

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



24 November 2004

**REPORT ON ITALY
WITHIN THE FRAMEWORK OF ARTICLE 22 PROCEDURE**

Document prepared by the Secretariat

Situation of Italy on 1st November 2004

Ratifications

Italy ratified the European Social Charter on 22/10/1965: it accepted all 72 of the Charter's paragraphs.

Italy ratified Protocol No. 3 on "collective complaints" on 03/11/1997. It has not yet made a declaration enabling national NGOs to submit complaints.

Italy ratified the Revised European Social Charter on 03/05/1996 and has accepted 97 of the Revised Charter's 98 paragraphs.

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								= Accepted provisions			

Reports

Between 1967 and 2003, Italy submitted 20 reports on the application of the Charter and 3 reports on the application of the Revised Charter.

Deadline for the submission of the 4th report on part of the non-hard core provisions of the Revised Charter: before 31/03/2004. Report not yet received.

Deadline for the submission of the 5th report on hard core provisions of the Revised Charter: before 30/06/2005.

Collective Complaints

No. 4/1999 European Federation of Employees in Public Service: Articles 5 and 6

No. 19/2003 World Organisation against Torture (OMCT): Article 17

No. 27/2004 European Roma Right Centre (ERRC): Article 31 and E

Position of the Revised Charter in the domestic order

Article 11.1 of the Constitution reads: "The legal system of Italy conforms to the generally recognized principles of international law".

Italy has incorporated the revised Charter in the domestic legal order through Act No. 30/1999.

The Constitutional Court and Regional Administrative Tribunals have referred to the Revised Charter in several cases.

PROCEDURE PROVIDED BY ARTICLE 22 OF THE CHARTER

Under the new procedure provided by Article 22 of the Social Charter – examination of non-accepted provisions - agreed by the Committee of Ministers in December 2002¹, the Deputies had 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 had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Italy, the European Committee of Social Rights, by a letter dated 02/04/2004, asked Italian authorities to produce a report on the only non-accepted provision of the Revised Charter, Article 25, by 31/07/2004. At 1st November 2004 no report has been received yet.

The European Committee of Social Rights ("the Committee") considers that, under Article 25, the right of workers to the protection of their claims in the event of insolvency of their employer, States benefit from a margin of appreciation as to the form of protection of workers' claims since the provision does not demand the existence of a specific guarantee institution. The protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should apply in situations where the employer's assets are recognized as insufficient to justify the opening of a formal insolvency procedure. In addition, under the Appendix to Article 25, States may exclude certain categories of workers from the protection by reason of the special nature of their employment relationship.

The Committee notes that, though it has not ratified ILO Convention No. 173, Italy transposed Council Directive 80/987/EEC through Legislative Decree No. 80/1992 (GU No. 36 of 13/2/1997, Suppl. Ord. No. 36). Accordingly there is a mechanism ensuring the protection of employees in case of insolvency of their employers. The payment of outstanding employees' claims is ensured by the

¹ Committee of Ministers decision of 11 December 2002.

Guarantee Fund, which is managed by INPS (*Istituto nazionale della previdenza sociale* – National Social Welfare Institution). The payment covers claims appertaining to the last three months of the employment relationship falling within the 12 months preceding the date when the insolvency proceeding started. A maximum ceiling for the payment is set by the legislation.

For this reason the Committee encourages the Italian authorities to accept Article 25 of the Revised Charter.