

– Belgium and the European Social Charter –

Signatures, ratifications and accepted provisions

Belgium ratified the European Social Charter on 16/10/1990 and the Revised European Social Charter on 02/03/2004, accepting 87 of the Revised Charter's 98 paragraphs.

In June 2015 Belgium accepted to be bound by 4 additional provisions (Articles 26§2, 27§1, 27§2 and 28 of the Revised Charter), bringing the total of accepted provisions to 91 of the 98 paragraphs.

It accepted the Additional Protocol of 1995 providing for a system of collective complaints on 23/06/2003, but has not yet made a declaration enabling national NGOs to submit collective complaints.

The Charter in domestic law

Automatic incorporation into domestic law based on case-law (Le Ski judgment, Court of Cassation, 27 May 1971).

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 Belgium](#) in 2009 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 ¹

I. Collective complaints procedure ²

Collective complaints (under examination)

European Youth Forum (YFJ) v. Belgium (Complaint No. 150/2017)

The Committee declared the [complaint admissible](#) on 5 December 2017.

International federation for Human Rights (FIDH) and Inclusion Europe v. Belgium (Complaint No.141/2017)

The Committee declared the [complaint admissible](#) on 4 July 2017.

University Women of Europe (UWE) v. Belgium (Complaint No. 124/2016)

The Committee declared the [complaint admissible](#) in respect of Articles 1, 4, 20 and E of the Charter on 4 July 2017.

Collective complaints (proceedings completed)

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

Centrale générale des services publics (CGSP) v. Belgium (Complaint No. 25/2004)

- Non-violation of Article 6§§1 and 2 (right to collective bargaining)

[Decision on the merits of 9 May 2005.](#)

Follow up:

- [Resolution ResChS\(2005\)13 of 7 July 2005](#) of the Committee of Ministers.

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

International Federation of Human Rights Leagues (FIDH) v. Belgium (Complaint No. 75/2011)

- Violation of Article E (non-discrimination) in conjunction with Articles 14§1 (right to benefit from social welfare services) and 16 (right of the family to social, legal and economic protection)

[Decision on the merits of 18 March 2013.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)16 of 16 October 2013 of the Committee of Ministers.](#)

- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

Defence for Children International (DCI) v. Belgium (Complaint No. 69/2011)

- Violation of Article 7§10 (right of children and young persons to protection)
- Violation of Article 17§1 (right to children and young persons to social, legal and economic protection)

[Decision on the merits of 23 October 2012.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)11 of 11 June 2013](#) of the Committee of Ministers.

- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

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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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](#).

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

Mental Disability Advocacy Center (MDAC) v. Belgium (Complaint No. 109/2014)

- Violation of Article 15§1 (the right of persons with disabilities to education)

[Decision on admissibility and merits of 16 October 2017](#)

Follow up:

- [Resolution CM/ResChS\(2018\)3 of 4 July 2018](#) of the Committee of Ministers.

Association for the Protection of All Children (APPROACH) Ltd v. Belgium (Complaint No. 98/2013)

- Violation of Article 17 (the right of children and young persons to social, legal and economic protection)

[Decision on merits of 20 January 2015.](#)

Follow up:

- [Resolution CM/ResChS\(2015\)12 of 17 June 2015](#) of the Committee of Ministers.

International Federation of Human Rights Leagues (FIDH) v. Belgium (Complaint No. 75/2011)

- Violation of Article 14§1 (right to benefit from social welfare services)
- Violation of 16 (right of the family to social, legal and economic protection)
- Violation of 30 (right to protection against poverty and social exclusion)

[Decision on the merits of 18 March 2013.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)16 of 16 October 2013 of the Committee of Ministers.](#)
- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

Defence for Children International (DCI) v. Belgium (Complaint No. 69/2011)

- Violation of Articles 11§§ 1 and 3 (right to protection of health)

[Decision on the merits of 23 October 2012.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)11 of 11 June 2013](#) of the Committee of Ministers.
- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

International Federation of Human Rights Leagues (FIDH) v. Belgium (Complaint No. 62/2010)

- Violation of Article E (non-discrimination) read in conjunction with Article 16 (right to the family to social, legal and economic protection)
- Violation of Article E (non-discrimination) read in conjunction with Article 30 (right to protection against poverty and social exclusion)

[Decision on the merits of 21 March 2012.](#)

Follow up:

- [Resolution CM/ResChS\(2013\)8 of 30 April 2013](#) of the Committee of Ministers.
- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

European Trade Union Confederation (ETUC) / Centrale Générale des Syndicats Libéraux de Belgique (CGSLB) / Confédération des Syndicats chrétiens de Belgique (CSC) / Fédération Générale du Travail de Belgique (FGTB) v. Belgium (No. 59/2009)

- Violation of Article 6§4 (right to bargain collectively)

[Decision on the merits of 13 September 2011.](#)

Follow up:

- [Resolution CM/ResChS\(2012\)3 of 4 April 2012](#) of the Committee of Ministers.
- Assessment of the European Committee of Social Rights on the follow-up (4 December 2015)

World Organisation against Torture (OMCT) v. Belgium (No. 21/2003)

- Violation of Article 17 (right of children to social, economic and legal protection)

[Decision on the merits of 7 December 2004.](#)

Follow up:

- [Resolution ResChS\(2005\)10 of 8 June 2005](#) of the Committee of Ministers.

II. Reporting system³

Reports submitted by Belgium

Between 1992 and 2016, Belgium submitted 12 reports on the application of the 1961 Charter and 11 on the application of the Revised Charter.

The [11th report](#), submitted on 27 October 2016, concerns the accepted provisions relating to Thematic Group 2 "Health, social security and social protection", namely:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

Conclusions in respect of these provisions will be published in January 2018.

The 12th report, submitted on 30/10/2017, concerns the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure.

The assessments of the Committee on the follow up to decisions will be published at the latest in January 2019.

Conclusions with respect to these provisions will be published in January 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 2016

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

The non-EEA nationals are subject to a length of residence requirement of two years to be eligible for financial aid for education.

▶ *Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities*

The right of persons with disabilities to mainstream education is not effectively guaranteed.

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

Early termination of the employment relationship of a foreign national results in the automatic withdrawal of that person's residence permit with no possibility of seeking new employment.

▶ *Article 25 – Right of workers to protection of their claims in the event of the insolvency of their employer*

The average time to satisfy workers' claims in case of insolvency of their employer is excessive.

Thematic Group 2 "Health, social security and social protection" - Conclusions 2017

▶ *Article 3§3 - Right to safe and healthy working conditions - Enforcement of safety and health regulations*

The labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

▶ *Article 12§4 - Right to social security - Social security of persons moving between States*

- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the retention of accrued benefits is not guaranteed to nationals of all other States Parties.

▶ *Article 14§1 - Right to benefit from social welfare services - Promotion or provision of social services*

- there are significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;
- there is a lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels- Capital Region

▶ *Article 30 - Right to protection against poverty and social exclusion*

There is no adequate overall and coordinated approach to combating poverty and social exclusion.

Thematic Group 3 "Labour rights" - Conclusions 2014

▶ *Article 2§3 – Right to just conditions of work - Annual holiday with pay*

Workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

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

Weekly rest day may be postponed over a period exceeding twelve successive working days.

▶ *Article 4§1 – Right to a fair remuneration - Decent remuneration*

1. It has not been established that the average minimum wages suffice to ensure a decent standard of living;
2. The average minimum wages of young workers do not suffice to ensure a decent standard of living.

▶ *Article 4§2 – Right to a fair remuneration - Increased rate of remuneration for overtime work*

The compensatory time-off for overtime hours in the public sector is not sufficient.

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

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

The restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

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

According to applicable rules, Conclusions 2015 only refer to the information submitted by the Belgium Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

► *Article 7§5 – Right to special working conditions between the ages of 15 and 18 – Fair pay*

The allowances paid to apprentices are inadequate.

► *Article 7§6 – Right to special working conditions between the ages of 15 and 18 - Inclusion of time spent on vocational training in the normal working time*

It has not been established that, in practice, training attended by young workers at their request and with their employer's consent is regarded as working time and remunerated as such.

► *Article 7§8 – Right to special working conditions between the ages of 15 and 18 - Prohibition of night work*

It has not been established that the legal prohibition on night work applies to the great majority of persons under the age of 18.

► *Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training*

1. Corporal punishment is not prohibited in the home and in childcare institutions in all communities of Belgium.

2. Minors can be detained in adult prisons.

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

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ Article 10§4 - Conclusions 2016

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

- ▶ Article 3§3 - Conclusions 2013
- ▶ Article 11§3 - Conclusions 2013

Thematic Group 3 "Labour rights"

- ▶ Article 4§4 - Conclusions 2014
- ▶ Article 4§5 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

- ▶ Article 7§7 - Conclusions 2011
- ▶ Article 7§10 - Conclusions 2011
- ▶ Article 19§1 - Conclusions 2011
- ▶ Article 19§3 - Conclusions 2011
- ▶ Article 19§4 - Conclusions 2011
- ▶ Article 19§6 - Conclusions 2011
- ▶ Article 19§10 - Conclusions 2011

According to applicable rules, Conclusions 2015 only refer to the information submitted by the Belgium Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

III. Examples of progress achieved in the implementation of rights under the Charter (update in progress)

Children

- ▶ Repeal, for minors at risk, of section 53 of the Young Persons Protection Act of 8 April 1965, which authorised juvenile judges to order that minors be held provisionally in remand prisons (for up to fifteen days) (Decree of 4 March 1991).
- ▶ Establishment of a system to combat and criminalise child pornography (Act of 13 April 1995, as amended by the Act of 28 November 2000; Article 383bis of the Criminal Code).
- ▶ Introduction of the right for children to be heard in adoption proceedings, in principle from the age of 12 onwards (Article 931 of the Judicial Code, as amended in 2003).
- ▶ Adoption of the collective labour agreement No. 80 bis, which brings the period during which the worker is entitled to take the nursing break, from seven to nine months (Article 6 of the collective agreement).

Non-discrimination

- ▶ Strengthening of safeguards against discrimination by the Act of 25 February 2003 (extension of the concept, possibility of reinstatement and proportionate compensation for victims, etc.) and by the Act of 10 May 2007.

Non-discrimination (family benefits)

- ▶ Suppression of the five years residence requirement for granting "guaranteed family benefits" to non-EU and non-EEA nationals (Framework Act 24 December 2002).

Employment

- ▶ Setting of an upper limit on weekly working hours as part of the "Extensive flexibility working time scheme" (Act of 4 December 1998).
- ▶ Extension of periods of notice for workers (collective agreement of 20 December 1999).
- ▶ Introduction of a rule under which dockworkers at Antwerp must only be recruited on the basis of their technical knowledge, not their trade union membership (Royal Decree of 19 December 2000).
- ▶ Introduction of the right to paid breastfeeding breaks (collective labour agreement No. 80/ 2001).
- ▶ Abolition of compulsory work for prisoners (Act of 12 January 2005).
- ▶ Introduction of financial measures to encourage people over 50 to return to work (such as employment and back-to-work bonuses).
- ▶ Prohibition of discrimination based on trade union membership, so any workers who rely on this ground will be able to claim compensation proportional to the real damage (sections 107 and 108 of the Act of 30 December 2009, amending the Anti-Discrimination Act of 10 May 2007).

- ▶ On 19 March 2012, the German-speaking Community adopted a decree on the fight against certain forms of discrimination, which prohibits direct and indirect discrimination based on "nationality, alleged race, colour, descent or national or ethnic origin; age, sexual orientation, religious or philosophical belief or disability; sex and related criteria such as pregnancy, childbirth and maternity or transsexualism; civil status, birth, wealth, political ideas, trade union affiliation, language, current or future state of health, physical or genetic characteristics or social background". It applies to all persons, both in the public and in the private sector, including in public bodies, with regard to labour and employment relations.

- ▶ At federal level, the law on combating the gender pay gap was adopted on 22 April 2012 and requires measures to combat the wage gap to be negotiated at inter-occupational, sectoral and company level.

Safe and healthy working conditions

- ▶ New legislation on the prevention of psychosocial risks at work was enacted during the reference period and entered into force on 1 September 2014, namely the Act of 28 February 2014 supplementing the Act of 4 August 1996, the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996, and the Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work
- ▶ The Social Criminal Code contains offences relating to the prevention of psychological and social problems caused by work. It is based on the provisions of the Act of 4 August 1996 as amended by the Act of 28 February 2014, on the prevention of psychosocial risks at work including stress, violence and moral or sexual

harassment at work. The Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work supplements these new provisions. Under the Act of 26 February 2016 (outside the reference period), the criminal provisions of the Social Criminal Code have been adapted to these new requirements.

► The Royal Decree of 10 October 2012 (Belgian Official Gazette of 5 November 2012) stipulates the basic requirements to be met by workplaces, including notably the general rules on layout, lighting, ventilation, temperature, communal facilities including sanitary installations and chairs for working and resting.

► Under the Royal Decree of 10 July 2013 implementing Chapter 5 entitled "Regulation of certain aspects of the electronic exchange of information between those involved in combating illegal labour and social security fraud" of Title 5 of Book 1 of the Social Criminal Code, as amended by the Royal Decree of 26 December 2013, social inspectors from the Directorate General of Employee Well-being of Belgium's Federal Public Service for Employment, Labour and Social Dialogue are allowed to issue infringement reports electronically.

Social security

► Measures have been taken in the field of health to moderate the price of medicines and offer better protection to persons with chronic conditions, particularly by making it compulsory to include these persons in the direct payment system.

Protection against poverty and social exclusion

► In the Flemish region, the Decree of 21 March 2003 on Combating Poverty was modified on 20 December 2013 allowing the Flemish Authorities to subsidise local governments with a view to developing and supporting local initiatives to combat specifically child poverty.

► In the Walloon region, a number of measures have been taken since 2012 to adopt an overall and coordinated approach with a view to promoting access to social rights such as employment, housing, culture and medical assistance. In 2015, a first cross-cutting plan to combat poverty was adopted in order to provide concrete and effective answers to precise difficulties encountered by people living at risk of poverty.

► The Government of the German-speaking community prepared in 2013 an analysis of poverty and the social vulnerability of its community which led in 2014-2015 to action divided up into three phases: (1) identification of the characteristics of the population targeted by social action and the way in which assistance is deployed on the territory, following a comparison with the other Communities of the Federal State of Belgium; (2) collection of data using a sample of real life stories; (3) analytical phase, allowing the German-speaking community to set up a network of social action.

► The Federal State and the federated entities signed in 2014 a Cooperation Agreement on Homelessness and the Lack of Housing aiming at pursuing, coordinating and harmonising their policies to prevent and fight against homelessness and lack of accommodation