



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

October 2015

SECOND REPORT

ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

MALTA

TABLE OF CONTENTS

I. SUMMARY	3
II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS	5
Appendix I: Malta and the European Social Charter.....	21
Appendix II: Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter.....	26

I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers in December 2002 decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and 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, 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, with a view to securing a higher level of acceptance. 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 Governments tend to overlook that the selective acceptance of the provisions of the Charter should be a temporary phenomenon.

Malta ratified the European Social Charter on 4 October 1988 as well as 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.

The procedure provided by Article 22 of the 1961 Charter was applied for the first time in 2010, in the context of a meeting between members of the European Committee of Social Rights and the Maltese authorities. The meeting, which was co-organised by the Department of the European Social Charter and the Maltese Ministry of Education, Employment and the Family, took place on 7 December 2010 in Valetta.¹

Five years after the first meeting, on 28 May 2015 the Maltese Government submitted a written report, which covers the 26 paragraphs which are not yet accepted. The following provisions are not yet accepted: Articles 2§4, 2§7, 8§3, 12§2, 18§1, 18§2, 18§3, 19§1, 19§2, 19§3, 19§4, 19§5, 19§6, 19§7, 19§8, 19§9, 19§10, 19§11, 19§12, 21, 22, 27§1, 30, 31§1, 31§2 and 31§3.

Having examined the written information, the Committee notes that Maltese authorities still consider the acceptance of Article 12§2 of the Charter in the near future; furthermore, it concludes also that the current situation in law and in practice in Malta does not seem to present obstacles to the acceptance of Article 2§7, Article 18§2, Article 19§1, 5, 9 and 11, Article 21, Article 22, Article 27§1, Article 30 and Article 31§2 of the Charter.

As regards the remaining non-accepted provisions, the Committee considers that some situations do not appear to be fully in conformity with the provisions of the Charter, namely Article 2§4, Article 8§3 and Article 19§6. However, it is of the view that for several of these

The Committee's report is available at the following address:
http://www.coe.int/t/dghl/monitoring/socialcharter/Non-acceptedProv/Malta2010_en.pdf

provisions only minor adjustments to the law or practice would be sufficient to remove the obstacles to acceptance.

Finally, further information on the current legal situation and practice is needed to allow the Committee to assess the situation in Malta as regards the following provisions: Article 18§1, Article 18§3, Article 19§2, 3, 4, 7, 8, 10 and 12, Article 31§1 and Article 31§3.

In view of the conclusions of this report, the Committee wishes to encourage Malta to consider accepting additional provisions of the Charter as soon as possible, so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights.

The Committee would also like to encourage Malta to consider accepting the collective complaints procedure. In this respect, the Committee refers to the Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter (Appendix II).

The next examination of the provisions not accepted by Malta will take place in 2020.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The description of the situation in Malta set out for the different provisions below reproduces the written information provided by the Maltese Government.

Article 2§4 Elimination of risks in dangerous or unhealthy occupations

Situation in Malta:

The Committee recalls from its report on the 2010 meeting with the Government within the framework of the procedure on non-accepted provisions that the prevention and elimination of risks seem to be reflected in Maltese legislation and practice in accordance with EU rules, exposure to risk factors may not exceed prescribed limits. However; where risks cannot fully be eliminated; no provision is made for the reduction of working time. There are several occupations in Malta which may be considered to harbour residual risks or be inherently dangerous, for example the building sector, quarrying. Further information would have to be sought from the trade unions as to whether various organisational measures, such as additional breaks, setting of rest areas and alternating of duties, are used to reduce risk and exposure, and if not, whether they could be introduced. Difficulties are foreseen for the building sector.

According to the report, Malta's position in this respect has not changed since 2010.

Opinion of the Committee:

The first part of Article 2§4 requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations. The second part of Article 2§4 requires states to ensure some form of compensation for workers exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied.

Article 2§4 mentions 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 Charter. They need to be assessed on a case by case basis.

As no provision is made for reducing working time or otherwise reduce exposure, where risk cannot be fully eliminated, the Committee considers that the current legal situation and practice may raise a problem of conformity with Article 2§4 of the Charter.

Article 2§7 Night work

Situation in Malta:

The Committee recalls from its previous report (2010) that Section 10 of the Organisation of Working Time Regulations of 2004 concerning night work requires medical examinations prior night work; it also allows for transfer to daytime work. However, the Maltese authorities state there is no continuous consultation with trade unions in enterprises with less than 50

employees; the majority of the enterprises in Malta have less than 50 employees and hence no trade union representation.

According to the report, Malta's position in this respect has not changed since 2010.

Opinion of the Committee:

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. The Committee has stated that the Charter does not require all enterprises to have workers' representatives.

In the light of the current case law and the current legal situation and practice, the Committee considers that there are no obstacles to the acceptance by Malta of Article 2§7 of the Charter.

Article 8§3 Time off for nursing mothers

Situation in Malta:

The Government still considers this measure as difficult to implement especially in large enterprises, and national legal provisions still do not provide sufficient time off for nursing mothers. The Committee recalls from its previous report (2010) that the Maltese authorities do not find it realistic to have childcare facilities on site in small enterprises, where there are only one or two employees, nor to allow such employees to take nursing breaks.

Opinion of the Committee:

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 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 takes the view that the current legal situation and practice in Malta still may raise a problem of conformity with Article 8§3 of the Charter, in particular for small enterprises.

Article 12§2 Maintenance of a 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:

The Government has not yet finalised preparations to ratify the European Code of Social Security. The Committee recalls from its previous report (2010) that the Maltese authorities

had nearly completed the preparations for ratification of the European Code of Social Security at the time, and stated that they would proceed to accept this provision once the Code had been ratified.

Opinion of the Committee:

Article 12§2 obliges states 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, 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

On the basis of the above, the Committee considers that there are no obstacles to the acceptance by Malta of Article 12§2 of the Charter, once the Code has been ratified.

Article 18§1-3 Applying existing regulations in a spirit of liberality – Simplifying existing formalities and reducing dues and taxes - Liberalising regulations

Situation in Malta:

The report recalls that the Maltese Government has implemented in its national legislation the Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 *on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State, and on a common set of rights for third-country workers legally residing in a Member State*. The said Directive already provides for simplified procedures regarding applications submitted by third country nationals for the purpose of employment and rights which such persons enjoy on the basis of such legislation.

However, the report points out that the Maltese Government cannot apply an approach which is more liberal than that provided in the said legislation.

Opinion of the Committee:

The Committee's assessment of the degree of liberality in applying existing regulations pursuant to Article 18§1 is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

Given the above, further information on the current legal situation and practice is needed to allow the Committee to properly assess the situation regarding Article 18§1 of the Charter.

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, Article 18§2 guarantees that the Parties undertake to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers. With regard to the formalities to be completed, Article 18§2 presupposes the possibility of completing 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. Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

In the light of the current case law and the current legal situation and practice, and having regard to the introduction of a single application procedure, the Committee considers that there are no major obstacles to the acceptance by Malta of Article 18§2 of the Charter.

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

– Access to the national labour market:

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.

– 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.

– Rights in the event of loss of employment:

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.

The Committee considers that further information on the current legal situation and practice is needed to allow it to properly assess the situation.

Article 19§1 Assistance and information on migration

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that there are many resources informing about visas and permit requirements to work in Malta, such as the Government's own web sites. Information on job opportunities is also available online, and applicants have the chance to contact job centres by e-mail. Information is also available for Maltese nationals who have emigrated abroad and wish to return.

Opinion of the Committee:

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 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. States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

On this basis, the Committee takes the view that there are no major obstacles to the acceptance by Malta of Article 19§1 of the Charter.

Article 19§2 Departure, journey and reception

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. No other information has been provided in respect of Article 19§2.

Opinion of the Committee:

Article 19§2 obliges States 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 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 Committee needs further information in order to assess whether the situation in Malta is in conformity with Article 19§2.

Article 19§3 Co-operation between social services of emigration and immigration States

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. No other information has been provided in respect of Article 19§3.

Opinion of the Committee:

Under Article 19§3, 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

The Committee needs further information in order to assess whether the situation in Malta is in conformity with Article 19§3.

Article 19§4 Equality regarding employment, right to organize and accommodation

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the abovementioned right. However, the Committee recalls from its previous report (2010) that Maltese law expressly provides that migrant workers have equal rights in respect of remuneration and other employment and working conditions: pursuant to the Employment and Industrial Relations Act (2003) a foreign national working in Malta has all the rights of a national employee.

Any employee who believes that his or her rights may be breached in any way may seek recourse at the Department for Industrial and Employment Relations. Employers should not engage foreign nationals on conditions of work, (i.e. wages/salaries, hours of work, etc.) which are less favourable than those established for work of the same character or nature by national laws and regulations. However, according to the previous report (2010) there are residence requirements for purchasing property in Malta.

Opinion of the Committee:

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

The undertaking of States under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing. There must be no legal or de facto restrictions on home-buying, access to subsidised housing or housing aids, such as loans or other allowances.

The Committee states that the restrictions on foreigners purchasing property in Malta would need to be further investigated prior to giving a view whether Malta could accept this provision.

As a consequence, further information on the current legal situation and practice is needed to allow the Committee to assess the conformity of the situation. 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.

Article 19§5 Equal regarding taxes and contributions

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that foreign workers are subject to the same taxes and contributions as Maltese workers.

Opinion of the Committee:

This provision 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 maintains its view that there are no major obstacles to the acceptance by Malta of Article 19§5 of the Charter.

Article 19§6 Family reunion

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that, according to the Maltese national law, a third-country national is entitled to apply for family reunification subject to the following conditions:

- he/she is holding a residence permit valid for a minimum period of one year;
- he/she 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 national 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.

In general, members of the family of the applicant will not be entitled to join him/her in Malta unless he/she has stayed lawfully in Malta for a period of two years.

Opinion of the Committee:

This provision 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 takes the view that the current legal situation and practice in Malta may raise a problem of conformity with Article 19§6 of the Charter, due to the restrictions on the access to the country for members of the family of workers who have not stayed lawfully in Malta for a period of two years.

Article 19§7 Equal treatment in legal proceedings

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that there is no discrimination between foreign workers and Maltese nationals, although no detail has been provided concerning the conditions needed to have access to courts, lawyers and legal aid for migrants.

Opinion of the Committee:

Under this provision, 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.

Given the above, further information on law and practice is needed to allow the Committee to assess whether the situation in Malta is in compliance with Article 19§7 of the Charter.

Article 19§8 Guarantees concerning deportation

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. No other information has been provided in respect of Article 19§8.

Opinion of the Committee:

This provision 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 constitute 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 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 Charter.

Article 19§9 Transfer of earnings and savings

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that there are no limits on the amount of savings, income, etc., that may be transferred out of the country.

Opinion of the Committee:

This provision obliges States not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.

In the light of the current legal situation and practice, the Committee is of the view that there are no major obstacles to the acceptance by Malta of Article 19§9 of the Charter.

Article 19§10 Equal treatment for the self-employed

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that self-employed migrant workers enjoy in so far as relevant the same rights as migrant workers. However, further examination of the issue is needed.

Opinion of the Committee:

Under this provision, 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; In addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.

Given the above, further information on law and practice is needed to allow the Committee to assess whether the situation in Malta complies with Article 19§10 of the Charter.

Article 19§11 Teaching language of host State

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that language classes are available for migrant workers and their families.

Opinion of the Committee:

Under this provision, States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of

their families who are no longer of school age. The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large.

States must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country.

States shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market.

In the light of the legal situation and practice previously described, the Committee maintains its view that there are no major obstacles to the acceptance by Malta of Article 19§11 of the Charter.

Article 19§12 Teaching mother tongue of migrant

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that some mother tongue language teaching seemed to exist, although not necessarily funded by the state.

Opinion of the Committee:

The undertaking of States under this provision is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory. States should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.

Given the above, further information on how the state promotes and facilitates mother tongue teaching is needed to allow the Committee to assess whether the situation in Malta complies with Article 19§12 of the Charter.

Article 21 Right of workers to be informed and consulted

Situation in Malta:

According to the report, there were no major changes in the situation concerning the implementation of the Article. However, the Committee recalls from its previous report (2010) that, after the transposal of the EU Directive establishing a general framework for informing and consulting employees (2002/14/EC), there are guarantees on information and consultation for workers within the undertaking.

Opinion of the Committee:

This provision applies to all undertakings, whether private or public. States 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.

States 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. For example, 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.

In the light of the current legal situation and practice, the Committee is of the view that there are no major obstacles to the acceptance by Malta of Article 21 of the Charter.

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

Situation in Malta:

According to the report, there were no major changes in the situation concerning the implementation of the Article. The Committee recalls from its previous report (2010) that all large enterprises have health and safety committees, whereas this was not necessarily the case in smaller enterprises.

Opinion of the Committee:

This provision applies to all undertakings, whether private or public. States 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 as well as tendency undertakings.

Under this provision, 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.

In the light of the current legal situation and practice, the Committee is of the view that, subject to certain clarifications, notably on the existence of participation arrangements in smaller enterprises, there seem to be no major obstacles to the acceptance by Malta of Article 22 of the Charter.

Article 27§1 Participation in working life

Situation in Malta:

According to the report, some progress has been registered given that the Government is now providing free child care in Child Care Centres.

Opinion of the Committee:

Under Article 27§1a of the Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities.

Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training.

Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market.

Under Article 27§1b measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment. These measures should apply equally to men and women.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.

In the light of the legal situation and practice, the Committee is of the view that there are no major obstacles to acceptance by Malta of Article 27§1 of the Charter.

Article 30 Right to protection against poverty and social exclusion

Situation in Malta:

According to the report, conclusions on the issue are the same as stated in the last report (2010), although a Strategy against Poverty has been launched, setting out policy measures to target the groups of people who are at risk of poverty and social exclusion.

Opinion of the Committee:

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also be monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectorial or target group

approach. Normally, some sort of coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should be provided. At the very least, States should demonstrate that poverty and social exclusion reduction is an embedded aspect of all the relevant strands of public policy.

The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance.

In the light of the legal situation and practice in Malta, the Committee is of the view that there are no major obstacles to the acceptance by Malta of Article 30 of the Charter.

Article 31§1 Adequate housing

Situation in Malta:

According to the report, no progress has been made to ensure the adequacy of older constructions, although the Government, through the Housing Authority, has started a project to install lifts in old Government apartments.

The Committee recalls from its previous report (2010) that there is legislation on the minimum standards that new constructions should meet. Under the legislation on rented properties, a landlord is obliged to make structural renovations and the tenant has an obligation to maintain a rented property. Better security of tenure has been given to tenants in new rent reform legislation.

Opinion of the Committee:

States must guarantee to everyone the right to adequate housing. They should promote access to housing in particular to the 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.

The notion of adequate housing must be defined in law. "Adequate housing" means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.

The Committee takes the view that overall the measures in place seem to correspond to those required by Article 31§1, however more information is still needed on the notion of

adequacy of housing, and on the absence of a requirement to ensure the adequacy of older constructions. Therefore the Committee needs further information on law and practice in order to assess whether the situation in Malta complies with Article 31§2 of the Charter.

Article 31§2 Reduction of homelessness

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that evictions are regulated by law, and there is a right to appeal before the courts. However, it is unclear whether legal aid is available in case of eviction in the private sector; also, there is no statutory definition of homelessness.

Furthermore, the Maltese authorities confirmed the existence of emergency shelters run by NGO's.

Opinion of the Committee:

The Committee has given the following interpretation of this provision:

- Definition:

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1.

- Preventing homelessness:

States must take action to prevent categories of vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3).

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. States must set up procedures to limit the risk of eviction. Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide. The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

- Right to shelter:

According to Article 31§2, homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings.

States should foresee sufficient places in emergency shelters and the conditions in the shelters should be such as to enable living in keeping with human dignity.

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

Article 31§3 Affordable housing

Situation in Malta:

According to the report, the Maltese authorities are currently awaiting feedbacks from responsible entities concerning the situation in the country. However, the Committee recalls from its previous report (2010) that Government housing does exist; the stock however is limited currently 2000 persons on waiting. There are also schemes to help people to buy and/or rent affordable houses, and rent subsidies do exist.

Opinion of the Committee:

An adequate supply of affordable housing must be ensured for persons with limited resources.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located. In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income. States must:

- adopt appropriate measures for the provision of housing, in particular social housing; social housing should target, in particular, the most disadvantaged;
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; judicial or other remedies must be available when waiting periods are excessive;
- introduce housing benefits at least for low-income and disadvantaged sections of the population. Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

The Committee notes that the measures in place in principle correspond to the requirements of the provision, but further information is needed on the current legal situation and practice, in particular on the extent of the housing stock and the waiting list, to allow the Committee to assess whether the situation in Malta complies with Article 31§3 of the Charter.

APPENDIX I

– Malta and the European Social Charter –

Ratifications

Malta ratified the European Social Charter on 04/10/1988 as well as the Amending Protocol to the Charter on 16/02/1994.

It ratified the Revised European Social Charter on 27/05/05, 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.

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 ¹	27.2	27.3	28	29	30	31.1	
31.2	31.3								Grey = Accepted provisions			

¹ Sub-paragraph c.

The Charter in Domestic law

Malta is a dualist state.

Reports

Between 1990 and 2015 Malta submitted 16 reports on the application of the Charter and 9 reports on the application of the Revised Charter.

The 8th report, submitted on 3 February 2014, covers the accepted provisions relating to Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29).

The conclusions in respect of these provisions were published in January 2015.

The 9th report, submitted on 29/10/2014, concerns the accepted provisions relating to Thematic Group 4 "Children, family, migrants", namely:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

In addition, the report concerns the information required by the European Committee of Social Rights in the framework of Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

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

* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups.

Situation of Malta with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter ²

Health

- ▶ The regulations on the medical supervision of young workers apply to all workers in all sectors (1994 Act on the promotion of health and safety at work)
- ▶ The right to maternity leave has been extended to part-time employees (1996 regulation), six weeks post natal leave is now compulsory and in general the right to maternity leave has been strengthened (Industrial Relations and Employment Act (cap 452) and Protection of Maternity (Employment) Regulations 2003)
- ▶ Prohibition on assigning an employee while she is pregnant, following delivery or while she is breastfeeding, to work which may pose hazards for the course of her pregnancy or her own or the child's physical and mental health (administrative regulation 92/2000)

Non-discrimination (Sex)

- ▶ Elimination of gender-based discrimination with regard to the payment of survivor's pension and sickness benefit (changes made with effect from 1 January 1998)
- ▶ Elimination of discrimination between spouses in wedlock and with regard to children including replacement of paternal responsibility by parental authority (Act No. XXI of 1993)
- ▶ Protection against discrimination strengthened (Equal Treatment in Employment Regulations L.N. 461 of 2004 were adopted under the Employment and Industrial Relations Act XXII of 2002)
- ▶ Legal Notice No. 181 of 2008, Regulations on Access to Goods and Services and their Supply (Equal Treatment), extends the illegality of sexual harassment within both public and private sectors in the provision of goods and services that are available to the public.

Nationality

- ▶ Entitlement to the social security benefits provided for in the Social Security Act of 1987 has been extended to include nationals of other Contracting Parties (European Social Charter Order, 1999)

Employment

- ▶ Under the Police Act as amended in 2002 police officers from the rank of inspector and above may form one professional association, while all police officers of other ranks may form another.
- ▶ Creation of Malta Council for Economic and Social Development to promote social dialogue in Malta.
- ▶ Organisation of Working Time Regulations 2003 LN 247 of 2003 provide for a minimum period equivalent to four weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated. Also legislation now provides that when a worker falls sick during his/her annual leave, he/she does not lose his /her right to holiday leave, and may recover his holiday leave.
- ▶ New legislation regulates minimum periods of weekly rest (Organisation of Working Time Regulations 2003 LN 247 of 2003)
- ▶ Female employees related to the employer and part-time employees protected against dismissal during maternity leave. (Protection of Maternity (Employment) Regulations 2003)

² « 1. The [European Committee of Social Rights] 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 » (Article 2 of the Rules of the Committee).

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

► *Article 24 – Right to protection in case of dismissal*

1. Employees are excluded from protection against dismissal during a six months probationary period that might be extended until up to one year for certain categories of employees;
2. The termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not justified.

[\(Conclusions 2012\)](#)

Thematic Group 2 “Health, social security and social protection”

► *Article 351 - Right to safe and healthy working conditions - Safety and health regulations*

- there is an adequate occupational health and safety policy;
- occupational risk prevention is organised at company level, work-related risks are assessed and preventive measures geared to the nature of risks are adopted.

[\(Conclusions 2013\)](#)

► *Article 354 - Right to safe and healthy working conditions - Occupational health services*

It has not been established that measures are taken to promote the progressive development of occupational health services.

[\(Conclusions 2013\)](#)

► *Article 1251 – Existence of a social security system - Right to social security*

The rates of sickness benefits for a single person, of unemployment benefits, including the Special Unemployment Benefit for a single person, and of the invalidity pension and the survivors’ pension are manifestly inadequate; and the duration for which unemployment benefit is payable is too short.

[\(Conclusions 2013\)](#)

► *Article 1254 – Existence of a social security system - Social security of persons moving between States*

It is not established that equal treatment with regard to access to family allowances is guaranteed to nationals of all other States Parties.

[\(Conclusions 2013\)](#)

► *Article 1351 – Right to social and medical assistance - Adequate assistance for every person in need*

- It has not been established that social assistance is provided to everyone in need..

[\(Conclusions 2013\)](#)

► *Article 1353 – Right to social and medical assistance - Non-discrimination in the exercise of social and political rights*

It has not been established that services exist, offering advice and personal assistance to persons without adequate resources or at risk of becoming so.

[\(Conclusions 2013\)](#)

► *Article 1354 – Right to social and medical assistance-Specific emergency assistance for non-residents*

It has not been established that all foreign nationals, whether legally present or in an irregular situation, are entitled to emergency medical and social assistance in Malta.

[\(Conclusions 2013\)](#)

Thematic Group 3 “Labour rights”

▶ *Article 2§1 – Reasonable working time*

It has not been established that the legislation guarantees the right to reasonable weekly working hours.

[\(Conclusions 2014\)](#)

▶ *Article 2§2 – Public holidays with pay*

It has not been established that work performed on a public holiday is adequately compensated.

[\(Conclusions 2014\)](#)

▶ *Article 4§2 - Increased remuneration for overtime work*

It has not been established that the right to an increased time off in lieu of overtime remuneration is guaranteed.

[\(Conclusions 2014\)](#)

▶ *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*

1. The notice periods generally applied are not reasonable in the following cases:
 - a. less than six months of service;
 - b. between six months and two years of service;
 - c. between three and four years of service;
2. The notice period of one week applicable to probationary periods is not reasonable;
3. No notice period is provided for in the event of dismissal in economic, technological or organisational circumstances requiring changes in the workforce.

[\(Conclusions 2014\)](#)

▶ *Article 5 – Right to organise*

It has not been established that there are adequate remedies against refusals to register police trade unions.

[\(Conclusions 2014\)](#)

▶ *Article 6§3 – Right to bargain collectively - Conciliation and arbitration*

1. it has not been established that decisions of the court of inquiry are binding on the parties only with their joint consent;
2. compulsory recourse to arbitration is permitted in circumstances which do not comply with the conditions set out in Article G of the Charter.

[\(Conclusions 2014\)](#)

Thematic Group 4 “Children, families, migrants”

▶ *Article 7§5 – Right of children and young persons to protection – Fair pay*

It is not established that the allowances paid to apprentices are fair.

[\(Conclusions 2011\)](#)

▶ *Article 7§8 – Right of children and young persons to protection – Prohibition of night work*

It is not established that the exceptions to the prohibition of night work in some economic sectors are necessary for a proper functioning of the relevant economic sector and that the number of young workers concerned is low.

[\(Conclusions 2011\)](#)

▶ *Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers*

1. It has not been established that children are protected from sexual exploitation;
2. It has not been established that children are protected against the misuse of information technologies.

[\(Conclusions 2011\)](#)

► *Article 16 - Right of the family to social, legal and economic protection*

It has not been established that Malta implements a comprehensive policy to ensure the social, legal and economic protection of the family.

It has not been established whether the childcare facilities are affordable and of good quality.

[\(Conclusions 2011\)](#)

► *Article 17§1 - Right of mothers and children to social and economic protection -*

1. Children born outside marriage are discriminated against in matters of succession and inequalities exist between children of a first and second marriage;

2. Corporal punishment in the home is not prohibited;

3. The age of criminal responsibility is manifestly too low.

[\(Conclusions 2011\)](#)

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

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§1 – Conclusions 2012

► Article 1§2 – Conclusions 2012

► Article 1§4 – Conclusions 2012

► Article 9 – Conclusions 2012

► Article 10§2 – Conclusions 2012

► Article 10§3 – Conclusions 2012

► Article 15§2 – Conclusions 2012

► Article 20 – Conclusions 2012

► Article 25 – Conclusions 2012

Thematic Group 2 “Health, social security and social protection”

► Article 3§3 – Conclusions 2013

► Article 14§2 – Conclusions 2013

Thematic Group 3 “Labour rights”

► Article 2§5 – Conclusions 2014

► Article 4§1 – Conclusions 2014

► Article 4§3 – Conclusions 2014

► Article 4§5 – Conclusions 2014

► Article 6§4 – Conclusions 2014

► Article 26§2 – Conclusions 2014

► Article 28 – Conclusions 2014

Thematic Group 4 “Children, families, migrants”

► Article 7§§2, 3 and 4 – Conclusions 2011

APPENDIX II

Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasizing that human rights must be enjoyed without discrimination;

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

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

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

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