

## — Austria and the European Social Charter —

### Signatures, ratifications and accepted provisions

Austria ratified the European Social Charter on 29/10/1969 and the Revised European Social Charter on 20/05/2011, accepting 76 of the Revised Charter's 98 paragraphs.

Austria has not yet accepted the system of collective complaints.

### The Charter in domestic law

Statutory *ad hoc* incorporation by specific implementing legislation.

### Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22
23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1
31.2	31.3						Grey= Accepted provisions				

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 a [report concerning Austria](#) in 2016. The Committee considers that there are no major legal obstacles to acceptance by Austria of the following provisions: Article 6§4, Article 7§6, Article 19§11, Article 26§2 and Article 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 Austria

Between 1972 and 2021, Austria has submitted 29 reports on the application of the 1961 Charter and 8 reports on the application of the Revised Charter.

The [8<sup>th</sup> report](#), submitted on 14/02/2020, covers the accepted provisions of the Social Charter relating to thematic group 1 "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25).

Conclusions with respect to these provisions were published in March 2021.

The 9<sup>th</sup> report, which was to be submitted by 31/12/2020, should concern the accepted provisions of the Social Charter 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 with respect to these provisions will be published in January 2022.

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<sup>1</sup> The European Committee of Social Rights ("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 2020

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

Equal treatment of nationals of other States Parties residing or working lawfully in Austria was not guaranteed with regard to fees and to financial assistance for training.

► *Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

The obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

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

► *Article 12§4 – Right to 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;
- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

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

- The right to the adequate level of social assistance is not guaranteed for all persons in need;
- In some Länder non-EEA nationals, lawfully resident are subject to a length of residence requirement of five years to be entitled for social assistance.

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

It has not been established that, in all nine Länder, social services are organised in such a way that they are adapted to needs.

### Thematic Group 3 "Labour rights" - Conclusions 2018

► *Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*

The period of three months beyond the mandate during which protection is afforded to workers' representatives is not reasonable.

### Thematic Group 4 "Children, families and migrants" – Conclusions 2019

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

The length of residence required for receipt of housing allowances in certain Länder is excessive.

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

The maximum length of pre-trial detention is excessive.

► *Article 19§6 – Right of migrant workers and their families to protection and assistance – Family reunion*

- Age threshold of 21 which is above the age at which a marriage may be legally recognised in the host state is an undue hindrance to family reunion;
- The fact that certain categories of sponsored family member need to prove knowledge of the German language hinders the right to family reunion;
- Requirement to pay fees for the necessary language tests and language courses may impede rather than facilitate family reunion;
- Families may be required to wait for more than a year before being granted reunion under the quota system, a delay which is excessive.

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

**The Committee was unable to assess whether the following rights are respected and invited the Austrian Government to provide for additional information in its next report on the following provisions:**

**Thematic Group 1 "Employment, training and equal opportunities"**

- ▶ Article 1§2 - Conclusions 2020
- ▶ Article 15§3 - Conclusions 2020

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

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**Thematic Group 3 "Labour rights"**

- ▶ Article 4§3 - Conclusions 2018

**Thematic Group 4 "Children, families and migrants"**

- ▶ Article 7§10 - Conclusions 2019
- ▶ Article 19§1 - Conclusions 2019

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

### **Thematic Group 1 "Employment, training and equal opportunities"**

- ▶ The Insurance Law Amendment Act (*Versicherungsrecht-Änderungsgesetz*) of 2013 introduced special protection against discrimination for people with disabilities into the Insurance Contract Act (*Versicherungsvertragsgesetz*).
- ▶ The quota system (Bundeshöchstzahl) was repealed as of 1 January 2014.
- ▶ The Red-White-Red Card and the EU Blue Card systems were introduced in 2011, has simplified the formalities for obtaining the documents needed for engaging in a professional occupation, in that it has established a combined residence and work permit (administered through a "one-stop shop").
- ▶ The legislation was amended as of 1 August 2013 to expressly address court proceedings, specifying that the awarded compensation must be effective and proportionate as well as suited to preventing discrimination.

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

- ▶ A Joint Resolution on the Austrian Employees Safety and Health Strategy 2013-2020 has been signed by all federal ministries involved in occupational health and safety, by accident insurers, social partners and interest groups. The Resolution is aimed at consistently improving the safety and health of Austrian employees, particularly with regard to areas like muscular and skeletal strain, psychological stress, risk posed by carcinogens and workplace evolution and support by prevention experts.
- ▶ The amendment to the Workers Protection Act (Federal Law Gazette I No. 118/2012) is aimed at more effective prevention of stress and risks of a psychological nature that lead to inappropriate physical strain on workers. Risks potentially resulting in psychological stress are also required to be examined and assessed as part of risks assessment.
- ▶ Act No. 450/1994 of 17 June 1994 on Workers Protection, which sets out the basis legal framework in the field of occupational safety and health, was amended during the reference period to introduce the additional possibility of requiring a fire protection group and the health and safety committee and to clarify the role of prevention expert.
- ▶ As regards specific regulations on establishment, alteration and upkeep of workplaces, regulations have notably been adopted concerning worker protection by means of personal protective equipment (Ordinance, Federal Law Gazette II No. 77/2014), health surveillance at work (Ordinance, Federal Law Gazette II No. 26/2014), electrical protection (Ordinance, Federal Law Gazette II No. 33/2012), observance of workers' protection requirements and proof of compliance in transport approval procedures (Ordinance, Federal Law Gazette II No. 17/2012).
- ▶ The provisions of the Ordinance governing chemicals (2003) and the Ordinance on asbestos (2003) entered into force on 1st January 2014, banned the marketing and use of asbestos fibres. In practice, the provisions covering the marketing of asbestos-containing substances and preparations are applied so that any marketing of asbestos (also in preparations and finished products) is banned.
- ▶ As of 1 July 2012 the scope of competence of the Labour Inspectorate was broadened to additionally cover the workplaces and work sites previously falling under the Transport Labour Inspectorate. Separate statistics continued to be kept in 2012 and 2013, while combined data is reported as of 2014.
- ▶ As a result of an amendment to the Workers Protection Act (*ArbeitnehmerInneschutzgesetz, ASchG*) that entered into force as of 1 January 2013, Section 4§6 ASchG specifies that, in addition to occupational health and safety officers and occupational physicians, other qualified experts can be engaged to perform workplace evaluations; such experts include chemists, toxicologists, ergonomists and

above all occupational psychologists. This new provision lists examples of the experts to be engaged, while special consideration should be given to occupational psychologists when psychological stress is to be evaluated. Occupational psychologists are not considered prevention experts (only occupational health and safety officers and occupational physicians are regarded as such).

▶ The extension of long-term illness benefits to self-employed people (Social Insurance Amendment Act 2012 – Sozialversicherungs-Änderungsgesetz 2012, Federal Law Gazette I no. 123/2012)

▶ The extension of the list of occupational diseases covered for accident insurance purposes (vibration-induced vascular disorders, pressure damage, chronic diseases of the tendon sheaths, peritendinum and muscular and tendinous insertions, as well as rhinopathy have been included).

▶ A reform of the disability pension system, with the introduction of a rehabilitation benefit (Act Governing Amendments to Social Law 2012 (Sozialrechts-Änderungsgesetz 2012), Federal Law Gazette I no. 3/2013) – the new benefit aims at encouraging rehabilitation and retraining and applies to persons with a temporary incapacity to work of at least 6 months; a rehabilitation allowance is furthermore introduced for persons not entitled to incapacity benefit because of the lack of permanent incapacity, but whose temporary incapacity for at least 6 months has been confirmed and where occupational measures are not practicable or not appropriate.

▶ The adoption in January 2014 of rules (Labour Law Reform Act 2013 (Arbeitsrechts-Änderungsgesetz 2013), Federal Law Gazette I no. 138/2013) enabling employees to take full-time or part-time leave, in agreement with their employers, in order to care for a close relative and receive care-leave benefits while maintaining their health insurance (to be paid by the Federal Government).

▶ As from July 2015, children and young people under the age of 18 needing orthodontic braces are entitled to receive such treatment as a benefit in kind without co-payment or payment of a contribution towards the cost of treatment by the insured.

▶ The introduction of relief measures for those caring for a disabled child and wishing to take out self-insurance and the creation of a non-contributory self-insurance scheme for people providing care for family members (Act Governing Amendments to Social Law 2015 (Sozialrechts-Änderungsgesetz 2015), Federal Law Gazette I no. 162/2015).

▶ The extension of full insurance coverage to participants to certain volunteers programmes, as specified in the Volunteer Act.

▶ The introduction of a temporary assistance allowance (Überbrückungsgeld) for unemployed construction workers who, in 2015, are close to their retirement age and cannot fulfil their work due to illness.

▶ The aggregation of periods credited towards the minimum period of unemployment – since 2015, specific periods such as military service or alternative civilian service, family hospice leave etc. are credited towards the duration of previous employment. The newly credited periods may also be part of the 156 weeks of unemployment insurance-covered employment within the preceding five years, for claiming 30 weeks of unemployment benefits.

▶ As a result of an important administrative reform entered into force in January 2014, and of a Constitutional decision of December 2014, complaints concerning the granting of unemployment benefits have now a suspensive effect.

### **Thematic Group 3 “Labour rights”**

▶ Teaching and educational staff in private teaching and education institutions are also covered by a separate scheme, falling either under the Ordinance of 17 November 2016 (M 21/2016/XXIII/97/1, Federal Law Gazette III, no. 327/2016), or the collective agreement for employees of private educational institutions (S 5/2016/XXIII/97/1), as amended, depending on whether the employer belongs to the

professional association of private education institution employers (BABE). Teaching staff who have worked overtime receive a 50% overtime supplement in addition to basic hourly remuneration.

#### **Thematic Group 4 "Children, families and migrants"**

- ▶ Increase of the penalty for the abuse of children under 14 years of age. Introduction of provisions stipulating that the statute of limitation in the case of certain sexual offences committed against children does not begin to run until the age of majority has been reached (amendments made in 1998 to the criminal law on sexual offences).
- ▶ Under the Act to Reform the Law of Parent and Child and Name Law 2013, the courts can entrust parents with joint custody even against one of the parents' will, where it is ruled that this would be more in the interest of the child's well-being than if one parent were to have sole custody.
- ▶ Pursuant to legislative changes, the situation in seven out of nine Länder (Burgenland, Carinthia, Upper Austria, Styria, Salzburg, Tyrol and Vorarlberg) has been put in conformity with the Charter insofar as their Housing Subsidies Acts provide for equal treatment of foreign nationals.