



European
Social
Charter

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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

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**THIRD REPORT
ON THE NON-ACCEPTED PROVISIONS OF
THE REVISED EUROPEAN SOCIAL CHARTER
MALTA**

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I. SUMMARY

1. Background

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions – the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, five years after ratification of the Revised European Social Charter and every five years thereafter, the European Committee of Social Rights (ECSR) reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance, given that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the Article 22 procedure is therefore to review the situation after five years and encourage acceptance of more provisions.

Malta ratified the European Social Charter on 4 October 1988 and the Amending Protocol to the Charter on 16 February 1994. It ratified the Revised European Social Charter on 27 July 2005, accepting 72 of the Revised Charter's 98 paragraphs. Malta has neither signed nor ratified the Additional Protocol providing for a system of collective complaints.

Malta is not bound by 26 numbered paragraphs of the Revised Charter (see the country factsheet in Appendix I), namely Art.2§§4,7, Art.8§3, Art.12§2, Art.18§§1–3, Art.19§§1–12, Art.21, Art.22, Art.27§1(c), Art.30 and Art.31§§1–3.

2. Previous Examinations

The procedure provided by Article 22 of the 1961 Charter was applied for the first time as regards the Revised European Social Charter in 2010, and a meeting between members of the European Committee of Social Rights and representatives of the Maltese ministries was held in Valetta on 7 December 2010.

The previous, second examination of non-accepted provision was carried out in 2015 in the form of a written procedure based on the report submitted by the Maltese authorities. Based on the analysis of the situation, the Committee concluded that there were no major legal or practical obstacles to acceptance by Malta of Art.2§7, Art.18§2, Art.19§1,5,9 and 11, Art.21, Art.22, Art.27§1(c), Art.30 and Art.31§2. Moreover, the Committee noted that the Maltese authorities were considering the acceptance of Art.12§2 of the Charter in the near future. On the other hand, the Committee considered that some situations did not appear to be in conformity with the provisions of the Charter, namely in respect of Art.2§4, Art.8§3 and Art.19§6. However, the Committee also noted that for some of these provisions only minor adjustments to the law or practice would be needed to remove the obstacles to acceptance. As regards the other non-accepted provisions, the Committee was of the view that the information provided was not sufficient to allow a thorough assessment: Art.18§1, Art.18§3, Art.19§§2,3,4,7,8,10 and 12, Art.31§§1 and 3.

3. Current Examination

The current, third examination of non-accepted provisions of the Revised Charter in 2020 is again based on a written procedure.

Based on the report submitted by Maltese authorities the situation in respect of the following non-accepted provisions of the Revised Charter is assessed:

- The right to just working conditions – elimination of risks in dangerous or unhealthy occupations (Art.2§4)
- The right to just working conditions – night work (Art.2§7)
- The right of employed women to protection of maternity – time off for nursing infants (Art.8§3)
- The right to social security – satisfactory level of the social security system (Art.12§2)
- The right to engage in a gainful occupation in the territory of other Parties – liberal application of existing regulations, simplification of formalities and liberalization of regulations (Art.18§§1–3)
- The right of migrant workers and their families to protection and assistance (Art.19§§1–12)
- The right to information and consultation (Art.21)
- The right to participate in the improvement of working conditions (Art.22)
- The right of workers with family responsibilities to equal opportunities and equal treatment – childcare arrangements (Art.27§1(c))
- The right to protection against poverty and social exclusion (Art.30)
- The right to housing (Art.31§§1–3)

Having examined the information provided in the report, the Committee welcomes the readiness indicated by the Maltese authorities to accept several provisions of the Revised Charter, namely Art.2§7, Art.12§2, Art.19§§1–3,5,9, Art.21, Art.22 and Art.30. Beyond these provisions, the Committee also reiterates its earlier findings that from the point of view of the situation in law and in practice there are no obstacles to the immediate acceptance of Art.18§2, Art.19§11, Art.27§1(c) and Art.31§2.

Further updated information on the situation in law and in practice is needed for a proper assessment of Art.18§§1 and 3, Art.19§§7,8 and 12 and Art.31§§1 and 3.

As regards Art.2§4, Art.8§3 and Art.19§§4, 6 and 10, the current situation does not seem to be in conformity with the requirements of the Revised Charter. The Government is encouraged to take efforts towards ensuring the respective rights in law and in practice in the future.

The European Committee of Social Rights remains at the disposal of the authorities of Malta and encourages them to take the necessary steps towards acceptance of the indicated provisions of the Revised Charter as well as the collective complaints procedure.

The factsheet on the provisions of the Revised Charter accepted by Malta appears in Appendix I.

The next examination of the provisions not yet accepted by Malta will take place in 2025.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

In the written report the Maltese authorities present the situation in Malta concerning the non-accepted provisions of the Revised Charter, indicating also their current position as regards possible acceptance of concerned provisions.

Article 2§4 (*Right to just working conditions – elimination of risks in dangerous or unhealthy occupations*)

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations.

Situation in Malta

The Maltese report refers to the conclusions of the ECSR from 2010, when the Committee considered that the legal situation in Malta did not appear to be in conformity with Article 2§4 of the Revised Charter, as no provision is made for reducing working time or otherwise reduce exposure, where risk cannot be fully eliminated. The prevention and elimination of risks are reflected in Maltese legislation and practice in accordance with EU rules and exposure time to risk factors may not exceed prescribed limits. However, where such risks cannot fully be eliminated (as in the building sector or quarrying), no provision is made for the reduction of working time. The same position was reiterated in 2015.

According to the report, Malta's position in respect of this provision has not changed.

Opinion of the European Committee of Social Rights

The Committee reiterates the applicable case-law as regards Article 2§4. This provision requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations as well as to ensure some form of compensation for workers exposed to risks that cannot be eliminated or sufficiently reduced either in spite of the effective application of the preventive measures or because they have not yet been applied.

Article 2§4 refers to two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, however, other approaches to reducing exposure to risks may also ensure conformity with the Revised Charter. They need to be assessed on a case by case basis. As no provision is made in Malta for reducing working time or otherwise reduce exposure, where risk cannot be fully eliminated, the Committee considers that additional measures need to be taken to bring the situation in Malta in conformity with Article 2§4.

Article 2§7 (*Right to just working conditions – night work*)

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Situation in Malta

The Maltese report refers to Articles 9 and 10 of the Organisation of Working Time Regulations, which concern night work and require medical examinations prior to night work and also allow for transfer to daytime work.

The report confers that Article 2§7 can be accepted by Malta.

Opinion of the European Committee of Social Rights

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define what is considered to be “night work” within the context of this provision, in particular what period is considered to be “night” and who is considered to be a “night worker”.

The Committee welcomes the readiness of the Maltese authorities to accept Article 2§7 of the Revised Charter and reiterates its previous finding that there are no obstacles to the acceptance by Malta of this provision.

Article 8§3 (*The right of employed women to protection of maternity – time off for nursing infants*)

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

➤ to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

Situation in Malta

According to the report, the Maltese authorities consider that it will be difficult for small enterprises, which constitute the majority of enterprises in Malta, to provide nursing breaks for their staff, and that they do not regard it realistic to have childcare facilities on site where there are only one or two employees, nor to allow such employees to take breaks.

Based on these considerations, the Maltese authorities do not currently consider acceptance of Article 8§3 of the Revised Charter.

Opinion of the European Committee of Social Rights

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose. Time off for nursing should in principle be granted during working hours and should be treated as normal working time and remunerated as such. However, provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance. Time off for nursing must be granted at least until the child reaches the age of nine months. The practical ways of implementing this provision are assessed on a case-by-case basis.

The Committee notes that additional measures should be taken to bring the current legal situation and practice in Malta in conformity with Article 8§3 of the Revised Charter, in particular as regards small enterprises.

Article 12§2 (*Right to social security*)

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

➤ to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security.

Situation in Malta

In previous reports on non-accepted provisions (in 2010 and 2015), the Maltese authorities had indicated that a process of preparing for ratification of the European Code of Social

Security had been undergoing and had suggested that once Malta has ratified the Code, it will proceed to accepting Article 12§2 of the Revised Charter.

According to the current report, the preparations are now completed and the authorities consider that Malta satisfies the requirements to ratify the European Code of Social Security. However, they suggest that a bilateral meeting is held to confirm its readiness.

Opinion of the European Committee of Social Rights

Article 12§2 obliges States Parties to establish and maintain a social security system which is at least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of six of the nine parts relating to branches of social security, although certain branches count for more than one part (medical care counts as two parts, and old age counts as three). Each contingency sets minimum levels of personal coverage and minimum levels of benefits.

The Committee welcomes the completion of preparations for ratification of the European Code of Social Security. The Committee remains at the disposal of the Maltese authorities to discuss steps towards ratification of the Code and acceptance of Article 12§2 of the Revised Charter.

Article 18 (*Right to engage in a gainful occupation in the territory of other Parties*)

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

Article 18§1:

- to apply existing regulations in a spirit of liberality;

Article 18§2:

- to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;

Article 18§3:

- to liberalise, individually or collectively, regulations governing the employment of foreign workers.

Situation in Malta

According to the information provided in the report, persons from all EU Member states as well as EEA countries and Switzerland are eligible to live and work in Malta without a need of an employment licence (work permit), and have the same rights as Maltese nationals to access the labour market in Malta. Other foreign nationals wishing to work in Malta must obtain an employment licence. In 2005 such responsibility was delegated to Jobsplus agency. However, following the transposition of the Single Permit Directive (Directive 2011/98/EU), third country nationals (TCNs) wishing to reside and work in Malta need to apply for a Single Permit (including Residence and Work) at Identity Malta Agency.

TCNs qualifying for a Single Permit would still require an employment licence in order to work in Malta, but the issue of such licence is an internal process between the Identity Malta Agency and Jobsplus. In this respect, Jobsplus continues to conduct the labour market tests and consequently a number of requirements still apply in order to carry out such tests.

In respect of TCNs who do not qualify for the Single Permit Application, an employment licence is granted to an employer subject to labour market considerations; and the employer

must demonstrate that every effort has been made to recruit a Maltese/EU citizen. Such licences are issued for a specific job and for a specific period, for a maximum period of one year with the exemption of asylum seekers whose work permit is valid for 6 months and failed asylum seekers whose work permit is valid for 3 months. The duration of these licences depends on the status of the application submitted with the Refugee Commission for asylum. In general employment licenses are renewable. A residence permit is automatically granted where a work permit has been approved.

The Maltese authorities consider the system to be transparent in that a decision to refuse to grant an employment licence is reasoned and applicants may request a reconsideration of their case. Fees for an employment licence vary according to the status of the applicant. The fee for an asylum seeker, recognized refugees, beneficiaries of subsidiary protection and persons granted analogous forms of protection is €58 on issue. All other TCNs pay €150 on application and a further €80 as the employment licence is issued.

The provision is not applicable for the employment of TCN in the public service. In cases of short-term employment of a group of foreign nationals in the film and entertainment industry, a bulk licence fee is payable: €150 for the first persons; €15 for any additional person up to a maximum of €500 payable on application. If the bulk licence is issued, an additional €80 is payable. Jobsplus informs its clients that payment for the above-mentioned documentation needs to be agreed between the employer and the employees.

Opinion of the European Committee of Social Rights

Article 18 applies to employees and the self-employed who are nationals of States which are Party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion. Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.

The assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures must be broken down by country and must also distinguish between first-time applications and renewal applications.

Economic or social reasons might justify limiting access of foreign workers to the national labour market. This may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers. However, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market.

Formalities and dues and other charges governing the employment are dealt with specifically under Art.18§2. Conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time. States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. In order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

In addition, States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the areas of access to the labour market, the right to engage in an occupation, and rights in the event of loss of employment. The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met. States Parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. As regards the right to engage in an occupation, a person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted. Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.

To permit full assessment of the situation in practice as regards Article 18§1, data on the refusal rates for work permits needs to be collected by authorities. As the Maltese report does not contain such data, the Committee can't perform a proper assessment of the situation in respect of Article 18§1 of the Revised Charter.

As regards Article 18§2, the Committee reiterates its earlier finding that there are no major obstacles to the acceptance by Malta of Article 18§2 of the Revised Charter.

As regards Article 18§3, the information provided in the Maltese report is too scarce and further information on the current legal situation and practice is needed to allow a proper assessment of the situation.

Article 19 (*Right of migrant workers and their families to protection and assistance*)

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

Article 19§1

➤ to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

Article 19§2

➤ to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

Article 19§3

➤ to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

Situation in Malta

According to the report, Article 19§§1–3 could be accepted by Malta. No further information is provided.

Opinion of the European Committee of Social Rights

Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate. Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States Parties must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

Article 19§2 obliges States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception. ‘Reception’ means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty, and the measures at issue must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.

The obligation to “provide within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey” relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the State is not responsible.

The scope of Article 19§3 extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin. Formal arrangements are not necessary, the provision of practical co-operation on a needs basis may be sufficient.

The Committee reiterates its previous finding that Article 19§1 could be immediately accepted by Malta. The Committee also welcomes the readiness of the Maltese authorities to accept Art.19§§2 and 3.

Article 19§4

➤ to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

- a. remuneration and other employment and working conditions;
- b. membership of trade unions and enjoyment of the benefits of collective bargaining;
- c. accommodation.

Situation in Malta

According to the report, the law expressly provides that migrant workers have equal rights in respect of remuneration and other employment and working conditions. A foreign national working in Malta has all the rights of a Maltese employee in accordance with the Employment and Industrial Relations Act (2003). Any employee who believes that his or her rights are breached in any way may seek recourse at the Department of Industrial and Employment Relations. Employers should not engage foreign nationals on conditions of work or wages/salaries, which are less favourable than those established for work of the same character or nature by national laws and regulations.

However, there are residence requirements for purchasing property in Malta and Gozo. Under the Immovable Property (Acquisition by Non-Residents) Act, Maltese and EU citizens who have continuously resided in Malta for five or more years may purchase any immovable property, for any purpose, without any restrictions or limits. Maltese and EU citizens who have not resided continuously in Malta for 5 years, require prior authorisation from the Commissioner for Revenue (CfR) when purchasing immovable property for the purposes of their secondary residence or holiday home. However there are no such restrictions in respect of the purchase of immovable properties as the primary residence. Migrant workers who do not fall within the above two categories of residence, require prior authorisation from the CfR when purchasing immovable properties either for their primary or secondary residence, or any other purpose. In the private residential lease market, there are no restrictions on the basis of nationality, residence or origin and the conditions stipulated within the lease agreement wherein a migrant worker is a tenant cannot be less favourable than those wherein the tenant is a Maltese or EU citizens, in accordance with Section 4(d) of the Equal Treatment of Persons Order.

Opinion of the European Committee of Social Rights

Article 19§4 guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation.

States are required to guarantee certain minimum standards in these areas with a view to assisting and improving the legal, social and material position of migrant workers and their families. States are obliged to eliminate all legal and *de facto* discrimination concerning remuneration and other employment and working conditions, including in-service/vocational training and promotion. The right to membership of a trade union includes the right to be founding member and access to administrative and managerial

posts in trade unions. This also applies to workers who provide services within the host state but are contracted by an employer in another state. There must be no legal or *de facto* restrictions on access to public or private accommodation including home-buying, access to subsidised housing or housing aids, such as loans or other allowances. The Committee recalls that Article 19§4 does not require States to provide housing for everyone, but to ensure non-discrimination in access to housing.

The Committee notes that the Maltese law provides for equal treatment in working conditions and pay. However, no details are provided in the report as regards equal treatment in respect of formation and participation in trade union activities, and enjoyment of the benefits of collective bargaining.

The report explains the applicable restrictions on non-EU nationals for purchasing home in Malta. Such restrictions raise a problem of conformity with Art.19§4 of the Revised Charter.

Article 19§5

➤ to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

Situation in Malta

According to the report, Article 19§5 could be accepted by Malta. No further information is provided.

Opinion of the European Committee of Social Rights

Article 19§5 recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.

The Committee welcomes the readiness of the Maltese authorities to accept Article 19§5 and reiterates its previous finding that there are no major obstacles to the acceptance by Malta of this provision.

Article 19§6

➤ to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

Situation in Malta

According to the information provided in the report, the third country nationals who are recognised by Identity Malta agency (IMA) as direct family members of EU nationals, irrespective of their nationality, are exempted from the need to have an employment licence. However, in the case were IMA does not recognise them as family members of EU nationals, they need to apply for a permit. In such cases, family members of non-EU nationals are subject to the same procedure as the 'sponsor' i.e. if the 'sponsor' is to apply for a single permit to work in Malta, the same applies to the family member.

According to the information of previous reports, a third-country national may to apply for family reunification if he/she is holding a residence permit valid for a minimum period of one year and has reasonable prospects of obtaining the right of permanent residence. A third country national may not submit an application for family reunification before he has resided legally in Malta for a minimum period of twelve months.

The following family members are eligible for family reunification: a spouse (at least 21 years of age); unmarried minor children including children adopted in a manner recognized by Maltese law. The family members can be granted a first residence permit for a period of one year, which can be renewable, provided that the duration of the residence permits (granted to the members of the family), does not extend beyond the date of expiry of the original residence permit.

Evidence must be provided that a family relationship exists with the persons who are the subject of the application, and that the third country nationals has (i) accommodation regarded as normal for a comparable family in Malta and which meets the general health and safety standards in force in Malta; (ii) sickness insurance in respect of all risks for himself, and the members of his family; (iii) stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to, at least, the average wage in Malta with an addition of another twenty percent income or resources for each member of the family who will be the subject of the family reunification application.

Opinion of the European Committee of Social Rights

Article 19§6 obliges States to allow the families of migrants legally established in their territory to join them. The worker's children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years).

The Committee considers that certain conditions excessively inhibit family reunion and are therefore violations of the Charter, these include: refusal on health grounds except where the condition is a threat to public health, order or security; a requirement that the migrant has been resident for more than one year; a requirement that the family have sufficient accommodation which is too restrictive; a requirement that the family have sufficient means which is too restrictive; or language tests which must be passed in order to be allowed to join the family in the State.

The Committee had previously held that the legal situation and practice in Malta does raise a problem of conformity with Article 19§6 of the Revised Charter, due to restrictions on the access to the country for members of the family of workers who have not stayed lawfully in Malta for a prescribed period. The Committee reiterates its previous finding. The Committee also notes that updated information on refusals of family reunion is needed to assess the situation in practice.

Article 19§7

➤ to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article

Situation in Malta

The report indicates that the foreign nationals who are present in Malta and satisfy the requisites of article 912 of Chapter 12, should qualify for legal aid.

Opinion of the European Committee of Social Rights

Under Article 19§7, States must ensure that any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if he or she cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings.

The Maltese report does not specify the requisites of article 912 of Chapter 12, which need to be satisfied to qualify for legal aid in Malta. According to the 2017 report “Access to Legal Assistance in Malta” by Aditus Foundation and the Critical Institute¹, Article 912 of the Code of Organisation and Civil Procedure stipulates that legal aid may be granted to any person who is a party to a civil dispute or who has good grounds for commencing civil legal action; and whose maximum income did not exceed the national minimum wage and total assets did not exceed € 6,988.

The Committee notes that further information is needed to assess the situation in practice.

Article 19§8

➤ to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

Situation in Malta

According to the report, the Maltese authorities are still waiting feedbacks from responsible entities concerning the situation in the country. In this respect, the situation has not changed compared to 2015 when such feedback was also not available. No other information is provided in respect of Article 19§8.

Opinion of the European Committee of Social Rights

Article 19§8 obliges States 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 morality. Expulsion for offences against public order or morality can only be in conformity with the Charter if they constitutes a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on 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.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment. The fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion. States must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body, even in cases where national security, public order or morality are at stake.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members

¹ Available at https://aditus.org.mt/Publications/atlas/atlasreport_2017.pdf

have an independent right to stay in the territory. Moreover, for as long as a migrant workers' family members hold a right of residence it must not be possible to remove them, even if the migrant worker has personally lost this right, except where they endanger national security or offend against public interest or morality. Finally, the impossibility of expelling or removing a migrant worker which follows either from a State Party's undertakings pursuant to the Charter or from choices specific to that State and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence.

The guarantees against expulsion contained in this paragraph only apply to migrant workers and his or her family members if these persons reside lawfully in the territory of the State.

Further information on law and practice is needed to allow the Committee to assess whether the situation in Malta complies with Article 19§8 of the Revised Charter.

Article 19§9

➤ to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

Situation in Malta

According to the report, Article 19§9 could be accepted by Malta. No further information is provided.

Opinion of the European Committee of Social Rights

Under Article 19§9 migrants must be allowed to transfer money (earnings and savings) to their own country or any other country both during their stay and when they leave their host country. There may be legal limits, but not excessive restrictions. This provision includes the right to transfer moveable property in their possession.

The Committee welcomes the readiness of the Maltese authorities to accept Article 19§9.

Article 19§10

➤ to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

Situation in Malta

According to the information provided in the report, the Single Permit application process does not apply in the case of self-employment. Guidelines for the engagement of third country nationals (TCN) in self-employment vary according to status. A TCN applying for self-employment must meet one or more of the following criteria: invest in Malta a capital expenditure of at least €500,000 on fixed assets within six months from the date on which Jobsplus has issued the self-employment licence; is a highly skilled innovator with a sound business plan and commits to recruit at least three EEA/Swiss/Maltese nationals; a person leading a project approved by Malta Enterprise. TCNs who are long-term residence, asylum seekers, beneficiaries of subsidiary or international protection and refugees require only an employment licence to work as self-employed and are exempted from meeting the above listed criteria.

The report suggests that even though access to self-employment of TCNs is more restrictive as they have to satisfy one or more of the criteria mentioned above, they enjoy the same rights as other migrant workers. However, family members of TCNs in self-employment are subject to the same procedures as the TCN 'sponsor'. This means that if the dependent, i.e. family member, wants to be self-employed, the same investment criteria would apply and if they want to access the labour market one has to apply for a Single permit or an employment licence (if they do not qualify for the Single permit).

Opinion of the European Committee of Social Rights

Under Article 19§10, States must ensure equal treatment of self-employed persons and wage-earners as well as self-employed migrants and self-employed nationals as regards the rights covered by Art.19§§1–9 and Art.19§§11–12.

States must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants. A finding of nonconformity under any of the paragraphs Art.19§§1–9 or Art.19§§11–12 may lead to a finding of nonconformity under Art.19§10.

Referring to the above indicated problems of conformity with Article 19§§4 and 6, additional measures should be taken to bring the situation in compliance with requirements of Art.19§10 of the Revised Charter.

Article 19§11

➤ to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

Situation in Malta

According to the report, Malta continuously evaluates and monitors the needs of learners to ensure that the education system promotes a culture of dialogue and democratic values, creating a space for community building at the national level, through best practices.

Malta is implementing Migrant Integration Strategy and Action Plan - Vision 2020 "Integration = Belonging" and has undertaken various measures in the framework of this strategy. With regard to compulsory education, the Migrant Learners' Unit was set up to strengthen the provision for inclusive support for children from a migrant background. The programme focuses on the learning of Maltese and English, which are the languages of schooling in Malta. Other academic subjects are also taught, adopting a Content and Language Integrated Learning (CLIL) approach. The induction programme focuses on each learner's well-being offering a holistic educational experience while focusing on the acquisition of linguistic and socio-cultural competences. The Ministry for Education and Employment has set induction processes for newcomer migrant learners who cannot as yet communicate in the languages of instruction in Maltese state schools (Maltese and English). The induction process spans over one school year and is held in over 20 schools and hubs all over Malta and Gozo. During 2019–2020, a new induction hub for students of secondary schooling age has been set up.

Since 2011, the Ministry for Education and Employment has been involved in the Language Learning and Parental Support for Integration (LLAPSI and LLAPSI+) Projects, a series of EU-funded projects mainly through the Integration Fund (IF), the European Refugee Fund (ERF) and currently the Asylum and Migration Integration Fund (AMIF). Most of the projects focused on the upskilling of teachers, procurement of teaching materials and the

development of learning and assessment tools. The current LLAPSI+ project also includes the recruitment of a team of Community Liaison Staff with the main objective of school outreach to support parents and guardians whose children are in schooling. This initiative contributes to consolidating the home-school links and works towards building a more cohesive society even within the school communities. The Migrant Learners' Unit also has the services of a social worker and a counsellor who work in the different schools and hubs. Through the LLAPSI+ project, the Migrant Learners Unit has also offered a summer intensive language course (the Language 2 Go!) with the aim of supporting newly arrived learners who are still struggling with learning the languages of schooling. The courses have been offered annually in four different sites in both Malta and Gozo. Apart from language training components, the current LLAPSI+ project includes components such as 'Making Friends-Bringing Friends Clubs', an afterschool creative club with the aim of providing an opportunity for newcomer learners to work together and strengthen the relationship between different cohorts including EU nationals and the hosting community.

The Malta College of Arts, Science and Technology (MCAST), which is Malta's main vocational education and training institution, treats all prospective learners equally without any discrimination. Prospective students, including migrants, who require additional information/support at that initial stage are provided with the various specialised services on campus. These services include career guidance, both group and individual, assistance through the Integration Unit and sessions on how to access information. MCAST also carries out outreach activities to help out migrants to engage themselves in vocational education, including apprenticeship and placements in industry, to acquire the necessary skills to join the labour market and eventually integrate themselves within the Maltese community. Through MCAST's contacts with migrant organisations and NGOs working in the field the required information on how to access services, including career guidance, is provided.

MCAST also carries out outreach activities in secondary schools with particular focus on the preparation of migrant students. If the students are in their early secondary years, they will thus have time to prepare themselves in time to be able to choose their post-secondary education paths.

With regards basic skills investment, through MCAST's learning support unit, students are supported in the basic skills at whatever level they are studying to facilitate their access to education. The introduction of Maltese as a Foreign language ensures a fair possibility for student speakers of other languages to succeed and is also helping them in their integration process. This conforms with the approach adopted by the Human Rights Department, which is implementing an AMIF project (also known as the I Belong Programme). MCAST collaborates with Human Rights Directorate (HRD) by providing the service of Stage 1 lectures in Maltese, English and cultural awareness.

The Department of Inclusion and Access to Learning of the University of Malta has been commissioned to design, deliver and oversee the implementation of an important part of the migrant integration process. As part of the University of Malta's internationalisation programme, the University is seeking to attract a number of non-EU/EEA nationals to read for Masters and PhD programmes in different areas of study, to strengthen the research and innovation dimensions of the University of Malta.

Within the Ministry for Tourism, the Institute of Tourism Studies (ITS) is also supporting the Integration Strategy on the ground. ITS enrolls numerous foreign students and the Institute makes it a priority to make them feel welcome by encouraging also other national students to help them and make them feel that they belong at the Institute.

The Directorate for Research, Lifelong Learning and Employability within the Ministry for Education and Employment pursues a policy of inclusivity. Lifelong learning courses are open to both Maltese and non-Maltese nationals. The Directorate has developed courses in Maltese-as-a-foreign-language (MFL) and English-as-a-foreign-language (EFL). At enrolment stage, asylum seekers and beneficiaries of international protection are given the same rights as Maltese and EU citizens. Courses in English-as-a-foreign-language (EFL) and Maltese-as-a-foreign-language (MFL) offered by the Directorate for Research, Lifelong Learning and Employability within the Ministry for Education and Employment are accredited and lead to the awarding of a General Education Award at Malta Qualifications Framework (MQF) levels 1 and 2. Furthermore, to increase accessibility, courses by the Directorate for Research, Lifelong Learning and Employability within MEDE are offered at a minimal cost, including free of charge to certain cohorts. Courses are offered in various localities, including those with high migrant populations. Additionally, from time to time, the Directorate for Research, Lifelong Learning and Employability within MEDE offers courses targeted at specific migrant groups, in partnership with NGOs working with such cohorts.

The Institute for Education's initial teacher training courses include modules on the subject to ensure that the new teaching workforce is capable of creating the inclusive environment conducive to learning required by all learners. It also offers accredited short courses on multiculturalism in education, how to include international learners in the learning experience classroom and courses that empower senior management teams in schools to create a multicultural environment. The Institute for Education is also creating supporting resources for schools to pick and choose from according to their particular needs and demographics.

Jobsplus (the Maltese public employment services) provides language courses in Maltese and English for foreigners (including third country nationals) free of charge to all individuals of working age with a valid residence permit in Malta and subject that they meet the eligibility criteria of the course. Jobsplus courses, which are pegged to the Maltese and European Qualification Frameworks, aim at helping individuals acquire transversal and specific skills which are labour market related. Language courses provided by Jobsplus aim at equipping participants with the necessary literacy skills and be exposed to the basics of the language in order to facilitate everyday interaction in social and work environments.

Opinion of the European Committee of Social Rights

Under Article 19§11 States should promote and facilitate the teaching of the national language to migrants and their family members which is the main means to integrate into the world of work and society at large. The Committee holds that national language classes shall be provided free of charge otherwise these are not accessible to many migrants, and a requirement to pay substantial fees is not in conformity with the Charter.

In the light of the legal situation and practice in Malta, the Committee holds that there are no major obstacles to the acceptance by Malta of Article 19§11 of the Revised Charter.

Article 19§12

➤ to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Situation in Malta

According to the report, the Maltese authorities are still waiting feedbacks from responsible entities concerning the situation in the country. In this respect, the situation has not changed

compared to 2015 when such feedback was also not available. No other information is provided in respect of Article 19§12.

Opinion of the European Committee of Social Rights

Under Article 19§12 States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories in schools, voluntary associations, NGOs etc.

The Committee has previously requested further information on how the state promotes and facilitates mother tongue teaching, to assess whether the situation in Malta complies with Article 19§12 of the Revised Charter. As this information has not been provided, the Committee reiterates its request.

Article 21 (*Right to information and consultation*)

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake:

➤ to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Situation in Malta

According to the report, Article 21 could be accepted by Malta. No further information is provided.

Opinion of the European Committee of Social Rights

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. However it is not applicable to public servants. All categories of employees (all employees with an employment contract with an undertaking, irrespective of their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.

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. The thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state – are in conformity with this provision.

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 environment except where the conduct of the business requires that some confidential information not be disclosed.

Furthermore, they 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.

The rights to information and consultation must be effectively guaranteed and workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under this Article.

The Committee welcomes the readiness of the Maltese authorities to accept Article 21 and encourages them to proceed towards acceptance.

Article 22 (*Right to participate in the improvement of working conditions*)

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake

- to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:
 - a) to the determination and the improvement of the working conditions, work organization and working environment;
 - b) to the protection of health and safety within the undertaking;
 - c) to the organisation of social and socio-cultural services and facilities within the undertaking;
 - d) to the supervision of the observance of regulations on these matters.

Situation in Malta

According to the report, Article 22 could be accepted by Malta. No further information is provided. In previous reports (2010 and 2015) the Committee had noted that all large enterprises have health and safety committees, whereas this was not necessarily the case in smaller enterprises.

Opinion of the European Committee of Social Rights

Article 22 of the Revised Charter 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 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, such as:

- the determination and improvement of the working conditions, work organisation and working environment;
- the protection of health and safety within the undertaking. The right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Revised Charter. For the States Parties who have accepted Articles 3 and 22, this issue is examined only under Article 22;
- the organisation of social and socio-cultural services within the undertaking. The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned

or have already been established. Article 22 of the Revised Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established.

Workers must have legal remedies when these rights are not respected. There must also be sanctions for employers which fail to fulfil their obligations under Article 22.

During the previous assessment, the Committee held the view that subject to certain clarifications, in particular on the existence of participation arrangements in smaller enterprises, there seemed to be no major obstacles to the acceptance by Malta of Article 22 of the Revised Charter. The Committee welcomes the readiness of the Maltese authorities to accept Article 21 and encourages them to proceed towards acceptance.

Article 27 (*Right of workers with family responsibilities to equal opportunities and equal treatment*)

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

Article 27§1 (*Participation in working life*)

➤ to take appropriate measures:

c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements

Situation in Malta

According to the report, in 2014 Malta set up the free childcare scheme, offering free childcare services, as an active labour market policy, to children up to the age of 3 years, whose parents are in employment or education. This serves as an opportunity to sustain and nurture early childhood development, care and pre-primary education through a stimulating learning environment. Children are provided with quality education and care services that focus on children's interests and play-based learning. Working in partnership with primary caregivers, including parents or guardians, each child is empowered to develop a lifetime of learning in a fun, caring and meaningful approach.

Opinion of the European Committee of Social Rights

Article 27§1 addresses the issues of reconciliation of work and family responsibilities.

Under Article 27§1(c), States shall develop child day care services and other childcare arrangements, and make them available and accessible to workers with family responsibilities. Another aspect addressed under Art. 27§1(c) is that parents should be allowed to reduce or cease work because of the serious illness of a child. As regards child care services, there is an overlap between Article 16 and Article 27§1(c) of the Revised Charter. As Malta has ratified Article 16, it is already bound by the obligation concerning the provision of child day care services under that provision.

In the light of the Committee's case law and the legal situation and practice in Malta, the Committee is of the view that there are no obstacles to the immediate acceptance of Article 27§1(c).

Article 30 (*Right to protection against poverty and social exclusion*)

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.
- b. to review these measures with a view to their adaptation if necessary.

Situation in Malta

According to the report, Article 30 could be accepted by Malta. No further information is provided.

Opinion of the European Committee of Social Rights

Article 30 requires States to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should be in place monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and social exclusion. This approach must link and integrate policies in a consistent way, moving beyond sectoral or target group approach.

The measures taken must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance, addressing the multidimensional phenomena of poverty and social exclusion. The measures 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 regions.

Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken. As long as poverty and social exclusion persist, there should be an increase in the resources deployed to make social rights possible. Adequate resources should be allocated to attain the objectives of the strategy. The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country.

To assess national situations, the Committee uses the Eurostat at-risk-of-poverty rate (the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income) before and after social transfers is used as a comparative value.

In a statement of interpretation from 2013, the Committee noted that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Revised Charter. The governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.

In previous reports, the Committee had taken note that a Strategy against Poverty had been launched, setting out policy measures to target the groups of people who are at risk of poverty and social exclusion. The Committee observes that the share of population living at risk of poverty or social exclusion in Malta (20.1% in 2019 by Eurostat), has been below the European average.

The Committee welcomes the readiness of the Maltese authorities to accept Article 30 and encourages them to proceed towards acceptance.

Article 31 (*Right to housing*)

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

Article 31§1 (*Adequate housing*)

- to promote access to housing of an adequate standard

Situation in Malta

According to the information provided in the report, new constructions must meet the requirements established in the Development Control Design Policy, Guidance and Standards 2015 by the Malta Environment and Planning Authority, the Building Regulation Act and other regulations under the supervision of the Maltese Building & Construction Agency. However, there are no requirements to ensure that older constructions are adequate, although housing benefits are available to make existing buildings adequate and any renovation of existing buildings must comply with the Energy Performance Certificate Regulations. Under legislation on rented properties, a landlord is obliged to make structural renovations and the tenant has an obligation to maintain a rented property. The Private Residential Leases Act (effective from 1 January 2020) also stipulates that the Housing Authority shall have the power to introduce and enforce minimum standards of habitability for tenements which are offered for letting, however no minimum standards have been published so far.

Around 81% of the population are private homeowners. Better security of tenure has been given to tenants in the Private Residential Leases Act by setting a minimum period of one year for “long” private residential lease agreements and imposing minimum notice periods for landlords in cases of non-renewal.

Opinion of the European Committee of Social Rights

Under Article 31§1 States must guarantee to everyone the right to adequate housing. Adequate housing means a dwelling which is: 1) safe from a sanitary and health point of view and possesses all basic amenities (such as water, heating, waste disposal, sanitation facilities, electricity etc.); 2) not over-crowded – the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence; 3) with secure tenure supported by the law. To ensure that the housing stock is adequate, public authorities shall take appropriate measure, such as conduct an inventory of the housing stock; apply injunctions against owners who disregard obligations; adopt urban development rules and maintenance obligations for landlords; and take safeguards against the interruption of essential services such as water, electricity and telephone. Public authorities shall also promote access to housing for different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities, including those with mental health problems. Hence, beyond legal provisions effective implementation is necessary.

During the previous assessment in 2015 the Committee expressed the view that while overall the measures in place seem to correspond to those required by Article 31§1, more information was needed on the notion of adequacy of housing, and on the absence of a requirement to ensure the adequacy of older constructions. The additional information

provided is still too limited to permit a thorough assessment on whether this right is effectively guaranteed in practice.

Article 31§2 (Reduction of homelessness)

➤ to prevent and reduce homelessness with a view to its gradual elimination;

Situation in Malta

The report provides information on the situation as regards the definition of homelessness. Reference is made to the homelessness project conducted by the Foundation for Social Welfare Services' Research Team from June 2017 to April 2018. The project consisted of several research components to examine the homelessness issue. The research team observed that the Maltese law does not define homelessness. The project utilised an operational definition of homelessness from literature (Edgar et al 2007: 56):²

A homeless person is someone who does not have access to accommodation which they can reasonably occupy, whether this accommodation is legally their own property or whether the property is rented; provided by institutions; provided by employers; or occupied rent-free under some contractual or other arrangement.

Based on this approach, service users were identified as homeless if they were:

- living rough,
- living in emergency accommodation (emergency shelter),
- living in accommodation for the homeless,
- living in institutions (health and penal),
- living in nonconventional dwellings due to lack of housing,
- living in unfit housing
- living temporarily in conventional housing with family and friends (due to lack of housing)

When a homeless person seeks help from the Foundation for Social Welfare Services, the following stages are carried out:

- appointment and initial assessment;
- assessment;
- finding an alternative accommodation;
- COVID-19 testing;
- relocation to a homeless shelter;
- care plan
- follow-up.

The report also lists 12 institutions, which receive the Government financing in 2020 to provide services, such as shelter, for the homeless (amongst others).

According to Chapter 12 of the Laws of Malta, there is no automatic right to a legal aid lawyer in eviction cases. This right applies only in the cases indicated in article 913 (1) of Chapter 12 whereby in order to be eligible for legal aid in an eviction case, one must satisfy the means test established by article 912 (b) of Chapter 12.³

Opinion of the European Committee of Social Rights

² Edgar, B.; Harrison, M.; Watson, P.; Busch-Geertsema, V. (2007). Measurement of homelessness at European Union level. Scotland: Joint Centre for Scottish Housing Research.
https://ec.europa.eu/employment_social/social_inclusion/docs/2007/study_homelessness_en.pdf

³ See footnote 1 above. The income threshold according to this provision was the following: the income did not exceed the national minimum wage and total assets did not exceed € 6,988.

Article 31§2 addresses the issue of prevention and reduction of homelessness. States must take action to prevent groups of vulnerable people from becoming homeless, in particular by ensuring access to social housing and setting up procedures to limit the risk of eviction. Evictions should be governed by rules of procedure, which are sufficiently protective of the rights of the persons concerned. There shall be legal protection of persons threatened by eviction, including an obligation to consult the parties affected to find alternative solutions to eviction, and an obligation to fix a reasonable notice period before eviction. Evictions, if they could not be avoided, must be carried out under conditions which respect the dignity of the persons concerned. Evictions carried out at night or during the winter period shall be prohibited by law and authorities must adopt measures to re-house or financially assist the persons concerned. To prevent homelessness, there shall be access to emergency measures, such as shelter, accompanied with procedures to find more permanent housing. The conditions in temporary shelters shall enable living in keeping with human dignity.

In the light of the legal situation and practice, the Committee is of the view that there are no major obstacles to the acceptance by Malta of Article 31§2 of the Revised Charter.

Article 31§3 (*Affordable housing*)

- to make the price of housing accessible to those without adequate resources.

Situation in Malta

According to the report, the Government housing does exist, but the stock is limited and currently there are 2602 persons on the Government's waiting list for social accommodation. There are also various schemes aimed at helping both young individuals (21 to 39 years of age) and separated or divorced adults (over 40 year of age) to purchase property at affordable rates. The Housing Authority also operates a Private Rent Housing Benefit Scheme which ensures that the total housing expenses of eligible tenants does not exceed the affordability thresholds established by said Authority from time to time.

Opinion of the European Committee of Social Rights

Article 31§3 addresses the affordability of housing, in particular for persons with limited resources. Social housing should target the most disadvantaged. Waiting periods for the allocation of housing must not be excessive, and legal and non-legal remedies must be available when waiting periods are long. Housing benefits shall be available at least for low-income and disadvantaged groups. Finally, the rights to housing must be guaranteed without discrimination, in particular in respect of Roma or travellers.

The Committee has previously asked for further information on the legal situation and practice, in particular on the extent of the housing stock and the waiting list, to assess the situation in Malta in respect of Article 31§3 of the Revised Charter. Given the updated information on the number of persons on the waiting list for social accommodation, the Committee notes that this number has increased by about 30% compared to previously reported number. Further information is also sought on the practical implementation of housing rights and policies, to establish that measures are being taken to make the price of housing accessible to those without adequate resources.

APPENDIX I

Situation of Malta with respect to the European Social Charter

Signatures and ratifications

Malta ratified the Revised European Social Charter on 27 July 2005 accepting 72 of its 98 paragraphs.

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
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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
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26.2	27.1 ¹	27.2	27.3	28	29	30	31.1	31.2	31.3	

¹ Sub-paragraph c