

“HOW TO MAKE THE BEST USE OF THE *COLLECTIVE COMPLAINTS PROCEDURE* UNDER THE EUROPEAN SOCIAL CHARTER”

BACKGROUND INFORMATION

Awareness-raising and training for Non-Governmental Organisations organised by the Council of Europe's INGOs Conference and Social Platform, with the support of ANESC – Academic Network on the European Social Charter and Social Rights, in the framework of the “Turin Process”

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European Economic and Social Committee

Trèves Building, 7th floor, 74 rue de Trèves, 1040 Brussels ([how to get to the EESC](#))



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1. Purpose of the Training

The purpose of the training is to make sure that European Non-Governmental Organisations are duly informed about the *Collective Complaints Procedure* and fully aware of their key role in its operation, with a view to a better protection of fundamental social rights at the pan-European level. The training therefore aims at:

1. Improving knowledge of INGOs about the *Collective Complaints Procedure* and the related normative system of the European Social Charter;
2. Promoting an in depth exchange of views and experiences among INGOs with respect to the procedure, in relation to specific themes, provisions and/or States Parties;
3. Providing technical advice with respect to possible questions from INGOs wishing to make better use of the procedure.

The training is part of the '**Turin process**' - www.coe.int/web/turin-process launched by the Secretary General of the Council of Europe at the High-Level Conference on the European Social Charter (Turin, 17-18 October 2014).

The 'Turin process' aims at reinforcing the normative system of the Charter within the Council of Europe and in its relationship with the law of the European Union. The objective is to improve the implementation of fundamental social rights throughout Europe, in parallel to the civil and political rights guaranteed by the European Convention on Human Rights.

2. The European Social Charter - www.coe.int/socialcharter

The Charter is a human rights treaty, complement to the European Convention on Human Rights, which refers to civil and political rights. Together, the two treaties span the whole spectrum of human rights. The Council of Europe is committed to the principle of indivisibility: social rights are human rights on an equal footing with civil and political rights.

The Charter is the most wide-ranging and comprehensive international legal instrument for the protection of social rights. The Charter's normative system covers a broad range of individual and collective rights, covering many different areas: employment, social protection, social and medical assistance, health, education, housing, social exclusion, poverty. Within these areas, there are provisions protecting specific target groups such as children, women, disabled, families, elderly people, and migrants.

Today, the Charter is one of the most widely ratified human rights treaties of the Council of Europe. The widespread support for social rights is assured by the fact that most member States are parties to one of the main instruments, either the 1961 European Social Charter or the Revised European Social Charter of 1996. Only four States – Liechtenstein, Monaco, San Marino and Switzerland – have not ratified either of these treaties.

The European Committee of Social Rights is the Council of Europe body which monitors the implementation of the Charter's provisions through 'reports' drawn up by States Parties and through collective complaints lodged by NGOs and social partners. The decisions of the European Committee of Social Rights are *declaratory*; in other words, they set out the law. On this basis, States Parties are required to take measures to give them effect under domestic law or through policies. In this connection, in some cases, domestic courts can declare invalid or set aside domestic legislation if the European Committee of Social Rights has ruled that it is not in compliance with the Charter.

In the event of violation of the Charter, the State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity. In line with the practice adopted in the framework of monitoring the implementation of the European Convention on Human Rights, the respondent State must provide information on the measures it has taken to

give effect to the European Committee of Social Rights' decision, taking account of the recommendation or resolution adopted by the Committee of Ministers. In cases where it is found that the Charter has been violated, the respondent State must present in every subsequent report on the provision(s) concerned the measures taken to bring the situation into conformity. Ultimately, it falls to the European Committee of Social Rights to determine whether the situation has been brought into compliance with the Charter.

The *Collective Complaints Procedure* is a protection system which complements the judicial protection provided under the European Convention on Human Rights. Complaints may be lodged by entitled international non-governmental organisations and social partners¹ without domestic remedies having been exhausted and without the complainant organizations necessarily being a victim of the alleged violation. Because of their collective nature, complaints may only raise questions concerning non-compliance of a State's law or practice with accepted provisions of the Charter. Complaints can be lodged against a State in which the Charter is in force, which has accepted the procedure and the relevant Charter's provision(s).

The following Council of Europe member states has accepted the *Collective Complaints Procedure*: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Portugal, Slovenia, and Sweden.

The following member states have **not** yet accepted the procedure: Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia & Herzegovina, Denmark, Estonia, Georgia, Germany, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Poland, Romania, Russian Federation, San Marino, Serbia, Slovakia, Spain, Switzerland, "The former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom.

For further information about which provisions of the Charter each State has accepted, please see the section '*Country Factsheets*' on www.coe.int/socialcharter, as well as:

- [Overview of signatures and ratifications](#),
- [Complete presentation of the state of Signatures and Ratifications](#)
- [Conclusions \(RS\) / decisions \(CCP\)](#)

Further information on the normative system of the Charter (chart of signatures and ratifications of the different treaties; list of declarations, reservations and other communications made by the States; texts and summaries of the treaties; explanatory reports, etc.) [are available here](#).

3. About Us

The Conference of INGOs of the Council of Europe - www.coe.int/t/ngo

More than 300 INGOs enjoy participatory status and make up, since 2005, the Conference of INGOs which constitutes civil society's pillar in the Council of Europe "quadrilogue" with the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities. Through this status, the Council of Europe includes INGOs in intergovernmental activities and encourages dialogue of members of parliament and local and regional authorities with associations on challenges facing society. The Conference of INGOs is now recognised as an institution of the Council of Europe.

¹ Any State may grant representative national non-governmental organizations (NGOs) within its jurisdiction the right to lodge complaints against it. As at 28 April 2015, only Finland has done so.

Social Platform - www.socialplatform.org

Social Platform is the largest platform of European rights and value-based NGOs working in the social sector. Its mission is to advocate for, and raise awareness on, policies that bring social progress to all in the EU, by mobilising members and providing them with a strong voice.

The Academic Network on the European Social Charter and Social Rights - <http://racseanesc.org>

ANESC is a non-profit organisation of academics and other persons who wish to contribute to its aim. The Network's mission is to promote the European Social Charter and social rights in Europe, in relation to the experience of other continents. It shall take every initiative conducive to making the European Social Charter and the other instruments for the protection of social rights known in Europe, and to improving their application and protection both at the level of the Council of Europe and in its member States. The Network's actions shall principally take these forms: Education and training; Research and publication; Legal expertise; Contributions to national and international judicial or contentious procedures, particularly in an *amicus curiae* capacity.

4. Reporting obligations in respect of States Parties which have not accepted the collective complaints procedure

Every year, the States Parties, which have not accepted the collective complaints procedure, submit a **'full report'** indicating how they implement the Charter in law and in practice. Each report concerns a selection of the accepted provisions of the Charter.

The Social Charter provisions are divided into four thematic groups presented below in a chronological order:

Thematic Groups:	Provisions:	Date of submission of States' reports:	European Committee of Social Rights 'Conclusions to be published on:
- Group 4 Children, families, migrants	Article 7 Article 8 Article 16 Article 17 Article 19 Article 27 Article 31	31/10/2014	December 2015
- Group 1 Employment, training and equal opportunities	Article 1 Article 9 Article 10 Article 15 Article 18 Article 20 Article 24 Article 25	31/10/2015	December 2016
- Group 2 Health, social security and social protection	Article 3 Article 11 Article 12 Article 13 Article 14	31/10/2016	December 2017

	Article 23 Article 30		
- Group 3 Labour rights	Article 2 Article 4 Article 5 Article 6 Article 21 Article 22 Article 26 Article 28 Article 29	31/10/2017	December 2018

In case of lack of information after examination of Group 1 “Employment, training and equal opportunities”, the State Party concerned has to submit the requested information when reporting on Group 3 “Labour” and vice versa.

In case the Committee concludes that a situation is not in conformity because of a lack of information after examination of Group 2 “Health, social security and social protection”, the State Party concerned has to submit the requested information when reporting on Group 4 “Children, families, migrants” and vice versa.

5. Reporting obligations in respect of States Parties which have accepted the collective complaints procedure

States having accepted the collective complaints procedure are required, in alternation with the ‘full report’, to provide a ‘simplified report’ on the measures taken to implement the decisions of the European Committee of Social Rights adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four Thematic Groups.

The 15 States which have accepted the collective complaints procedure are divided into two groups.

The groups will be composed by distributing the States according to the number of complaints registered against them (from the highest to the lowest), as follows:

- Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland
- Group B, made up of seven States: Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic

The system functions as follows:

Full report		Simplified report
October 2014 Provisions from Group 4 Children, families, migrants	All states except the ones from group A	States from group A
October 2015 Provisions from Group 1 Employment, training and equal	All states except the ones from group B	States from group B

opportunities		
October 2016 Provisions from Group 2 Health, social security and social protection	All states except the ones from group B	States from group B
October 2017 Provisions from Group 3 Labour rights	All states except the ones from group A	States from group A
October 2018 Provisions from Group 4 Children, families, migrants	All states except the ones from group B	States from group B
October 2019 Provisions from Group 1 Employment, training and equal opportunities	All states except the ones from group A	States from group A
October 2020 Provisions from Group 2 Health, social security and social protection	All states except the ones from group A	States from group A
October 2021 Provisions from Group 3 Labour rights	All states except the ones from group B	States from group B
etc.		

In their reports, States must reply to any questions put in the event of non-conformity for lack of information for the relevant provisions.

As new states accept the collective complaints procedure, they will be assigned on an alternating basis to Group B then Group A, then to Group B again, and so on.

The new system entered into force for all States which have already accepted the procedure since October 2014 and, for other states, will enter into force one year after acceptance. Please note that Article 23 of the 1961 Charter, as amended by the 1991 Turin Protocol (to be implemented also by the States which have ratified the Revised Charter) states:

“The Secretary General shall forward a copy of the reports of the Contracting Parties to the International non-governmental organisations which have consultative status with the Council of Europe and have particular competence in the matters governed by the present Charter”.

6. The European Social Charter - Articles

Article 1 – The right to work

Article 2 – The right to just conditions of work

Article 3 – The right to safe and healthy working conditions.

Article 4 – The right to a fair remuneration

Article 5 – The right to organise

Article 6 – The right to bargain collectively

Article 7 – The right of children and young persons to protection

Article 8 – The right of employed women to protection of maternity

Article 9 – The right to vocational guidance

Article 10 – The right to vocational training

Article 11 – The right to protection of health

Article 12 – The right to social security

Article 13 – The right to social and medical assistance

Article 14 – The right to benefit from social welfare services

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

Article 16 – The right of the family to social, legal and economic protection

Article 17 – The right of children and young persons to social, legal and economic protection

Article 18 – The right to engage in a gainful occupation in the territory of other Parties

Article 19 – The right of migrant workers and their families to protection and assistance

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

Article 21 – The right to information and consultation

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Article 23 – The right of elderly persons to social protection

Article 24 – The right to protection in cases of termination of employment

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

Article 26 – The right to dignity at work

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Article 29 – The right to information and consultation in collective redundancy procedures

Article 30 – The right to protection against poverty and social exclusion

Article 31 – The right to housing

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