EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

September 2016

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

AUSTRIA

TABLE OF CONTENTS

I. SUMMARY

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

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

Austria ratified the 1961 Charter on 29 October 1969 and the Revised European Social Charter on 20 May 2011. The Committee contacted the authorities in Austria in January 2016 with a view to applying, for the first time, the procedure provided by Article 22 of the 1961 Charter. It was agreed to hold a meeting between a delegation of the Committee and representatives of various institutions of Austria in Vienna on 28 April 2016. As Austria has accepted 76 of the 98 paragraphs of the Charter, the meeting covered the remaining 22 paragraphs:

- Article 2§1 – Right to reasonable daily and weekly working hours;
- Article 4§4 – Reasonable notice of termination of employment;
- Article 6§4 – Collective action;
- Article 7§6 – Inclusion of time spent on vocational training in the normal working time;
- Article 8§2 – Illegality of dismissal during maternity leave;
- Article 15§2 – Employment of persons with disabilities;
- Article 18§3 – Liberalising regulations;
- Article 19§4 – Equality regarding employment, right to organise and accommodation;
- Article 19§8 – Guarantees concerning deportation;
- Article 19§10 – Equal treatment for the self-employed;
- Article 19§11 – Teaching language of the host state;
- 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 26§2 – Moral harassment;
- Article 27§3 – Illegality of dismissal on the ground of family responsibilities;
- 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§1, 31§2, 31§3 – The right to housing.

The Committee proceeded to the examination of the situation on the basis of the information provided by the Government during the meeting and in writing (information submitted on 22 April 2016).

The Committee considered that there were no major obstacles in law and in practice to Austria's acceptance of several additional provisions of the Charter, including provisions such as Articles 6§4, 7§6, 19§11, 26§2 and 29.

Acceptance of provisions such as Article 19§4, 21, 22, 23, 27§3, 30, 31§1 and 31§2 might also be considered under certain circumstances. On the other hand, some legal obstacles remain in respect of Article 2§1, 4§4, 18§3, 19§8, 19§10, 24 and 31§3.

As regards Articles 8§2 and 15§2 where Austria has declared itself bound by the 1961 Charter, the discussion showed that there was no legal necessity for Austria's declaration. In respect of Article 8§2 the situation in Austria appears to be in conformity also with the Revised Charter version of the provision. For 15§2 there may be an issue of nationality discrimination for certain support measures, but this problem would concern both the 1961 Charter and the Revised Charter.

An exchange of views also took place concerning the 1995 Additional Protocol to the Charter providing for a system of collective complaints. The Council of Europe delegation met with the Chief of Cabinet of the Minister of Labour, Social Affairs and Consumer Protection, Mr Fabian Fusseis, who confirmed the Government's willingness to consider the acceptance of additional provisions, but also stressed that Austria has always taken and continues to take a cautious approach to accepting further international obligations in this regard. In accordance with this approach, the Austrian Government was not inclined to accept the collective complaints procedure for the time being, but would carefully review the experiences of other member states with the implementation of this procedure.

The Committee remains at the disposal of the authorities of Austria and encourages them to take the necessary steps towards acceptance of the collective complaints procedure.

The next examination of the provisions not yet accepted by Austria will take place in 2021.

The programme of the meeting appears in Appendix I and the list of participants in Appendix II. The situation of Austria with respect to the Charter appears in Appendix III.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The meeting was chaired by Ms Anna Ritzberger-Moser, Director General, Labour Law and Central Labour Inspectorate, Federal Ministry of Labour, Social Affairs and Consumer Protection and Ms Susanne Piffl-Pavelec, Head of Division, EU-Labour Law and International Social Poliy, Federal Ministry of Labour, Social Affairs and Consumer Protection.

The authorities of Austria presented the situation in law and in practice relating to the non-accepted provisions. Interventions were made by representatives of the Federal Ministry of Labour, Social Affairs and Consumer Protection (Divisions of Labour Law and Central Labour Inspectorate; EU-Labour Law and International Social Policy; Labour Protection Law; Contractual Labour Law; Collective Labour Law; EU Labour Market Laws, International Affairs of Labour Market Laws; Department of Senior Citizens Affairs; Department of Social Policy Issues); Federal Chancellery (Civil Service and Administrative Innovation;); Federal Ministry of the Interior (Law Department); (see detailed Programme in Appendix I).

Questions and relevant comments were also raised by representatives of the national Ombudsman institution and of the Chambers of Labour (workers).

The Committee delegation consisted of the President of the Committee, Mr Giuseppe Palmisano as well as Ms Birgitta Nyström and Ms Karin Lukas. The Secretariat was represented by the Deputy Head of the Department of the European Social Charter, Mr Henrik Kristensen, and Ms Diana Balanescu, Lawyer. They presented some aspects of the case-law with regard to the non-accepted provisions and an opinion on the conformity of the situation in Austria with respect to these provisions. Detailed information on the case-law is available in the Digest of the Case-Law of the European Committee of Social Rights.

Article 2§1 – Reasonable working time

Situation in Austria

The authorities stated that ratifying this provision is currently not possible for the following reasons:

- In some special cases, more than 16 hours of continuous daily working time are allowed, particularly in hospitals and pharmacies. As a prerequisite, sufficient rest periods must be available. In this context, extra-long working hours are considered necessary to maintain the healthcare system.

- The reference period for weekly maximum working time (including overtime) is in line with case law requirements, but the collective agreement may define a reference period of more than one year with regard to weekly regular working time (excluding overtime) if this creates recreation periods of several weeks.

- The entire period of readiness for work at a place specified by the employer is considered working time. On the other hand, being on call at a place chosen by the worker is considered a rest period unless the employee is actually called in for work. This distinction is in line with rulings of the Court of Justice of the European Union.

The representative of the Chamber of Labour mentioned during the meeting that workers are facing burn-out, stress and very short periods of rest.

Opinion of the Committee

The Committee recalled that Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The underlying aim is to protect worker's safety and health.

This right must be guaranteed through legislation, regulations, collective agreements or any other binding means. In addition there must be an appropriate authority, such as a labour inspection, to ensure that the limits are respected in practice.

The Charter does not expressly define what constitutes reasonable working hours, but on the basis of the Committee's case law normal working hours of 8 hours per day and 40 hours per week have always been regarded as compatible with the Charter. Extremely long working hours of up to 16 hours or more within a period of 24 hours or up to 60 hours or more in one week have been found by the Committee to be unreasonable and contrary to the Charter, except in case of force majeure. These hours are inclusive of any overtime.

On the basis of the information at its disposal and following the discussions held during the meeting, the Committee considers that the situation in Austria might raise problems of conformity with Article 2§1, especially with regard to the 16 hours of continuous daily working time which are permitted, particularly in hospitals and pharmacies. The Committee encourages the authorities to take actions/measures to reduce step by step the daily working time in order to be in line with the European Social Charter.

Article 4§4 – Reasonable notice of termination of employment

Situation in Austria

The authorities described the legal framework. Statutory provisions governing notice periods and dates are laid down in the Austrian Salaried Employees Act (*Angestelltengesetz, AngG*) with regard to white-collar workers, and in the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) and the Industrial Code (*Gewerbeordnung, GewO*) with regard to blue-collar workers. Collective agreements also contain provisions on notice periods and dates.

The notice periods defined in the General Civil Code and the Industrial Code are very short.

Section 1159 *ABGB* lays down that employment relationships where low-level work is carried out and where remuneration is calculated by hours or days, units or individual pieces of work can be terminated any time, becoming effective the following day. If the employment relationship constitutes the worker's main occupation and has already lasted for three months, or if remuneration is calculated by weeks, it may be terminated on the first working day of a week, becoming effective at the end of the calendar week.
For specific employment relationships, Section 1159b *AGBG* specifies a notice period of at least 14 days.

Section 77 *GewO* defines a notice period of 14 days for blue-collar workers which can be shortened or waived entirely by agreement.

Section 13 of the Domestic Help and Domestic Employee Act (*Hausgehilfen- und Hausangestelltengesetz*) defines a notice period of 14 days for low-level work which can be shortened to one week by agreement.

The Salaried Employees Act provides for longer notice periods. Pursuant to Section 20, a notice period of at least six weeks is required by law. Notice periods cannot be replaced by severance pay. If notice periods or dates are not observed, employees are entitled to compensation for termination of employment (i.e. remuneration which the employee would have received if the specified notice period and date had been observed).

Temporary employment relationships cannot be terminated. They may be terminated prematurely only upon mutual agreement between the employer and the employee or for good cause.

During the trial period, which must not exceed one month, the employment relationship may be terminated by both parties any time without observing any notice periods and dates and without any particular reason. The trial period cannot be renewed.

Opinion of the Committee

The Committee reminded that this paragraph forms part of the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages.

The concept of "reasonable" notice has not been defined *in abstracto* nor ruled on the function of the period of notice or the compensation in lieu thereof. The Committee assesses the situations on a case by case basis.[1] The major criterion for the assessment of reasonableness is length of service.[2] It has concluded, for example, that the following periods of notice and/or compensation in lieu thereof were not in conformity to the Charter:

- five days' notice after less than three months of service;[3]
- one week's notice after less than six months of service;[4]
- two weeks' notice after more than six months of service;[5]
- less than one month's notice after one year of service;[6]
- eight weeks' notice after at least ten years of service;[7]
- twelve weeks' notice for workers dismissed for long-term working incapacity who have five or more years of service.[8]

It was stated by the authorities that Section 1159b *AGBG* specifies a notice period of at "least" 14 days. Longer periods may be agreed in labour contracts.

The Committee notes that in Austria, in the case of blue collar workers the notice period is of 14 days which can even be shortened or waived entirely by agreement (Section 77 *GewO*). Some collective agreements refer to length of service. Collective agreements are binding and the individual labour contracts cannot derogate from the collective agreements.

Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer who is a natural person.[9]

[1] Conclusions XIII-3 (1995), Portugal
[2] Conclusions 2007, Armenia
[3] Conclusions 2007, Albania
[4] Conclusions XIII-3 (1995), Portugal
[5] Conclusions XVI-2 (2003), Poland
[6] Conclusions XIV-2 (1998), Spain
[7] Conclusions 2010, Turkey
[8] Conclusions 2010, Estonie
[9] Conclusions XIV-2 (1998), Spain

The right to reasonable notice of termination of employment applies to all categories of workers independently of their status, including those in non–standard such as fixed-term,[10] temporary, part-time,[11] intermittent, seasonal or complementary[12] employment. It applies to civil servants and contractual staff in the civil service,[13] to manual workers[14] and in all sectors of activity.[15] It also applies during the probationary period[16] and upon early termination of fixed-term contracts.[17] Domestic law must be broad enough to ensure that no workers are left unprotected.

Temporary employment relationships may be terminated prematurely only upon mutual agreement between the employer and the employee or for good cause. The authorities explained that by "good cause" may be understood the situation when the labour contract is terminated by the employee as the remuneration has not been paid or by the employer if the behaviour of the employee at work is not acceptable.

For example, within the construction sector, it is possible to terminate an employment contract in one day.

On the basis of the information at its disposal and following the discussions held during the meeting, the Committee considers that the situation in Austria might raise problems of conformity with Article 4§4, especially with regard to the notice period applicable for blue-collar workers and for unskilled workers.

Article 6§4 – Collective action

Situation in Austria

The authorities emphasised that, in Austria, the dialogue between the social partners is generally conducive to a climate of communication. It helps to avoid and/or settle conflicts between employees and employers. This is the reason why going on strike is not very common in Austria and why there is no legislation in Austria governing industrial disputes.

The Austrian Constitution does not contain any provisions on the right to go on strike, nor does it contain a negative evaluation of strikes or restrictions upon them, let alone a ban on strikes. Industrial action is not restricted in any way: there is no ban on strikes or on lock-outs, and there is no limitation of strike action to the trade unions which are considered to be the most representative in their industry. Participation in a strike is not limited to trade union members.

Pursuant to Section 9 of the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz, AlVG*), working in an undertaking affected by a strike cannot be reasonably expected. Section 13 *AlVG* lays down that workers are not entitled to unemployment benefits if their unemployment is the direct consequence of a strike or defensive lock-out. Hiring out workers to undertakings affected by a strike or lock-out is prohibited in accordance with Section 9 of the Temporary Agency Work Act (*Arbeitskräfteüberlassungsgesetz, AÜG*). Pursuant

[10] Conclusions XIV-2 (1998), Spain
[11] Conclusions XVIII-2 (2007), Slovak Republic
[12] Conclusions 2010, Bulgaria
[13] Conclusions 2010, Georgia
[14] Conclusions XVI-2 (2003), Greece
[15] Conclusions I (1969), Italy
[16] General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012, §§26 and 28
[17] Conclusions XIV-2 (1998), Spain

to Section 10 of the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz, AuslBG*), such undertakings must not be granted employment permits either.

In the assessment of a strike situation, labour law provisions are primarily applied, but also general civil law and criminal law provisions; however, hardly any courts-of-last-instance rulings exist in this context. The legitimacy of the industrial action as a whole has to be assessed separately from the action of an individual.

With respect to the industrial action as a whole (organisation), Austria takes the position that - apart from a violation of the peace obligation under the collective agreement and a ban on industrial under a works agreement- such action is only unlawful if it can be classified as causing "unethical damage" pursuant to Section 1295 Para. 2 *ABGB*. A strike concerning working conditions (in the broader sense), with no disproportionate relationship between the goal of the strike and the damage caused, which addresses the employer and which is organised by a trade union, cannot be considered unethical.

At the level of individual employment relationships, a strike basically constitutes a failure to perform work, which might be a reason for dismissal. However, the relevant grounds for dismissal as defined by Section 82 lit. f of the Industrial Code (*Gewerbeordnung, GewO*) 1859 and by Section 27 no. 4 AngG, i.e. leaving work without permission and persistent negligence of obligations, require that workers are at fault (slight negligence as a minimum) for not meeting their obligations. The right to strike is considered a fundamental right of democratic societies that cannot be withdrawn. Workers who are on strike are, as a rule, convinced that they are exercising their rights, which usually does not constitute a reason for dismissal. On top of that, in the event of sanctions, the employer is bound by the labour-law principle of equal treatment.

Workers are not entitled to remuneration while they are on strike. If the strike is organised by a trade union, the remuneration lost will usually be made up for by payments from a strike fund.

The representative of the Chamber of Labour emphasised that the freedom to strike is already guaranteed in Austria by Article 11 on the freedom of assembly and association of the European Convention of Human Rights and by Article 9 of the Austrian Constitution which states that "the generally recognized rules of international law are regarded as integral parts of Federal law".

Opinion of the Committee

The Committee recalled that Article 6§4 guarantees the right to strike, but also the right to picketing.[18] The right may result from statutory law or case-law.[19]A general prohibition of lock-out is not in conformity with Article 6§4.[20] [21]Article 6§4 applies to conflicts of interests.[22] It does not concern conflicts of rights, i.e. related to the existence, validity or interpretation of a collective agreement and to the violation of a collective agreement.[23]

[18] European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §29
[19] Conclusions I (1969), Statement of Interpretation on Article 6§4
[20] Conclusions I (1969), Statement of Interpretation on Article 6§4
[21] Conclusions VIII (1984), Statement of Interpretation on Article 6§4
[22] Conclusions I (1969), Statement of Interpretation on Article 6§4
[23] Conclusions II (1971), Statement of Interpretation on Article 6§4

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose 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.[24] The expression "prescribed by law" means, not only statutory law, but also case-law of domestic courts, if it is stable and foreseeable. Moreover this expression includes the respect of fair procedures.[25]

The prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (e.g. goals which do not relate to the enjoyment of labour rights, or relate to discriminatory objectives) is not necessarily contrary to Article 6§4 of the Charter. In this context, excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law.

Article 6§4 guarantees also the right to participate in secondary action.[26]

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health.[27] [28] However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. "energy" or "health" – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.[29] The requirement to notify the duration of the strike to the employer prior to strike action is contrary to the article 6§4 of the Charter, even for essential public services.[30]

The right to strike of certain categories of public officials may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.[31] [32] Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity to the Charter.[33]

[24] Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter)
[25] European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §43-44
[26] Conclusions XX-3 (2014), United Kingdom.
[27] Conclusions I (1969), Statement of Interpretation on Article 6§4
[28] Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §24
[29] Conclusions XVII-1 (2004), Czech Republic
[30] Conclusions 2006, Italy
[31] Conclusions I (1969), Statement of Interpretation on Article 6§4
[32] Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §46
[33] European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, § 211

The Committee stressed that States are expected to report on their specific systems/traditions of the labour relations and the Committee shall take into consideration the specific characteristics of each system when assessing the situation. According to the authorities, the collective bargain process works quite well, the social partners respect themselves and 98% of employees are covered by tariff collective agreements. The Committee emphasised that the acceptance of Article 6§4 will only benefit to the system already in place in Austria.

The President of the Committee recalled that Article H of the Charter guarantees that the provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee considers that there are no obstacles to acceptance by Austria of Article 6§4. The Committee emphasises that the acceptance of Article 6§4 would only consolidate the right to strike in Austria, without creating any new duties or new restrictions for the social partners.

Article 7§6 – Inclusion of time spent on vocational training in the normal working time

Situation in Austria

The authorities stated that in Austria the majority of young persons take up training in an apprenticeship, which is based on a so-called dual system: apprentices receive on-the-job training at their employer's undertaking and attend classes at a vocational school. The time spent at school is added to their working time.

There are no express regulations, however, for young persons undergoing voluntary training. General recognition of any training courses, including those not related to the employment relationship, would notably reduce the willingness of employers to give their consent.

Opinion of the Committee

The Committee recalled that in application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day.[34] Such training must, in principle, be done with the employer's consent and be related to the young person's work.

Training time must thus be remunerated as normal working time, and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.[35]

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.[36]

[34] Conclusions XV-2 (2001), Netherlands
[35] Conclusions V (1977), Statement of Interpretation on Article 7§6
[36] Conclusions V (1977), Statement of Interpretation on Article 7§6

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, the Committee considers that there are no obstacles to acceptance by Austria of Article 7§6.

Article 8§2 – Illegality of dismissal during maternity leave

Situation in Austria

In Austria, women are protected against termination in all cases where a woman became pregnant before she received the termination notice. This applies regardless of whether the woman

- has already notified the employer of the pregnancy;
- has not notified the employer of the pregnancy but does so after she has received the termination notice;
- was not even aware of her pregnancy at the time when she received the termination notice.

A female worker is not protected against termination, however, when she becomes pregnant during the notice period, i.e. between the date she received the termination notice and the end of the employment relationship. This would be impractical, as the notice period may be several months. A letter was addressed to the President of the Committee of Social Rights on 25 January 2016 as to whether this case is covered by Article 8 (2) of the Revised Charter.

Opinion of the Committee

The Committee recalled that Austria considers itself bound by Article 8§2 of the 1961 Charter.

The Committee further recalled that under Article 8§2, it must be unlawful to dismiss employees from 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.[37]

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.[38] 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.

However, the dismissal of a pregnant woman is not contrary to this provision in the following situations: in the case of misconduct which justifies breaking off the employment relationship,[39] if the undertaking ceases to operate, or if the period prescribed in the employment contract expires.[40] These exceptions are to be interpreted strictly.

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be entitled to take their case before the courts.

[37] Conclusions XIII-4 (1996), Austria
[38] Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
[39] Conclusions X-2 (1990), Spain
[40] Conclusions 2005, Estonia

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee considers that in respect of Article 8§2 the situation in Austria appears to be in conformity also with the Revised Charter version of the provision and the case-law of the Committee.

The Committee recalls that under Article B of the Revised Charter, "*the acceptance of the obligations of any provision of this Charter shall, from the date of entry into force of those obligations for the Party concerned, result in the corresponding provision of the European Social Charter (1961 Charter) and, where appropriate, of its Additional Protocol of 1988 ceasing to apply to the Party concerned in the event of that Party being bound by the first of those instruments or by both instruments*."

Consequently, the Committee recommends that Austria declare itself to be bound by Article 8§2 of the Revised Charter.

Article 15§2 – Employment of persons with disabilities

Situation in Austria

This provision has not been ratified because the Disability Employment Act (*Behinderteneinstellungsgesetz*) defines narrower criteria (entitlement to residence and work and equal legal status based on EU law) than the Revised Charter for third-country (i.e. non-EEC) nationals of Contracting Parties to the Charter regarding the right to be classified as an eligible person with a disability, including the associated legal consequences (in particular qualified protection against dismissal and being counted towards fulfilment of the statutory quota).

The representative of the Ombudsman pointed out that since 1 July 2012 the institution has had an explicit mandate by order of the Federal Constitution for protecting and promoting compliance with human rights. They stressed that according to the UN Convention on the Rights of Persons with Disabilities, ratified by Austria on 28 September 2008, there is no difference between third country nationals and others.

Opinion of the Committee

The Committee recalled that Austria considers itself bound by Article 15§2 of the 1961 Charter.

The Committee further recalled that Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities.[41] It applies to persons with physical and/or intellectual disabilities.[42]

States Parties need to systematically provide updated figures concerning the total number of persons with disabilities, including those in age of working; those employed (on the open market and in sheltered employment); those benefiting from employment promotion measures; those seeking employment; those that are unemployed as well as the general transfer rate of people with disabilities from sheltered to open market employment.[43]

[41] Conclusions XX-1 (2012), Czech Republic
[42] Conclusions I (1969), Statement of Interpretation on article 15§2
[43] Conclusions 2012, Cyprus

To this end, legislation must prohibit discrimination on the basis of disability[44] to create genuine equality of opportunities on the open labour market,[45] the dismissal on the basis of disability and confer an effective remedy on those who are found to have been unlawfully discriminated.[46] In addition, regarding working conditions there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational illness.[47]

States Parties enjoy a margin of discretion concerning the other measures they take in order to promote access to employment of persons with disabilities. Article 15§2 does not require the introduction of quotas but, when such a system is applied, its effectiveness is taken into consideration when assessing conformity with Article 15§2.[48]

Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market.

Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights.[49]

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee considers that in respect of Article 15§2 there may be an issue of nationality discrimination for certain support measures, but this problem concerns both the 1961 Charter and the Revised Charter. Thus, there is no real justification for Austria to remain bound by the wording of 1961 Charter. Moreover, the available data indicate that the level of protection for persons with disabilities is already high.

Consequently, the Committee recommends that Austria declare itself to be bound by Article 15§2 of the Revised Charter.

Article 18§3 – Liberalising regulations

Situation in Austria

The Government considers that ratifying Article 18§3 continues to be impossible, as Austria's percentage of foreign workers in the labour market is already one of the highest among EU and OECD countries. Further liberalisation of access to the labour market for Council of Europe member states does not seem possible for the foreseeable future, as the number of migrant workers coming into Austria, especially from the Member States that joined the EU in 2004 and 2007, is increasing tremendously, while at the same time unemployment among domestic and integrated foreign labour is rising sharply.

During the meeting in Vienna on 26 April 2016 the Government presented the following facts and figures:

[44] Conclusions 2003, Slovenia
[45] Conclusions 2012, Russian Federation
[46] Conclusions XIX-1 (2008), Czech Republic
[47] Conclusions 2007, Statement of Interpretation on Article 15§2
[48] Conclusions XIV-2 (1998), Belgium
[49] Conclusions XVII-2 (2005), Czech Republic

Austria is among those EU and OECD countries with the highest relative figures of foreign workers and foreign population. And even its absolute figures are rather big.

Population figures of 2015 (Statistik Austria):
Total population of Austria: 8,584,926.
1,146,078 of them are foreign nationals – that is 13.3 %
Persons with migratory background: 1,714,000 (around 20 % of the total population)

Labour market data 2015 (database of the Federation of Austrian Social insurance):
Total number of dependent workers: 3,534,584;
615,681 of them were foreign workers (17.4 %)
357,508 from EEA countries (58.1 %)
90,874 from Germany, 71,088 from Hungary, 38,412 from Romania, 32,838 from Poland.

Development of the figures of employment of foreign nationals (database of the Federation of Austrian Social insurance):
In 1975: 191,011
In 1990: 217,611
In 2003: 350,361 (before the accession of new EU-Member states)
In 2010: 451,276 (before the end of the transitional arrangements on free movement of workers for the new EU Member states (EU-10+EU-2)
In 2015: 615,681 - and still increasing (March 2016: 639,293).

Unemployment in Austria in 2015 (database of *Arbeitsmarktservice*=PES):
The total of unemployed persons: 419,458 (2010: 250,782)
115,827 (27.6 %) of them were foreign nationals (2010: 48,167)
Unemployment rate of total labour force: 9.1 % (Austrian register method);
Unemployment rate of foreign nationals 13.5 % (Austrian register method).

Foreign nationals more frequently work in low-skilled or semi-skilled or certain skilled sectors which have mostly been affected by the negative economic development of the last couple of years.

90,000 applications of asylum seekers in Austria in 2015/in relative figures among the three main host countries in EU (data base of the Ministry of Interior/EUROSTAT) – they have to be integrated into the labour market; more than 23,000 already got the status of refugee or subsidiary protection and thus full access to the Austrian labour market, German language courses, training, means tested benefits, etc.; the Austrian government budget provides 75 million € for integration measures plus 70 million € for labour market integration measures by Public Employment Service (*Arbeitsmarktservice*) for refugees and people with subsidiary protection status.

In 2011: Introduction of the Red-White-Red card system – a new criteria based immigration system for non-EEA nationals, who wish to immigrate and work permanently as highly qualified workers (several categories) or skilled workers in shortage professions in Austria; application for a Red-White-Red card may be filed by the worker or the employer on behalf of the worker, in both cases based on a legally binding job offer of the employer.

Red-White-Red card is issued for one year for a specific position with a specific employer. In principle changing the position/employer is possible during the first year, but only after a new application that has to meet the admission requirements. A Red-White-Red card holder who has been employed at least 10 months within the preceding 12 months may be issued a Red White Red card plus which entitles him/her to unlimited access to the labour market.

Spouses or registered homosexual partners and dependent children of Red-White –Red card holders may be issued a Red-White-Red card plus entitling them to unlimited access to the labour market from the beginning.

The list of shortage professions started with 26 professions in 2012, then it was gradually reduced to 24 in 2013, 16 in 2014, 12 in 2015 and finally 8 professions in 2016 (e.g. milling machinists, technicians with a high level of training (engineer) in power engineering technology; graduate power engineers, graduate engineers in mechanical engineering, graduate nurses).

Foreign workers enjoy equal treatment with Austrian nationals regarding wages and working conditions as well as social insurance.

Opinion of the Committee

Under Article 18§3, States are required to liberalise the regulations governing the employment of foreign workers. When examining the compliance of national situations, the Committee checks in particular that conditions for access to the national labour market are not too restrictive, for example by limiting the employment to a narrowly defined geographical area or to a specific employer. If certain restrictions of this nature could be accepted initially when a foreign workers gains entry to the labour market they should be lifted gradually.

The Committee has also considered that very complicated procedures and formalities for obtaining a work permit could represent an obstacle to accessing the national labour market which is contrary to Article 18§3.

The Committee holds that where applications for work permits are systematically refused due to a “priority workers” rule (foreigner only if no national or EEA national is available) this would be a violation of the Charter since for non-EEA nationals this would rather restrict access to the labour market.

The Committee also considers that foreigners should not be banned from occupying certain jobs/posts for reasons other than those set out in Article G, that is public interest, national security and the exercise of (high-level) public authority. This is an issue which the Committee also examines under Article 1§2 where the situation in Austria has not so far raised any issues (see Conclusions XX-1 (2012).

Finally, in case a work permit is revoked before the date of expiry, either because the work contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit. In other words, Article 18 may require extension of the validity of the residence permit to provide sufficient time for a new job to be found.

While acknowledging the significant number of foreign workers in the Austrian labour market, the Committee considers that developments in law and in practice in recent years have tended to restrict rather than liberalise regulations governing the employment of foreign workers and having regard to the Government’s statement that no further liberalisation seems possible for the foreseeable future this poses a problem of conformity with Article 18§3 of the Charter.

Article 19§4 – Equality regarding employment, right to organise and accommodation

Situation in Austria

This provision is complied with in terms of working conditions and trade union membership but not in terms of accommodation as far as nationals of Contracting Parties outside the EEA are concerned.

Ratifying Article 19§4 is not possible because, since 2000, the European Committee of Social Rights has been criticising the unequal treatment of nationals of Contracting Parties to the Charter who are lawful residents of Austria or are properly employed here when it comes to housing subsidies of the *Länder* and access to council flats under Article 16.

Most recent conclusions 2015 (published on 27 January 2016) on Article 16 (The right of families to social, legal and economic protection):
"The Committee notes that in some provinces subsidies for housing construction and refurbishment and housing allowance are restricted to Austrian nationals or EU/EEA nationals (Carinthia, Styria) or they are subject to conditions related to length of residence (Upper Austria, Salzburg, Tyrol, Vienna). The Committee recalls that discrimination (based on nationality or length of residence requirements) is not in conformity with the Charter. The Committee considers that the situation is not in conformity with Article 16 of the Charter on the grounds that equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements)."

Even though the situation in seven *Länder* now seems to be in conformity with Article 16, two *Länder* (Tyrol and Vienna) do not fully comply with Article 16 and with Article 19§4.

This incompatibility with the Charter is also one of the reasons why Article 30 (right to protection against poverty and social exclusion) and Article 31 (right to housing) cannot be ratified.

Opinion of the Committee

Article 19§4 guarantees non-discrimination of migrant workers with respect to: (i) remuneration and other employment and working conditions, (ii) trade union membership and the enjoyment of benefits of collective bargaining, and (iii) accommodation.

States Parties must prove the absence of discrimination, direct or indirect, in terms of law and practice.

On the basis of the information at its disposal the Committee can confirm that the situation as regards Article 19§4a and b appears to be in conformity with the Charter whereas legal obstacles remain with respect to Article 19§4c due to the existence of nationality and/or length of residence requirements for the payment of housing subsidies in certain *Länder*. However, the Committee wishes to encourage Austria to take measures to remedy this situation and meanwhile accept Article 19§4a and b.

Article 19§8 – Guarantees concerning deportation

Situation in Austria

A ratification of Article 19(8) cannot be considered as the provision defines endangering and/or "offending against public interest" and security as the only reasons for deportation

and the Committee of Social Rights restricts its applicability by additionally requiring individual checks on behaviour or situations.

On the other hand, a tight network of preconditions has been created over the past decade for issuing return decisions (for third-country nationals) and deportations (especially EEA citizens) that goes far beyond this, in particular if there are general reasons for refusal (no accommodation according to local standards, no health insurance, inability to sustain themselves, no integration agreement, political reasons) or if there are circumstances constituting an administrative offence (marriage/adoption of convenience).

Additionally, the Austrian Federal Office for Immigration and Asylum is the body which makes decisions as a first-instance authority, and only the second-instance authority, i.e. the Federal Administrative Court, is a court as required by the Committee.

Due to the current strong inflow of migrants into Austria, these major obstacles cannot be removed for the time being, rendering ratification possible only in the long run.

Opinion of the Committee

Under Article 19§8 of the Charter expulsion of lawfully resident migrants can only take place where they are a threat to national security, or offend against public interest or morality.

According to the Committee's most recent statement of interpretation on this provision

"*expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Expulsion orders must be proportionate, taking into account 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. The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate.*

All foreign migrants served with expulsion orders must have also a right of appeal to a court or other independent body."

Public health risks are not as such regarded as a threat to public interest or order unless the person concerned refuses to undergo treatment.

In the same vein, the fact that a migrant worker is dependent to an extent on social assistance can in general not be regarded as a threat against public order (and should as such not be a ground for expulsion), but in a complaints decision from 2012 (ERTF v. France, CC 64/2011) has allowed that there might be circumstances in which the welfare burden on the State would be so excessive that expulsion could be justified.

Finally, collective expulsions are not in conformity with the Charter; decisions on expulsion may be made only on the basis of a reasonable and objective examination of the particular situation of each individual. This corresponds largely to the case law of the European Court of Human Rights.

On the basis of the information at its disposal the Committee considers that deportations may take place in circumstances that go beyond those permitted by Article 19§8 thus constituting an obstacle to acceptance of this provision.

Article 19§10 – Equal treatment for the self-employed

Situation in Austria

Ratifying Article 19§10 is not possible due to the Committee's assessment regarding Article 19§6 (family reunification).

Most recent conclusion on Article 19§6 in respect of Austria (Conclusions XX-4, published on 27 January 2016)

The Committee concludes that the situation in Austria is not in conformity with Article 19§6 of the Charter on the grounds that:

- the age limit of 21 for family reunions of married couples who are not nationals of an EEA member state does not facilitate family reunion:
  the Committee notes from the report that the minimum age of spouses who wish to apply for family reunion and are not EU or EEA nationals has been raised from 18 to 21. The Committee notes that for some couples this could therefore entail a wait of longer than one year. It considers that the maximum period of one year laid down in its case-law (Conclusions I, II, Germany) must apply without discrimination to all migrants and their families regardless of their specific situations, save for legitimate intervention in cases of forced marriage and fraudulent abuse of immigration rules. The Migrant Integration Policy Index (MIPEX) states that "2009's 21-year age limits may further discourage sponsors and delay spouses' integration. Waiting another 3 years abroad is supposed to combat arranged and forced marriages, even if the measure affects all marriages." The Committee considers that raising the age threshold above the age at which a marriage may be legally recognised in the host state does not allow for sufficient consideration of the individual merits of an application, and is an undue hindrance to family reunion. Therefore, the Committee considers that the situation with regard to the scope of family reunion in Austria is not in conformity with Article 19(6) of the Charter.
- under the quota system which limits the number of requests which may be accepted during any given year, families may be required to wait for up to three years before being granted reunion, a delay which is excessive;
- the fact that certain categories of sponsored family members need to prove a knowledge of German at level A1 of the Common European Framework hinders the right to family reunion.

Opinion of the Committee

Under Article 19§10 States must extend the protections of Article 19 to self-employed persons. Findings of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10, but not necessarily so (for example where the finding of non-conformity concerns exclusively the situation of dependent workers)

Nevertheless, the Committee concurs with the Government's view that the finding of non-conformity under Article 19§6 would likely lead to a similar finding under Article 19§10. However, to the extent that there is otherwise no unjustified treatment in law and in practice amounting to discrimination between wage-earners and self-employed migrants or between self-employed migrants and self-employed nationals, Austria could consider accepting this provision on reasons of principle (once the problem of conformity under Article 19§6 has been remedied there would – everything else being equal – no longer a problem under Article 19§10).

Article 19§11 – Teaching language of the host state
Situation in Austria

This provision is complied with as regards children who are still subject to compulsory education.

In the case of adults, however, this requirement is not fully met, especially as far as family members are concerned, in particular women who do not participate in the labour market and are therefore not eligible for Public Employment Service measures.

The extent to which courses promoting language skills are provided by the *Länder* in this area needs to be investigated separately and could not be exhaustively researched in the run-up to the meeting.

Opinion of the Committee

Under Article 19§11, States Parties must promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.

It follows that teaching the language to children and pupils in the school system as part of the ordinary curriculum is an essential element in satisfying the obligations laid down by Article 19§11, however it is not enough: there must also be measures taken in favour of family members who are not subject to compulsory school.

A requirement to pay substantial fees for language courses is not in conformity with the Charter. Minor registration or administrative fees might be acceptable, but the actual tuition/teaching should be free of charge. This case law was confirmed most recently in Conclusions 2015 (Conclusions 2015, the Netherlands).

On the basis of the information at its disposal the Committee does not see any major legal obstacles to acceptance by Austria of this provision, subject to more detailed information on the situation of adult family members and the extent to which language training for this group is provided at the *Länder* level.

Article 21 – The right to information and consultation and

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

Situation in Austria

These Articles were not ratified because the rights to information, consultation and participation can, pursuant to the Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) 1974, Federal Law Gazette no. 22 as amended, and the Agricultural Labour Act (*Landarbeitsgesetz, LAG*), only be exercised by the works council, i.e. they are not guaranteed in undertakings where the prerequisites for establishing a works council exist but none has been established (very small undertakings with up to 4 employees, which are not required to have a works council, may be exempt from the applicability of these Articles pursuant to clause 6 of the Appendix to Articles 21 and 22).

With regard to the safety and health of workers, the possibility of workers to exercise their right to participation is independent of whether or not a works council exists. Sections 10 to 13 of the Workers' Protection Act (*ArbeitnehmerInnenschutzgesetz, ASchG*) lay down that,

under the conditions specified in these provisions, workers must participate in all issues regarding the safety and health of workers, even if no bodies representing the workers exist. Therefore, the requirements of Article 22 lit. a are partly met (improvement of working conditions and the working environment), those of lit. b are fully met (protection of health and safety within the undertaking), and those of lit. d are partly met (as far as the participation in issues regarding the protection of workers is concerned).

With respect to the other areas governed by Articles 21 and 22, however, Art. 1(2) has to be taken into account, which lays down that these Articles are deemed complied with if the provisions are applied to the majority of workers, i.e. 80% of the workers in the public and private sectors according to the case law of the Committee of Social Rights. Articles 21 and 22 (except for safety and health) can be ratified only if at least 80% of all workers employed by undertakings which are required to establish a works council are actually represented by a works council.

The Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund, ÖGB*) reports that the representation rate of workers employed by undertakings which are required to establish a works council is still slightly below 80%.

Article 21

Opinion of the Committee

The Committee provided information on aspects of interpretation and case law, emphasising that Article 21 implies to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, (a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and (b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

The provision applies to all undertakings, whether private or public, which are defined as a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy. It does not therefore apply to public servants. States Parties may, however, exclude from the scope of the provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. The right of workers or their representatives to be informed of matters relevant to their working environment and to consultation with respect to proposed decisions that could substantially affect their interests must be effectively guaranteed and legal remedies must be available where that right is not respected.

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, the Committee considers that most requirements of this provision are fulfilled and therefore recommends acceptance of Article 21. It would, however, request more information on the implementation of the right to information and consultation in all undertakings, whether private or public (for example information available in the collective agreements), and the availability of legal remedies in case of failure of compliance by the employer.

Article 22

Opinion of the Committee

The Committee provided information on aspects of interpretation and case law, highlighting that Article 22 implies to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute (a) to the determination and the improvement of the working conditions, work organisation and working environment; (b) to the protection of health and safety within the undertaking; (c) to the organisation of social and socio-cultural services and facilities within the undertaking; (d) to the supervision of the observance of regulations on these matters.

The provision applies to all undertakings, whether private or public, which are defined as a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy. It does not therefore apply to public servants. States Parties may, however, exclude from the scope of the provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. The right of workers or their representatives to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision must be guaranteed effectively. Article 22 does not require that employers offer social and socio-cultural services and facilities, but it does require that, where such services and facilities have been established, workers or their representatives participate in their organisation.

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, the Committee notes that most of the above mentioned requirements are fulfilled and therefore recommends acceptance of Article 22. It would, however, request more information on the implementation of the right to participation in all undertakings, whether private or public, and the implementation of its various components.

Article 23 – The right of elderly persons to social protection

Situation in Austria

The authorities pointed out that Austria's focus regarding policies for senior citizens is to ensure their right to have a say in politics and to create opportunities for older persons to be an equal partner in all issues and areas that concern them, with the first priority being to maintain and/or improve their quality of life.

This is achieved, for example, by means of the Federal Senior Citizens Act (*Bundesseniorengesetz*), the Austrian Federal Senior Citizens Advisory Board (*Bundesseniorenbeirat*), the general focus on offers for senior citizens, the implementation of the federal scheme for senior citizens or the sponsoring of projects. The aim of the Federal Senior Citizens Act is to ensure that funds are made available for the provision of advice, information and the care of senior citizens by the major senior citizens' organisations and to promote their quality of life. The Federal Ministry of Labour, Social Affairs and Consumer Protection subsidises the services provided by senior citizens' organisations to the older generation throughout Austria every year through programmes and measures with more than EUR 2 million per year. In concrete terms, the Federal Government allocates EUR 1 for each senior citizen to senior citizens' organisations, i.e. EUR 2.3 million in total, for providing advice, information and activities.

In addition, in the form of the Federal Senior Citizens Advisory Board an appropriate body was established to represent the interests of the older generation at a national level. With its 35 members (representatives of senior citizens, ministries, the *Länder* and local authorities), the Federal Senior Citizens Advisory Board advises the Federal Minister and serves as an indispensable platform for discussing issues which concern older persons. This means, on the one hand, that the Federal Senior Citizens Advisory Board gives senior citizens the opportunity to contribute their ideas and experiences and thus influence social life at a political level, and on the other hand, it enables politicians to discuss any given challenges with representatives of the older generation and to jointly resolve current problems.

The Austrian Senior Citizens Council is incorporated by law and serves as the umbrella association of the senior citizens organisations. It is on an equal footing with the statutory interest groups representing employees, businesses and farmers when it comes to matters concerning the interests of senior citizens in Austria, meaning that Austria has a statutory interest group representing senior citizens.

Last but not least, the Federal Senior Citizens Act allows for the funding of specific projects geared towards maintaining and/or improving the quality of life, by, for example, awarding a National Quality Certificate to old-people's homes and nursing homes. Creating this certificate was a measure to ensure the right to appropriate care and services, the right to privacy, the right to personal dignity as well as the right to participate in setting and, if necessary, enhancing the living conditions in such homes. It aims to make quality and residents' rights visible and to create an incentive to further advancing the service quality and focusing on the quality of life of persons in old-people's homes and nursing homes.

Furthermore, the Federal Senior Citizens Act is the basis for the Federal Senior Citizens Scheme (*Bundesseniorenplan*). In 2012, the Austrian government and parliament adopted the first medium- and long-term federal scheme for senior citizens called "Ageing and the future" ("*Altern und Zukunft*"). The federal scheme is based on a comprehensive scientific analysis and was developed jointly with all relevant societal stakeholders (federal ministries, the *Länder*, the Austrian Association of Cities and Towns and the Austrian Association of Local Authorities, the Austrian Senior Citizens Council as the umbrella organisation of senior citizens' organisations). The main goal of the Federal Senior Citizens Scheme is to create, maintain or enhance the quality of life of all older people or individual groups among them. In particular, the aim is to mitigate inequalities and encourage people to be active. The scheme includes goals and recommendations in 14 areas. These areas are: participation, the economic situation, working as an older person, health, education, older women, generations, living and mobility, care, social security, the media, discrimination and violence, migrants, infrastructure.

Encouraging lifelong learning is another measure to maintain and/or enhance the quality of life and is necessary to adjust to rapidly changing circumstances, demands and challenges caused by new findings, insights and technologies. In its Strategy on lifelong learning in Austria campaign, which was adopted in 2011, the Austrian government put particular emphasis on education and training in the post-career stage of life. In line with this strategy, the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK) has developed several measures in the past few years in order to promote post-career education and training and to meet the aforementioned requirements. Accordingly, guidance for the continuing education and training of persons in the post-career stage of life and new information and communication technologies will be promoted in the next few years.

Alongside education or lifelong learning, a differentiated, modern image of older people reflecting the manifold living conditions of senior citizens is a major prerequisite for their active social, cultural and political participation. Generally accepted opinions, beliefs, mindsets and images of old age and ageing impact on the social roles open to older people in a society

and on what is expected from them in those roles. One of the objectives here is to counteract prejudice and clichés.

As an important part of its working programme in the context of the European Year for Active Ageing and Solidarity between the Generations 2012, Austria hosted the UNECE Ministerial Conference (18-20 September 2012). The goal of the conference was to evaluate for the second time the implementation of the ten commitments made under the Madrid International Plan of Action on Ageing (MIPAA) and the *Regional Implementation Strategy (RIS)* as well as the progress made since the Ministerial Conference in León in 2007. The Conference emphasised the active role Austria has played for 30 years now in designing policies for older people at a national and international level. It shows that the necessary change in paradigms when looking at ageing societies is an issue of international importance, and at the same time it contributes to a new quality of public debate in Austria regarding the growing percentage of older persons and the opportunities connected to active ageing and solidarity between the generations.

Austria takes an active part in the negotiations about older people's rights at a European and international level. At the European level, a working group was established with Austria, led by the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection, among the working group members, which reviewed the gaps and omissions in existing law regarding the rights of older people. In February 2014, the recommendations developed by the working group were adopted by the Committee of Ministers. In addition to the Council of Europe and the Working Group on Ageing (WGA), which Austria is chairing once again, Austria also participates actively in the Open-Ended Working Group on Ageing (OEWGA).

Despite numerous measures taken by the Ministry of Social Affairs and/or Austria, a ratification of Article 23 is still viewed critically due to the personal applicability of the Charter, in particular due to the Committee of Social Rights' criticism regarding Article 16 - unequal treatment of third-country nationals (i.e. non-EEA nationals) of the Contracting Parties to the Charter in housing subsidies legislation of individual countries (for details see Art. 19§4, and regarding Article 13§1 - 5-year waiting period for third-country nationals of Contracting Parties to the Charter when it comes to entitlement to means-tested minimum income.

The representative of the Austrian Ombudsman stressed the need of accepting Article 23 as it is of great importance for the protection of human rights of elderly persons. They reported that the Ombudsman visited the homes of elderly persons and raised particular concerns with regard to elderly persons with disabilities in relation to the legal framework protecting their rights and lack of resources in the sense that more staff is needed and staff needs to be appropriately allocated to the persons most in need.

Opinion of the Committee

The Committee provided information on aspects of interpretation and case law, stating that under Article 23, States Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as their physical, psychological and intellectual capacities permit, by means of (a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life; (b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their lifestyle and to lead independent lives in their familiar surrounding for as long as they wish and are able, by means of (a) provision of housing suited to their needs and their state of health or of adequate sup-

port for adapting their housing; (b) the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a 'decent life' and play an active part in public, social and cultural life. The Committee compares pensions with the average wage levels and the overall cost of living. Pensions must be index-linked. The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer's allowance for family members looking after an elderly relative.

However when assessing adequacy of resources of elderly persons under Article 23, all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life are taken into account. In particular, pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons are examined. These resources are then compared with the median equivalised income.

The Committee welcomes all measures and positive actions taken by Austria in order to improve the situation of the elderly persons. It notes that there is a will to ratify Article 23 of the European Social Charter. The main problem seems to be the federal structure/system of the country - the *Länder* division. The Committee recalled that other States Parties to the Charter which have a similar structure are able to report on the applicable legislation at the federal level as well as on the legislation applicable to the *Länder*.

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, the Committee recommends acceptance of Article 23 by Austria. It would, however, request more information on the situation in practice at the level of *Länder.*

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

Situation in Austria

The authorities stated that ratifying this provision would require substantial changes in Austria as, under Austrian law, a specific reason has to be indicated only in the case of dismissal without prior notice (*Entlassung*) of an employment relationship. Termination of an employment relationship (*Kündigung*) does not require specific reasons in order to be justified (principle of free terminability). The authorities stated that giving notice of termination is "per se" enough to terminate the employment relationship.

Special protection against termination of employment, which allows the employer to terminate an employment relationship only on the basis of certain facts or situations, only exists for certain groups of employees. Special protection against termination applies, for example, to workers' representatives, workers on parental leave and parents working part-time, employees on full-time or part-time family hospice leave, workers doing national service or alternative civil service, persons with disabilities and persons subject to victim assistance.

Opinion of the Committee

The Committee provided some information on interpretation and case law, underlining that Article 24 implied to recognise (a) the right not to have the employment terminated without valid reasons for such termination connected with capacity or conduct or based on the operational requirements of the undertaking, establishment or service; (b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief, including the right to appeal to an impartial body. Whereas all workers who have signed an employment contract come under that protection, according to the Appendix to Article 24, States Parties may exclude one or more of the following categories: (a) workers engaged under a contract of employment for a specified period of time or a specified task; (b) workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration; (c) workers engaged on a casual basis for a short period. This list is exhaustive.

The Appendix to Article 24 also provides a non-exhaustive list of reasons for which termination of employment is prohibited. Some reasons involve conformity to other provisions of the Charter: discrimination (Articles 1§2, 4§3, 15 and 20); trade union activities (Article 5); participation in strikes (Article 6§4); maternity (Article 8§2); family responsibilities (Article 27); worker representation (Article 28). The following are reasons examined only under Article 24: (a) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; (b) temporary absence from work due to illness or injury; (c) reach by the employee of the normal pensionable age.

The following are considered valid reasons for termination of employment: (a) reasons connected with the capacity or conduct of the employee; (b) certain economic reasons based on the operational requirements of the undertaking, establishment or service. Courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on points of law. Employers must notify employees of their dismissal in writing. Employees who consider themselves to have been dismissed without valid reason must have the right to appeal to an impartial body, whereby the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer. Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief, whereby compensation systems are considered appropriate if they include the reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body; the possibility of reinstatement; and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed.

The Committee emphasised that any prior notice of termination should present valid reasons for terminating an employment contract.

On the basis of the information at its disposal and following the discussions held during the meeting, the Committee considers that the situation in Austria fulfils some but not all of the requirements of Article 24. The current legal framework might pose problems of conformity under Article 24. The Committee recalled, however, that Article 24 widely reflected international standards, established by ILO Conventions and Recommendations as well as the EU *acquis*.

Article 26§2 – Moral harassment

Situation in Austria

Bullying (*Mobbing*) is not a legal term, but the phenomenon has been sufficiently described in literature and by case law. In its ruling of 26 November 2011, 9 ObA 131/11x, the Austrian Supreme Court of Justice (OGH) firmly established the definition of bullying along the lines of Heinz Leyman's interpretation of the term (a German-Swedish industrial and organisational psychologist) as conflict-laden communication in the workplace between colleagues or superordinates and subordinates, where the attacked person is the underdog and is directly or indirectly attacked by one or several persons systematically, frequently and over a prolonged period with the objective and/or the result of being expelled from the employment relationship and where the vulnerable person perceives this as discriminatory. Bullying is characterised by systematic, marginalising and ritual behaviour over a prolonged period of time.
Austria's labour law contains a wide range of elements that can be applied to the phenomenon of bullying.

The employer's duty of care encompasses the rights of workers to privacy. Employers must ensure that the private and personal sphere of workers is not affected by bullying. If employers become aware of any vulnerability, they must immediately take appropriate remedial action. In doing so, they are basically free to choose the means; the instruments available (ranging from issuing warnings to dismissal) are to be used in accordance with the principle of proportionality. If the employer culpably fails to take remedial action, this constitutes grounds for the employee to claim compensation from the employer for negligence. This has been upheld by several OGH rulings (e.g. 9 ObA 131/11x of 26 November 2011, 9 ObA 13/16 of 21 February 2013).

The Equal Treatment Act (*Gleichbehandlungsgesetz, GlBG*) bans harassment in the workplace based on gender, ethnic origin, religion or belief, age and sexual orientation. Harassment as defined by the *GlBG* and bullying are not identical, but harassment may take the form of bullying.

Bullying and harassment as defined by the *GlBG* overlap to some extent, but not every act of bullying constitutes harassment as defined by the *GlBG*, as the latter has specific characteristics. Furthermore, a typical feature of bullying is its repeated occurrence, whereas harassment may occur only once.

The *GlBG* sets forth an entitlement to compensation both from the harasser (irrespective of establishing fault) and the employer (if the employer does not promptly take appropriate remedial action), including non-material damages (at least EUR 1,000) as well as balancing the burden of proof.

In the event of bullying that is not considered harassment as defined by the *GlBG*, compensation can only be claimed in accordance with the *AGBG*. In that case it has to be established who is at fault and the plaintiff has the burden of proof.

The Labour Constitution Act (*Arbeitsverfassungsgesetz, ArbVG*) lays down that voluntary works agreements may be concluded that govern measures for the protection of workers' health and/or humane working conditions. In addition, employees can contest the termination of employment pursuant to Section 105 Para. 3 no. 1 lit. l *ArBVG* on grounds of obviously not unjustified assertion of claims from the employment relationship which are denied by the employer if the worker asks the employer for remedial action in the case of bullying and, as a consequence, is dismissed for this very reason. (8 ObA 53/14y of 25 November 2014).

Employee protection legislation contains provisions on phenomena such as stress, violence or bullying in the workplace in the context of employee protection. According to the Workers' Health and Safety Act (*ArbeitnehmerInnenschutzgesetz; ASchG*), bullying, stress and physical violence in the workplace are particularly relevant as psychological stress factors in occupational health and safety, and as such they need to be covered by the necessary measures and be taken into account in the organisation of occupational health and safety in an undertaking.

It should be emphasised, however, that bullying is a complex phenomenon which cannot be tackled with statutory measures alone, but requires several approaches. It is necessary to raise awareness and to substantially improve the knowledge of the applicable legal framework and of the options available for coping with bullying.

The authorities indicated during the meeting that the Public Service Act contains specific provisions on bullying. They added that preventive measures are in place – through specific Committees/Persons in charge of dealing with bullying and that bullying should be treated in the same way as the other forms of discrimination.

Opinion of the Committee

The Committee recalled that 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. States Parties 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.[50] [51]

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law.[52]

The Appendix to Article 26§2 specifies that States Parties have no obligation to enact legislation relating specifically to harassment, provided that the legal framework, as interpreted by the relevant national authorities ensures an effective protection in law and in practice against harassment in the workplace or in relation to work.[53]

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.[54] Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment., in particular in situations where harassment is likely to occur. A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2.[55] In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

[50] Conclusions 2003, Bulgaria
[51] Conclusions 2007, Statement of Interpretation on Article 26
[52] Conclusions 2007, Statement of Interpretation on Article 26
[53] Conclusions 2005, Moldova
[54] Conclusions 2003, Slovenia
[55] Confederazione Generale Italiana del lavoro (CGIL) v. Italy, Complaint No 91/2013, decisions on the merits of 12 October 2015, §295

Workers must be afforded effective protection against harassment. 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 retaliated against for upholding these rights.[56] [57]

It must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.[58] [59]Under civil law, effective protection of employees requires a shift in the burden of proof, 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.[60]

The Committee noted that in the event of bullying which is not considered harassment, the Civil Code applies and compensation may be claimed in accordance with the *AGBG.* The Committee pointed out that as long as the alleged victims of bullying have effective remedies which allow them to seek reparation for pecuniary and non-pecuniary damage under the Austrian system, the situation would be in conformity with the requirements of the Charter. Case-law may be provided for this type of situations.

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee considers that the situation in Austria fulfills the above mentioned requirements and there are no obstacles to acceptance by Austria of Article 26§2.

Article 27§3 – Illegality of termination of employment on the grounds of family responsibilities

Situation in Austria

Workers who take parental leave or work part-time in accordance with the Maternity Protection Act (*Mutterschutzgesetz, MSchG*), the Parental Leave for Fathers Act (*Väter-Karenzgesetz, VKG*) or similar provisions are basically protected against termination of employment and dismissal for four weeks after their leave has ended; beyond this period, the principle of free terminability applies.
Persons on full-time or part-time family hospice leave are protected against termination of employment for four weeks after the leave.

The employment of persons on full-time or part-time nursing care leave must not be terminated on grounds of taking full-time leave or part-time work (*Motivkündigungsschutz*).

Section 3 of the Austrian Equal Treatment Act (*GlBG*) bans any discrimination in the workplace on grounds of their sex, in particular with reference to the employee's marital status or the fact whether someone has children. This means that, for example, whether or not someone is married or lives in a registered same-sex partnership or has children must not be cause for discrimination. The prohibition of discrimination also includes the prohibition of discriminatory termination of an employment relationship.

[56] Conclusions 2007, Statement of Interpretation on Article 26
[57] Conclusions 2005, Moldova
[58] Conclusions 2003, Sweden
[59] Conclusions 2014, Finland
[60] Conclusions 2007, Statement of Interpretation on Article 26

The prohibition of discrimination therefore also covers discrimination on grounds of child care obligations, regardless of which parent has assumed these obligations. In this context, both the (biological) sex of a person and their gender (i.e. the role an individual assumes in society) must be taken into account. A man who is discriminated against for assuming child care obligations has adopted the predominantly female role of child rearing and can therefore assert discrimination on grounds of sex/gender. The Vienna Higher Regional Court (*Oberlandesgericht Wien, OLG Wien*) handed down a pertinent ruling on 23 May 2013, 8 Ra 13/13k. It found that disadvantaging a man because he has taken paternity leave can in fact be considered discrimination. Senate I of the Austrian Equal Treatment Commission also classifies discrimination of men on grounds of their child care obligations as discrimination on grounds of sex/gender.

The prohibition of discrimination under the *GlBG* does not include, however, discrimination on grounds of meeting family responsibilities towards other close relatives, e.g. parents or parents-in-law.

Opinion of the Committee

The Committee recalled that family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement.[61]

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 order reinstatement of an employee unlawfully dismissed[62] and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.[63]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[64]

The Committee notes that all the above mentioned requirements are fulfilled in Austria. Following the discussions held during the meeting, it notes that alleged victims of discrimination on grounds of meeting family responsibilities towards other close relatives, e.g. parents or parents-in-law, may contest their dismissal as being unfair under the Labour Constitution Act (eg Article 105 (3)(1)(i)). The Committee points out that as long as the victims of discrimination have available remedies which allow them to seek reparation for pecuniary and non-pecuniary damage under the Austrian system, the situation would be in conformity with the requirements of the Charter. Case –law may be provided for this type of situations.

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, the Committee notes that the

[61] Conclusions 2003, Statement of Interpretation on Article 27§3; see for example Bulgaria
[62] Conclusions 2007, Finland
[63] Conclusions 2005, Estonia
[64] Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3.

above mentioned requirements are fulfilled and there are no obstacles to acceptance by Austria of Article 27§3.

Article 29 – Right to information and consultation in collective redundancy procedures

Situation in Austria

This provision was not ratified in 2011 because it was only considered to have been complied with by the private sector. As Council Directive 98/59/EC on collective redundancies does not apply to workers employed in the public administration or at institutions under public law, no corresponding steps were taken towards its transposition in legislation applicable to public sector employees.

The issue of collective redundancy, however, does not seem to be relevant to the public sector, although the following remarks refer to federal public sector employees.
In the event that the responsibilities of federal authorities are transferred to external companies which are specifically set up for that purpose, the public-law employment relationship of civil servants with the Federal Government remains effective. The rights acquired by contractual public employees at federal level are not curtailed either in such cases. The corresponding laws explicitly enacted to lay down the legal framework for the transfer of previously sovereign responsibilities make sure that the acquired rights of the employees are retained.

In the public sector, consultation with the staff representation body in the event of termination of an employment relationship is ensured as follows:

In the event of termination of an employment relationship (dismissal, termination by the employer, termination by mutual agreement), the Federal Staff Representation Act (*Bundes-Personalvertretungsgesetz, PVG*), Federal Law Gazette no. 133, last amended by the Federal Act of Federal Law Gazette I no. 164/2015, lays down that the administrative offices' committee (*Dienststellenausschuss*) must be notified no later than two weeks prior to a planned measure of this kind. The administrative offices' committee may then raise objections within a two-week period and make counter proposals. If the head of the administrative office and the administrative offices' committee fail to reach an agreement, the case has to be referred to the competent superordinate administrative office at the administrative offices' committee's request, where a competent expert committee (*Fachausschuss*) has been set up; if no such administrative office exists, the case has to be referred to the central administrative body.

If the head of the superordinate administrative office and the expert committee also fail to reach an agreement, the case has to be referred to the central administrative body upon the expert committee's request.
If the bodies of the central administrative body deal with this case and an agreement with the competent central committee cannot be reached without unnecessary delay, and within six weeks at the most, the head of the central administrative body has to make a decision without unnecessary delay after discussing the case with the central committee. At the central committee's request, the head of the central administrative body has to obtain an expert opinion from the staff representation supervisory authority.

The provisions of the *PVG* provide additional protection to the employee affected, because the fact that *PVG* provisions were violated in the course of termination of the employment relationship entitles the employee to file an application and/or complaint for the measure to be ineffective.

Given that collective redundancies do not occur in the public sector and that statutory provisions lay down the protection of the acquired rights of employees in the event that administrative offices are outsourced, and that the staff representation body has a strong say in the event that employment relationships are terminated, there seems to be no need for the implementation of Article 29 in the public sector.

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.

Under Article 29 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.[65]

The definition of redundancies in domestic law, however, must not be too restrictive.[66]
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 Parties are free to decide how the workers' representatives who have to be informed and consulted are to be appointed (general or ad hoc system).[67]
Domestic law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular workplace by a trade union or other representative body. Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.[68]

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. Article 29 requires that the States Parties establish an information and consultation procedure which should precede the process of collective redundancies. Its provisions are directed – on the one hand – towards ensuring that workers are made aware of reasons and scale of planned redundancies, and – on the other hand – towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.[69]

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.[70]
Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers.

[65] Conclusions 2003, Statement of Interpretation on Article 29
[66] Conclusions 2014, Azerbaijan
[67] Conclusions 2003 Sweden
[68] Conclusions 2014, Statement of Interpretation on Article 29
[69] Conclusions 2014, Statement of Interpretation on Article 29
[70] Conclusions 2007, Sweden

The Committee notes that in the public sector there is an individual procedure in place but not on “collective redundancy”, therefore individual procedures apply also to collective ones.

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee considers that the situation in Austria fulfills the above mentioned requirements and there are no obstacles to acceptance by Austria of Article 29.

Article 30 – Right to protection against poverty and social exclusion and

Article 31 – The right to housing

Situation in Austria

The authorities stated that the areas addressed by Articles 30 and 31 are also within the competence of the *Länder* and/or the local stakeholders. Therefore, a consensus between all these stakeholders is required.

Nonetheless, affordable housing and combating poverty and social marginalisation are matters of particular concern to Austria's Federal Government. As part of the Europe 2020 strategy, the Government has defined the reduction of the number of people affected by poverty or social marginalisation by 235,000 over a ten-year period as a national objective. The measures taken to this end are very diverse and address various disadvantaged groups of the population. They include, for example, enhancing the availability of childcare and nursing care, guidance and support for schools and other educational institutions, the 50+ employment initiative as well as retraining, follow-up training and upskilling in line with labour market requirements.

Austria's policy in combating homelessness has often been highlighted as a best-practice example at an international and European level. Numerous low-threshold projects to combat homelessness, often carried out in cooperation with NGOs, in combination with subsidised housing, which is of great importance in Austria, constitute a successful mix of measures. As a result, the situation in Austria is mostly a notably better one than in other (European) countries. In cooperation with the *Länder*, the introduction of the means-tested minimum income has also helped to effectively improve the situation of people who are at risk of poverty.

A ratification of Articles 30 and 31 is still viewed critically due to the personal scope of the Charter, in particular due the Committee of Social Rights' criticism regarding Article 16 (unequal treatment of third-country nationals (i.e. non-EEA nationals) of the Contracting Parties to the Charter in the housing subsidies acts of individual countries - for details see Art. 19§4 - and regarding Article 13§1 (5-year waiting period for third-country nationals of Contracting Parties to the Charter when it comes to entitlement to means-tested minimum income).

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

Opinion of the Committee

The Committee provided information concerning interpretation and case law, drawing attention to two important aspects of Article 30 which concerned: (a) a coordinated approach to promote effective access of vulnerable persons to social human rights; (b) the review of such measures with a view to adapting them, where necessary. The Committee would not only examine the legislation but also require that coordinated policy measures were in place to

protect against poverty and social exclusion. These should strengthen access to social human rights, their monitoring and enforcement, improve procedures and management of benefits and services, in particular in the fields of employment, housing, training, education, culture and social and medical assistance. As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social human rights possible. The Committee would review poverty data, examine the evolution of the situation and ensure that adequate funding was allocated to attain the objectives of the strategy. The economic crisis should not have, as a consequence, a reduction in the protection of vulnerable persons.

The Committee welcomes the efforts and positive measures taken by Austria in combating poverty which are in line with the requirements of Article 30 of the Charter.

When examining and balancing the specific problems raised by the authorities with the overall progress and situation both in law and in practice, the Committee gave a positive assessment of the situation under Article 30 seeing no major obstacles to acceptance of this provision.

Article 31 – The right to housing

Paragraph 1 – Adequate housing

Opinion of the Committee

The Committee provided information on aspects of interpretation and case law, emphasising that under Article 31§1, the right to housing implies to take measures designed to promote access to housing of an adequate standard.

States Parties should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems. The notion of adequate housing must be defined in law with regard to: (a) a dwelling which is safe from a sanitary and health point of view and where specific dangers such as the presence of lead or asbestos are under control; (b) a dwelling of a size suitable in light of the number of persons and the composition of the household in residence; (c) a dwelling with secure tenure supported by the law. The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock, and not only to housing available for rent, but also to owner occupied housing. Public authorities are liable to ensure that housing is adequate through measures such as an inventory of the housing stock; injunctions against owners who disregard obligations; urban development rules; and maintenance obligations for landlords. They must also set limits against the interruption of essential services such as water, electricity and telephone. The right to adequate housing must enjoy legal protection through adequate procedural safeguards (i.e. access for occupiers to affordable and impartial remedies).

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, and noting the positive measures taken by Austria in ensuring adequate housing, the Committee gave a positive assessment of the situation under Article 31§1 seeing no major obstacles to acceptance of this provision. It also pointed out that Austria had undertaken obligations similar to Article 31§1 under the UN Covenant on Economic, Social and Cultural Rights.

Paragraph 2 – Reduction of homelessness

Opinion of the Committee

The Committee provided information on aspects of interpretation and case law, underlining that under Article 31§2, the right to housing implies to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.

States Parties must set up procedures to limit the risk of forced eviction, which can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Though illegal occupation of a site or dwelling may justify the eviction of the illegal occupants, the criteria of illegal occupation must not be unduly wide, and eviction should be governed by rules of procedure sufficiently protective of the rights of the occupiers. These must include, in particular, an obligation to consult the occupiers in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. When evictions do take place, they must be carried out under conditions which respect the dignity of the occupiers, and the law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, public authorities must adopt measures to re-house or financially assist the occupiers. The law must provide compensation for illegal evictions. It must also provide legal remedies and offer legal aid to occupiers in need of seeking redress from the courts.

Under Article 31§2, homeless persons must be offered shelter as an emergency solution, whereby such shelter must meet health, safety and hygiene standards and be equipped with basic amenities. Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person's human dignity, shelter must be offered also to children and adults unlawfully present in the national territory.

On the basis of the information at its disposal and following the discussions held during the meeting, concerning the situation both in law and in practice, and noting the efforts and positive measures taken by Austria in combating homelessness, the Committee gave a positive assessment of the situation under Article 31§2 seeing no major obstacles to acceptance of this provision. It also pointed out that Austria had undertaken obligations similar to Article 31§2 under the UN Covenant on Economic, Social and Cultural Rights.

Paragraph 3 – Affordable housing

Opinion of the Committee

The Committee recalled that an adequate supply of affordable housing must be ensured for persons with limited resources. Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. [71] In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income. [72]

[71] Conclusions 2003, Sweden
[72] FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72.

States Parties must:

- adopt appropriate measures for the provision of housing, in particular social housing;[73] social housing should target, in particular, the most disadvantaged; [74]
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; judicial or other remedies must be available when waiting periods are excessive;[75]
- introduce housing benefits at least for low-income and disadvantaged sections of the population.[76] Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.[77]

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers. [78]

On the basis of the information at its disposal and following the discussions held during the meeting concerning the situation both in law and in practice, the Committee notes that Article 31§3 should be applied also to third country-country nationals which might pose problems of conformity under this provision.

[73] Conclusions 2003, Sweden
[74] International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100
[75] International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, § 131
[76] Conclusions 2003, Sweden
[77] Conclusions 2003, Sweden
[78] International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155

III. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINTS PROCEDURE

The President of the Committee provided an overview of the collective complaints procedure, which had been so far accepted by 15 member States, including 14 states party to the European Union.

He noted that the collective complaints procedure, which came into force in 1998 under an Additional Protocol to the European Social Charter, complemented the judicial procedure under the European Convention of Human Rights.

The aim of the procedure was to increase the effectiveness and the speed of the implementation of the European Social Charter and also to increase the role of the Social partners and NGOs by giving them a more prominent role in enabling them to directly apply to the Committee when they consider that the Charter is not correctly applied in a country.

The complainant organisation is not necessarily a victim and there is no obligation to exhaust domestic remedies.

The organisations entitled to lodge collective complaints are as follows:

– the European social partners: European Trade Union Confederation (ETUC), for employees; Business Europe and International Organisation of Employers (OIE), for employers;
– certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe;
– social partners at national level.

Furthermore, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. So far, only Finland has done so.

A complaint may be declared admissible even if a similar case has already been submitted to another national or international body. The fact that the substance of a complaint has been examined as part of the Charter supervision procedure based on government reports does not constitute an impediment to the complaint's admissibility. The fact that a complaint relates to a claim already examined in the context of a previous complaint is not in itself a reason for inadmissibility; the submission of new evidence during the examination of a complaint may prompt the Committee to re-assess a situation it has already examined in the context of previous complaints and, where appropriate, take decisions which may differ from the conclusions it adopted previously.

If the complaint is declared admissible, the Committee asks the respondent State to make written submissions on the merits of the complaint within a time limit which it sets. The President then invites the organisation that lodged the complaint to submit, on the same conditions, a response to these submissions. The President may then invite the respondent State to submit a further response. It is a real adversarial procedure.

International organisations of employers and trade unions are invited to make observations on complaints lodged by national organisations of employers and trade unions or by non-governmental organisations. The observations submitted here are transmitted to the organisation that lodged the complaint and to the respondent State.

The Committee may also invite any organisation, institution or person to submit observations. Any observation received by the Committee is transmitted to the respondent State and to the organisation that lodged the complaint.

In the course of the examination of the complaint, the European Committee of Social Rights may organise a hearing. The hearing may be held at the request of one of the parties or on the Committee's initiative. The hearing is public unless the President decides otherwise.

Following deliberation, the Committee adopts a decision on the merits of the complaint. It decides whether or not the Charter has been violated. The decision is notified to the parties and the Committee of Ministers.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions of the European Committee of Social Rights must be taken into consideration by the States concerned; however, they are not enforceable in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, the complainant organisation cannot require the committee's decision to be enforced in domestic law as would be the case with a ruling by a court in the State concerned.

The decisions of the Committee – like its Conclusions in the reporting system – are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law. In this connection, domestic courts could declare invalid or set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter, depending on the internal legal system of the State.

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.

The Committee of Ministers may adopt a resolution, by a majority of those voting. The resolution takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity. The Committee of Ministers' decision is based on social and economic policy considerations not on legal considerations.

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the State. In view of the importance of this decision, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States party to the Charter may take part in the vote.

The European Committee of Social Rights' decision on the merits of the complaint is made public at the latest four months after the report is transmitted to the Committee of Ministers and is published on the Council of Europe website.

Ultimately, it falls to the Committee to determine whether the situation has been brought into compliance with the Charter.

The Committee's findings of violation in the framework of the complaints procedure are not intended to be decisions against states. The spirit and purpose of the procedure, as the Committee understands it, is not to put the State on trial for its lack of implementation of the Charter. It is rather to put the normative provisions of the Charter to the test of specific and concrete situations. It is to assess what a State has to do or to prevent in order to guarantee the application of rights of the Charter in specific situations. In other words, the purpose is to

give an additional opportunity to states parties to bring the situation into conformity and to prevent possible further violations of the Charter.

There are other added values of the procedure: the complaints procedure is also important because it opens the Charter to the civil society, to its very beneficiaries, those who are directly concerned with the implementation of the Charter and who are the best guardians of these rights.

Furthermore, accepting the procedure now produces an advantage to the States concerned in terms of reporting burden under the Charter: States having accepted the complaint procedure are exempted from some reporting obligations under the Charter.

Experience has shown that, since the introduction of the procedure, the number of complaints over time had been relatively limited and has not created an undue burden on governments.

The President of the Committee also recalled that, in the framework of the Turin process started in 2014, reinforcement of the collective complaints procedure was a priority and all member States had been called on to ratify the Protocol. It provided a legal tool for guaranteeing the full enjoyment of fundamental social and economic rights and had important implications for improving democracy through the involvement of civil society as actors.

The Government authorities mentioned that an inter-ministerial working group with social partner participation had been set up, in order to discuss the opportunity of ratifying the Collective Complaints Protocol. The experts pointed out that the Protocol in a way constituted an “alien element within the Austrian legal system”, where the main emphasis lies on domestic judicial proceedings and on individual applications.

The authorities added that Austria will have a closer look at the experience made by the other Member States of the Council of Europe with the collective complaints procedure.

The President of the Committee emphasised that there are no major differences between the internal legal order of Austria and that of those states which have accepted the collective complaints procedure, and the acceptance of the Additional Protocol to the European Social Charter should not pose specific problems for Austria.

In his closing remarks, the President of the Committee encouraged Austria to accept new provisions in order to support the state of social rights in the country. To allow further improvements o social rights in Austria, new provisions of the Charter could be accepted even if the situation does not seem at present to be fully in compliance with the Charter.

APPENDIX I: **PROGRAMME OF THE MEETING ON THE NON ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER**

organised by

Council of Europe

and

Federal Ministry of Labour, Social Affairs and Consumer Protection

Vienna, 28 April 2016

Venue: Federal Ministry of Labour, Social Affairs and Consumer Protection,
Stubenring 1, 1010 Vienna
"Sophiensaal" (Room 139)

Working languages: English and German

The meeting is organised in the framework of the procedure provided for by Article 22 of the 1961 Charter on "non-accepted provisions". It will consist of an exchange of views and information on the provisions not accepted by Austria with a view to evaluating the prospects for acceptance of additional provisions. There will also be an exchange of views on the collective complaints procedure.

The overall objective is to ensure the effectiveness of social rights in Austria.

9.30 Opening of the meeting

Ms Anna Ritzberger-Moser, Director General, Labour Law and Central Labour Inspectorate, Federal Ministry of Labour, Social Affairs and Consumer Protection
Mr Henrik Kristensen, Deputy Head of the Department of the European Social Charter, Council of Europe
Ms Susanne Piffl-Pavelec, Head of Division, EU-Labour Law and International Social Poliy, Federal Ministry of Labour, Social Affairs and Consumer Protection

9:45 Article 2§1 (Reasonable working time) and Article 7§6 (Inclusion of time spent on vocational training in the normal working time)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Mr Hans Binder, Head of Division, Labour Protection Law, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Ms Karin Lukas, member of the European Committee of Social Rights,

Discussion/questions/answers

10:15 Article 4§4 (Reasonable notice of termination of employment), Article 24 (Right to protection in case of dismissal) and Article 29 (Right to information and consultation in procedures of collective redundancy)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Ms Beate Saurugger, Contractual Labour Law Division, Federal Ministry of Labour, Social Affairs and Consumer Protection
Ms Anita Pleyer, Civil Service and Administrative Innovation, Federal Chancellery

Comments in light of the Committee's case law

Mr Giuseppe Palmisano, President of the European Committee of Social Rights

Discussion/questions/answers

11:00 Coffee break

11.15 Article 6§4 (Collective action), Article 21 (Right of workers to be informed and consulted) and Article 22 (Right of workers to take part in the determination and improvement of working conditions and working environment)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Ms Stefanie Mandl, Collective Labour Law Division, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Ms Birgitta Nyström, member of the European Committee of Social Rights,

Discussion/questions/answers

12.00 Article 8§2 (Illegality of dismissal during maternity leave) and Article 15§2 (Employment of persons with disabilities)

Discussion in light of the declaration made by Austria in connection with the ratification of the Revised Charter and subsequent correspondence between the Committee and the Austrian authorities.

Introduction by *Ms Karin Lukas, member of the European Committee of Social Rights*

Comments by Government and by Committee members

12:45 Lunch break

14:00 Article 26§2 (Moral harassment) and Article 27§3 (Illegality of dismissal on the ground of family responsibilities)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Ms Stefanie Mandl, Collective Labour Law Division, Federal Ministry of Labour, Social Affairs and Consumer Protection
Ms Beate Saurugger, Contractual Labour Law Division, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Ms Diana Balanescu, Lawyer, Department of the European Social Charter

Discussion/questions/answers

14:30 Article 23 (Right of the elderly to social protection)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Mr Markus Windegger, Department of Senior Citizens Affairs, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Ms Birgitta Nyström, member of the European Committee of Social Rights,

Discussion/questions/answers

15.00 Coffee break

15:15 Article 18§3 (Liberalising regulations), Article 19§4 (Equality regarding employment, right to organise and accommodation) Article 19§8 (Guarantees concerning deportation), Article 19§10 (Equal treatment for the self-employed) and Article 19§11 (Teaching language of host state)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Mr Heinz Kutrowatz, Head of Staff, EU Labour Market Laws, International Affairs of Labour Market Laws, Federal Ministry of Labour, Social Affairs and Consumer Protection
Mr Richard Melichar, Law Department, Federal Ministry of the Interior
Ms Elisabeth Florus, EU-Labour Law and International Social Policy Division, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Mr Henrik Kristensen, Deputy Head of the Department of the European Social Charter, Council of Europe

Discussion/questions/answers

16:00 Article 30 (Right to be protected against poverty and social exclusion) and Article 31 (Right to housing)

The situation in law and in practice in Austria. Reasons for non-acceptance.

Presentation by Government

Mr Christian Klopf, Department of Social Policy Issues, Federal Ministry of Labour, Social Affairs and Consumer Protection

Comments in light of the Committee's case law

Mr Giuseppe Palmisano, President of the European Committee of Social Rights

Discussion/questions/answers

16:30 The collective complaints procedure

Introduction by *Mr Giuseppe Palmisano, President of the European Committee of Social Rights*

Austria: progress towards acceptance of the procedure

Ms Elisabeth Florus, EU-Labour Law and International Social Policy Division, Federal Ministry of Labour, Social Affairs and Consumer Protection

Discussion/questions/answers

17.00 Closing of the meeting

APPENDIX II: List of participants

TEILNAHMELISTE

Sozialcharta-Meeting, 28. April 2016

Name	Organisation	E-Mail-Adresse
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APPENDIX III: Situation of Austria with respect to the European Social Charter

Signatures, ratifications and accepted provisions

Austria ratified the European Social Charter on 29/10/1969 and the Revised European Social Charter on 20/05/2011, accepting 76 of the Revised Charter's 98 paragraphs.

Austria has not yet accepted the system of collective complaints.

The Charter in domestic law

Statutory *ad hoc* incorporation by specific implementing legislation.

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				

Monitoring the implementation of the European Social Charter [79]

I. Reporting system [80]

Reports submitted by Austria

Between 1972 and 2015, Austria submitted 29 reports on the application of the 1961 Charter and 4 reports on the application of the Revised Charter.

The 4th report, submitted on 04/11/2015, concerns the accepted provisions relating to Thematic Group 1 "Employment, training and equal opportunities", namely:

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

In addition, the report concerns the information required by the Committee in the framework of Conclusions 2014 relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 26, 28 and 29 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2017.

The 5th report, which should be submitted by 31/10/2016, should concern the accepted provisions relating to Thematic Group 2 "Health, Social security and social protection", namely:

- 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).

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[79] The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 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 ».
Further information on the procedures may be found on the HUDOC database and in the Digest of the case law of the Committee.

[80] Following a decision taken by the Committee of Ministers in 2006, 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.
Following a decision taken by the Committee of Ministers in April 2014, States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.
Detailed information on the Reporting System is available on the relevant webpage. The reports submitted by States Parties may be consulted in the relevant section.

In addition, the report should provide the information required by the Committee in the framework of Conclusions 2015 relating to Thematic Group 4 "Children, families, migrants" (Articles 7, 8, 16, 17, 19, 27 and 31 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2018.

Situations of non-conformity [81]

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XX-1 (2012)

►*Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*
During the reference period Article 8§2 of the Aliens Employment Act legislation required employers to make foreign workers redundant first when reducing manpower or to avoid having to reduce the working hours of all employees.

►*Article 10§1 – Right to vocational training – Promotion of technical and vocational training; access to higher technical and university education*
Nationals of other States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

►*Article 10§4 – Right to vocational training – Encouragement for the full utilisation of available facilities*
Equal treatment of nationals of other States Parties lawfully resident or regularly working in Austria is not guaranteed with regard to fees and to financial assistance for training.

Thematic Group 2: "Health, social security and social protection" - Conclusions 2013

►*Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations* – Self-employed Workers are not sufficiently covered by occupational health and safety regulations.

► *Article 12§4 – Right to social security of persons moving between States*
1. Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
2. Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

► *Article 13§1– Right to social and medical assistance – Adequate assistance for every person in need*
Granting of social assistance benefits to non-EU/EEA national, who are legally residing in Austria, is subject to an excessive length of residence condition.

Thematic Group 3: "Labour rights" - Conclusions 2014

► *Article 2§4 – Right to just conditions of work – Elimination of risks in dangerous or unhealthy occupations*
Public-sector employees at federal level performing dangerous or unhealthy work are not entitled to appropriate compensation measures such as reduced working hours or additional paid leave.

► *Article 4§1 – Right to a fair remuneration – Decent remuneration*
It has not been established that the lowest wage paid is sufficient to ensure a decent standard of living.

[81] Further information on the situations of non-conformity is available on the HUDOC database.

► *Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*
The period during which the protection is granted to a workers' representative beyond his/her mandate is not reasonable.

Thematic Group 4: "Children, families and migrants" – Conclusions 2015

►*Article 7§10 – Right of children and young persons to protection- Special protection against physical and moral dangers*
Not all children until the age of 18 are protected against all forms of child pornography.

►*Article 16 - Right of the family to social, legal and economic protection*
Equal treatment for nationals of the other States Parties with regard to the payment of housing subsidies is not ensured (nationality, length of residence requirements).

►*Article 17§1 – Right of children and young persons to social, legal and economic protection - Assistance, education and training*
The maximum length of pre-trial detention of minors is excessive

►*Article 19§6 – Right of migrant workers and their families to protection and assistance – Family reunion*
• The age limit of 21 for family reunion of married couples who are not nationals of an EEA member state does not facilitate family reunion;
• Under the quota system which limits the number of requests which may be accepted during any given year, families may be required to wait for up to three years before being granted reunion, a delay which is excessive;
• The fact that certain categories of sponsored family member need to prove knowledge of the German language at level A1 on the Common European Framework hinders the right to family reunion.

The Committee was unable to assess whether the following rights are respected and invited the Austrian Government to provide for additional information in its next report on the following provisions:

Thematic Group 1 "Employment, training and equal opportunities"

► Article 1§4 - Conclusions XX-1 (2012)
► Article 9 - Conclusions XX-1 (2012)
► Article 15§1 - Conclusions XX-1 (2012)
► Article 15§2 - Conclusions XX-1 (2012)

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

► Article 3§1 - Conclusions 2013

Thematic Group 3: "Labour rights"

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

Thematic Group 4: "Children, families and migrants"

► Article 7§5 - Conclusions 2015

II. Examples of progress achieved in the implementation of rights under the Charter
(update in progress)

Non-discrimination (Nationality)
►Children of Turkish residents legally employed in the labour market are entitled to the exemption certificate allowing them to work anywhere in Austria once they have lived in the country for five years (according to the terms of the Association Agreement between Turkey and the EU and the decision taken by the Association Council in 1998).
►Repeal of the nationality condition for payment of the emergency assistance (*Notstandshilfe*) (legislative amendments effective since 1 April 1998).
►Adoption of a legislation to guarantee an equal treatment between Austrian nationals and nationals of other States Parties with regard to eligibility for scholarships (entry into force on 16 February 2006)
►Removal of the three-months employment requirement for nationals of other States Parties to benefit from childcare benefits and large-families allowances.
►Repeal of Section 8§2 of the Aliens Employment Act, which required employers who were reducing manpower to make foreign workers who had entered the labour market for the first time redundant first. Section 8§2 also provided that in the event of reduced activity in the company the employment contracts of foreign nationals may be terminated if such action might prevent shorter working hours in the long run for all workers.

Non-discrimination (Sex)
►Entitlement of workers to take legal action before a court to ensure the observance of the principle of equal pay for women and men (Act of 23 February 1979 on equality of treatment).

Non-discrimination (Disability)
►Adoption of a compendium of laws prohibiting discrimination on the ground of disability in a day-to-day context (excluding working environment).

Children
►Increase of the penalty for the abuse of children under 14 years of age. Introduction of provisions stipulating that the statute of limitation in the case of certain sexual offences committed against children does not begin to run until the age of majority has been reached (amendments made in 1998 to the criminal law on sexual offences).
►Under the Act to Reform the Law of Parent and Child and Name Law 2013, the courts can entrust parents with joint custody even against one of the parents' will, where it is ruled that this would be more in the interest of the child's well-being than if one parent were to have sole custody.

Employment
►Repeal of the 1885 Vagrancy Act and of Article 305 of the Criminal Code (Act of 1 January 1975).
►Adoption of a legislation on 14 January 2006 allowing all foreigners to be elected to work councils.
► Conclusion in 2009 of a framework agreement by social partners in order to reach a minimum wage of € 1,000 gross for workers in all sectors of the economy.

APPENDIX IV: 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.