

Charte sociale européenne



EUROPEAN COMMITTEE OF SOCIAL RIGHTS COMITE EUROPEEN DES DROITS SOCIAUX

March 2015

THIRD REPORT

ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

SLOVENIA

on the basis of the written report of the Government of Slovenia of 13 January 2015

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I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned from the point of view of the degree of conformity of the situation with non-accepted provisions. This review would be done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to forget that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

Slovenia ratified the Charter on 7 May 1999, accepting 95 of its 98 paragraphs. The following provisions are not yet accepted: Articles 13§1, 13§4 and 18§2. The procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between members of the European Committee of Social Rights and representatives of various Slovenian ministries in Ljubljana on 15 September 2004.

Taking into account the findings of this meeting, the European Committee of Social Rights was of the viewthat the situation in Slovenia allowed acceptance of Article 18§2 (the right to simplification and liberalisation of formalities related to immigration).

As regards Article 13 (the right to social and medical assistance), the situation with respect to emergency social and medical assistance for foreigners lawfully present in Slovenia appeared to be largely in conformity with paragraph 4 whereas the existing restrictions on access to full social assistance for certain lawfully resident foreigners remained an obstacle to compliance with paragraph 1 of this article¹.

With a view to carrying out the procedure for the second time in 2009, the Slovenian authorities were invited to produce a report on the non-accepted provisions but no report was submitted².

With a view to carrying out the procedure for the third time in 2014, the Slovenian authorities were invited to provide written information on the non-accepted provisions.

Having examined the written information, the Committee notes that Slovenian authorities will consider the acceptance of Article 18§2 of the Charter in the near future and it concludes that the current legislative situation and practice in Slovenia does not present obstacles to the acceptance of Articles 13§4 and 18§2 while difficulties remain concerning Article 13§1 of the Charter .

¹ See report on the meeting with the Slovenian Government on non-accepted provisions (Ljubljana, 15 September 2004). The Committee's report is available at the following address:

http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Slovenia2004_en.pdf

² See the 2nd report of the European Committee of Social Rights on non-accepted provisions which is available at the following address: http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Slovenia2009_en.pdf

In view of the conclusions of this report, the Committee wishes to encourage Slovenia to consider accepting remaining 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 next examination of the provisions not yet accepted by Slovenia will take place in 2019.

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).

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

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

Article 13§1

Situation in Slovenia:

According to the report, all nationals and foreigners with a residence permit who are without adequate resources and unable to secure such resources have the right to social and medical assistance. For more details regarding the social security system in Slovenia the report refers to the presentation included in the 12th National Report under Article 12.

Furthermore, reference is made to the Report on the meeting with the Slovenian Government within the framework of Article 22 procedure of 15th September 2004 which stated that the restrictions on the access of certain lawfully foreigners to full social assistance ("nationality requirement") was an obstacle to compliance with Article 13§1. The current report confirms that the nationality requirement remains in force.

The Government of the Republic of Slovenia further explains that social security (social and medical assistance included) is ensured to all migrants from the EU Member States (according to the regulations on coordination of social security systems) and to the nationals of the countries with which Slovenia concluded bilateral agreements on social insurance.

It indicates that the ratification of this Article is currently not under consideration by the Republic of Slovenia.

Opinion of the Committee:

Article 13§1 guarantees an individual right to adequate social and medical assistance to all nationals and resident foreigners who are without adequate resources.

Since it is an individual right, the right to social and medical assistance must be:

- clearly defined in law and based on objective criteria;
- not subject to any condition other than need;
- enforceable.

In particular, the individual right to social assistance is genuine when assistance is provided to all those in need and the level of benefits is adequate. As the need is the only

criterion referred to in Article 13§1, any restrictive condition, such as nationality and length of residence requirements, is contrary to the Charter.

The Committee takes the view that the current legal situation and practice in Slovenia may raise a problem of conformity with Article 13§1 of the Charter due to the restrictions on the access of certain lawfully resident foreigners to full social assistance.

Article 13§4

Situation in Slovenia:

The report of the Government of Slovenia recalls that the European Committee of Social Rights considered in its report on non-accepted provisions adopted in 2004 that the situation appeared to be largely in conformity with Article 13§4 of the Charter.

The Government of the Republic of Slovenia further explains that nationals of the other Parties who are lawfully present in Slovenia, but do not reside lawfully or work there, have the right to temporary emergency assistance, which includes food, accommodation clothing and emergency medical care.

Finally, it indicates that the ratification of this Article is currently not under consideration by the Republic of Slovenia.

Opinion of the Committee:

Article 13§4 guarantees the right to emergency social and medical assistance to foreign nationals who are lawfully present in a particular country but do not have resident status. By definition, no condition of length of presence can be set on the right to emergency assistance.

Appropriate forms of social and medical assistance do not necessarily include all the benefits available under the general scheme. Temporary assistance in an emergency is sufficient (food, accommodation, clothing, emergency medical care). In such cases, assistance must be given, regardless of local or national resources.

In the light of the current case law and the current legal situation and practice, Article 13§4 of the Charter could be accepted by Slovenia.

Article 18§2

Situation in Slovenia:

The report of the Government of Slovenia recalls that the European Committee of Social Rights considered in its report on non-accepted provisions adopted in 2004 that the situation has been in conformity with the Article 18§2 of the Charter.

The report indicates further that the Act Amending the Aliens Act (*Uradni list RS, št.* 26/14) was adopted in 2014, which introduces a single application procedure for a single permit for third-country nationals to reside and work in Slovenia. The authorities will therefore consider the acceptance of Article 18§2 of the Charter in the near future.

Opinion of the Committee:

Article 18§2 guarantees that with a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to

simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers.

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 and obtaining the residence and work permits at the same time, through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. 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.

In the light of the current case law and the current legal situation and practice, Article 18§2 of the Charter could be accepted by Slovenia.



- Slovenia and the European Social Charter -

Ratifications

Slovenia ratified the Revised European Social Charter on 07/05/1999 and accepted 95 of its 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 07/05/1999, but has not yet made a declaration enabling national NGOs to submit collective complaints.

Table of Accepted Provisions

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

The Charter in domestic law

Automatic incorporation into domestic law

Reports *

Between 2000 and 2014, Slovenia submitted 14 reports on the application of the Revised Charter.

The 13th report submitted on 07/01/2014 concerns the accepted provisions of the Revised Social Charter relating to Thematic Group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29). The Conclusions in respect of these provisions were published in January 2015.

The 14th report, which should have been submitted before 31 October 2014, should concern the accepted provisions of the Revised Social Charter relating to Thematic Group 4 "Children, family, migrants", namely:

• the right of children and young persons to protection (Article 7),

• the right of employed women to protection of maternity(Article 8),

• the right of the family to social, legal and economic protection (Article 16),

•the right of children and young persons to social and economic protection (Article 17),

•the right of migrant workers and their families to protection and assistance (Article 19),

• the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),

• the right to housing (Article 31).

In addition, the report concerns the information required by the European Committee of Social Rights in the framework of Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be adopted in December 2015.

* <u>Following a decision taken by the Committee of Ministers in 2006</u>, the provisions of the 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.

Update : January 2015 Factsheet – SLOVENIA Department of the European Social Charter Directorate General of Human rights and the Rule of Law

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

Examples of progress achieved following conclusions or decisions of the European Committee of Social Rights³

Employment

► The Employment Act (2003) provides for an increase in paid holidays *Article 2§3 – Annual holiday with pay*

► The new Employment Relations Act provides protection against notice of termination of contract and dismissal during worker's pregnancy. A woman unlawfully dismissed is entitled to be reinstated -*Article* 8§2 –*Illegality of dismissal during maternity leave*

► The Employment Act (2002) introduces the right to time off for nursing mothers - Article 8§3 - time off for nursing mothers

► Family Relations Act which entered into force in January 2003 regulates protection of parents from dismissal during pregnancy or breastfeeding-

Article 27§ 3 Prohibition of dismissal for reasons relating to family responsibilities

► The Employment Relations Act (2002) guarantees for workers a reasonable period of notice for termination of employment based on two criteria: the reasons for terminating the contract and the length of service, which are in conformity with the Charter- Article 4\$4 – right to reasonable notice of termination of employment

Social Protection

► The Parental Care and Family Benefits Act entered into force on 1 January 2002. It contains provisions on maternity leave, paternal leave, childcare leave and adoption leave- *12§3 – development of the social security system*

Non-discrimination

► The Employment Act (2002) contains provisions against discrimination in employment Article 1§2 – non-discrimination in employment

► A Constitutional Court decision in February 2003 overturned the provision of the existing regulation stipulating that Slovenian nationals were favoured for receiving national grants *Article 10§5 – right to financial assistance*

► The Parental Care and Family Benefits Act which entered into force on 1 January 2002, abolished the condition of nationality to which the childbirth allowance was subjected 12\$4 - equal treatment in social security matters

► An act on rehabilitation and employment of persons with disabilities will enter into force in 2004 *Article 15§§1 and 2 – right of disabled persons to training and employment*

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

► The new Aliens Act which entered into force in November 2002 abolished the housing condition for migrant workers who wished to be joined by their families *Article 19§§6 – family reunion*.

► The Ministry of Education no longer authorises the creation in schools of special classes for Roma children. A special working group on integration strategies into the school system for Roma has been established *Article 17§1 – right of children and young persons to social, legal and economic protection*

► Article 14 of the Constitution has been amended in order to guarantee equality irrespective of personal circumstances, including disability. The Principle of Equal Treatment Act guarantees equal treatment for persons with disabilities in the fields of employment, labour relations, education, etc.

► Article 15§1 and 3 – Vocational training for persons with disabilities; Integration and participation of persons with disabilities in the life of the community

► The 2003 Employment Relations Act (ERA) prohibits discrimination on the ground of disability with respect to recruitment, employment and work conditions and dismissal in both the public and private sectors- *Article 15§2-Employment of persons with disabilities*

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► Article 1§4 – Right to work - vocational guidance, training and rehabilitation It has not been established that the right of children with disabilities, and particularly children with intellectual disabilities, to mainstream training is effectively guaranteed. (Conclusions 2012)

Article 15§1– Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities It has not been established that the right of persons with disabilities, in particular with intellectual disabilities, to mainstream education and training is effectively guaranteed. (Conclusions 2012)

► Article 15§2- Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities

It has not been established that persons with disabilities are guaranteed an effective equal access to employment.

(Conclusions 2012)

► Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of gender

During the reference period women were prohibited from working in underground mines, and were prohibited from night work in industry and in the construction sector. (Conclusions 2012)

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

► Article 12§1 - Right to social security- existence of a social security system

- the minimum levels of sickness and unemployment benefits are manifestly inadequate;

- the duration of unemployment benefit is too short;

- the minimum level of pension benefit is manifestly inadequate. (Conclusions 2013)

► Article 12§4 – Right to social security - Social security of persons moving between States

- equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;

- it has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;

- it has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

(Conclusions 2013)

Thematic Group 3 "Labour rights"

► Article 2§1 – Right to just conditions of work- Reasonable working time

In some collective agreements on-call time spent at home in readiness for work during which no effective work is undertaken is assimilated to rest periods.

(Conclusions 2014)

► Article 4§4 – Right to a fair remuneration -Reasonable notice of termination of employment

Notice periods are not reasonable for employees with more than three years of service in the following circumstances: dismissal in companies with ten employees or fewer in accordance with some collective agreements; receivership or liquidation; ordinary dismissal for economic reasons. No notice period is provided for in the following circumstances: dismissal on refusal to transfer a contract to a successor employer; dismissal during probationary periods; expiry of work permits; liquidation where no administrator has been appointed.

(Conclusions 2014)

Thematic Group 4 "Children, families, migrants"

Article 7§5 – Right of children and young persons to protection -right of young workers to fair pay Apprentices do not enjoy a right to appropriate allowances. (Conclusions 2011)

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

- it has not been established that Roma families have sufficient legal protection;

- equal treatment of nationals of other States Parties to the 1961 Charter or the Charter in the payment of family benefits is not ensured because the length of residence requirement is excessive. (Conclusions 2011)

► Article 17§1 – rights of the family to social, legal and economic protection - Assistance, education and training

Corporal punishment in the home is not prohibited. (Conclusions 2011)

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

It has not been established that Slovenian authorities took appropriate steps against misleading propaganda relating to emigration and immigration. (Conclusions 2011)

► Article 19§3 - Right of migrant workers and their families to protection and assistance - Co-operation between social services of emigration and immigration States

It has not been established that Slovenian authorities promoted co-operation between social services, public and private, in emigration and immigration countries.

(Conclusions 2011)

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

- it has not been established that concerning remuneration, employment and other working conditions, the treatment of migrant workers is not less favourable than that of nationals;

- it has not been established that concerning membership of trade union and enjoyment of the benefits of collective bargaining the treatment of migrant workers is not less favourable than that of nationals;

- equal treatment and adequate conditions are not secured for migrant workers with respect to access to housing.

(Conclusions 2011)

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

The same ground for which it is not in conformity with paragraphs 1, 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

A two year residence requirement for access to free Slovenian language classes is excessive. <u>(Conclusions</u> 2011)

► Article 31§1 – Right to housing - Adequate housing

- the criteria for adequate housing concerning size do not apply to housing available for rent on the free market resulting in substandard housing conditions for some migrant workers;

- insufficient measures were taken by public authorities to improve the substandard housing conditions of a considerable number of Roma in Slovenia;

- the inadequate legal solutions for tenants of denationalised flats prevent them from effectively exercising their right to housing.

(Conclusions 2011) Complaint No. 53/2008

► Article 31§2 – Right to housing - Adequate housing

The measures currently in place to reduce the number of homeless persons are inadequate in quantitative terms.

(Conclusions 2011)

► Article 31§3 – Right to housing - Affordable housing

- nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or working regularly in Slovenia are not entitled to equal treatment regarding eligibility for non-profit housing;

- the supply of non-profit housing is inadequate and the remedies in case of excessive length of waiting period are not effective are not effective;

- the specific situation of tenants living in restituted denationalised flats is not sufficiently taken into account, thus hindering their effective access to affordable housing.

(Conclusions 2011) Complaint No. 53/2008

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

Thematic Group 1 "Employment, training and equal opportunities"

(Report to be submitted before 31 October 2015)

- ► Article 10§1 Conclusions 2012
- ► Article 10§2 Conclusions 2012
- ► Article 10§3 Conclusions 2012
- Article 10§5 Conclusions 2012
- ► Article 18§3 Conclusions 2012
- ► Article 24 Conclusions 2012

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

(Report to be submitted before 31 October 2016)

- ► Article 3§3 Conclusions 2013
- ► Article 3§4 Conclusions 2013
- ► Article 23 Conclusions 2013

Thematic Group 3 "Labour Rights"

(Report to be submitted before 31 October 2017)

- ► Article 2§2 Conclusions 2014
- ► Article 4§1 Conclusions 2014
- ► Article 4§3 Conclusions 2014
- ► Article 4§5 Conclusions 2014

Thematic Group 4 "Children, families, migrants"

(Report to be submitted before 31 October 2014)

- ► Article 7§4 Conclusions 2011
- ► Article 7§6 Conclusions 2011
- ► Article 7§7 Conclusions 2011
- ► Article 7§9 Conclusions 2011
- ► Article 7§10 Conclusions 2011
- ► Article 8§1 Conclusions 2011
- ► Article 8§2 Conclusions 2011
- ► Article 8§3 Conclusions 2011
- ► Article 1982 Conclusions 2011
- Article $19\S6$ Conclusions 2011
- ► Article 19§8 Conclusions 2011
- ► Article 27§3 Conclusions 2011

Collective Complaints and State of Procedure in Slovenia⁴

Collective complaints (under examination)

⁴ The case law of the Committee relative to collective complaints may be consulted on the European Social Charter website on the <u>Collective Complaint webpage</u>. Searches on complaints may also be carried out in the <u>European</u> <u>Committee of Social Rights Case law database</u>.

Association for the Protection of all Children Ltd - APPROACH Ltd v. Slovenia (No. 95/2013)

Decision on admissibility of 2/07/2013. The complaint registered on 4/02/2013, relates to Article 17 (the right of mothers and children to social and economic protection). The complainant organisation alleges that Slovenia does not comply with its obligations under the abovementioned provision because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings, and because Slovenia has failed to act with due diligence to eliminate such punishment in practice.

Collective complaints (proceedings completed)

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

None

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

None

3. <u>Complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee</u>

None

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

Fédération européenne des associations nationales travaillant avec les Sans-abri (FEANTSA) v. Slovenia (No. 53/2008)

- Violation of Article 31 (Right to housing)
- Violation of Articles 16 (Right of the family to social, legal and economic protection) in conjunction with Article E

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.