



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

June 2016

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

**THE NETHERLANDS**

Written procedure

## TABLE OF CONTENTS

OPINION	3
APPENDIX I: SITUATION OF THE NETHERLANDS WITH RESPECT TO THE EUROPEAN SOCIAL CHARTER	4
APPENDIX II: DECLARATION OF THE COMMITTEE OF MINISTERS ON THE 50TH ANNIVERSARY OF THE EUROPEAN SOCIAL CHARTER	13

## OPINION

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 "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights would examine - in a meeting or by written procedure - the level of conformity of the country's situation, in law and in practice, with non-accepted provisions. This review would be done for the first time five years after the ratification of the Revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

As the Netherlands ratified the Revised Charter on 3 May 2006, the procedure provided for by Article 22 of the 1961 Charter was applied for the first time in 2011. The European Committee of Social Rights decided for the written procedure on the only non-accepted provision of the Revised Charter - Article 19§12 (teaching mother tongue of migrant). In reply, the Dutch authorities indicated that the Netherlands does not intend to accept Article 19§12 of the Charter as facilitating special mother-tongue classes for children of migrant workers is not a priority. With a view to encouraging social cohesion, the Government's priority is teaching migrants the Dutch language. In its report, the Committee encouraged the Dutch authorities to accept Article 19§12 of the Charter as the Netherlands was already bound by the European Convention on the Legal Status of Migrant Workers (ETS No. 93), Article 15 of which covers the same matters.

With a view to carrying out the procedure for the second time in 2016, the Committee, by letter of 4 December 2015, renewed its invitation to the Dutch authorities to provide written information on the only non-accepted provision, indicating in particular any progress achieved towards accepting Article 19§12 of the Charter and, if appropriate, the reasons for the delay in accepting this provision. By letter of 23 May 2016, the Dutch authorities confirmed that the Netherlands still does not intend to accept Article 19§12 of the Charter, and that the rationale for this position has not changed since 2011.

The Committee considers that following the ratification of the European Convention on the Legal Status of Migrant Workers mentioned above, the conditions are met to ensure conformity with Article 19§12. The Committee therefore reiterates its position and again encourages the Dutch authorities to accept Article 19§12 of the Charter.

The next examination of the provision not accepted by the Netherlands will take place in 2021.



## APPENDIX I - Situation of the Netherlands with respect to the European Social Charter

### — The Netherlands and the European Social Charter —

#### Signatures, ratifications and accepted provisions

The Netherlands ratified the 1961 European Social Charter on 22/04/1980, accepting 71 (initially 69) of its 72 paragraphs and the Revised European Social Charter on 03/05/2006, accepting 97 of its 98 paragraphs (only applying to the Kingdom in Europe).

It ratified the 1988 Additional Protocol on 5/08/1992, accepting 3 of its 4 paragraphs and the 1991 Amending Protocol on 1/06/1993.

11 paragraphs (namely, Articles 1, 5, 6, 16 of the 1961 Charter and Article 1 of the 1988 Additional Protocol) remain applicable to Aruba, Curaçao, Sint Maarten and the Caribbean Part (special municipalities of Bonaire, Sint Eustatius and Saba).

The Netherlands accepted the 1995 Additional Protocol providing for a system of collective complaints on 03/05/2006 but has not yet made a declaration enabling national NGOs to submit collective complaints.

#### The Charter in domestic law

Automatic incorporation into domestic law.

#### 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				

#### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted a [report concerning the Netherlands](#) in 2011.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Collective complaints procedure <sup>2</sup>

### Collective complaints (under examination)

---

### Collective complaints (proceedings completed)

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

---

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

---

#### 3. Complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee

*Conference of European Churches (CEC) v. the Netherlands (Complaint No. 90/2013)*

- Violation of Article 31§2 (right to housing – reduction of homelessness)
- Violation of Article 13§4 (right to social and medical assistance – specific emergency assistance for non-residents)

[Decision on the merits of 1 July 2014.](#)

Follow up:

- [Resolution Res/CM ChS \(2015\)5 on 15 April 2015](#) of the Committee of Ministers.

*European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands (Complaint No. 86/2012)*

- Violation of Article 31§2 (right to housing – reduction of homelessness)
- Violation of Article 13§1 and 13§4 (right to social and medical assistance)
- Violation of Article 19§4c (right of migrant workers and their families to protection and assistance)
- Violation of Article 30 (right to protection against poverty and social exclusion)

[Decision on the merits of 2 July 2014.](#)

Follow up:

- [Resolution Res/CM ChS \(2015\)4 on 15 April 2015](#) of the Committee of Ministers.

---

<sup>1</sup> 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> Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

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

*Defence for Children International (DCI) v. the Netherlands (Complaint No. 47/2008)*

- Violation of Article 31§2 (right housing – reduction of homelessness) because NLD does not provide adequate (temporary) shelter to children unlawfully present in their territory;
- Violation of Article 17§1c (right of children and young persons to social, legal and economic protection - assistance) because NLD does not provide the requisite protection and special aid to children temporarily or definitively deprived of their family's support.

[Decision on the merits of 20 October 2009.](#)

Follow up:

- [Resolution CM/ResChS\(2010\)6 on 7 July 2010](#) of the Committee of Ministers.

## II. Reporting system<sup>3</sup>

### Reports submitted by the Netherlands

Between 1982 and 2015, the Netherlands submitted 20 reports on the application of the 1961 Charter and 9 on the application of the Revised Charter.

The [9th report](#), submitted on 02/11/2015, concerns the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure, as well as the information required by the Committee in the framework of the Conclusions adopted in 2014 (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29 of the Revised Charter, relating to the Thematic group 3 "Labour rights"), in the event of non-conformity for lack of information.

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

The 10<sup>th</sup> report, which should be submitted by 31 October 2016, should concern the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure, as well as the information required by the Committee in the framework of the Conclusions adopted in 2015 concerning article 7§9 (non-conformity for lack of information).

---

<sup>3</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](#).

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

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2012

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

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

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

The termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

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

► *Article 3§4 - Right to safe and healthy working conditions - Occupational health services*

It has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

► *Article 12§1 - The right to social security – Existence of a social security system*

It has not been established that there is a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit.

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

- The retention of accrued social security benefits (with the exception of old-age benefits) is not guaranteed to nationals of all other States Parties;
- The retention of accrued supplementary benefits is not guaranteed to nationals of all other States Parties.

► *Article 23 - Right of the elderly to social protection*

There is no adequate legal framework to combat age discrimination outside employment.

### Thematic Group 3 "Labour rights" - Conclusions 2014

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

Certain categories of workers are excluded from the statutory protection against unreasonable working hours.

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

Work performed on a public holiday in the hotel and catering industry is not adequately compensated.

► *Article 2§3 – Right to just conditions of work – Annual holidays with pay*

The employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

► *Article 2§4 – Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

Workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

---

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



► *Article 2§5 – Right to just conditions of work – Weekly rest period*

In certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

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

- It has not been established that the statutory minimum wage ensures a decent standard of living;
- The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

► *Article 4§2 – Right to a fair remuneration – Increased remuneration for overtime work*

Workers may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.

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

- Notice periods are not reasonable.
- No notice of termination is required during the probationary period.

► *Article 26§2 – Right to dignity in the workplace – Moral harassment*

It has not been established that employees are effectively protected, in law or in practice, against moral (psychological) harassment.

#### **Thematic Group 4 “Children, families, migrants” - Conclusions 2015**

► *Article 7§3 – Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education*

- Children aged 15, who are still subject to compulsory education, are not guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holidays;
- It is possible for children aged 15, who are still subject to compulsory education, to deliver newspapers before school from 6 a.m. for up to 2 hours per day, 5 days per week.

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

- young workers’ wages are not fair;
- apprentices’ allowances are not adequate

► *Article 7§6 – Right of children and young persons to protection –Inclusion of time spent on vocational training in the normal working time*

The time spent in vocational training is not included in the normal working time and remunerated as such for the majority of workers.

► *Article 7§9 - Right of children and young persons to protection - Regular medical examination*

- There is no general mandatory medical examination for workers under 18 years of age;
- It has not been established that regular medical examination of young workers is guaranteed in practice.

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

- In respect of the special Caribbean municipalities, the protection against domestic violence against women is not adequate;
- In respect of the special Caribbean municipalities, there is no child benefit scheme.

► *Article 17§1 – Right of children and young persons to social, legal and economic protection - Assistance, education and training*

Minors may be given an adult criminal law sentence and thus placed in adult detention facilities.

► *Articles 19§§4 and 10 – Right of migrant workers and their families to protection and assistance – Equality regarding employment, right to organise and accommodation; - Equal treatment for the self-employed*

The right to appeal before an independent judicial body relating to the distribution of accommodation to migrant workers and their families is not effective in practice.

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

- The minimum age of 21 for spouses to be eligible for reunification is an undue restriction on family reunion;
- Family members of a migrant worker who have settled in the Netherlands as a result of family reunion may be expelled automatically when the migrant worker loses his or her right of residence.

► *Articles 19§§11 and 10 – Right of migrant workers and their families to protection and assistance – Teaching language of host state; - Equal treatment for the self-employed*

The charges for language courses are likely to hinder the integration of migrant workers and their families

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

There is an insufficient number of halting sites for non-sedentary populations and the living conditions on such sites is poor.

► *Article 31§2 - Right to housing - Reduction of homelessness*

- The minimum notice period before eviction of two weeks is too short;
- The law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

**The Committee has been unable to assess compliance with the following provisions and has requested the Government of the Netherlands more information in the next report thereon:**

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

- ▶ Article 18§3 - Conclusions 2012

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

- ▶ Article 3§3 - Conclusions 2013
- ▶ Article 12§1 - Conclusions 2013
- ▶ Article 23 - Conclusions 2013

**Thematic Group 3 "Labour rights"**

- ▶ Article 4§5 - Conclusions 2014

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

- ▶ Article 19§3 - Conclusions 2015

### **III. EXAMPLES OF PROGRESS ACHIEVED IN THE IMPLEMENTATION OF RIGHTS UNDER THE CHARTER**

#### **Non-discrimination (sex)**

- ▶ Adoption in 1994 of a general Act on equal treatment covering all forms of discrimination – Extension of the prohibition of discrimination between men and women to categories of persons eligible for pensions, to pension rules and the implementation of pensions schemes (Amendment of the Equal Opportunities Act (WGB), in 1998).
- ▶ Prohibition on dismissal of an employee because he has brought legal or extra judicial proceedings to obtain equal remuneration (Act on "Reparation" of 1989).
- ▶ Entitlement of unmarried parents to exercise joint parental authority – Maintenance of joint parental authority even if the parents separate (Amendments to the Civil Code in 1995 and 1998).

#### **Non-discrimination (nationality)**

- ▶ Entitlement of migrant workers to be treated not less favourably than nationals as regards legal proceedings (Law of 8 March 1980).
- ▶ Adoption in 2000 of a new Student Finance Act guaranteeing to all nationals of non-EU States Party to the Charter and the revised Charter the equality of treatment with respect to financial assistance.

#### **Employment**

- ▶ Repeal of Article 6 of the Exceptional Decree of 1945 on professional relations pursuant to which a worker had to obtain prior authorization in order to terminate his employment (Act on Flexibility and Security of 1999).
- ▶ Granting of the right to a one month period of notice of dismissal to all workers (including part-time workers and those working from home) regardless of their status (Act on Flexibility and Security, which entered into force in 1999).
- ▶ Abolition of the closed shop clause in the print workers collective agreement following collective bargaining negotiations.
- ▶ Reduction from 100 to 50 employees of the threshold from which a works council must be created in the workplace (Amendments to the WOR in 1998).
- ▶ Authorisation of employees and workers, national insurance and subsidised institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

#### **Health**

- ▶ Extension of maternity leave from 12 to 16 weeks (Act of 22 February 1990).
- ▶ Entitlement of women working in private households and in the public health services for less than three days a week to maternity leave and maternity benefit during at least sixteen weeks (2000 Self-employed Persons Disablement Benefits Act - WAZ).

## APPENDIX II

### **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;

Emphasizing 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. Recognizes 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.