EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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2ND REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER

FINLAND

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I. SUMMARY

The procedure on non-accepted provisions is based on the decision adopted by the Ministers' Deputies in December 2002 in relation to Article 22 of the 1961 Charter. The Deputies 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 "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

In accordance with this decision, five years after ratification of the Revised Charter (and every five years thereafter), the European Committee of Social Rights ("the Committee") reviews non-accepted provisions with the authorities of the state concerned with a view to securing a higher level of acceptance. Experience has shown that governments tend to overlook that selective acceptance of Charter provisions is intended to be transitory. The aim of the new procedure is therefore to require them to review the national situation at regular intervals and encourage them to accept more provisions.

As Finland ratified the Revised Charter on 21 June 2002, accepting 88 of the 98 paragraphs, the procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Finnish ministries in Helsinki on 15-16 November 2007.

Following this meeting, the European Committee of Social Rights delegation at the time concluded that immediate acceptance seemed possible in respect of two provisions (Article 4§1 - right to fair renumeration and Article 19§10 - right of migrant workers: equal treatment for the self employed). The Committee further considered that acceptance at least in the medium term was possible in respect of the following provisions:[1]

Article 3§2 - right to safe and health working conditions: issue of safety and health regulation;
Article 3§3 - right to safe and health working conditions: provision for the enforcement of safety and health regulation by measures of supervision;
Article 7§6 - right of children and young persons to protection: time spent on vocational training;
Article 7§9 - right of children and young persons to protection: regular medical examination;
Article 8§3 - right of employed women to maternity protection: nursing breaks.

As regards the remaining three non-accepted provisions (Article 4§4 - reasonable notice of termination of employment; Article 8§1 - right of employed women to maternity protection: maternity leave and Article 8§5 - right of employed women to maternity protection: prohibition of dangerous, unhealthy or arduous work) the Committee was of the view that there were significant obstacles in law and/or in practice to ratification.

With a view to carrying out the procedure for the second time in 2012 the Finnish authorities were invited to provide written information on the non-accepted provisions before 30 June 2012. The requested information was submitted in a letter dated 29 June 2012.

[1] Report on the Meeting with Representatives of the Finnish Government on Provisions of the Revised European Social Charter not accepted by Finland, 27 February 2008, www.coe.int/socialcharter

Having examined the written information the Committee maintains that from the point of view of the situation in law and in practice there are no obstacles to the immediate acceptance of Article 4§1 and Article 19§10 and the Committee is now of the view that also Article 8§3 could be accepted immediately. Moreover, having regard to developments in the Committee's case law and/or developments in Finnish law since the ratification, the Committee considers – subject to certain clarifications – that there are no significant or insurmountable obstacles to acceptance of Articles 7§6, 7§9 and 8§1.

Finally, as regards Articles 3§2, 3§3, 4§4 and 8§5 it would appear that legislative changes are required to bring the situation into conformity with the Charter.

In view of the conclusions of this report the Committee wishes to encourage Finland to consider accepting additional provisions of the Charter as soon as possible so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights. The Committee refers in this respect to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter[1] and recalls that the process leading to the adoption of this declaration began at the seminar on the future of the European Social Charter organized by and at the initiative of the Finnish Government in Helsinki in February 2011.

[1] See Appendix 2.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The description of the situation in Finland set out for the different provisions below reproduces the written information provided by the Finnish Government with only minor editorial changes.

Article 3§2

Situation in Finland:

According to the Government Bill (*HE 229/2001* vp) on ratification of the Revised Charter (subsequently the "Charter"), the supervision practice under Article 3§§2 and 3, also covers self-employed persons.

At the time when Finland ratified the Charter in 2002, the Occupational Safety and Health Act (299/1958) in force did not cover self-employed persons to the extent required by the supervision practice under the Charter. Therefore, Finland considered on that occasion that it could not accept Article 3§§2 and 3.

The general scope of application of the Occupational Safety and Health Act, as revised in the overall reform of the Act in 2002 (*738/2002*), did not change. The Government Bill (*HE 59/2002* vp) concerning the Occupational Safety and Health Act and certain related Acts stated the following regarding Section 2 of the Act, concerning its general scope of application:

According to the provision on the general scope of application, the Act would apply to nearly all remunerated work performed for another. In principle, the Act would apply to any remunerated work that an employee performs for an employer on the basis of an employment contract, under the leadership and supervision of the employer (employment relationship), and to any work performed in public service and in a comparable employment relationship in the public sector. This would not change the existing situation. The most significant form of work excluded from the scope of the Act is work performed by a self-employed person or other work performed on one's own behalf. Work performed by a self-employed person is not entirely excluded from the scope of the Act, for the work of a self-employed person performed in a joint building site falls under the scope of the Act to a certain extent.

Thus, the overall reform of the Occupational Safety and Health Act did not change the position of self-employed persons because the reformed Act did not oblige them to protect themselves against the possible harm and risks involved in their work. Consequently, the occupational safety and health of self-employed persons remain excluded from the supervisory power of the occupational safety and health authorities.

On these grounds, the Government is of the view that Article 3§§2 and 3 cannot be accepted.

Opinion of the Committee:

Under Article 3§2 all workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations.[1]

The term "workers" used in Article 3 covers both employed and self-employed persons, especially as the latter are often employed in high-risk sectors.[2] The aim is to ensure that the working environment is safe and healthy for all operators, where necessary by adopting rules adapted to the operators' specific situation.[3] [4] [5]

All economic sectors must be covered by the regulations.[6] It is not necessary for a specific text to be adopted for each activity or sector, but the wording of texts should be sufficiently precise to allow their effective application in all sectors, taking particular account of the scale of or degree of danger in each sector. Sectors must be covered in their entirety and all companies must be covered regardless of the number of employees.[7]

No workplace, even if inhabited, can be "exempted" from the application of health and safety rules. Workers employed on residential premises, i.e. domestic staff and home workers, must therefore be covered but the rules may be adapted to the type of activity and the relatively risk-free nature of these workers' occupations and be worded in general terms.[8]

In the light of the above the Committee can only conclude that the situation is not a present in conformity with Article 3§2. It encourages the Finnish Government to consider extending the personal scope of health and safety regulations in line with the requirements of the Charter.[9]

Article 3§3

Situation in Finland:

See above under Article 3§2.

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[1] Conclusions II, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), p. 12.
[2] Conclusions 2005, Estonia, p. 136.
[3] Conclusions III, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), p. 17.
[4] Conclusions IV, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), pp. 21-22.
[5] Conclusions XIII-4, Belgium, p. 335.
[6] Conclusions I, Statement of Interpretation on Article 3, p. 22.
[7] Conclusions XIII-1, Greece, p. 78.
[8] Conclusions XIV-2, Belgium, pp. 123-124.
[9] The Committee observes in this respect that during the parliamentary procedure pertaining to the Government Bill on ratification of the Revised Charter two of the Parliament's standing committees, the Constitutional Committee and the Foreign Affairs Committee, expressed the view that the right to health and safety at the workplace should apply to all workers, including the self-employed (invoking constitutional grounds). The Constitutional Committee even considered the existing legislation on this point to be "clearly inadequate" and encouraged the Government to address the problem in the context of then on-going reforms.

Opinion of the Committee:

Under Article 3§3 States Parties undertake to provide for the enforcement of the health and safety regulations the enactment of which are stipulated by Article 3§2. It follows that the enforcement must take place in respect of all workers, all workplaces and all economic sectors.

Monitoring of compliance with occupational health and safety regulations including coercive measures is a prerequisite for the right guaranteed by Article 3 to be effective. Although the Committee considers that States enjoy discretion regarding not only how they organise their labour inspection services but also what resources they allocate to them, the exclusion of a specific category of workers from the scope of protection, such as the self-employed in the Finnish case, is contrary to this provision of the Charter.

The Committee refers to its comments on Article 3§2 and encourages the Finnish Government to consider extending the personal scope of health and safety regulations and their enforcement in line with the requirements of the Charter.

Article 4§1

Situation in Finland:

As to Article 4§1 the situation regarding a remuneration that will give workers and their families a decent standard of living has not changed after the 2007 meeting between the European Committee of Social Rights and the national authorities.

In Finland, the minimum remuneration for an employment relationship and other minimum conditions of employment are determined primarily either by generally applicable or normally applicable collective agreements. If no such collective agreements exist, the remuneration is determined by the employment contract concluded between the employer and the employee. If neither a generally applicable collective agreement nor a collective agreement binding under the Collective Agreements Act (*436/1946*) exists and the employer and the employee have not agreed on the remuneration to be paid for the work by the employment contract, the employee must be paid a reasonable normal remuneration for the work performed, considering the nature of the work.

In the public sector the minimum conditions are determined by the collective agreements binding on employers.

In the practice of supervising the implementation of the Charter, a remuneration giving a decent standard of living means a remuneration that amounts to at least 60% of the national average net pay. Finland does not compile statistics on average net pay, *i.e.,* income deducted by taxes and other charges.

Because the practice of applying Article 4§1 of the Charter essentially differs from the determination of the minimum conditions of remuneration in Finland and no statistics required by the practice of supervision are available, accepting Article 4§1 is, in the Government's view, not possible.

Opinion of the Committee:

The Committee recalls the fundamental importance it attaches to the right to fair remuneration; inadequate pay creates poverty and pay which lags far behind the average in a society is incompatible with social justice. The Committee has repeatedly stated that Article 4§1 merits being included among the "hard core" provisions of the treaty. It has even asked the Committee of Ministers to make sure that this provision is given particular attention within the context of the Article 22 procedure so as to encourage more States to accept it.

The Committee's case law under Article 4§1 is based on the assumption that in order for the situation to be in conformity with the Charter, ie. for a wage to be fair, the lowest wage should not fall too far behind the national average wage in a given country.

The Committee considers that a wage amounting to at least 60% of the average wage will provide the wage earner concerned with a decent living standard. In order to assess whether this 60% threshold is met, the Committee takes into account the lowest wages paid in the labour market and calculated net, that is after deduction of any taxes and social security contributions, whether it is a statutory minimum wage or wages fixed by other means, notably collective agreements.

If the lowest wage in a given State does not satisfy the 60% threshold, but does not fall very far below – wages situated between 50% and 60% – the Committee does not automatically consider the situation to be in breach of the Charter, but will ask the Government to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard, even if it is below 60 % of the national net average wage. In particular, consideration will be given to the costs of having health care, education, transport, etc.

In this respect it is important to underline that Article 4§1 does not require, or even encourage, States to adopt a statutory minimum wage. Therefore, contrary to what the Government seems to infer, the fact that wages in Finland are determined by generally applicable or normally applicable collective agreements does not pose any legal problem whatsoever in relation to the Charter.[1] As an aside it may be noted that hitherto and on the whole countries with collective bargaining-based wage determination have had a better record of compliance with Article 4§1 than countries with statutory minimum wage systems.

In view of the above, it appears to the Committee that the only[2] possible obstacle to acceptance of Article 4§1 by Finland is of a practical nature, namely the fact that Finland does not compile statistics on average net pay. However, precisely on this point the Committee has shown considerable flexibility in its case law taking into account a variety of wage indicators where it was not possible for a State Party to provide official statistics on the net average and/or minimum wages for the whole labour market. Figures, whether "official" or not, on the average wage in certain sectors and/or for different qualification levels of workers, typical examples of minimum wage rates agreed in collective

[1] Article I§1b of the Charter expressly provides that the provisions of the Charter may be implemented by "agreements between employers or employers' organisations and workers' organisations".

[2] Without prejudice to an assessment of whether current actual wage levels in Finland meet the threshold established under Article 4§1.

agreements, estimated typical impact of taxes and contributions for different wage levels, etc. may allow the Committee to reach an assessment of the situation.[1]

In this way it is possible for Governments to demonstrate compliance with Article 4§1 with a little additional effort which cannot be considered unreasonable given the importance of the right to a fair remuneration, even for countries with a collective agreement-based wage-fixing mechanism and even in the absence of regular statistics that match exactly the ones that the Committee would ideally want.

In conclusion, the Committee therefore maintains its view that there are no significant obstacles, legal or practical, to acceptance by Finland of Article 4§1.[2]

Article 4§4

Situation in Finland:

Under Article 4§4 of the Charter, the Parties must recognize the right of all workers to a reasonable period of notice for termination of employment. In the supervision practice under the Charter, the length of a reasonable period of notice for termination of employment has not been determined exactly. In assessing the reasonableness of a period of notice, the length of the employment relationship has been decisive. In the supervision practice this has been taken into account also when the employment relationship has been terminated on account of the employer's death or bankruptcy.

Chapter 7, Section 8 of the Employment Contracts Act (*55/2001*) provides that if the employer dies or is declared bankrupt, the period of notice for terminating the employment contract is 14 days regardless of the length of the employment relationship. Thus, the legislation differs from the interpretation adopted in the supervision practice, according to which the length of the employment relationship must be taken into account also in such situations when determining the length of the period of notice.

On the grounds above, the Government is of the view that Article 4§4 cannot be accepted.

Opinion of the Committee:

As alluded to above by the Finnish Government, the Committee has not defined *in abstractio* the concept of “reasonable” notice under Article 4§4 nor ruled on the function of the notice period or on compensation. It assesses the situations on a case by case basis.[3] It has concluded, for example, that the following are not in conformity to the Charter:

– one week’s notice for less than six months of service;[4]
– two weeks after six months of service ;[1]

[1] For an example, see Conclusions XVIII-2, Denmark, p. where, in the absence of official statistics covering the whole labour market, the Committee accepted that the average wage of a worker in manufacturing industry was a good approximation of the general average and it concluded that the collective agreements-based minimums were above the 60% threshold.
[2] The Committee recalls that during the parliamentary procedure pertaining to the Government Bill on ratification of the Revised Charter both the Constitutional Committee and the Foreign Affairs Committee considered that Finland should accept Article 4§1, “if at all possible”. See also fn. 11 above.
[3] Conclusions XIII-3, Portugal, p. 267.
[4] Conclusions XIII-3, Portugal, p. 267.

– less than one month's notice after one year of service;[2]
– thirty days' notice after at least five years' service;[3]
– six weeks' notice after ten to fifteen years' service;[4]
– eight weeks' notice after more than fifteen years' service.[5]

As is apparent, the main criterion for the assessment of the reasonableness of notice periods is length of service and in the Committee's view the multitude of individual assessments taken together provide a significant degree of guidance to the States Parties as to the scope of the obligation under Article 4§4.

The Committee confirms that Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer. [6] The situation in Finland whereby a notice of 14 days applies to all workers, independently of length of service, if the employer dies or is declared bankrupt, is therefore not in conformity with the Charter on this point.

Article 7§6

Situation in Finland:

According to Article 7§6 the time spent by young persons in vocational training during the normal working hours with the consent of the employer must be treated as forming part of the working day.

The legislation has not been amended after the 2007 meeting with the Committee so that Article 7§6 could be accepted.

Time spent in training is treated as part of the working day only in cases referred to in the Working Hours Act (*605/1996*). According to Section 4 of the Act, the time spent on work and the time an employee is required to be present at a place of work at the employer's disposal are considered working hours. Training is considered working hours mainly when attending it is compulsory or when agreed so with the employer.

However, Article 7§6 requires that also the time spent by young persons in vocational training during the normal working hours with the consent of the employer must be treated as forming part of the working day. Under the legislation, the time spent in such training need not be treated as part of the working day.

Because the legislation does not comply with the requirement made in Article 7§6, the Government is of the view that this provision cannot be accepted.

[1] Conclusions XVI-2, Poland, p. 616.
[2] Conclusions XIV-2, Spain, p. 684.
[3] Conclusions 2003, Bulgaria, p. 41.
[4] Conclusions XIV-2, Ireland, p. 398
[5] Conclusions XIV-2, Ireland, p. 398.
[6] Conclusions XIV-2, Spain, p. 684.

Opinion of the Committee:

The Committee understands that in Finland time spent on training is, in the main, regarded as working time when it is related to the work and at the workplace and when attending it is compulsory or agreed with the employer. Viewed in isolation this would appear to be in line with the requirements of the Charter.

The possible problem arises, however, with other types of training during normal working hours to which employers may give their consent (but without regarding it as working hours and without remunerating it). In this respect the Committee has held that the protection of Article 7§6 also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.[1]

Although the Committee has not yet had occasion to rule on a situation which is exactly similar to that obtaining in Finland, it wishes to underline that not all training to which the employer gives his/her consent is to be treated as forming part of working hours: when an employer gives a young worker time off to participate in training which is not related to the work and not required or financed by the employer, there would be no obligation following from Article 7§6 to regard this time as working time and to remunerate it as such.

On this basis it appears to the Committee that the situation in Finland may be in conformity with Article 7§6. It acknowledges however that there is a need for further clarification of existing law and practice and it is therefore at the disposal of the Finnish authorities for in-depth consultations on this issue.

Article 7§9

Situation in Finland:

As to Article 7§9, Section 13 of the Occupational Health Care Act (*1383/2001*) regulates medical examinations of employees. This Section also applies to employees under 18 years of age. It stipulates that

An employee may not without good cause refuse to attend a medical examination referred to in this Act if at the start or at a later stage of the employment the examination is necessary for investigating the employee's health in performing work or being in a working environment that presents a special risk of illness; or investigating the employee's working capacity or functional capacity for the purposes of the health requirements associated with the job.

The medical examination is performed by mutual agreement with the employee as provided in Section 6 of the Act on the Status and Rights of Patients (*785/1992*).

A certificate is written on the basis of the medical examination referred to in Section 13, subsection 1, subsection 2 of the Occupational Health Care Act. The certificate must include an overall evaluation of the employee's health qualifications for carrying out the tasks he or she is responsible for or the tasks planned to be assigned to him or her.

[1] Conclusions V, Statement of interpretation on Article 7§6, p. 67.

In addition to the aforementioned provisions, the Government Decree on medical examinations in work that presents a special risk of illness (*1383/2001*) is applicable to employees under 18 years of age.

Thus, the current legislation requires the medical control of employees under 18 years of age in occupations prescribed by national laws or regulations.

However, the legislation does not require regular medical examinations of such employees, for reasons related to their young age.

Therefore, in the Government's view, Article 7§9 cannot be accepted.

Opinion of the Committee:

Under Article 7§9 domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations.

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.[1] They may, however, be carried out by the occupational health services, if these services have the specific training to do so.[2]

The obligation entails a full medical examination on recruitment and regular check-ups thereafter.[3] The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.[4]

The Committee has examined the Decree on medical examinations in work that presents a special risk of illness referred to by the Government.[5] The decree prescribes medical examinations prior to taking up employment (or no later than one month thereafter) and subsequent check-ups with intervals varying between 1-3 years as necessary in work that involves exposure to various physical, chemical and biological factors as well as in night work and work involving possible exposure to violence (prison guard, police, night watch) and thus poses a risk to the health of workers.[6]

According to the decree, which as noted above also applies to young workers under the age of 18 years, the medical examinations shall be carried out at the expense of the employer (Section 1) and be conducted by qualified medical doctors (Section 4).

Insofar as the material scope of Article 7§9 is limited to "prescribed occupations" it appears to the Committee that the above-mentioned decree pursues the aim of this provision of the Charter. Subject to clarification as to the intervals between check-ups (3 years would be

[1] Conclusions 2006, Albania, p. 58.
[2] Conclusions VIII, Statement of interpretation on Article 7§9, p. 119.
[3] Conclusions XIII-1, Sweden, p. 170.
[4] Conclusions XIII-2, Belgium, p. 299.
[5] Government Decree of 27 December 2001 as amended by Government Decree of 13 October 2005. The Committee recalls that during the parliamentary procedure pertaining to the Government Bill on ratification of the Revised Charter the Labour Market and Equal Opportunities Committee considered that Article 7§9 embodies a right "worthy of protection". It therefore encouraged the Government to take measures to bring the situation in line with the Charter.
[6] A list of these factors is provided in an Appendix to the Decree.

too long for young workers), the Committee therefore does not see any major obstacles to acceptance of Article 7§9 by Finland.

Article 8§1

Situation in Finland:

As to Article 8§1, under the Employment Contracts Act (*55/2001*) and the Health Insurance Act (*1224/2004*), working women are entitled to a maternity leave of a total of 105 working days (*i.e.,* 17.5 weeks, when one calendar week is considered to consist of six working days). In all 30–50 working days of the maternity leave may be taken before the childbirth.

The maternity allowance payable during the first 56 days of the maternity leave corresponds to 90% of the beneficiary's annual earned income until the upper limit of EUR 53,072. For the income exceeding this limit, the maternity allowance is payable at a lower rate. After this period the allowance is payable at the rate of 70% until the upper limit of EUR 34,495. For the income exceeding this limit, the allowance is again payable at a lower rate. The aforementioned amounts in euro are increased annually by an index which follows changes in the pay level, on one hand, and in the price level, on the other hand.

Half of all mothers with an employment contract receive full pay for the first three months of their maternity leave. During this period the maternity allowance is paid to the employer. Mothers outside working life and mothers with a low annual earned income before childbirth receive a minimum allowance of EUR 22,96 per working day (EUR 574 per month). The minimum allowance is adjusted annually by an index that follows changes in the cost of living.

The earnings-related allowances are paid from the health insurance scheme, which is funded jointly by employers (73% of the total costs) and employees (27% of the total costs). In 2012 the employers contributed to the health insurance fund 2.12% of the total sum of the pay paid by them and the employees contributed 0.82% of their taxable income. The costs of the minimum allowances are covered by state tax revenue.

On the basis of the above, it can be considered that the current national legislation sufficiently meets the requirements of Article 8§1.

However, the attention should be paid to the aforementioned Government Bill on ratification of the Revised Charter which states in respect of Article 8§1 that the Employment Contracts Act prohibits work by an employee during a period of two weeks before the expected time of birth and two weeks after giving birth. During other times the employee is permitted to work during the maternity leave, if she so agrees with the employer. An employee has no right to maternity allowance if she has not resided in Finland for 180 days immediately before the expected time of birth.

Consequently, in the Government’s view, Article 8§1 cannot be accepted.

Opinion of the Committee:

The Committee concurs with the view expressed by the Government according to which the general legal framework as regards maternity leave (duration and benefit levels) in Finland seems to be in conformity with Article 8§1.

With respect to the compulsory periods of leave (in Finland two weeks pre-natal and two weeks post-natal), the Committee has previously held that there must be a minimum period of post-natal leave of six weeks. However, the Committee has re-considered its stance on this point and in Conclusions 2010 it issued the following statement of interpretation:

"Statement of interpretation on Article 8§1: compulsory post-natal leave

Article 8§1 of the Charter should be examined in the light, in particular, of developments in national legislation and international conventions. This provision was designed both to grant employed women protection in the case of maternity and to reflect a more general interest in public health, i.e. the health of the mother and child. In connection with the first point, the Charter requires a minimum of 14 weeks' leave entitlement, together with adequate financial safeguards. With regard to the second point, the women concerned enjoy the right to protection against any work which might be harmful to the health of the mother or the child.

The aforementioned two requirements are met insofar as national legislation, on the one hand, allows women the right to use all or part of their recognised entitlement to cease work for a period of at least 14 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliges the employer to respect the free choice of women.

The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Article 8 (see for example Conclusions VIII, United Kingdom). Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave)."[1]

[1] Conclusions 2011, General Introduction, pp. 5-6.

Finally, as regards the requirement in Finnish law that a worker must have resided in Finland for 180 days immediately before the expected time of birth in order to be entitled to maternity benefits, the Committee has held that under Article 8§1 the right to benefit may be subject to conditions such as a minimum period of contribution and/or a period of residence and/or employment. However, these conditions must be reasonable. The Committee has in the past found a requirement for six month prior insurance coverage for an insurance-based maternity benefit and a period of one year of habitual residence in the country before being entitled to a non-contributory maternity allowance to be compatible with Article 8§1.[1]

In view of the above, and subject to clarification as to whether there is any possibility of awarding other forms of maternity benefits or allowances to workers who have not fulfilled the 180 days requirement, the Committee considers that the situation is in conformity with the Charter.

Article 8§3

Situation in Finland:

As to Article 8§3 the situation in Finland has not changed since the 2007 meeting with the Committee.

The legislation does not contain provisions on nursing leave. The periods of maternity and parental leave are so long that no need has been found for a separate nursing leave.

Under the Employment Contracts Act employees are entitled to take leave from work during maternity, special maternity, paternity and parental benefit periods. The maternity leave lasts 105 working days.

After the end of the maternity allowance period, the parents may take a parental leave of 158 working days in full time or part time.

Employees are entitled to two periods of full time child care leave for looking after a child under 3 years of age.

Because the legislation does not comply with the requirement set out in Article 8§3, in the Government's view this provision cannot be accepted.

Opinion of the Committee:

Under Article 8§3 all employed mothers (including domestic employees[2] and women working at home) who breastfeed their babies shall be granted time off for this purpose.

Time off for nursing should in principle be granted during working hours should be treated as normal working time and remunerated as such.[3] However provision for part time work

[1] Conclusions XIII-5, Luxembourg.
[2] Conclusions XVII-2, Spain, p. 726.
[3] Conclusions XIII-4, Netherlands, p. 102.

may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.[1]

Time off for nursing must be granted at least until the child reaches the age of nine months.[2]

Each situation is assessed on a case-by-case basis; legislation providing for two daily breaks for a period of one year for breastfeeding, two half–hour breaks where the employer provides a nursery or room for breastfeeding,[3] one–hour daily breaks[4] and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter.[5]

In view of the foregoing, the Committee does not consider that the absence of specific provisions on breastfeeding breaks represents an obstacle to acceptance by Finland of Article 8§3. By analogy with its assessment in respect of Sweden,[6] the Committee considers that the existence of special maternity, paternity and child care leaves and the granting of parental benefits adequately compensates for the absence of specific rules on time off for nursing and for any income loss in this context.

Article 8§5

Situation in Finland:

The aforementioned Government Bill on ratification of the Revised Charter also analysed the barriers to ratifying Article 8§5.

The Government Bill stated that the revised Article 8§5 requires the Parties to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature. The paragraph has been supplemented with an obligation on the Parties to take appropriate measures to protect the employment rights of these women.

The earlier corresponding Article 8§4, sub-paragraph b of the 1961 Charter, which Finland did not accept, concerned prohibiting the employment of women in work unsuitable for them.

As part of their general obligations related to occupational safety and health, employers must take account of the personal capacities of their employees. The pregnancy of an employee is a personal capacity that must be taken into account in assessing the possibility of detriment to her health.

According to Section 48, subsection 2 of the Occupational Safety and Health Act pregnant women and breast-feeding mothers must, when necessary, have an opportunity to go to rest in a break room or other suitable place. Detailed provisions on the prevention of work-

[1] Conclusions 2005, Sweden, p. 689.
[2] Conclusions 2005, Cyprus, p. 74.
[3] Conclusions I, Italy, p. 51. .
[4] Conclusion I, Germany, p. 191
[5] Conclusions 2005, France, p. 228.
[6] Conclusions 2005, Sweden

related risks posed to a person's genome, foetus and reproduction are laid down in the related Government decision (*1043/1991*).

Chapter 4, Section 1 of the Employment Contracts Act contains provisions on special maternity leave. Provisions on special maternity allowance are laid down in Section 4 (1500/1995), Section 14 (*1500/1995*) and Section 23(g) (*1192/1990*) of the Health Insurance Act.

According to Section 23(g) of the Health Insurance Act a pregnant employee may be entitled to special maternity allowance if her working duties or conditions endanger the health of the employee or the foetus. The precondition is that no other work can be arranged for her as stipulated in Chapter 2, Section 3, para. 2 of the Employment Contracts Act and the employee must therefore be absent from work. Provisions on special maternity allowances also exist in the general collective agreements of the government, local government and the church.

Although the legislation ensures a high level of general protection of pregnant women, women who have recently given birth and who are nursing their infants, it does not contain the specific provision required by the Charter to prohibit work which is unsuitable for these women by reason of its dangerous, unhealthy or arduous nature. The earlier prohibition of employment of women in underground mining was repealed because it conflicted with the national gender equality policy. Moreover, Article 8§5 conflicts with the requirements of the legislation on gender equality and the current understanding and development trends of gender equality. Considering the unconditional wording of Article 8§5, the requirements made in it restrict the equal opportunities of women for employment and may thus lead to discrimination against women in working life.

Finland has amended the occupational safety and health provisions of the legislation described in the aforementioned Government Bill on ratification of the Revised Charter. Under Section 8 of the Occupational Safety and Health Act employers are required to take care of the safety and health of their employees while at work by taking the necessary measures. For this purpose, employers must consider, among other things, the circumstances related to the employees' personal capacities, including pregnancy.

In addition, according to Section 10 of the Occupational Safety and Health Act employers must, taking the nature of the work and activities into account, systematically and adequately analyse and identify the hazards and risk factors caused by the work, the working premises, other aspects of the working environment and the working conditions and, if the hazards and risk factors cannot be eliminated, assess their consequences to the employees' safety and health. When doing so, the employers must take into account, among other things, the potential risks to reproductive health.

Section 12 of the Occupational Safety and Health Act provides that when designing the arrangements of the working environment, employers must take into consideration employees whose working activities and health and safety otherwise call for special measures. Section 48 of the Act, in turn, provides that pregnant women and breast-feeding mothers must, when necessary, have an opportunity to go to rest in a break room or other suitable place.

Detailed provisions on the prevention of work-related risks posed to a person's genome, foetus and reproduction are laid down in the related aforementioned Government decision.

However, the amendments to the Occupational Safety and Health Act described above do not influence the feasibility of implementing Article 8§5.

Article 8§5 may still, in the manner mentioned in the aforementioned Government Bill on ratification of the Revised Charter, restrict the equal opportunities of women for employment and thus lead to discrimination against women in working life. The Occupational Safety and Health Act and the Employment Contracts Act, among other legislation, protect the position of pregnant women in work sufficiently at national level.

On the aforementioned grounds the Government is of the view that Article 8§5 cannot be accepted.

Opinion of the Committee:

Article 8§5 applies to pregnant women, women who have recently given birth or who are nursing their infants, in paid employment, including civil servants. Only self-employed women are excluded. It prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines. This applies to extraction work proper, but not to women who:

– occupy managerial posts and do not perform manual work;
– work in health and welfare services;
– spend brief training periods in underground sections of mines.[1]

The prohibition must be provided for in domestic law.

Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. National law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.[2]

National law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay, if this is not possible such women should be entitled to paid leave. Such women should retain the right to return to their previous employment.[3]

The Committee takes note that Finland has repealed previously existing legislation which prohibited the employment of pregnant women in underground mining and it also acknowledges the Government's view that Article 8§5 runs counter to Finnish gender equality policy in particular and to a contemporary understanding of gender equality in general. It can only conclude that the situation is not at present in conformity with the Charter.

[1] Conclusions X-2, Statement of Interpretation on Article 8§4, p. 97.
[2] Conclusions 2003, Bulgaria, p. 46.
[3] Conclusions 2005, Lithuania, p. 321.

Article 19§10

Situation in Finland:

Article 19§10 requires that the protection and assistance provided for in Article 19 must be extended to self-employed migrants insofar as such measures apply.

Section 79 of the Aliens Act (*301/2004*) regulates employment in certain occupations without a residence permit for an employed person.

According to Chapter 1, Section 1 of the Act on the Right to Carry On a Trade (*122/1919*), a natural person domiciled in the European Economic Area may, without needing any particular permit, carry on a trade that is legal and in accordance with good practice. By contrast, natural persons domiciled outside the European Economic Area need a permit for carrying on a trade. The Charter has also been ratified by states not parties to the Agreement on the European Economic Area. As the Article applies to all nationals of the Parties to the Charter, the legislation does not sufficiently safeguard the rights guaranteed under this paragraph for self-employed persons.

The Finnish system of issuing residence permits to self-employed persons from countries outside the EU/EEA or Switzerland consists of two phases. First, there are considerations related to the profitability of the business in question. Second, the applicant needs to fulfil the general conditions for residing in Finland. The relevant criteria are established in paragraphs 36, 72 and 76 of the Aliens' Act. There is a corresponding procedure and set of conditions for third-country workers.

However, the workers and self-employed persons holding the nationality of an EU/EEA member State or Switzerland profit from the more generous free movement provisions and do not need to apply for a residence permit as such. This dual system is largely recognized and there are no plans to alter its grounds.

For the reasons described above, the Government is of the view that Article 19§10 cannot be accepted.

Opinion of the Committee:

Under Article 19§10, States must ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families.[1]

States must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice, between wage-earners and self-employed migrants. In addition, equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.

A finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a non-conformity under paragraph 10.

The Committee wishes to emphasise that Article 19§10 is concerned neither with the granting of residence and/or work permits nor with the granting of permits for the exercise

[1] Conclusions I, Norway, p. 87.

of a trade as self-employed. The Charter's protection of self-employed migrant workers extends to the rights provided for in paragraphs 1 to 9, 11 and 12 and the Finnish system whereby natural persons domiciled outside the European Economic Area need a permit for carrying on a trade does therefore not raise a problem of conformity under Article 19§10.

APPENDIX 1

FINLAND AND THE EUROPEAN SOCIAL CHARTER

Situation of Finland as of September 2012

Ratifications

Finland ratified the Revised European Social Charter on 21/06/2002, accepting 88 of the 98 paragraphs of the Revised Charter.

It ratified the Additional Protocol providing for a system of Collective Complaints on 17/07/1998. Finland has made a declaration enabling national NGOs to submit collective complaints.

Finland ratified the European Social Charter and the Additional Protocol to the Charter on 29/04/1991. It ratified the Amending Protocol to the Charter on 18/08/1994.

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
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			

Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation

Reports

Between 1993 and 2012, Finland has submitted 10 reports on the application of the Charter and 7 reports on the Revised Charter.

The 6th report submitted by Finland on 7 February 2011, covers the accepted provisions relating to Thematic Group 4 "Children, families and migrants", (Article 7§§1, 2, 3, 4, 5, 7, 8 and 10, Article 8§§2 and 4, Articles 16 and 17, Article 19§§1, 2, 3, 4, 5, 6, 7, 8, 9 and Articles 27 and 31). Conclusions in respect of these provisions were published in January 2012.

The 7th report submitted by Finland on 5 January 2012 covers the accepted provisions relating to Thematic Group 1 "Employment, training and equal opportunities", i.e.

- 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),
- 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 of 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.

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* 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 Finland with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter[1]

Non-discrimination

► Signature in spring 2000 of a new collective agreement in the hotel and catering sectors, under which it is no longer necessary for shop stewards to be Finnish citizens.
►New legislation on Non-Discrimination strengthened the protection against discrimination (Act No. 21/2004).
► The limits on compensation payable in the event of sex discrimination were removed by amendments to the Act on Equality between Men and Women (amendments introduced by Act No. 232/2005).

Employment

► Extension to private employment agencies of the principles applicable to public employment services (Act No. 1005/1993 as amended by Act No. 418/1999)
► The working time permitted for children of 14 years of age or younger and subjected to compulsory education has been set at half of the duration of the school day. Employment of children of over 15 years of age for emergency work is possible only if no adult is available to carry out the work. If the rest period of a young worker has been reduced on account of emergency work, a comparable rest period must be given to him as soon as possible within a period of no more than three weeks (Act No. 998/1993 as amended by Act No. 754/1998)

Movement of persons

► Repeal in 1998 of the provision of the 1986 Passports Act (No. 642/1986, for the legislation currently in force, see Act No. 671/2006) which enabled the refusal of a passport to "persons who prove unable to look after themselves".

Cases of non-compliance

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)*
– the law establishes a ceiling on the compensation payable in cases of unlawful discriminatory dismissal;
– the length of alternative civilian service constitutes a disproportionate restriction on the right to earn a living in an occupation freely entered upon.
(Conclusions 2008)

Article 15§3 - Integration and participation of persons with disabilities in the life of the community - Right of persons with disabilities to independence, social integration and participation in the life of the community
There is no anti-discrimination legislation for persons with disabilities covering areas such as communication, housing transport and cultural and leisure activities.
(Conclusions 2008)

[1] « 1. The [European Committee of Social Rights] … 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 » (Rule 2 of the Rules of the Committee)

► *Article 18§1 - Right to engage in a gainful occupation in the territory of other States Parties - Applying existing regulations in a spirit of liberality*
The existing regulations are not being applied in a spirit of liberality.
(Conclusions 2008)

► *Article 24 - Right to protection in case of dismissal*
Compensation for unlawful termination of employment is subject to an upper limit.
(Conclusions 2008)

Thematic group 2 : "Health, social security and social protection"

►*Article 12§1 Right to social security - Existence of a social security system*
The minimum sickness and maternity allowances and the minimum national pension for single persons are manifestly inadequate.
(Conclusions 2009)

►*Article 12§4 – Right to social security - Social security of persons moving between states*
1. the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Finland is not guaranteed;
2. nationals of States Parties not covered by Community regulations or bound by an agreement with Finland are not entitled to accumulate insurance or employment periods completed in other countries.
(Conclusions 2009)

► *Article 23 - Right of the elderly to social protection*
The level of the national pension for the elderly is manifestly inadequate.
(Conclusions 2009)

Thematic group 3: "Labour rights"

►*Article 2§1 – Right to just conditions of work - Reasonable working time*
The legislation on working time allows daily rest periods during employment to be reduced to 7 or even 5 hours.
(Conclusions 2007) (Conclusions XIX-3 (2010) – Introduction only)

►*Article 4§2 – Right to a fair remuneration - Increased remuneration for overtime work*
– there is no evidence that all collective agreements derogating from the provisions of the Working Hours Act (No. 605/1996) afford a level of protection in compliance with Article 4§2;
– family day carers are not covered by provisions on overtime remuneration.
(Conclusions 2007) (Conclusions XIX-3 (2010) – Introduction only)

►*Article 6§4 – Right to bargain collectively - Collective action*
Civil servants cannot call a strike in pursuance of objectives which are not covered by the collective agreement.
(Conclusions 2006) (Conclusions XIX-3 (2010) – Introduction only)

Thematic group 4: "Children, families and migrants"

►*Article 8§2 – Right of employed women to protection - Illegality of dismissal during maternity leave*
No provision is made in law for the reinstatement of women unlawfully dismissed during pregnancy or maternity leave.
(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*
Legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.
(Conclusions 2011)

The European Committee of Social Rights has been unable to assess compliance with the following rights and has invited the Finnish 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 by 31/10/2011)

► Article 1§4 – Conclusions 2008
► Article 10§§2, 3 and 5 – Conclusions 2008

Thematic group 2 : "Health, social security and social protection"
(Report to be submitted by 31/10/2012)

► Article 12§2 – Conclusions 2009
► Article 13§2 – Conclusions 2009

Thematic group 3 : "Labour rights"
(Report to be submitted by 31/10/2013)

► Article 2§4 – Conclusions 2007
► Article 26§2– Conclusions 2007
► Article 29 – Conclusions 2007

Thematic group 4 : "Children, families and migrants"
(Report to be submitted by 31/10/2014)

► Article 17§1 – Conclusions 2011
► Article 19§4 – Conclusions 2011
► Article 19§8 – Conclusions 2011
► Article 31§3 – Conclusions 2011

Collective Complaints and State of Procedure in Finland[1]

Collective complaints (under examination)

Association of Care Giving Relatives and Friends v. Finland (No. 71/2011)

Association of Care Giving Relatives and Friends v. Finland (No. 70/2011)

Collective complaints (proceedings completed)

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

Federation of Finnish Enterprises v. Finland (No. 35/2006)
No violation of Article 5 (right to organise) decision on the merits of 16 October 2007.

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

None.

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

Tehy ry and STTK v. Finland (*No. 10/2000)*
Violation of Article 2§4 (*elimination of risks for workers in dangerous or unhealthy occupations),* decision on the merits of 17 October 2001.

[1] The case law 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 Case Law 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.