



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

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

AUSTRIA

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I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "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, the European Committee of Social Rights examines - in a meeting or by written procedure - the actual legal situation and the situation in practice in the countries concerned from the point of view of the degree of conformity of the situation with non-accepted provisions. This review is 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 and not a rule.

Austria ratified the 1961 Charter on 29 October 1969 and the Revised European Social Charter on 20 May 2011. It accepted 76 of its 98 paragraphs. The following provisions are not yet accepted: Articles 2§1, 4§4, 6§4, 7§6, 8§2, 15§2, 18§3, 19§4, 19§8, 19§10, 19§11, 21, 22, 23, 24, 26§2, 27§3, 29, 30 and 31§§1-3 (22 provisions).

Austria has not accepted the system of collective complaints.

The procedure provided for by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the members of the European Committee of Social Rights and the Secretariat and representatives of various institutions of Austria in Vienna, on 28 April 2016.

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. It considered in 2016 that there were no major obstacles in law and in practice to Austria's acceptance of several additional provisions of the Charter, including Articles 6§4, 7§6, 19§11, 26§2 and 29. The Committee also found that provisions such as Articles 19§4, 21, 22, 23, 27§3, 30, 31§1 and 31§2 could also be considered under certain circumstances.

In order to apply the procedure for the second time in 2021, the Austrian authorities were invited to provide written information on the non-accepted provisions of the Charter.

Having examined the written information received from the Government of Austria on 20 May 2021, the European Committee of Social Rights considers that there are no major obstacles to the acceptance of Articles 6§4, 7§6, 8§2, 19§4 a and b, 19§11, 23, 26§2, 27§3, 29, 30, and 31§2. Further clarification of the situation in law and practice would be required with respect to Articles 19§10, 21 and 22. The Committee considers that the current legal situation and practice in Austria should be improved to meet the requirements of Articles 2§1, 4§4, 15§2, 18§3, 19§4c, 19§8, 24, 31§1 and 31§3 of the Charter.

Austria considers itself bound by Articles 8§2 and 15§2 of the 1961 Charter.

The Committee invites Austria to consider accepting additional provisions of the Charter as soon as possible so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights.

The Committee also encourages Austria to consider ratifying the Additional Protocol providing for a system of collective complaints. In this respect, the Committee refers to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (Appendix 2).

The European Committee of Social Rights remains at the disposal of the authorities of Austria for continued dialogue on the non-accepted provisions.

The next examination of the provisions not yet accepted by Austria will take place in 2026.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Article 2 § 1 – The right to just conditions of work: Reasonable working time

Situation in Austria

The Austrian authorities confirm that accepting 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 particular, the COVID-19 crisis has shown that the possibility of allowing longer working hours under certain circumstances is 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.

Opinion of the Committee

The Committee recalls that Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime in order to protect worker's safety and health^{1 2}.

To this end, a reasonable period of work, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means. In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected³.

The Charter does not expressly define what constitutes reasonable working hours, but on the basis of the Committee's conclusions and decisions, normal working hours of 8 hours per day and 40 hours per week have always been regarded to be in conformity 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 week⁴ have been found by the Committee to be unreasonable and contrary to the Charter, except in case of *force majeure*⁵. These hours are inclusive of any overtime.

¹ Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1

² *Confédération Générale du Travail (CGT) v. France*, Complaint No. 22/2003, Decision on the merits of 7 December 2004, §34

³ Conclusions I (1969), Statement of Interpretation on Article 2§1

⁴ Conclusions XIV-2 (1998), Netherlands

⁵ Conclusions (2014), Netherlands

On the basis of the information provided, the Committee reiterates its opinion 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. It encourages the Austrian authorities to take the necessary measures to gradually reduce the working week in order to comply with the requirements of Article 2§1 of the Charter.

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

Situation in Austria

The Austrian authorities confirmed the legal framework as described in the first report on non-accepted provisions. They specify that in order to harmonise and adapt the rights of white-collar and blue-collar workers, an amendment to the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) provides for blue-collar workers to benefit from the same dismissal provisions as those provided by law for employees. This amendment is due to come into force on 21 July 2021.

The Austrian authorities point out that in view of the fact that the European Committee of Social Rights concluded that, for example, a notice period of five days after less than three months' service is not in conformity with the Charter and that, under Austrian law, the employment relationship can be terminated without any particular reason during the trial period, and that, according to Austrian law, the employment relationship can be terminated at any time by both parties without observing any notice period or date, and that, on the other hand, in view of the fact that the notice periods in the Domestic Help and Domestic Workers Act have not been adjusted by the above-mentioned amendment, this provision cannot be accepted.

Opinion of the Committee

The Committee recalls that paragraph 4 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. It refers to its first report on the non-accepted provisions, in which it set out in detail the requirements of Article 4§4 of the Charter.

In view of the information provided by the Austrian authorities, the Committee reiterates its opinion that the legal framework in Austria constitutes an obstacle to the acceptance of Article 4§4 of the Charter.

Article 6 § 4 – Right to bargain collectively: Collective action

Situation in Austria

The Austrian authorities confirmed the legal framework and practice as described in the first report on non-accepted provisions.

They recall that the Austrian constitution does not contain any provisions on the right to strike, nor any negative evaluation of or restrictions on strikes, let alone a ban on strikes. Industrial action is not restricted in any way: there is no ban on strikes or lock-outs, and there is no limitation of strike action to those unions that are considered to be the most representative in their sector. Participation in a strike is not limited to union members.

Opinion of the Committee

The Committee recalls that Article 6§4 guarantees the right to strike and the right to call a lock-out⁶. The right may result from statutory law or case-law⁷. It refers to its first report on the non-accepted provisions, in which it set out in detail the requirements of Article 6§4 of the Charter.

In view of the information provided by the Austrian authorities, the Committee reiterates its opinion that there are no obstacles to the immediate acceptance by Austria of Article 6§4 of the Charter. It therefore encourages Austria to accept this provision without delay.

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

Situation in Austria

The majority of young people are trained as apprentices, which is based on a so-called dual system: apprentices receive on-the-job training in their employer's company and attend courses 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. Additional courses attended by apprentices in their free time, which are directly related to the job, generally are not counted as working time.

The courses for the entrance qualification examination (*Berufsreifepfung*) can be completed by the training companies during the regular - non-compulsory - apprenticeship period and also with an extension of the apprenticeship period, taking into account the time spent for this. The *Berufsreifepfung* does not, however, constitute an independent vocational training course, but complements it in terms of general higher education and the associated general access to university.

Opinion of the Committee

The Committee recalls 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 day⁸. Such training must, in principle, be done with the employer's consent - but not necessarily financed by the latter 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 worked⁹.

In the light of the information provided by the Austrian authorities, the Committee reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 7§6 of the Charter. It therefore encourages the Austrian authorities to consider accepting this provision in the near future.

Article 8 § 2 – Right of employed women to protection of maternity: Illegality of dismissal

Situation in Austria

The Austrian authorities confirmed the legal framework for the protection of pregnant women as described in the first report on the non-accepted provisions.

⁶ Conclusions I (1969), Statement of Interpretation on Article 6§4

⁷ Ibidem

⁸ Conclusions XV-2 (2001), Netherlands

⁹ Conclusions V (1977), Statement of Interpretation on Article 7§6

In general, female civil servants and female contractual workers enjoy special protection against dismissal during pregnancy (dismissal during pregnancy and for a period of four months after the birth of the baby is only permissible if the court allows it). However, this does not apply if the dismissal is the result of a final decision by a disciplinary commission or court or if the employment relationship is terminated by force of law (paragraph 22 of the Maternity Protection Act). Disciplinary law complements the general indissolubility of the employment relationship of a civil servant. The assessment of the existence of a breach of duty is left to the disciplinary authority.

Opinion of the Committee

The Committee recalls that under Article 8§2, it must be unlawful to dismiss employees between the time they notify the employer of their pregnancy and the end of their maternity leave. Article 8§2 applies equally to women on fixed-term and open-ended contracts¹⁰.

However, the dismissal of a pregnant woman is not contrary to this provision if she has committed a misconduct justifying the termination of the employment relationship¹¹, if the undertaking ceases to operate, or if the period prescribed in the employment contract expires¹².

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.

In the case of dismissal contrary to this provision, the reinstatement of the woman should be the rule¹³. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured.

In view of the information provided and the fact that Austria considers itself bound by Article 8§2 of the 1961 Charter, the Committee reiterates its opinion that the situation in Austria also appears to be in conformity with this provision as formulated in the Revised Charter and with the Committee's case law.

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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

Situation in Austria

The Austrian authorities confirmed the information provided for the first report on the non-accepted provisions that this provision cannot be accepted, as the Employment of Disabled Persons Act (*Behinderteneinstellungsgesetz*) lays down narrower criteria than the Revised Charter for third-country nationals of States Parties to the Charter with regard to the right to be classified as an eligible person with a disability, including the associated legal consequences (in particular, qualified protection against dismissal and counting towards the fulfilment of the legal quota).

¹⁰ Conclusions XIII-4 (1996), Austria

¹¹ Conclusions X-2 (1990), Spain

¹² Conclusions 2005, Estonia

¹³ Conclusions 2005, Cyprus

Opinion of the Committee

The Committee recalls that Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities¹⁴. It applies to persons with physical and/or intellectual disabilities¹⁵.

Legislation must prohibit discrimination on the grounds of disability¹⁶ in order to create genuine equality of opportunities in the open labour market¹⁷, dismissal on the grounds of disability and provide an effective remedy to those who are found to have been unlawfully discriminated¹⁸.

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 rights¹⁹.

The Committee further recalls that Austria considers itself bound by Article 15§2 of the 1961 Charter. It reiterates that, with regard to Article 15§2, there may be a problem of nationality discrimination for certain support measures, but this problem concerns both the 1961 Charter and the revised Charter. There is therefore no real justification for Austria to remain bound by the wording of the 1961 Charter.

As no additional information has been provided since the last assessment on the situation of third-country nationals with disabilities of States Parties to the Charter with regard to equal and effective access to employment in the open labour market, the Committee reiterates its opinion that the situation in Austria constitutes an obstacle to the acceptance of Article 15§2 of the Charter.

Article 18§3 - Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations

Situation in Austria

The Austrian authorities confirmed that the acceptance of Art. 18§3 remains impossible, as it is necessary to stop the flow of foreign workers wishing to access the labour market in Austria. The percentage of foreign workers in the Austrian labour market is already one of the highest among EU and OECD countries. Further liberalisation of labour market access for Council of Europe member states does not seem possible in the foreseeable future, as the number of migrant workers arriving in Austria, especially from the member states that joined the EU in 2004 and 2007, is increasing enormously, while at the same time unemployment among the domestic and integrated foreign workers is rising sharply.

Opinion of the Committee

The Committee recalls that Article 18§3 requires States to periodically liberalise the regulations governing the employment of foreign workers in the following areas: access to the national labour market, the right to engage in an occupation and rights in the event of loss of employment.

¹⁴ Conclusions XX-1 (2012), Czech Republic

¹⁵ Conclusions I (1969), Statement of Interpretation on article 15§2

¹⁶ Conclusions 2003, Slovenia

¹⁷ Conclusions 2012, Russian Federation

¹⁸ Conclusions XIX-1 (2008), Czech Republic

¹⁹ Conclusions XVII-2 (2005), Czech Republic

In view of ensuring the effective exercise of this right, States Parties' engagement in liberalisation shall include regulations governing the recognition of foreign certifications, professional qualifications and diplomas, to the extent that such qualifications and certifications are necessary to engage in a gainful occupation as employees or self-employed workers²⁰.

In its first report on the non-accepted provisions, the Committee considered that developments in law and practice in recent years in Austria have tended to restrict rather than liberalise the regulations governing the employment of foreign workers and, in view of the government's statement that no further liberalisation seems possible in the foreseeable future, it considered this to be a problem of conformity with Article 18§3 of the Charter.

In the light of the information provided by the Austrian authorities and the confirmation of the statement that further liberalisation of labour market access for Council of Europe member states does not seem possible in the foreseeable future, the Committee reiterates its opinion that the situation in Austria constitutes an obstacle to the acceptance of Article 18§3 of the Charter.

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

Situation in Austria

The Austrian authorities confirmed the information provided for the first report on the non-accepted provisions, i.e. that Article 19§4 is respected in terms of working conditions and trade union membership, but not in terms of accommodation, as far as nationals of non-EEA States Parties are concerned. They also confirmed that the acceptance of Article 19§4 is not possible because the European Committee of Social Rights criticises the unequal treatment of nationals of States Parties to the Charter who are legally resident or in regular employment when it comes to housing benefits under Article 16 of the Charter.

This incompatibility with the Charter is also one of the reasons why Article 30 cannot be accepted and it is the main reason why Article 31 cannot be accepted.

Opinion of the Committee

Article 19§4 of the Charter guarantees non-discrimination of migrant workers with respect to: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation. States Parties must prove the absence of discrimination, direct or indirect, in terms of law and practice^{21 22}, and should inform of any practical measures taken to remedy cases of discrimination.

Based on the information provided, the Committee understands that the main obstacle to the acceptance of this provision is the situation related to the requirements of Article 19§4c (accommodation). As in its first evaluation in 2016, it encourages Austria to take steps to remedy this situation and meanwhile accept Article 19§4a and b of the Charter.

²⁰ Statement of Interpretation on Article 18§3, 2012

²¹ Conclusions III (1973), Italy

²² European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §§ 202-203

Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation

Situation in Austria

The Austrian authorities confirmed that Article 19§8 cannot be accepted for the reasons described in the first report on the non-accepted provisions, including the existing legislative framework.

Opinion of the Committee

The Committee recalls that Article 19§8 obliges States Parties to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality²³. Such 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. 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.

National legislation should reflect the legal implications of Articles 18§1 and 19§8 of the Charter as well as the case-law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules protecting from deportation²⁴.

Given the information provided, the Committee reiterates its opinion that the legal framework in Austria constitutes an obstacle to the acceptance of Article 19§8 of the Charter. It invites the Austrian authorities to take steps towards providing the appropriate legal framework and its implementation in practice to introduce and respect guarantees concerning deportation.

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

Situation in Austria

The Austrian authorities confirmed that it is not possible for them to accept Article 19§10, in particular because of the conclusion of non-conformity issued by the European Committee of Social Rights concerning Article 19§6 (Conclusions XX-4/2016).

Opinion of the Committee

The Committee recalls that Article 19§10 requires States to ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families²⁵. A finding of non-conformity under these paragraphs may lead to a conclusion 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).

States Parties must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice, between wage-earners and self-employed migrants. In addition, equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.

²³ Conclusions VI (1979), Cyprus

²⁴ Conclusions 2011, Statement of Interpretation on Article 19§8

²⁵ Conclusions I (1969), Norway

Having examined the information provided by the Austrian authorities, the Committee considers that the lack of information on legislation and practice concerning the equal treatment of self-employed migrants in Austria prevents it from assessing the situation in the country as it relates to Article 19§10 of the Charter.

Article 19§11 - Right of migrant workers and their families to protection and assistance - Teaching language of host state

Situation in Austria

Article 19§11 is respected with regard to children who are still subject to compulsory education.

However, in the case of adults, the requirements of this provision are not fully met, especially in the case of family members, particularly women, who are not in employment and therefore cannot benefit from Public Employment Service (PES) measures.

Currently the PES offers language courses for third country nationals as well as EU-nationals that are registered with the PES, whereas the Austrian Integration Fund (*Österreichischer Integrationsfonds* - ÖIF) provides language courses for refugees. From next year (2022), the ÖIF will take over the responsibility to provide language courses for third-country nationals from the PES.

In the field of basic education, German language skills (speaking, reading, writing) are promoted.

The *Länder* Vorarlberg, for example, finances "low-threshold German courses for women in cities/municipalities/regions" for remedial integration. For pedagogical reasons, these courses have to be paid for.

In addition, there is a wide range of German courses offered by adult education providers.

However, unlimited and undifferentiated funding, as requested by the European Committee of Social Rights under Article 19§11, is not feasible.

Opinion of the Committee

The Committee recalls that under Article 19§11, States Parties should 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 age²⁶. The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large.

A requirement to pay substantial fees is not in conformity with the Charter. States Parties are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible²⁷.

Given the information provided by the Austrian authorities, the Committee encourages Austria to consider accepting Article 19§11 of the Charter.

Article 21 – Right of workers to be informed and consulted

Situation in Austria

The Austrian authorities confirmed that Article 21 cannot be accepted for the reasons described in the first report on the non-accepted provisions. They underlined in particular that the rights to

²⁶ Conclusions 2002, France

²⁷ Conclusions 2011, Norway

information, consultation and participation can only be exercised by the works council under the Labour Constitution Act and the Agricultural Labour Act, i.e. they are not guaranteed in undertakings where the preconditions for the establishment of a works council exist but where no works council has been set up.

Opinion of the Committee

The Committee recalls that Article 21 applies to all undertakings, whether private or public. States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works' councils) must be informed on all matters relevant to their working environment²⁸ except where the conduct of business requires that certain confidential information be withheld.

Workers must be consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on their employment status.

These rights must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected²⁹. There must also be sanctions for employers which fail to fulfil their obligations under Article 21 of the Charter³⁰.

In its previous assessment, the Committee considered that most of the requirements of this provision were met and therefore recommended Austria to accept Article 21. However, it requested more information on the implementation of the right to information and consultation in all undertakings, whether private or public (e.g. information available in collective agreements), and on the availability of legal remedies in case of failure of compliance by the employer. As no reply was provided by the Austrian authorities, the Committee cannot comment on the possibility of Austria accepting Article 21.

Article 22 – Right of workers to take part in the determination and improvement of working conditions and working environment

Situation in Austria

The Austrian authorities confirmed that Article 22 cannot be accepted for the reasons described in the first report on the non-accepted provisions. They underlined in particular that the right to participation can only be exercised by the works council under the Labour Constitution Act and the Agricultural Labour Act, i.e. they are not guaranteed in undertakings where the preconditions for the establishment of a works council exist but where no works council has been set up.

Opinion of the Committee

The Committee recalls that Article 22 applies to all undertakings, whether private or public. States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice³¹ and tendency undertakings.

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision.

²⁸ Conclusions 2010, Belgium

²⁹ Conclusions 2003, Romania

³⁰ Conclusions 2005, Lithuania

³¹ Conclusions 2005, Estonia

Workers must have legal remedies when these rights are not respected³². There must also be sanctions for employers which fail to fulfil their obligations under Article 22³³.

In its previous assessment, the Committee considered that most of the requirements of this provision, both in law and in practice, were met and therefore recommended Austria to accept Article 22. However, it requested more information on the implementation of the right to participation in all undertakings, whether private or public, and the implementation of its various components. As no reply was provided by the Austrian authorities, the Committee cannot comment on the possibility of Austria accepting Article 22.

Article 23 – Right of the elderly to social protection

Situation in Austria

The Austrian authorities confirmed the information on the measures taken to guarantee the right to social protection for the older people as described in the first report on the non-accepted provisions.

The ratification of Article 23 is still considered as problematic because of the personal applicability of the Charter, in particular because of the reactions of the European Committee of Social Rights concerning Article 16 - unequal treatment of third-country nationals (i.e. non-EEA nationals) of the States Parties to the Charter with regard to housing benefits, and concerning Article 13§1 - waiting period for third-country nationals of the States Parties to the Charter with regard to the right to social assistance.

Opinion of the Committee

The Committee recalls that Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of the older people. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for older persons, obliging the Parties to devise and carry out coherent actions in the different areas covered³⁴.

The Committee welcomes all measures and positive actions taken by Austria in order to improve the situation of the older persons. It reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 23 of the Charter. The Committee recalls that some States have made reservations when accepting Article 23 of the Charter.

Article 24 – Right to protection in case of dismissal

Situation in Austria

The Austrian authorities have confirmed that the acceptance of this provision would require substantial changes in Austria because, under Austrian law, a specific reason must be given only in the case of dismissal without prior notice (*Entlassung*) of an employment relationship. The termination of an employment relationship (*Kündigung*) does not require specific reasons to be given (principle of free termination).

Especially in the current situation, where companies are struggling with the serious consequences of the COVID pandemic, they must continue to be supported. Restricting flexible operational design options (e.g. terminations with a commitment to re-employment) would be counter-productive.

³² Conclusions 2003, Bulgaria

³³ Conclusions 2003, Slovenia

³⁴ Conclusions XIII-3, Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)

Opinion of the Committee

All workers who have signed an employment contract are entitled to protection in the event of termination of employment. However, according to the appendix, the States Party may exclude one or more of the following categories:

- workers engaged under a contract of employment for a specified period of time or a specified task;
- 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. Exclusion of employees from protection against dismissal for six months or 26 weeks is not considered reasonable if it is applied indiscriminately, regardless of the employee's qualifications;
- workers engaged on a casual basis for a short period.

This list is exhaustive.

The Committee refers to its conclusions and decisions regarding the definition of valid reasons for the termination of employment and the prohibition of termination of employment for certain reasons³⁵.

Any employee who believes that he or she has been dismissed without just cause should have the right to appeal to an impartial body.

Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief.

In the light of the information provided, the Committee reiterates its opinion that the legal framework in Austria constitutes an obstacle to the acceptance of Article 24 of the Charter. It invites the Austrian authorities to consider the adoption of the appropriate legal framework and its implementation in practice in order to respect the guarantees foreseen by the Charter concerning the right to protection in case of dismissal.

Article 26§2 - Right to dignity in the workplace - Moral harassment

Situation in Austria

The Austrian authorities confirmed the information on the measures taken to protect workers from moral harassment as described in the first report on the non-accepted provisions.

With the amendment of the Workers' Health and Safety Act (*ArbeitnehmerInnenschutzgesetz; ASchG*), in force since 1.1.2013, the obligation of employers to include psychological aspects of work in occupational health and safety has been expressly clarified and specified: psychological strain caused by mental stress and risks at work is not limited to stress and work pressure, but also includes incidents of violence, sexual harassment, derogatory remarks and bullying at work:

- The legal materials (GP XXIV RV 1983) emphasize the relevance of psychological stress in employee protection and expressly also the necessary awareness-raising process among those responsible in the companies, as required in Article 26 § 2 of the Charter. It is expressly made clear that dangers as defined in ASchG also include psychological stress and health also includes psychological health (Section 2, Paragraph 7 and 7a ASchG); at the same time, the use of industrial psychologists as additional support in companies is emphasized.

³⁵ See <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80> pp. 204-206

- Employers are expressly obliged to take measures to protect life and health and to protect the integrity and dignity of employees. Employees are obliged to apply these measures and must behave in such a way that a hazard is avoided as far as possible, which also includes observing the dignity and integrity of others at work (Section 3 (1) and Section 15 (1) ASchG). Protection against physical and verbal violence, especially sexual harassment in the workplace, is addressed, contradicting behavior is frowned upon.

- Mental stress at work must be included in the job evaluation (§ 4 ASchG) and the principles of risk prevention must be taken into account during planning - "human factor" at work, social relationships, work organization, etc. The evaluation must also be updated after incidents with increased work-related psychological stress - e.g. after incidents of violence or sexual harassment, incidents of bullying can also be an occasion to review or take preventive measures. The legal materials list as incidents that can trigger an acute psychological stress reaction inter alia the accumulation of conflicts or complaints, violent attacks, post-traumatic stress disorder after an accident at work.

- Safety specialists and occupational physicians are also responsible for advising and assisting employers in structuring work processes in such a way as to minimise psychological stress (including possible violence and other acts) and to mitigate its adverse effects on health.

After the amendment of the ASchG, the focus of safety and health protection at work in accordance with Article 26 of the Charter is now on raising awareness of violence, bullying, etc. in the workplace, information and support in operational implementation (as part of the evaluation of work-related psychological stress) as well as integration in relevant specialist areas (e.g. industrial psychology, occupational medicine).

For the earliest possible operational prevention, the Labour Inspectorate and other institutions active in occupational safety (e.g. Chamber of Labours, VIDA trade union / "Tatort Workplace") have developed information materials, practical aids and guidelines as well as good practices on how to deal with violence in the workplace.

Information materials and advice focuses are constantly being developed - e.g. 2020 new guidelines for cleaning staff, property managers and clients (new chapter 12.3 Violence in the workplace - bullying, sexual harassment). When the labour inspectorate visits companies, the prevention of violence is a recurrent topic of advice and review in connection with the workplace evaluation of psychological stress. Training for labour inspectors on violence prevention takes place as part of professional training (2019, 2021).

In the Austrian multi-annual occupational health and safety strategies, in which the main actors in occupational health and safety in Austria (e.g. social partners, research institutes, labour inspectorate, general accident insurance body - AUVA) collaborate, the prevention of psychological stress, violence and bullying is a focus.

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

The GIBG provides for the right to compensation both from the harasser (irrespective of the establishment of fault) and from the employer (if the employer does not take prompt and appropriate remedial action), including non-material damages (at least EUR 1,000), as well as the balance of the burden of proof.

In the public sector, there is a wide range of statutory provisions concerning bullying.

Opinion of the Committee

The Committee recalls 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^{36 37}.

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 work³⁸.

As regards awareness raising, the requirements are the same as under Article 26§1 which Austria has accepted.

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^{39 40}

The employers should be liable when the harassment occurs in connection with work or on premises under his responsibility, even when it involves, as perpetrator or victim, a third person who is not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.^{41 42}

The Committee welcomes all measures and positive actions taken by Austria in order to protect workers from moral harassment. It reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 26§2 of the Charter.

Article 27§3 - Right of workers with family responsibilities to equal opportunity and treatment: Illegality of dismissal on the ground of family responsibilities

Situation in Austria

The Austrian authorities confirmed the information provided for the first report on the non-accepted provisions on measures taken to protect workers against dismissal due to family responsibilities.

Opinion of the Committee

The Committee recalls that family responsibilities must not be a valid reason for dismissal. The notion of "family responsibilities" should be understood here as obligations towards dependent children and also towards other close family members who need care and support. Article 27§3 aims to prevent these obligations from restricting preparation for and access to working life, the exercise of a professional activity and career progression⁴³.

³⁶ Conclusions 2003, Bulgaria

³⁷ Conclusions 2007, Statement of Interpretation on Article 26

³⁸ Conclusions 2005, Moldova

³⁹ Conclusions 2007, Statement of Interpretation on Article 26

⁴⁰ Conclusions 2005, Moldova

⁴¹ Conclusions 2003, Sweden

⁴² Conclusions 2014, Finland

⁴³ Conclusions 2003, Statement of Interpretation on Article 27§3; see for example Bulgaria

Workers dismissed on such unlawful grounds must be afforded the same level of protection as that afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter, which Austria has accepted.

Any ceiling on compensation that might prevent the damages from being proportionate to the harm suffered and sufficiently dissuasive is prohibited. In the event of a ceiling on compensation for pecuniary damage, the victim must be able to claim unlimited compensation for non-pecuniary damage through other legal means (e.g. anti-discrimination legislation), and the courts competent to award compensation for pecuniary and non-pecuniary damage must decide within a reasonable time⁴⁴.

Given the information provided by the Austrian authorities, the Committee reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 27§3 of the Charter.

Article 29 - Right to information and consultation in procedures of collective redundancy

Situation in Austria

This provision was not accepted in 2011 because it was considered to be complied with only by the private sector. As Council Directive 98/59/EC on collective redundancies does not apply to workers employed in the public administration or in institutions governed by public law, no corresponding measures have been taken to transpose it into the legislation applicable to public sector employees.

According to the case law of the European Committee of Social Rights, consultation rights must be accompanied by guarantees that they can be exercised in practice. Section 109 of the Federal Act on the Labour Constitution (ArbVG) provides that, in the event of late information to the works council, the arbitration board must additionally compensate the disadvantages that employees have suffered as a result of the late information when drawing up the social plan. According to Section 160 (1) ArbVG, the administrative fine is € 2,180.

Opinion of the Committee

The Committee recalls that under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.

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. 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)⁴⁵

The obligation of the consultation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.

The obligation to consult is not only an obligation to inform unilaterally, but implies that a process is set in motion, i.e. that there is sufficient dialogue between the employer and the workers' representatives on ways to avoid redundancies or limit their number and to mitigate their effects, although it is not necessary that an agreement is reached⁴⁶. Simple notification of redundancies to workers or their representatives is not sufficient⁴⁷.

⁴⁴ Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3.

⁴⁵ Conclusions 2003 Sweden

⁴⁶ Conclusions 2003, Statement of Interpretation on Article 29

⁴⁷ Conclusions 2014, Georgia

Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies made to ensure that they are not put into effect before the consultation obligation is met⁴⁸. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers.

The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter⁴⁹.

On the basis of the information at its disposal, the Committee reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 29 of the Charter.

Article 30 – Right to be protected against poverty and social exclusion

Situation in Austria

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.

Combating poverty and social exclusion is an issue of particular concern to Austria's Federal Government. The Austrian Federal Government is committed to the principle of poverty reduction throughout the expiring Europe 2020 strategy and takes its responsibility seriously to create opportunities for an independent and self-determined life. This is also reflected in the current government program 2020-2024. In doing so, a special focus is drawn on combating child poverty, as avoiding poverty as early as possible and promoting social mobility are not only important building blocks for guaranteeing equal development opportunities from the start, but also for preventing the risk of poverty and social exclusion later in life. Generally, Austria has a very well developed welfare state that offers comprehensive protection against social risks and has a strong poverty-reducing effect.

In the context of the current COVID-19 pandemic, many additional crisis support measures, especially for those most affected, have been and are being implemented to cushion the negative socio-economic effects caused by the crisis.

However, the acceptance of Articles 30 and 31 is still not possible due to the personal scope of the Charter, in particular due to the criticism of the European Committee of Social Rights concerning Article 13§1 and Article 16 of the Charter.

Länder-specific information is, by way of example, provided for Vienna, Carinthia and Styria.

Opinion of the Committee

The Committee recalls that with a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance⁵⁰. The comprehensive and coordinated approach must link and integrate policies in a coherent way, going beyond a purely sectoral or target group approach and coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should exist.

⁴⁸ Conclusions 2007, Sweden

⁴⁹ Conclusions 2003 and 2005, Statement of Interpretation on Article 29

⁵⁰ Statement of interpretation on Article 30, Conclusions 2003, see e.g. Conclusions France

Adequate resources are one of the main elements of the overall strategy to combat social exclusion and poverty, and should therefore be allocated to achieve the objectives of the strategy⁵¹.

The measures taken should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country. They should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions⁵².

The Committee also recalls that Article 30 of the Charter requires the existence of monitoring mechanisms for reviewing and adapting the efforts in all areas and sectors, at all levels, national, regional, local, to combat poverty and social exclusion; mechanisms which should involve all relevant actors, including civil society and persons directly affected by poverty and exclusion.

The Committee has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter. These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of political or social rights, Article 13).

The Committee welcomes Austria's continuing efforts to combat poverty, which meet the requirements of Article 30 of the Charter. On the basis of the information at its disposal, the Committee reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 30 of the Charter.

Article 31 §§ 1-3 – Right to housing: Adequate housing, Reduction of homelessness, Affordable housing

Situation in Austria

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.

Affordable housing is an issue of particular concern to the Austrian Federal Government. In this context, Austria continues to be committed to the creation of sufficient affordable housing.

Austria's policy in combating homelessness has often been highlighted as a best-practice example at international and European level. Numerous low-threshold projects to combat homelessness, often carried out in cooperation with NGOs, combined with subsidised housing, which is of great importance in Austria, constitute a successful package.

Therefore, the situation in Austria is mostly and notably better than in other (European) countries. Currently, numerous crisis support measures have been introduced to cushion COVID-19-related challenges in the housing sector.

However, the acceptance of Articles 30 and 31 is still not possible due to the personal scope of the Charter, in particular due to the criticism of the European Committee of Social Rights concerning Article 13§1 and Article 16 of the Charter.

Länder-specific information is, by way of example, provided for Vienna, Carinthia and Styria.

⁵¹ Conclusions 2005, Slovenia

⁵² Statement of interpretation on Article 30, Conclusions 2003, see e.g. Conclusions France

In Vienna, a distinction is still made in the context of the housing allowance. Citizens of other States Parties to the Charter outside the EEA are only entitled to a claim after a legitimate stay of five years in Austria. Due to the limited funds available, there are currently no plans to further expand the eligibility criteria for the housing allowance.

Opinion of the Committee

The Committee recalls that Article 31 imposes to States positive obligations. States must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. They enjoy a margin of discretion in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources⁵³.

Article 31 cannot be interpreted as imposing on States Parties an obligation of “results”. However, the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form. This implies that, for the situation to be in conformity, States Party must⁵⁴:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b) maintain meaningful statistics on needs, resources and results;
- c) undertake regular reviews of the impact of the strategies adopted;
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

Under Article 31, States Parties must guarantee to everyone the right to adequate housing (Article 31§1), take action to prevent categories of vulnerable people from becoming homeless (Article 31§2) and ensure an adequate supply of affordable housing for persons with limited resources. The right to affordable housing must be guaranteed without discrimination (Article 31§3).

On the basis of the information at its disposal, the Committee reiterates its opinion that there are no major obstacles to the acceptance by Austria of Article 31§2 of the Charter. It considers that the requirement of a legitimate stay of 5 years in Austria for citizens of other States Parties to the Charter outside the EEA to be eligible for the housing allowance might raise problems of conformity under Articles 31§1 and 31§3 of the Charter.

⁵³ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, § 35

⁵⁴ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

— Austria and 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					

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 Austria](#) in 2016.

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

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.