

## — Malta and the European Social Charter —

### Signatures, ratifications and accepted provisions

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 not accepted the system of collective complaints.

### The Charter in Domestic law

Malta is a dualist state.

### 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 Malta](#) in 2010 and in 2015. In its reports, the Committee notes that Maltese authorities consider the acceptance of Article 12§2 of the Charter in the near future; furthermore, it considered that the 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.

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 Malta

Between 1990 and 2019, Malta has submitted 16 reports on the application of the 1961 Charter and 12 reports on the application of the Revised Charter.

The [11<sup>th</sup> report](#), submitted on 08/11/2017 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 1§4 – Right to work – Vocational guidance, training and rehabilitation*

It has not been established that the legislation provides for an individual leave for training for employed persons.

► *Article 10§3 – Right to vocational training – Vocational training and retraining of adult workers*

It has not been established that the legislation provides for an individual leave for training for employed persons.

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

It has not been established that in equal pay litigation cases legislation allows pay comparisons to be made across companies/undertakings.

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

- Employees undergoing a probation period of six months are not protected against dismissal;
- Termination of employment at the initiative of the employer on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified.

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

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

- Measures taken to reduce the number of accidents at work are insufficient;
- It has not been established that the labour inspection system is effective.

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

- The minimum level of sickness benefits is inadequate;
- The minimum level of unemployment benefits is inadequate;
- The minimum level of invalidity benefits is inadequate.

► *Article 12§4 – Existence of a social security system - Social security of persons moving between States*

- It has not been established that equal treatment with regard to social security is guaranteed to nationals of all other States Parties;
- It has not been established that equal treatment with regard to access to family allowances 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*

- The level of social assistance paid to a single person without resources is not adequate;
- It has not been established that residence permits cannot be withdrawn before their legal expiry on the sole ground that the person concerned is in need.

► *Article 23 – Right of the elderly to social protection - The Committee takes note of the information contained in the report submitted by Malta.*

There was no adequate legal framework prohibiting discrimination on grounds of age during the reference period.

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

► *Article 2§1 – Reasonable working time*

The law does not guarantee the right to reasonable weekly working hours.

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

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

Work performed on a public holiday is not adequately compensated for all workers.

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

It has not been established that the minimum wage ensure a decent standard of living for all workers.

► *Article 4§3 – Right to a fair remuneration - Non-discrimination between women and men with respect to remuneration*

It has not been established that the principle of equal pay is effectively guaranteed in practice.

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

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

► *Article 4§5 – Right to a fair remuneration - Limits to wage deductions*

It has not been established that the safeguards preventing workers from waiving their right to limits wage deductions are adequate.

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

- Decisions of the court of inquiry are binding on the parties even without their prior consent;
- Compulsory arbitration is permitted in circumstances which go beyond the limits set by Article G of the Charter.

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

The absolute prohibition of the right to strike of the police goes beyond the limits permitted by Article G of the Charter.

► *Article 26§2 - Right to dignity in the workplace - Moral harassment*

- It has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against moral (psychological) harassment in the workplace or in relation to work;
- It has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of moral (psychological) harassment.

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

► *Article 7§1 – Right of children and young persons to protection - Prohibition of employment under the age of 15*

The prohibition of employment of children under 15 does not apply to children employed in occasional or short-term work involving domestic service in a private household or work in a family undertaking.

► *Article 7§4 - Right of children and young persons to protection - Working time*

The daily and weekly working time for young workers under the age of 16 is excessive.

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

It has not been established that the exceptions to the prohibition of night work in some economic sectors are necessary for the proper functioning of these sectors and that the number of young workers concerned is not high (**Conclusions 2017 and 2015**).

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

Migrant families face discrimination in their access to housing.

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

Corporal punishment was not prohibited in the home, in schools and in institutions.

**The Committee 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§3 - Conclusions 2016
- ▶ Article 10§4 - Conclusions 2016
- ▶ Article 10§5 - Conclusions 2016

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

- ▶ Article 11§2 - Conclusions 2017
- ▶ Article 11§3 - Conclusions 2017
- ▶ Article 13§3 - Conclusions 2017
- ▶ Article 13§4 - Conclusions 2017

**Thematic Group 3 « Labour rights »**

- ▶ Article 4§2 - Conclusions 2018
- ▶ Article 5 - Conclusions 2018
- ▶ Article 6§1 - Conclusions 2018
- ▶ Article 6§2 - Conclusions 2018
- ▶ Article 26§1 - Conclusions 2018

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

- ▶ Article 7§3 - Conclusions 2015
- ▶ Article 7§5 - Conclusions 2015
- ▶ Article 7§10 - 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 »**

► The Equal Opportunities (Persons with a Disability) Act, amended in 2012, prohibits discrimination in all areas including employment (see Conclusions 2012). Under this law employers must not discriminate against persons with disabilities in procedures relating to job applications, recruitment, promotion, dismissal, remuneration, vocational training or other areas linked to employment conditions. It is not permitted for employers to use tests or procedures designed to exclude persons with disabilities unless they can prove that these tests are crucial to the work concerned.

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

► The OHSa in collaboration with the EU-OHSa has developed a risk assessment tool (Online interactive Risk Assessment (OiRA)) which can be used for work in an office setting. The tool has been developed in the Maltese language and is based on Maltese occupational health and safety legislation.

► The report mentions certain positive measures taken in favour of pensioners (exemption from taxes when the pension rate is equal to the national minimum wage; lowering of the age requirement – from 80 years old to 78, and then to 75 – for the granting of a €300 yearly allowance for elderly who continue to live in their residence; award of full widow pensions even when the beneficiary is employed).

► 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).

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

► Since 2012 employers are obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003, prior to assigning a worker to night work.

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

► Pregnant employees are entitled to an uninterrupted period of fully paid maternity leave of 14 weeks (increased to 18 weeks as from 1 January 2013).

► Following amendments in 2011 to Regulation 5 of the Protection of Maternity (Employment) a special allowance equivalent to the rate of sickness benefit is paid for the whole period necessary for the protection of the employee's health and safety.

► The Protection of Maternity (Employment) Regulations (Legal Notice 439/2003) were amended in 2012 to the effect that employers are now obliged to conduct a risk assessment in accordance with the requirements of the General Provisions for Health and Safety at Work Regulations 2003 (Legal Notice 36/2003).

► The entry into force of the Domestic Violence Act in 2013, which establishes a commission on domestic violence. The functions of this commission are to advise the Minister responsible for social policy on the issue of domestic violence.

► Article 712 *et seq.* of the Civil Code has been amended so that children of second (or subsequent) marriages or children who were adopted are not discriminated against.

► Corporal punishment is unlawful in the home under a 2014 amendment to the Criminal Code. Corporal punishment is unlawful in alternative care settings under article 339 of the Criminal Code, as amended by the Criminal Code (Amendment No. 3) Act 2014. Corporal punishment is unlawful in schools under Article 339 of the Criminal Code as amended in 2014.

► The age of criminal responsibility has been raised to the age of 14. The relevant provisions of the law have been changed (Article 35 of the Criminal Code) and now a child under the age of 14 shall be exempt from criminal responsibility for any act or omission. Hence the Article in the Criminal Code relating to mischievous discretion between the ages of 9 to 14 has been removed.