



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

June 2018

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

SWEDEN

Written procedure

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OPINION

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

Following this decision, it was agreed that the European Committee of Social Rights 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 would be done for the first time five years after the ratification of the revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

As Sweden ratified the Revised Charter on 29 May 1998, the procedure provided by Article 22 of the 1961 Charter was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Swedish ministries in Stockholm, on 26 and 27 November 2003. Sweden being the first member State to ratify the Revised Charter in May 1998, the Stockholm meeting was the first under the new procedure adopted by the Committee of Ministers in December 2002. In summarising the discussions of the meeting, the President of the Committee noted that although further analysis was obviously needed, there were no significant or insurmountable obstacles to acceptance by Sweden of Articles 2§1, 2§7, 3§4, 4§5, 7§5 and 8§4.

At the second meeting on the non-accepted provisions (Strasbourg, 21 October 2008) the European Committee of Social Rights reiterated its view expressed in 2003 that the provisions then mentioned could be accepted by Sweden. In particular, it concluded that there was no contradiction whatsoever between the Committee's case law and the situation in law and in practice in Sweden in respect of 3 provisions: Articles 2§7, 3§4 and 8§4. The Swedish Government was therefore invited to consider acceptance of these provisions.

With a view to carrying out the procedure for the third time and following the request by Swedish authorities, the European Committee of Social Rights applied a written procedure. By a letter dated 21 March 2014, the Swedish authorities informed the Committee that the Government's position in respect of the provisions under consideration (Articles 2§§1, 2, 4 and 7, 3§4, 4§§2 and 5, 7§§5 and 6, 8§2, 8§§4 and 5, 12§4, 24 and 28) remained the same as in the overview of 2008, and that the rationale for this position had not changed since 2008.

The written procedure was also applied in view to reviewing the situation for the fourth time. Again, by a letter dated 30 May 2018, the Swedish authorities confirmed that the Government's position in respect of the provisions under consideration remained the same as in the overview of 2008 and 2013, and that the rationale for this position had not changed since 2008 and 2013.

The Committee remains at the disposal of the Swedish authorities and encourages them to consider acceptance of the non-accepted provisions identified in 2003 and confirmed in 2008 as posing no problems for acceptance. The next examination of the provisions not accepted by Sweden will take place in 2023.

Furthermore, the Committee invites Sweden to consider recognising the right of national NGOs to lodge complaints before the Committee in the framework of the collective complaints procedure, as foreseen by Article 2 of the Additional Protocol providing for a system of collective complaints.

APPENDIX I - Situation of Sweden with respect to the European social charter

Signatures, ratifications and accepted provisions

Sweden ratified the European Social Charter on 17/12/1962: it accepted 62 of the Charter's 72 paragraphs.

Sweden ratified the Additional Protocol to the European Social Charter on 05/05/89, the Amending Protocol to the European Social Charter on 18/03/1992 and the Additional Protocol providing for a system of collective complaints on 29/05/1998.

It has not yet made a declaration enabling national NGOs to submit complaints.

Sweden ratified the Revised European Social Charter on 29/05/1998: it accepted 83 of the Revised Charter's 98 paragraphs.

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		

Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Sweden](#) in 2003, 2008 and in 2014.

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

MONITORING THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER

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I. COLLECTIVE COMPLAINTS PROCEDURE ²

Collective complaints (under examination)

University Women of Europe (UWE) v. Sweden (Complaint No. 138/2016)
The Committee [declared](#) the complaint admissible on 4 July 2017.

Collective complaints (proceeding completed)

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

Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden (Complaint No. 99/2013)

- No violation of Article 11 (the right to protection of health)

Decision on the merits of 17 March 2015.

Follow up:

- [Resolution Res/CM ChS \(2015\)13 on 17 June 2015](#) of the Committee of Ministers.

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

Confederation of Swedish Enterprises v. Sweden (Complaint No. 12/2002)

- Violation of Article 5 (right to organise)

[Decision on the merits of 15 May 2003](#).

Follow up:

- [Resolution ResChS\(2003\)1 on 26 September 2003](#) of the Committee of Ministers.

- [Assessment of the European Committee of Social Rights on the follow up \(7 July 2016\)](#).

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

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4. Complaints where the Committee has found a violation and where progress has been made but which has not yet been remedied

Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden (Complaint No. 85/2012)

- Violation of Article 6§2 (right to bargain collectively)
- Violation of Article 6§4 (right to bargain collectively),
- Violation of Article 19§4 *a* and *b* (right of migrant workers to protection and assistance)

[Decision on admissibility and the merits of 3 July 2003](#).

¹ The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

² Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

Follow up:

- [Resolution Res/CM ChS \(2014\) 1 on 5 February 2014](#) of the Committee of Ministers.
- [Assessment of the European Committee of Social Rights on the follow up](#) (7 July 2016).
- [Assessment of the European Committee of Social Rights on the follow up](#) (13 September 2017)

5. Complaints where the Committee has found a violation, which has not yet been remedied

II. REPORTING SYSTEM ³

Reports submitted by Sweden

Between 1964 and 2000, Sweden submitted 20 reports on the application of the Charter. Between 2001 and 2017, it submitted 17 reports on the application of the Revised Charter.

The [17th report](#), submitted on 24 October 2017, concerns the accepted provisions of the Revised Social Charter relating to Thematic Group 3 "Labour Rights", namely:

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right of dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),

• THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES (ARTICLE 29).

Conclusions with respect to these provisions will be published in January 2019.

The 18th report is due on 31 October 2018 and will concern the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure.

Findings with respect to these decisions will be published in the autumn of 2019.

³ Following a [decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years. Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups. Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

Situations of non-conformity ⁴

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

► *Article 10§5 – Right to vocational training - Full use of facilities available*

Nationals of other States Parties to the Charter and the 1961 Charter not members of the EU must have a permanent residence permit in order to be entitled to study support for education and vocational training.

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

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

It has not been established that the minimum level of the unemployment and sickness benefits are adequate.

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

The scope of the legal framework to combat age discrimination outside employment is not sufficiently wide.

Thematic Group 3 "Labour rights" - Conclusions 2014

► *Article 6§2 - Right to a bargain collectively – Negotiation procedures*

The statutory framework on posted workers does not promote the development of suitable machinery for voluntary negotiations between employers and workers' organisations with a view to the regulation of terms and conditions of employment by means of collective agreements.

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

The statutory framework on posted workers constitutes a restriction on the free enjoyment of the right of trade unions to engage in collective action.

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

There is no provision that would prevent redundancies from being put into effect before the obligation to inform and consult has been fulfilled.

Thematic Group 4 "Children, families, migrants" - Conclusions 2011

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

a regular medical examination for all young workers is not guaranteed by legislation.

► *Article 17§2 – Right of children and young persons to social, legal and economic protection - Free primary and secondary education - regular attendance at school*

Children unlawfully present in the territory do not have effective access to education.

► *Article 19§§8 and 10 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed; - Guarantees concerning deportation*

Migrant workers expelled on account of national security have no right of appeal to an independent body.

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

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

Thematic Group 1 "Employment, training and equal opportunities"

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

Thematic Group 3 "Labour rights"

- ▶ Article 4§4 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

- ▶ Article 19§1 - Conclusions 2011
- ▶ Article 31§1 - Conclusions 2011

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

(UPDATE IN PROGRESS)

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Entry into force in 2006 of the Children and School Students (Prohibition of Discrimination and Other Degrading Treatment) Act (2006:67). It, *inter alia*, prohibits discrimination of children and pupils on the basis of disability in the field of education.
- ▶ Under legislation adopted in 2005, foreign students are entitled to work in Sweden without obtaining a work permit for as long as their residence permit is valid.
- ▶ Adoption of the Act of 7 April 1994 against ethnic discrimination, including in employment.
- ▶ Adoption of Act No. 433 of 1991 on equal opportunities.

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

- ▶ In 2001, legislation was enacted which makes health education a school subject in its own right
- ▶ Entry into force on 1 January 2001 of the Social Security Act (*Socialförsäkringslagen* No. 1999/799) which contains provisions concerning work-related benefits which are no longer related to residence in Sweden; and all direct references to nationality have been abolished.
- ▶ Abolition of the provision of the legislation governing seafarers which provided that seamen could be bound by coercive measures to remain at their post (Act No. 282 of 18 May 1973 on the Merchant Navy).

Thematic Group 3 "Labour rights"

- ▶ Freedom not to join a trade union - there are no closed shop clauses in any of the collective agreements.

Thematic Group 4 "Children, families, migrants"

- ▶ The Act on the working environment has been extended to cover children under 18 who do not receive any income, including children related to their employer (1990) and those who work in their employer's home (1996).
- ▶ Abolition of the requirement for employers to pay for language courses for their migrant workers (Repeal in 1986 of Act No. 650 of 1972).

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;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;
2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;
3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;
4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;
5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on Governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;
6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;
7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.