EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

11 March 2013

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

NORWAY

On the basis of the written report of the Norwegian Government of 28 January 2013

Document prepared by the Secretariat

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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 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 tosecuring 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 Norway ratified the Charter on 7 May 2001, accepting 80 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 Norwegian ministries in Oslo on 28 March 2006.

Following this meeting, the European Committee of Social Rights delegation at the time concluded that immediate acceptance seemed possible in respect of the following provisions:

Article 2§7 – Night work
Article 3§1 – Health and safety and the working environment
Article 18§1 – Applying existing regulations in a spirit of liberality
Article 18§4 – Right of nationals to leave the country
Article 27§1 (a and b) – Participation in professional life
Article 27§3 – Prohibition of dismissal for reasons relating to family responsibilities

The Committee further considered that acceptance at least in the medium term was possible in respect of the following provisions:

Article 3§4 – Occupational health services
Article 7§4 – Length of working time
Article 7§9 – Regular medical examination
Article 8§4 – Regulation of night work
Article 26§1 – Sexual harassment

As regards the remaining non- accepted provisions:

Article 8§2 – Illegality of dismissal during maternity leave

Article 8§5 – Prohibition of dangerous, unhealthy or arduous work
Article 18§2 – Simplification of existing formalities and reduction of dues and taxes
Article 18§3 – Liberalisation of regulations
Article 19§8 – Guarantees concerning deportation
Article 26§2 – Moral harassment
Article 29 – Right to information and consultation in collective redundancy procedures

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 2011 the Norwegian authorities were invited to provide written information on the non-accepted provisions before 30 June 2011. The Norwegian Ministry of Labour informed the Committee of the ongoing process for the preparation of the written information by letters dated 4 July 2011 and 19 October 2012, a process that was delayed by the terrorist attacks which severely affected the Ministry in July 2011. The requested information was finally submitted in a letter dated 28 January 2013.

Having examined the written information the Committee confirms that from the point of view of the situation in law and in practice there are no obstacles to the immediate acceptance of Articles 2§7, 3§1, 18§1, 18§4, 27§1 (a and b) and 27§3.

Moreover, the Committee considers – subject to certain clarifications – that there are no significant or insurmountable obstacles to acceptance of Articles 3§4, 7§4, 7§9, 8§4 and 26§1.

Finally, as regards Articles 8§2, 8§5, 18§2; 18§3, 19§8, 26§2 and 29 it would appear that legislative changes are required to bring the situation into conformity with the Charter.

The next examination of the provisions not accepted by Norway will take place in 2016.

In view of the conclusions of this report, the Committee wishes to encourage Norway 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 notes with interest the Government's statement that it is working toward the ratification of Articles 2§7, 3§1, 27§1 and 27§3 and hopes that this work can be completed with a positive result in the near future. It encourages the Government to consider acceptance of the other provisions that the Committee has identified in this report.

The Committee would also like to encourage Norway to consider recognising the right of national NGOs to lodge complaints before the ECSR in the framework of the collective complaints procedure as foreseen by Article 2 of the Additional Protocol providing for a system of collective complaints.

The Committee finally 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).

EXAMINATION OF THE NON-ACCEPTED PROVISIONS

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

Article 2§7

Situation in Norway:

According to the report, night work is in principle prohibited by the Working Environment Act (WEA). Night work is only permitted in those cases were it is necessary because of the nature of the work or in situations where there is an exceptional and time-limited need for it and this is agreed upon in a collective agreement (WEA Section 10-11). The WEA contains special regulations with regard to employees who regularly work in the night time.

For more details the report refers to the presentation of law and practice made by the Ministry of Labour in 2006.[1]

Seafarers

The Working Environment Act (WEA) does not apply to seafarers.

Act of 16 February 2007, No. 09 relating to Ship Safety and Security (hereinafter Act No. 09) and the Seamen's Act of 30 May 1975, No. 18 (hereinafter Act No. 18) regulate seafarers' working and living conditions on Norwegian ships. Act No. 09 does not establish compensatory measures which take account of the special nature of night work. However, the Act guarantees the seafarers decent working conditions as they are described below. Act No 09 is new since the assesment that was made in 2006. Some details in the new legislation are as follows:

Act No. 09 regulates the arrangement and carrying out of work on board, cf. Section 22. The work on board shall be arranged and carried out so as to safeguard life and health and the psychosocial working environment. In the arrangement of work, due regard shall be paid to the individual person's qualifications to undertake the work on a safe and sound basis.

Act No. 09 is the legal basis for Regulation of 1 January 2005 concerning the working environment, safety and health of workers on board ships. The Regulation stipulates that the measures and working methods applied shall ensure the best possible level of protection and a continuous improvement of the safety and health of workers, and shall be integrated in all activities on board, cf. Section 2-3. Planning and assessment of the working

[1] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf

environment and implementation of the necessary preventive measures shall take place in cooperation with the workers. The following elements shall, among other things, be ensured:

a) the work shall be arranged and organised with due regard to the age, competence and other qualifications of the individual worker;
b) the work shall be adapted to the individual worker, particularly with regard to the design of the workstation, the choice of equipment and methods, and with the aim of facilitating monotonous and repetitive work;
c) the persons charged with directing and supervising work on board shall have the necessary qualifications and an awareness of hazards, etc. associated with the work;
d) effective supervision to ensure that work is carried out in a safe and appropriate manner in terms of health;
e) the persons who are put to work to have been given the possibility of sufficient rest.

In addition, for any worker who is pregnant, has recently given birth or is breastfeeding, special arrangements and organization of work shall be ensured.

Act No. 09 also stipulates that the normal working hours shall be based on an eighthour day, cf. Section 23. The minimum hours of rest shall not be less than ten hours in any 24-hour period, and 77 hours in any 168-hour period, as a basic rule. Hours of rest may be divided into two periods, one of which shall be at least six hours in length. The interval between consecutive periods of rest shall not exceed 14 hours, cf. Section 24 first paragraph. For seafarers on watch, the provisions of Section 24 first paragraph do not apply in the event of an emergency situation or work as a consequence of a drill or other exceptional operational conditions.

The provisions of Section 24 first paragraph may be departed from in a binding collective agreement. For persons forming part of the navigational or engineering watch, derogation in a collective agreement from the provisions in Section 24 first paragraph shall be limited to at least six consecutive hours, provided that no such reduction extends over more than 48 hours and the hours of rest will comprise at least 70 hours for any period of 168 hours.

Furthermore, there are provisions which limit night work for young seafarers in the Regulation of 25 April 2002, No. 423 concerning work and outplacement of young seafarers on Norwegian ships, cf. Section 10. Night work is defined as work between 8 p.m. and 8 a.m. unless the person in question gets at least nine consecutive hours of leisure time in this period. Prior to any assignment to night work and at regular intervals thereafter, adolescents shall be entitled to a free assessment of their health and capacities, unless the work they do in the period during which work is prohibited is of an exceptional nature.

Act No. 09 establishes health requirements in Section 17. Any person who is working on board must be physically and mentally fit for the service and not pose a danger to other persons on board. The employee shall present a health certificate that stipulates that the conditions of the previous sentence are fulfilled, and shall be required to submit to medical examination whenever the master considers that there are reasons for this to be done.

Article I of the European Social Charter applies to Article 2§7. Even if the legal framework for seafarers on board Norwegian ships should not be fully in compliance with the Article 2§7, it would seem that Norway is in compliance with the Article as long as the provisions of the WEA implementing the right enshrined in Article 2§7 is enjoyed by at least 80% of the workers. The WEA comprise a waste majority of Norwegian employees.

Opinion of the Committee:

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define "night" within the context of this provision.

The measures which take account of the special nature of the work must at least include the following:

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.[2]

In the light of the current case law and the current legal situation and practice the provision could be immediately accepted by Norway.

[2] Conclusions 2003, Romania, p. 368.

Article 3§1

Situation in Norway:

There is extensive legislation, measures and cooperation with the workers' and employers' organisations on this subject in Norway. The national policy on occupational health and safety and the working environment is reviewed continually by the authorities and from time to time more deeply by expert committees, through research projects, by law committees etc. It is an extensive and continuing cooperation with the workers' and the employers' organisations regarding the national policy on this subject.

To ensure a systematic follow-up on these provisions by the undertakings, there are amongst others, provisions in Section 3-1 of the WEA, demanding a systematic work with health, environment and safety.

The report refers to the presentation of law and practice made by the Ministry of Labour in 2006[3] for more details regarding the right to safe and healthy working conditions.

Seafarers

There is no legislation for seafarers in particular that establishes a coherent national policy on occupational safety, occupational health and the working environment. The report refers to the presentation of law and practice made by the Ministry of Labour in 2006 in this regard.

However, as a means to improve seafarers' and fishermen's working and living conditions, a Council for Seafarers' and fishermen's working and living conditions was established 20 October 2004. The Council treats general issues concerning these workers' working and living conditions, as well as particular issues that may arise. The Council consists of representatives of the Social Partners, i.e. employer and employee organisations.

Furthermore, a coherent national policy as described above, will most naturally be formulated for all workers in Norway, and not for seafarers separately.

Opinion of the Committee:

Article 3§1 requires States to formulate, implement and periodically review a coherent policy on occupational health and safety in consultation with social partners i.e. employers' organisations and trade unions.[4]

General objective of national policy

[3] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf

[4] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria, p. 31.

The main policy objective must be to foster and preserve an culture of prevention in the areas of health and safety at national level. Occupational risk prevention must be a priority. It must be incorporated into the public authorities' activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.).[5] The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.

Organisation of occupational risk prevention

A culture of prevention implies that all the partners – authorities, employers and workers – will be actively involved in occupational risk prevention, working within a well-defined framework of rights and duties and predetermined structures.

The main aspects are:

- at company level: besides compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well as information and training for workers. Employers and/or users are required to provide appropriate information, training and medical supervision for temporary workers and employees on fixed-term contracts, i.e. taking account of accumulated periods of exposition to dangerous substances while working for different employers;
- at government level: the development of an appropriate system of public prevention and supervision, which is generally the task of the labour inspectorate. The only responsibility of inspectors covered by Article 3§1 is their duty to share the knowledge about risks and risk prevention they have acquired during their inspections and investigations conducted as part of their preventive activities (information, education, prevention). Their duty to ensure compliance with the rules comes under the rights guaranteed by Article 3§3 of the Charter (right to occupational health and safety – supervisory measures).[6]

Improvement of occupational health and safety (research and training)

The methods used to increase general awareness, knowledge and understanding of the concepts of danger and risk and of ways of preventing and managing them must include[7]:

- training (qualified staff);
- information (statistical systems and dissemination of knowledge);
- quality assurance (professional qualifications, certification systems for facilities and equipment);

[5] Conclusions 2005, Lithuania, p. 306.
[6] Conclusions 2005, Lithuania, p. 306.
[7] Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria, p. 31.

- research (scientific and technical expertise).

Consultation with employers' and workers' organisations

When devising and implementing national policies and strategies, the relevant authorities must consult trade unions and employers' organisations at national, sectoral and company level. Consultation between the relevant authorities and employers' and workers' organisations on measures to improve occupational health and safety was already required under Article 3§3 of the 1961 Charter. However, Article 3§1 of the Charter requires broader consultation in that it calls not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues. Consultation mechanisms and procedures must be set up. At national and sectoral level, this requirement is satisfied where there are specialised bodies made up of government, employers' and workers representatives, which are consulted by the public authorities. These bodies may be permanent or *ad hoc* consultation forums.

At company level, the employer's duty to consult trade unions forms part of the "right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking" guaranteed by Article 22 of the Charter. Consultation at company level in states which have accepted both Article 3§1 and Article 22 is examined only under Article 22.[8]

In the light of the current case law and the current legal situation and practice as described above the provision could be immediately accepted by Norway.

[8] Conclusions 2005, Lithuania, p. 306.

Article 3§4

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[9]

Opinion of the Committee:

Under Article 3§4, all workers in all branches of economic activity and all companies must have access to occupational health services. These services may be run jointly by several companies.[10] States party are required to promote the progressive development of such services. It means that "a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources".[11] Therefore, if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.[12]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could possibly be accepted by Norway subject to further analysis. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to continue its consideration of this provision with a view to its possible acceptance in the near future.

[9] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[10] Conclusions 2003, Statement of Interpretation on Article 3§4, see e. g. Conclusions 2003, Bulgaria p. 37.
[11] *Association internationale Autisme-Europe (AIAE)* v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53.
[12] Conclusions 2003, Statement of Interpretation on Article 3§4.

Article 7§4

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[13]

Opinion of the Committee:

Under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice.[14] For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article.[15] However, for persons over 16 years of age, the same limits are in conformity with the article.[16]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could possibly be accepted by Norway subject to further analysis. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to continue its consideration of this provision with a view to its possible acceptance in the near future.

[13] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[14] Conclusions 2006, Albania, p. 55.
[15] Conclusions XI-1, Netherlands, p. 95.
[16] Conclusions 2002, Italy, pp. 85-86.

Article 7§9

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[17]

Opinion of the Committee:

In application of 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.[18] They may, however, be carried out by the occupational health services, if these services have the specific training to do so.[19] The obligation entails a full medical examination on recruitment and regular check-ups thereafter.[20] 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.[21] The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.[22]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could possibly be accepted by Norway subject to further analysis. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to continue its consideration of this provision with a view to its possible acceptance in the near future.

[17] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[18] Conclusions 2006, Albania, p. 58.
[19] Conclusions VIII, Statement of interpretation on Article 7§9, p. 119.
[20] Conclusions XIII-1, Sweden, p. 170.
[21] Conclusions XIII-2, Belgium, p. 299.
[22] Conclusions XIII-2, Italy, p. 99.

Article 8§2

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[23]

Opinion of the Committee:

Article 8§2 makes it unlawful to dismiss female employees form the time they notify the employer of their pregnancy to the end of their maternity leave. Article 8§2 applies equally to women on fixed-term and open–ended contracts.[24]

This provision does however not lay down an absolute prohibition; according to the Committee's case law[25] inserted in the Appendix to the Revised Charter, it permits exceptions in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate of if the period prescribed in the employment contract expires.[26] Exceptions are strictly interpreted by the Committee. The notification of the dismissal, by the employer, during the period of protection does not as such amount to a violation of article 8§2 provided that the period of notice and any procedures are suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures must apply in the event of notice of dismissal prior to the period of protection. [27] In cases of dismissal contravening this provision of the Charter, national legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be able to take their case before the courts.

Reinstatement of the women should be the rule.[28] Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts (or any other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal, hence any ceiling on the level of compensation that may be awarded is not in conformity with the Charter.[29]

In the previous report, the Committee was of the opinion that, taking into account the fact that it was not prohibited to give notice during the period protected by the Charter (although

[23] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[24] Conclusions XIII-4, Austria, p. 93.
[25] Conclusions X-2, Spain, p. 96.
[26] Conclusions 2005, Estonia, p. 144.
[27] Conclusions XIII-4, Statement of Interpretation on Article 8§2, pp. 92-93.
[28] Conclusions 2005, Cyprus, p. 73.
[29] Conclusions2005, Estonia, p. 144.

the notice does not become effective during this period), the situation did not appear to be fully in compliance with Article 8§2 of the Charter at the time. The situation having not undergone substantial changes since then, the Committee reiterates its opinion.

Article 8§4

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[30]

Opinion of the Committee:

Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman. The regulations must:

- only authorise night work where necessary, having due regard to working conditions and the organisation of work in the firm concerned;[31]
- lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.[32]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could possibly be accepted by Norway subject to further analysis. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to continue its consideration of this provision with a view to its possible acceptance in the near future.

[30] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[31] Conclusions 2003, France, p. 125.
[32] Conclusions X-2, Statement of Interpretation on Article 8§4, p. 97.

Article 8§5

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[33]

Opinion of the Committee:

Article 8§5 applies to all 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.

1- This provision 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.[34]

This prohibition must be provided for in law.

2- 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.[35] 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.[36]

In the previous report, the Committee was of the opinion that, in the absence of legislation prohibiting the employment of pregnant women in underground mining, the situation was not in conformity with the Charter at the time. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

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[33] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[34] Conclusions X-2, Statement of Interpretation on Article 8§5, p. 97.
[35] Conclusions 2003, Bulgaria, p. 46.
[36] Conclusions 2005, Lithuania, p. 321.

Article 18§1

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[37]

Opinion of the Committee:

Article 18 applies to employees and the self-employed who are nationals of States party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.[38] Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.[39] This article also covers foreign workers who have obtained employment in a foreign country but subsequently lose it.[40]

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.[41]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could be immediately accepted by Norway. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to consider acceptance of Article 18§1.

[37] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[38] Conclusions X-2, Austria, p. 137.
[39] Conclusions XIII-1, Sweden, p. 204.
[40] Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61.
[41] Conclusions XVII-2, Spain, p. 747.
[42] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf

Article 18§2

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[42]

Opinion of the Committee:

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision.[43] With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin[44] and obtaining the residence and work permits at the same time and through a single application.[45] It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.[46]

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.[47]

In the previous report, the Committee was of the opinion that, in view of the requirement that application formalities were in principle to be completed before entry into the country and also taking into account the introduction of an application fee, the situation appeared not to be in conformity with the Charter at the time. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

[42] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[43] Conclusions IX-1, United Kingdom, p. 102.
[44] Conclusions XVII-2, Finland, p. 243.
[45] Conclusions XVII-2, Germany, pp. 285-286.
[46] Conclusions XVII-2, Portugal, pp. 702-703.
[47] Conclusions XVII-2, Portugal, p. 703.

Article 18§3

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[48]

Opinion of the Committee:

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

– Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.[49] States parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

– Right to engage in an occupation:

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. [50]

– Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found. [51]

In the previous report, the Committee was of the opinion that the situation as regards the possibility of an extension of the work/residence permit in case of job loss seemed to be too restrictive and the situation therefore was not in conformity with the Charter at the time. As

[48] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[49] Conclusions V, Germany, p. 119.
[50] Conclusions II, Statement of Interpretation on Article 18§3, p. 60.
[51] Conclusions XVII-2, Finland, p. 247.

the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

Article 18§4

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[52]

Opinion of the Committee:

The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are "prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals."[53] [54]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could be accepted immediately by Norway. The situation having not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to consider acceptance of Article 18§4.

[52] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[53] Conclusions XI-1, Netherlands, p. 155.
[54] Conclusions 2005, Cyprus, p. 105.

Article 19§8

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[55]

Opinion of the Committee:

This paragraph obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.[56] Expulsion for offences against public order or morality can only be in conformity with the Charter if they constitutes a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.[57] The fact that a migrant worker is dependent on social assistance can not be regarded as a threat against public order and cannot constitute a ground for expulsion.[58] States must ensure that foreign nationals served with expulsion orders have a right of appeal[59] to a court or other independent body, even in cases where national security, public order or morality are at stake.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory.[60] The guarantees against expulsion contained in this paragraph only apply to migrant workers and his or her family members if these persons reside legally in the territory of the State.[61]

In the previous report, the Committee was of the opinion that, taking into account the criteria upon which expulsion might have taken place as laid down by Section 29 of the Act concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm, the situation did not appear to be fully in compliance with Article 19§8 of the Charter at the time. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

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[55] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[56] Conclusions VI, Cyprus, p. 126.
[57] Conclusions V, Germany, p. 138.
[58] Conclusions V, Italy, pp. 138-139.
[59] Conclusions IV, United-Kingdom, pp. 129-130.
[60] Conclusions XVI-1, Netherlands, pp. 460-461.
[61] Conclusions II, Cyprus, p. 198.

Article 26§1

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[62]

Opinion of the Committee:

Sexual harassment amounts to a breach of equal treatment characterised by the adoption towards one or more persons of preferential or retaliatory conduct or other forms of insistent behaviour which may undermine their dignity or harm their career.[63] The Appendix to Article 26§1 specifies that states have no obligation to enact laws relating specifically to harassment where workers are afforded effective protection against harassment by existing norms,[64] irrespective of whether this is a general anti-discrimination act or a specific law against harassment.

It must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.[65] Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.[66] These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.[67] Procedures should allow an effective protection of victims, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.[68]

Furthermore, states must conduct information, awareness-raising and prevention campaigns in the workplace or in relation to work.

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could possibly be accepted by Norway subject to further analysis. As the situation has not undergone substantial changes since then, the

[62] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[63] Conclusions 2005, Statement of Interpretation on Article 26§1.
[64] Conclusions 2005, Statement of Interpretation on Article 26§1.
[65] Conclusions 2003, Italy, p. 324.
[66] Conclusions 2005, Moldova, pp. 493-495.
[67] Conclusions 2005, Lithuania, p. 390.
[68] Conclusions 2003, Slovenia, p. 537.

Committee reiterates its opinion and invites Norway to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 26§2

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on the non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[69]

Opinion of the Committee:

Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. The states party are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.[70] This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be discriminated against for upholding these rights.[71]

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.

In the previous report, the Committee was of the opinion that the material scope of Section 4§3 of the Working Environment Act would appear to be too narrow to comply with the Charter and the provision could not be accepted at the time. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

[69] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[70] Conclusions 2005, Statement of Interpretation on Article 26§2.
[71] Conclusions 2003, Slovenia, p. 539.

Article 27§1 a) and b)

Situation in Norway:

Regarding subparagraph a) the WEA states in Section 1-1 that one of the purposes of the act is to facilitate adaptations of the individual employee's working situation in relation to his or her capabilities and circumstances of life. In addition there are provisions which will facilitate the employee with family responsibilities in Chapter 10 concerning working hours of the WEA.

The report refers to the presentation of law and practice made by the Ministry of Labour in 2006[72] for more details regarding the right of workers with family responsibilities to equal opportunities and equal treatment.

Regarding subparagraph b) reference is made in the report to the answer under subparagraph a).

The National Insurance Act

With reference to the National Insurance Act Chapter 14, a pregnant woman who is required to give up her job because the working conditions may harm the unborn child, is entitled to pregnancy benefits. Parents, who have care of the child and stay home from work during leave of absence, are entitled to parental benefits. The parental benefit period is 47 weeks with 100 per cent compensation or 57 weeks with 80 per cent compensation. The benefit period will be lengthened to 49/59 weeks for children born after 1July 2013.

The right to daily cash benefits for employees who are absent from work due to care for a sick child under the age of 12, is laid down in Chapter 9 of the National Insurance Act. This chapter also includes right to daily cash benefits due to care for a hospitalised child under the age of 12, care for a child under the age of 18 suffering from a serious or potentially fatal disease or care for a close relative during the terminal phase.

The Gender Equality Act

The Gender Equality Act Section 3 provides protection against differential treatment in relation to pregnancy, childbirth and leave of absence in this regard. The regulation includes an absolute prohibition against differential treatment that places a woman or a man in a

[72] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf

weaker position than in which she or he otherwise would have been as a result of pregnancy, childbirth and leave of absence.

The protection rule against differential treatment is enforced by the Equality and Antidiscrimination Ombudsman and the Equality and Anti-discrimination Tribunal.

Opinion of the Committee:

Under Article 27§1a of the Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training.[73]

Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities.[74] States should pay particular attention to the problem of unemployment of part-time workers.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.[75] There measures should apply equally to men and women.[76] The type of measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights. The kind of measures to be adopted shall not be decided unilaterally by the employer, but shall be defined with employees in collective agreements or other measures.

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could be accepted immediately by Norway. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to consider acceptance of Article 27§1.

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[73] Conclusions 2005, Statement of Interpretation on Article 27§1a; see for example Estonia p. 213.
[74] Conclusions 2003, Sweden, p. 637.
[75] Conclusions 2005, Statement of Interpretation on Article 27§1b; see for example Estonia p. 213.
[76] Conclusions 2005, Lithuania, p. 397.

Article 27§3

Situation in Norway:

Section 15-7 subsection 1 of the WEA states that employees may not be dismissed unless this is objectively justified (fair) on the basis of circumstances relating to the undertaking, the employer or the employee.1be Ministry's opinion is that a dismissal solely based on family responsibilities will not be according to the WEA.

The report refers to the presentation of law and practice made by the Ministry of Labour in 2006[77] for more details regarding this subject.

Opinion of the Committee:

Family responsibilities must not constitute a valid ground for termination of employment.[78] Workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. In particular, courts or other competent bodies should be able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are therefore not in conformity with the Charter.[79]

In the previous report, the Committee was of the opinion that, in the light of the case law and the legal situation and practice, this provision could be accepted immediately by Norway. The situation having not undergone substantial changes since then, the Committee reiterates its opinion and invites Norway to consider acceptance of Article 27§3.

[77] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[78] Conclusions 2003, Statement of Interpretation on Article 27§3 ; see for example Bulgaria, p. 89.
[79] Conclusions 2005, Estonia, p. 217.

Article 29

Situation in Norway:

The report states that no substantial changes in the relevant legislation and practice have taken place since the previous report on non-accepted provisions submitted by the Ministry of Labour in 2006 and makes reference to that report.[80]

Opinion of the Committee:

Under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.

Redundancies concerned

Article 29 gives no definition of the term "collective redundancy". The Committee has explained that the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.[81]

Notion of workers' representatives

The appendix to the Charter defines workers' representatives as persons who are recognised as such under national legislation or practice, in accordance with ILO Convention No. 135 on workers' representatives. In other words, trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. This wording means that states are free to decide how the workers' representatives who have to be informed and consulted are to be appointed (general or ad hoc system).[82]

Consultation procedure

Prior consultation in good time
Under Article 29, consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies.

Purpose of the consultation

[80] Report on non-accepted provisions of the Social Charter, Norway, 2006: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Norway2006_en.pdf
[81] Conclusions 2003, Statement of Interpretation on Article 29.
[82] Conclusions 2003, see Sweden, p. 641.

Article 29 defines the purpose of the consultation procedure, which must cover at least:

- the redundancies themselves, the "ways and means of avoiding collective redundancies or limiting their occurrence"; and
- support measures and ways and means of mitigating their consequences, for example by recourse to accompanying social measures designed, in particular, to facilitate the redeployment or retraining of the workers concerned, in other words a redundancy package.

Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. The Committee has stated that "this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached".[83]

Content of prior information

With a view to fostering dialogue, the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.[84]

Intervention of the public authorities

Article 29 lays down no specific obligations in this respect. The form for submitting reports refers to "possibilities of intervention by the public authorities" "in case of default by the employer" implying that the authorities are expected to play a secondary, a posteriori role at some point in the redundancy procedure in the event of default by the employer. However, there is not as yet any case-law on this subject.

Sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.[85]

In the previous report, the Committee was of the opinion that, since there were no rules protecting seamen in cases of collective redundancies, the situation was not in conformity

[83] Conclusions 2003, Statement of Interpretation on Article 29.
[84] Conclusions 2005, Lithuania, p. 404; Conclusions 2003, Romania, p. 429.
[85] Conclusions 2003, Statement of Interpretation on Article 29.

with Article 29 at the time. As the situation has not undergone substantial changes since then, the Committee reiterates its opinion.

APPENDIX 1

— Norway and the European Social Charter –

Ratifications
Norway ratified the European Social Charter on 26/10/1962: it accepted 60 of the Charter's 72 paragraphs.

Norway ratified the Additional Protocol providing for a system of collective complaints on 20/03/1997. It has not yet made a declaration enabling national NGOs to submit complaints.

Norway ratified the Revised Charter on 07/05/2001: it accepted 80 of the Revised Charter's 98 paragraphs.

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							Gray = Accepted provisions			

* Sub-para. c.

The Charter in domestic law
Statutory ad hoc incorporation by specific implementing legislation.

Reports *
Between 1964 and 2012, Norway submitted 22 reports on the application of the Charter and 10 reports on the application of the Revised Charter.

The 9th report, submitted on 5/12/2011, on the accepted provisions of the Revised Charter accepted by Norway relates to Thematic Group 1 (Articles 1, 9, 10, 15, 20, 24 and 25). Conclusions in respect of these provisions were published in January 2013.

The 10th report , submitted on 26/11/2012, on the accepted provisions of the Revised Charter accepted by Norway relates to Thematic Group 2 "Health, social security and social protection", i.e.

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

Conclusions in respect of these provisions will be published in December 2013.

* 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.

The situation of Norway with respect to application of the Revised Charter

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

Employment

► Repeal of the Seafarers Act of 17 July 1953, which allowed criminal sanctions to be imposed on seafarers who deserted their post or committed disciplinary offences, even in cases where neither the safety of the vessel nor the lives or healths of those on board were in danger (Act of 30 May 1975). Abolition of compulsory service for dentists. *Article 1§2 – prohibition of forced labour.*

► Amendment in 2002 of the 1958 Civil Service Disputes Act improves employees' representation in wage negotiations. *Article 6§2 – negotiation procedures*

► The Labour Disputes Act, amended in 2002, provides in its Section 35.9 that the mediator can now only join up ballots (*kobling av avstemninger*) relating to several sectors if the parties concerned agree. *Article 6§3 – right to bargain collectively (conciliation and arbitration).*

Movement of persons

► Extension of the scope of family reunion to include children only one of whose parents is living in Norway (1991 immigration directives, as amended in 1997). *Article 19§6 – right to family reunion.*

Non-discrimination (nationality)

► Various practical measures to assist foreigners in finding accommodation, such as reserving quotas of existing housing stock for refugees and immigrants, promoting research into multicultural living environments and disseminating information on the legislation providing for equal treatment in access to housing. *Article 19§4 – right to equal treatment with regard to access to housing.*

Education/Health

► Amendment to the Working Environment Act. Section 54 B establishes a prohibition against direct and indirect discrimination on the basis of disability. *Article 15§2 – right to employment of persons with disabilities*.

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► *Article 10§5 - Right to vocational training - Full use of facilities available*

Equal treatment for non-EU nationals with respect to financial assistance for training is not guaranteed. (Conclusions 2012)

► *Article 24 – Right to protection in case of dismissal*

It has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases. (Conclusions 2012)

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

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

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 Norway is not guaranteed. (Conclusions 2009)

► *Article 13§1 – Right to social and medical assistance - adequate assistance for every person in need*
The level of social assistance benefit that is paid to individuals in need who are not participants in the individual qualification programme is not adequate.
(Conclusions 2009)

Thematic Group 3 "Labour rights"

► *Article 2§1 – Right to just conditions of work - Right to reasonable working time*
Legislation provides that total working hours in a twenty-four hour period may, in certain circumstances, be up to sixteen hours.
(Conclusions 2010)

► *Article 4§5 – Right to a fair remuneration - Limits to deduction from wages*
Workers may waive their right to limitation of wage deductions.
(Conclusions 2010)

► *Article 6§4 – Right to bargain collectively - Collective action*
During the reference period (2005-2006), legislation was enacted in order to terminate collective action in the state sector in circumstances which went beyond those permitted by Article G of the Revised Charter.[86]
(Conclusions 2010)

Thematic Group 4 "Children, families, migrants"

► *Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education*
It is possible for children aged 15, still subject to compulsory education, to deliver newspapers before school, from 6 a.m. for up to 2 hours per day, 5 days per week.
(Conclusions 2011)

► *Article 7§5 – Right of children and young persons to protection – Fair pay*
It has not been established that young workers receive a fair wage; and it has not been established that apprentices receive appropriate allowances.
(Conclusions 2011)

► *Article 7§6 - Right of children and young persons to protection - Inclusion of time spent on vocational training in the normal working time*
Young workers are not entitled to have their training time paid as working hours.
(Conclusions 2011)

► *Article 7§8 - Right of children and young persons to protection - Prohibition of night work*
It has not been established that the prohibition of night work covers the great majority of young workers.
(Conclusions 2011)

► *Article 17§1 - Right of children and young persons to social, legal and economic protection - Assistance, education and training*
Prison sentences for minors may be up to 21 years.
(Conclusions 2011)

► *Article 19§4 - Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation*
That it has not been established that with respect to accommodation migrant workers enjoy treatment which is not less favourable than that of nationals.
(Conclusions 2011)

► *Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

[86] Previous such interventions to terminate collective action was the subject of RecChS(93)2 adopted on 7 September 1993 by the Committee of Ministers.

*S*ame grounds for which it is not in conformity with paragraphs 4, and 11 of the same Article.
(Conclusions 2011)

► *Article 19§11 - Right of migrant workers and their families to protection and assistance – Teaching language of host State*
It has not been established that migrant workers not citizens of EU/EEA are entitled to free language training when they are unable to pay the fees for compulsory language training.
(Conclusions 2011)

► *Article 31§1 - Right to housing - Adequate housing*
There is evidence of discrimination against migrant workers in the Norwegian housing market.
(Conclusions 2011)

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

Thematic Group 1 "Employment, training and equal opportunities"
(Report to be submitted before 31 October 2015)

None.

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

► Article 12§1 - Conclusions 2009
► Article 14§1 - Conclusions 2009

Thematic Group 3 "Labour rights"
(Report to be submitted before 31 October 2013)

► Article 4§2 – Conclusions 2010
► Article 21 – Conclusions 2010

Thematic Group 4 "Children, families, migrants"
(Report to be submitted before 31 October 2014)

► Article 8§3 – Conclusions 2011
► Article 19§§3 and 6 Conclusions 2011

Collective Complaints and State of Procedure in Norway[87]

Collective complaints (under examination)

Fellesforbundet for Sjøfolk (FFFS) v. Norway, No. 74/2011

[87] 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 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.