

## — Germany and the European Social Charter —

### Signatures, ratifications and accepted provisions

Germany ratified the European Social Charter on 27/01/1965 and the Revised European Social Charter on 29/03/2021 accepting 88 of its 98 paragraphs.

It has signed but not ratified the Additional Protocol of 1988.

It has signed the Revised European Social Charter on 29/06/2007 but has not yet ratified it.

It has neither signed nor ratified the Amending Protocol of 1991 and the Additional Protocol of 1995 providing for a 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 <sup>1</sup>

### I. Reporting system <sup>2</sup>

#### Reports submitted by Germany

Between 1965 and 2022, Germany submitted 39 reports on the application of the 1961 Charter.

Germany did not submit a report on 31/12/2020<sup>3</sup>, on the accepted provisions relating thematic group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14 and Article 4 of the Additional Protocol).

In the absence of this report, the Committee did not adopt any conclusions as regards Germany in Conclusions XXII-2 (2021).

The 39<sup>th</sup> report, which was submitted on 2/02/2022, concerns the accepted provisions relating to thematic group 3 "Labour rights", namely:

- the right to just conditions of work (Article 2);
- the right to a fair remuneration (Article 4);
- the right to organise (Article 5);
- the right to bargain collectively (Article 6);
- the right to information and consultation (Article 2 of the Additional Protocol);
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Conclusions with respect to these provisions will be published in March 2023.

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<sup>1</sup> 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](#).

<sup>2</sup> 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](#).

<sup>3</sup> Germany submitted report, however it arrived too late to be examined by the Committee.

## Situations of non-conformity <sup>4</sup>

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXII-1 (2020)

► *Article 18§1 – Right to engage in a gainful occupation in the territory of other States Parties - Applying existing regulations in a spirit of liberality*

It has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

### Thematic Group 2 "Health, social security and social protection" - Conclusions XXI-2 (2017)

No report<sup>5</sup> was submitted concerning the Articles in thematic group 2 in 2021; therefore, the Committee was unable to adopt Conclusions in the XXII-2 (2021) cycle.

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-2 (2017).

► *Article 3§1 – Right to safe and healthy working conditions – Safety and health regulations*

Certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

► *Article 12§1 – Right to social security – Existence of a Social security system*

It has not been established that the level of old age and invalidity pensions is adequate in all cases.

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

- Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- The right to maintenance of accruing rights 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*

The total level of social assistance, including the basic and additional benefits is not adequate.

### Thematic Group 3 "Labour rights" - Conclusions XXI-3 (2018)

► *Article 2§2 - Right to just conditions of work - Public holidays with pay*

It has not been established that the worker's right to an adequate level of compensation for work performed on a public holiday is guaranteed.

► *Article 4§1 – Right to a fair remuneration - Decent remuneration*

The statutory minimum wage is not sufficient to ensure a decent standard of living to all workers.

► *Article 4§3 – Right to a fair remuneration – Non-discrimination between women and men workers with respect to remuneration*

The maximum compensation of 12 months wages established by law in cases of litigation concerning reprisals is not sufficient to make good the damage suffered by the victim and to act as a deterrent to the offender.

► *Article 6§4 – Right to bargain collectively – Collective action*

- The prohibition on all strikes not aimed at achieving a collective agreement constitutes an excessive restriction on the right to strike;
- The requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike;
- The denial of the right to strike to civil servants as a whole, regardless of whether they exercise public authority, constitutes an excessive restriction to the right to strike.

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<sup>4</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

<sup>5</sup> Germany submitted report, however it arrived too late to be examined by the Committee.

Thematic Group 4 "Children, families, migrants" - Conclusions XXI-4 (2019)

► *Article 7§5 – Right of children and young persons to protection – Fair pay*

The allowances paid to apprentices are inadequate.

► *Articles 19§6 and 19§10 – Right of migrant workers and their families to protection and assistance – Family reunion; - Equal treatment for the self-employed*

- The requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- The requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany with one parent without the consent of the other, present an obstacle to family reunion;
- Spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

The Committee has been unable to assess compliance with the following provisions and has invited the German Government to provide more information in the next report:

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Article 1§2 - Conclusions XXII-1 (2020)
- ▶ Article 1§4 - Conclusions XXII-1 (2020)
- ▶ Article 9 - Conclusions XXII-1 (2020)
- ▶ Article 18§3 - Conclusions XXII-1 (2020)

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

No report was submitted concerning the Articles in thematic group 2 in 2021; therefore, the Committee was unable to adopt Conclusions in the XXII-2 (2021) cycle.

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-2 (2017).

- ▶ Article 3§2 - Conclusions XXI-2 (2017)
- ▶ Article 11§1 - Conclusions XXI-2 (2017)
- ▶ Article 11§2 - Conclusions XXI-2 (2017)
- ▶ Article 11§3 - Conclusions XXI-2 (2017)
- ▶ Article 13§3 - Conclusions XXI-2 (2017)
- ▶ Article 14§1 - Conclusions XXI-2 (2017)
- ▶ Article 14§2 - Conclusions XXI-2 (2017)

Thematic Group 3 "Labour rights"

- ▶ Article 2§5 - Conclusions XXI-3 (2018)
- ▶ Article 4§5 - Conclusions XXI-3 (2018)

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§3 - Conclusions XXI-4 (2019)
- ▶ Article 7§4 - Conclusions XXI-4 (2019)
- ▶ Article 19§1 - Conclusions XXI-4 (2019)
- ▶ Article 19§4 - Conclusions XXI-4 (2019)
- ▶ Article 19§8 - Conclusions XXI-4 (2019)

## II. Examples of progress achieved in the implementation of rights under the Charter (*non-exhaustive list*)

### Thematic Group 1 "Employment, training and equal opportunities"

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

► Two clarifying provisions on psychological stress in the Safety and Health at Work Act (Arbeitsschutzgesetz) entered into force on 25 October 2013 (Article 8 (1) of the Act of 19 October 2013, ). Section 4 (1) of the Safety and Health at Work Act stipulates that work shall be shaped so as to avoid, as far as possible, any risk to life and physical and mental health and to keep the remaining risk as low as possible. A new point 6 "psychological stress at work" was incorporated into Section 5(3) on Assessment of the condition of work of the Act.

► The insurance coverage of the Statutory occupational accident insurance scheme was extended, in 2012 and 2015, to new categories of persons and four additional occupational illnesses were recognised as such in 2015.

### Thematic Group 3 "Labour rights"

► In the public service sector trainees are now entitled to leave with continued payment of their training allowance, with the provision that the entitlement to leave amounts to 29 days per calendar year if the weekly working time is spread over five days in the calendar week.

### Thematic Group 4 "Children, families, migrants"

► The Bavarian legislator introduced a new Act which entered into force on 30 August 2012. The new Act provides for an entitlement to Land child-raising allowance of parents of foreign origin without the characteristic of "nationality" being taken into account.

► On 25 September 2012 the Council of Ministers of the Land of Baden-Württemberg decided to end the eligibility for state child-raising allowance for all children born on or after 1 October 2012.

► The Law governing the expansion of assistance for pregnant women and the regulation of anonymous childbirth, which came into force on 1 May 2014, reinforces the rights of the child. The fundamental right of the child to know his or her origins is guaranteed in that he or she is able to inspect the mother's data and obtain information on her name, address and date of birth.