspectorate's purview to include this sector (Act No. 22/1982).
- ▶ Preventive and protective measures against asbestos (Act No. 47(1)/2000 and Reg. No. 104/2000) in conformity with *acquis communautaire*. The Protection against Radiation Act, No. 115(I)/2002 transposes Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, and Regulation No. 497/2002 transposes Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure.
- ▶ Screening for breast cancer was introduced in two districts in September 2003 and February 2004 respectively. The programme will be introduced in the other two districts in 2005.
- ▶ Introduction of a proper system of social security (Act No. 106/1972); introduction of General Health Scheme in 2001, covering whole population
- ▶ An individual right to free counselling is guaranteed through the social welfare services with the aim of supporting individuals and families at times of crisis.

Thematic Group 3 "Labour rights"

- ▶ Abolition of restrictions on trade unions' right to elect their own representatives freely (Act No. 381/1991 amending the Trade Unions Act); protection of union membership (Termination of Employment Acts 1967-1994 and the Trade Unions Acts 1965-1996)
- ▶ Safeguarding of police officers' right to bargain collectively (Section 52 §1 of the 1989 Police Act No. 27)
- ▶ Defence Regulations 79A and 79B, which authorised the requisitioning of workers and the prohibition of strikes in cases other than those permitted by the Revised Charter, were repealed by an Order of the Council of Ministers published in the Official Gazette on 22.09.2206.

Thematic Group 4 "Children, families, migrants"

- ▶ Regulation of the prohibition of dismissal during maternity leave (Maternity Protection Act No. 54/1987, as amended by Act No. 48 (I) of 1994); possibility of court-ordered reinstatement for unlawfully dismissed employees in firms with twenty or more employees (Act No. 61 (I) 1994)

³ « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure » (Article 2 of the Rules of the Committee).

- ▶ The period during which maternity allowance is paid has increased from 16 to 18 weeks (Social Insurance (Amendment) Law 110(I) of 2007)
- ▶ Prohibition of the employment of children under the age of 15 and compulsory education for all children up to the age of 15 (Protection of Young Persons at Work Act of 2001) Article 7§1 and 3 – prohibition of employment under the age of 15.
- ▶ Guarantees in the event of expulsion (Aliens and Immigration Act No. 54/1976). 2000 Regulations amending the Aliens and Immigration Act No. 54/1976 providing for the right to family reunion.
- ▶ Legal Aid Act No. 165(I) of 2002 provides for legal aid to persons with low income and for proceedings both before civil and criminal courts regarding cases in respect of violation of human rights and include family cases

Cases of non-conformity

Thematic Group 1 “Employment, training and equal opportunities”

- ▶ *Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

1. The duration of civilian (alternative military) service, which generally lasts twice as long as compulsory military service, amounts to a disproportionate restriction on the right of workers to earn their living in an occupation freely entered upon.

2. Nationals of other Parties can only be employed if no Cypriot citizen can be recruited for the same post. This condition constitutes direct discrimination on grounds of nationality.

([Conclusions 2008](#))

- ▶ *Article 20 – Right to equal opportunities and treatment in employment and occupation without sex discrimination*

It is not possible to make a comparison of jobs outside the company directly concerned in unequal pay claims.

([Conclusions 2008](#))

- ▶ *Article 24 – Right to protection in case of dismissal*

Cypriot law excludes from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer regardless of the employee’s qualifications. Moreover, compensation for unlawful termination of employment is subject to a maximum of two years’ wages

([Conclusions 2008](#))

Thematic Group 2 “Health, social security and social protection”

- ▶ *Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations*

Domestic workers are not covered by any occupational health or safety regulations.

([Conclusions 2009](#))

- ▶ *Article 12§4 – Right to social security – Existence of a social security system*

1. The social pension is manifestly inadequate;

2. The sickness, unemployment, work injury and maternity benefits are manifestly inadequate even if calculated on the basis of average basic insurable earnings.

([Conclusions 2009](#))

- ▶ *Article 12§4 – Right to social security – Social security of persons moving between states*

1. The length of residence requirement for a social pension for non-nationals not covered by Community regulations is excessive;

2. Accumulation of insurance periods acquired under the legislation of a State Party which is not covered by Community regulations or not bound by an agreement with Cyprus is not guaranteed.

([Conclusions 2009](#))

Thematic Group 3 “Labour rights”

► *Article 6§4 – Right to bargain collectively – Collective action*

The Trade Union laws 1955-1996 require that a decision to call a strike must be endorsed by the executive committee of a trade union.

([Conclusions 2010](#))

Thematic Group 4 “Children, families, migrants”

► *Article 7§1 and 7§3 – Right of children and young persons to protection - Prohibition of employment under the age of 15 – Prohibition of employment of young persons subject to compulsory education*

The prohibition on the employment of under 15 year olds does not apply to children employed in occasional or short-term domestic work

([Conclusions 2011](#))

► *Article 7§10 - Right of children and young persons to protection - - Special protection against physical and moral dangers*

It has not been established that children are effectively protected against the misuse of information technologies.

([Conclusions 2011](#))

► *Article 19§1 – Right of migrant workers and their families to protection and assistance - Assistance and information on migration*

It has not been established that appropriate steps against misleading propaganda relating to emigration and immigration have been taken.

([Conclusions 2011](#))

► *Article 19§4 – Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation*

It has not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to remuneration, employment and other working conditions; membership of trade unions, enjoyment of the benefits of collective bargaining; and access to housing.

([Conclusions 2011](#))

► *Article 19§6 (and 19§10) – Right of migrant workers and their families to protection and assistance - Family reunion*

The requirement for foreign workers wishing to be joined by their close relatives to have been residing lawfully in Cyprus for at least two years is excessive.

([Conclusions 2011](#))

► *Article 27§3 – Right of workers with family responsibilities to equal opportunity and treatment – Illegality of dismissal on the ground of family responsibilities*

Courts may only order reinstatement of an unlawfully dismissed employee in cases where the enterprise concerned has more than 20 employees.

([Conclusions 2011](#))

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Cypriot Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2011)

► Article 10§§3 and 4 – Conclusions 2008

► Article 15§§2 and 3 – Conclusions 2008

Thematic Group 2 “Health, social security and social protection”
(Report to be submitted before 31 October 2012)

- ▶ Article 11§§1 and 3 – Conclusions 2009

Thematic Group 3 “Labour rights”

(Report to be submitted on 31 October 2013)

No situations deferred.

Thematic Group 4 “Children, families, migrants”

(Report to be submitted by 31 October 2014)

- ▶ Article 8§1 – Conclusions 2011
- ▶ Article 19§§3, 8 and 11 – Conclusions 2011

Collective Complaints and State of Procedure in Cyprus¹

Collective complaints (under examination)

–

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

–

2. Complaints where the Committee has found a violation which has been remedied

–

3. Complaints where the Committee has found a violation which has not yet been remedied

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¹ The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the [Collective Complaint webpage](#). Searches on complaints may also be carried out in the [European Committee of Social Rights Caselaw database](#).

APPENDIX 2



Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

*(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 (“the Charter”);

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various

observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.