

## – Andorra and the European Social Charter –

### Signatures, ratifications and accepted provisions

Andorra ratified the Revised European Social Charter on 12/11/2004, accepting 75 of the 98 paragraphs.

Andorra has not accepted the system of collective complaints.

### The Charter in domestic law

Under Article 3(4) of the Constitution: "Treaties and international agreements take effect in the legal system from the moment of their publication in the Butlletí Oficial del Principat d'Andorra and cannot be amended or repealed by law."

### 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 Andorra](#) in 2012 and in 2015.

In these reports, the Committee invites the Government of Andorra to accept the following provisions: Articles 6§§1, 2, 3 and 4, 19§2, 19§4a and b, 21, 22, 25, 27, 28 and 29.

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

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Andorra

Between 2008 and 2019, Andorra has submitted 12 reports on the application of the Revised Charter.

The [11<sup>th</sup> report](#), submitted on 22/11/2017 covers the accepted provisions of the Revised Social Charter relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29).

Conclusions with respect to these provisions have been published in March 2019.

The [12<sup>th</sup> report](#), which was submitted on 31/10/2018, concerns the accepted provisions relating to Thematic group 4 "Children, families, 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).

Conclusions with respect to these provisions will be published in January 2020.

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<sup>1</sup> 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](#).

<sup>2</sup> 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 <sup>3</sup>**

### **Thematic Group 1 « Employment, training and equal opportunities » - Conclusions 2016**

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

The law establishes a length of residence requirement of three years for students to apply for financial aid.

► *Article 15§3 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Integration and participation of persons with disabilities in the life of the community*

- It has not been established that housing, transport and telecommunications are covered by the anti-discrimination legislation;
- It has not been established that there are effective remedies available to disabled people alleging discriminatory treatment.

### **Thematic Group 2 « Health, social security and social protection » - Conclusions 2017**

► *Article 3§2 - Right to safe and healthy working conditions - Safety and health regulations*

- The health and safety legislation and regulations do not specifically cover a majority of the risks;
- The levels of protection against asbestos and ionising radiation are insufficient;
- Self-employed workers are not adequately protected.

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

- The minimum level of sickness benefits is inadequate;
- The minimum level of occupational injury and occupational disease benefits is inadequate.

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

- Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- It has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties;
- It has not been established that the right to maintenance of accruing rights is guaranteed to nationals of all other States Parties.

► *Article 13§1- Right to social and medical assistance - Adequate assistance for every person in need*

It has not been established that foreign nationals unlawfully present in the territory are entitled to emergency social and medical assistance.

### **Thematic Group 3 « Labour rights » - Conclusions 2018**

► *Article 2§7 - Right to just conditions of work - Night work*

There is no provision in the legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter.

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

The minimum inter-professional wage does not ensure a decent standard of living to all workers.

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

- The amount of severance pay awarded on termination of the employment contract is insufficient for workers with less than three years of service;
- The legislation makes no provision for notice periods in the case of termination of employment during probationary periods.

### **Thematic Group 4 « Children, families, migrants » - Conclusions 2015**

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

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<sup>3</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

- The minimum wage of young workers is not fair;
- The apprentices' allowances are not adequate.

▶ *Article 17§1 - Right of children and young persons to social, legal and economic protection - Assistance, education and training*

During the reference period, corporal punishment was not explicitly prohibited in the home, in schools and in institutions.

▶ *Article 19§1 – Right of migrant workers and their families to protection and assistance - Assistance and information on migration*

It has not been established that adequate measures have been taken to combat misleading propaganda concerning emigration and immigration.

▶ *Article 19§7 – Right of migrant workers and their families to protection and assistance – Equality regarding legal proceedings*

Free services of interpretation are not always accessible where these are required by the litigant or defendant in the interests of justice.

▶ *Article 31§2 – Right to housing- Reduction of homelessness*

It has not been established that:

- there is adequate legal protection for persons threatened with eviction;
- the law prohibits eviction from emergency accommodation/shelters without the provision of alternative accommodation.

**The Committee has been unable to assess compliance with the following rights and has invited the Andorran 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§4 - Conclusions 2016
- ▶ Article 10§3 - Conclusions 2016
- ▶ Article 10§4 - Conclusions 2016

**Thematic Group 2 « Health, social security and social protection »**

- ▶ Article 13§4 - Conclusions 2017
- ▶ Article 30 - Conclusions 2017

**Thematic Group 3 « Labour rights »**

- ▶ Article 2§4 - Conclusions 2018
- ▶ Article 4§2 - Conclusions 2018
- ▶ Article 4§3 - Conclusions 2018

**Thematic Group 4 « Children, families and migrants »**

- ▶ Article 7§1 - Conclusions 2015

## **II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

### **Thematic Group 1 « Employment, training and equal opportunities »**

► In its decision of 27 March 2014, the Civil Division of the Supreme Court of Justice held that it was for the company to prove that the dismissal of one of its employers was not an act of discrimination (Article 20).

### **Thematic Group 2 « Health, social security and social protection »**

► Adoption and partial entry into force of Law No. 34/2008 on safety and health at work, providing for the setting of working hours and rest periods according to the risks generated by the occupation; listing the dangerous, unhealthy or harmful activities; providing for adjustments of working time to protect pregnant or breastfeeding women and minor workers.

► Adoption and entry into force of occupational health service regulations of 14 November 2012.

► On 17 April 2013, after consulting employers' and employees' organisations, the Government approved the text of four technical notes relating to Law No. 34/2008 and concerning four areas, in particular very small and small enterprises in sectors of activity where risks are low or very low; co-operation and co-ordination; providing information for and training employees, and health supervision.

► Four sets of regulations were adopted during the reference period. In particular, the Regulations on minimum health and safety requirements for the use of personal protective equipment (BOPA, 10 October 2012) determine the notion of personal protective equipment; a list of exclusions; the standard criteria which must be applied when risks cannot be sufficiently avoided or mitigated through technical means of collective protection or through the adoption of measures, methods and procedures for organising work; and a list of obligations which are incumbent on employers and employees with regard to the use of personal protection equipment. The Regulations on minimum health and safety requirements for the use of work equipment (BOPA, 10 October 2012) set out measures to encourage improvements in the safety and health of private and public sector workers when using work equipment, and the roles and responsibilities of employers and employees regarding work equipment. Moreover, the Regulations on minimum requirements regarding health and safety signs in workplaces (BOPA, 10 October 2012) indicate their scope and expressly recognise two cases in which they are not applicable (sale of dangerous products, equipment, substances and preparations, and signs used for regulating road and air traffic, except concerning such traffic in the workplace). In addition, they define the concepts of different types of health and safety signs. These regulations also contain provisions on information and training, as well as on worker consultation and participation.

► Since April 2013, all companies must have a protection and prevention service which performs and carries out the following tasks and activities: design, apply and co-ordinate preventive action plans and programmes; evaluate risk factors which may affect occupational health and safety at work; identify priorities for the adoption of appropriate preventive measures and supervise their effectiveness; inform and train employees so as to avoid the risks linked to their work, and implement emergency and first aid plans.

► The Technical Information Note No. 4 of the Labour Inspectorate Department, which was approved by the Government on 17 April 2013, clarifies details of the content of Article 19 (health supervision) of the law on occupational health and safety and the Regulation on occupational health services. Particular reference is made to the definition of occupational health services and to the objectives of medical examinations; the need to propose medical examinations at work if they are not compulsory (in particular at regular intervals); carrying out compulsory medical examinations (dangerous activities, workers under 18 years of age, particularly sensitive workers, return to work after more than 6 months' sick leave and in cases in which it is essential in order to be able to evaluate the risks); the terms applied for proposing or carrying out medical examinations at work for all employees; supervising the health of workers who have several jobs or in the event that they change posts; the medical supervision of minors.

- ▶ As from 2012, social security coverage has been compulsory for self-employed workers.
- ▶ As from September 2014, family allowances have been granted starting from the first child, rather than from the second (Law 6/2014 of 24 April 2014).
- ▶ As from 2015, healthcare coverage has been extended to certain categories of economically inactive person.
- ▶ According to the report, Act 6/2014 of 24 April on Social and Health Services, is a step forward in the organisation and consolidation of the Andorran social protection system, through a network of benefits that complement the benefits established by the social security regulations. The Act 6/2014 determines the eligibility as well as the amounts of benefits. It aims at ensuring complementarity of social security benefits and social assistance, with a view to guaranteeing pecuniary benefits of a sufficient level (to meet essential needs of individuals or families who, because of their disability, their advanced age or other circumstances, cannot work or because they have limited autonomy).

### **Thematic Group 3 « Labour rights »**

- ▶ The Equality Unit, which was set up in January 2016 within the Department of Social Affairs (...) includes a Specialised Unit for the Care of Victims of Violence, which provides cross-sectoral assistance (social, psychological and legal) for women who are victims of sexual harassment in the workplace.
- ▶ Article 149bis of the Criminal Code, as amended by the Decree-Law of 29 April 2015, henceforth defines sexual harassment as "verbal, non-verbal or physical behaviour of a sexual nature towards another without their consent with the aim or effect of compromising their dignity, particularly when this behaviour creates an intimidating, hostile, degrading, humiliating or offensive environment (...)".

### **Thematic Group 4 « Children, families and migrants »**

- ▶ Corporal punishment is therefore now unlawful in all alternative care settings and in the home under Article 476 of the Penal Code 2005, as amended in 2014.
- ▶ The prohibition of simple possession of pornographic material was introduced by the amendment to the Penal Code (Act 15/2008 of 3 October 2008, entered into force on 28 October 2008), whereby Article 155.3 provides that whoever possesses pornographic material in which the images of a minor appear (real minors or persons having the appearance of minors), shall be sentenced to a term of imprisonment.
- ▶ Since December 2014, the Criminal Code established as criminal offences, inter alia public incitement to violence, hatred or discrimination against an individual or a group of individuals, public insults or defamation and threats, as well as the public dissemination or distribution and the production or possession of racist images or material;
- ▶ Andorra has implemented an advanced inclusive educational programme which attaches considerable importance to human rights and efforts to tackle stereotypes, hate speech and discrimination.