

## — Poland and the European Social Charter —

### Signatures, ratifications and accepted provisions

Poland ratified the 1961 European Social Charter on 25/06/1997 accepting 58 of the Charter's 72 paragraphs.

It ratified the Amending Protocol to the Charter on 25/06/1997.

It has signed, but not yet ratified the Revised European Social Charter on 25/10/2005.

It has not signed the Additional Protocol to the European Social Charter, nor 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	3.1	3.2	3.3
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*
9	10.1	10.2	10.3	10.4	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	16	17	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
AP1	AP2	AP3	AP4	AP = Additional protocol				Grey = Accepted provisions			

\* On 27/01/2011, Poland denounced Article 854b (prohibition of the employment of women in certain dangerous occupations).

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

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

### Reports submitted by Poland

Between 1999 and 2021, Poland has submitted 20 reports on the application of the 1961 Charter.

The [19<sup>th</sup> report](#), submitted on 16/12/2019, covers the accepted provisions of the Social Charter relating to thematic group 1 "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18 and Article 1 of the Additional Protocol).

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

The [20<sup>th</sup> report](#), which was submitted on 10/02/2021, covers 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 4 of the Additional Protocol).

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 XXII-1 (2020)

► *Article 10§1 - Right to vocational training - technical and vocational training - Access to higher technical and university education*

There are no specific instruments deployed to integrate migrants and refugees into vocational education and training.

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

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

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

► *Article 11§1 - Right to protection of health - Removal of the causes of ill-health*

Access to health care is not ensured because of long waiting times.

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

The minimum level of unemployment benefits is inadequate.

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

- Equal treatment with regard to access to family benefits is not guaranteed to nationals of all other States Parties;
- The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

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

Access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.

### Thematic Group 3 "Labour rights" - Conclusions XXI-3 (2018)

► *Article 2§1 – Right to just conditions of work - Reasonable working time*

- In some jobs the working day can exceed sixteen hours and even be as long as 24 hours;
- On-call periods where no effective work is performed are assimilated to rest periods.

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

Workers in both the public and private sectors do not have a right to increased compensatory time off for overtime hours.

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

No notice period is required in cases where a worker is dismissed due to long-term illness or occupational accident.

► *Article 4§5– Right to a fair remuneration –Limits to deduction from wages*

After maintenance payments and other authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.

► *Article 5 – Right to organise*

During the reference period, the legal framework continued to restrict some categories of workers from fully enjoying the right to organise.

### Thematic Group 4 "Children, families, migrants" - Conclusions XXI-4 (2019)

► *Article 8§4 – Right of employed women to protection - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work*

The regulation of night work does not adequately protect women carrying out night work in industrial employment.

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

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

- The 10-year residence requirement to be eligible to family benefits for foreigners without a work permit, is excessive;
- Family benefits are inadequate for children under the age of five;
- It has not been established that in the reference period a significant number of families was entitled to child benefit for their first child.

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

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*

- Family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion;
- Social benefits are excluded from the calculation of the level of means required to bring in the family or certain family members.

► *Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation*

- A risk to public health constitutes a ground for expulsion;
- It has not been established that a migrant worker's dependence on social assistance cannot constitute a ground for expulsion;
- It has not been established that a right to appeal is effectively guaranteed.

► *Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

The ground of non-conformity under Articles 19§6 and 19§8 applies also to self-employed migrant workers.

**The Committee has been unable to assess compliance with the following provisions and has invited the Polish Government to provide more information in the next report:**

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

- ▶ Article 1§2 - Conclusions XXII-1 (2020)
- ▶ Article 1§3 - Conclusions XXII-1 (2020)

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

- ▶ Article 3§1 - Conclusions XXI-2 (2017)
- ▶ Article 12§3 - Conclusions XXI-2 (2017)
- ▶ Article 13§3 - Conclusions XXI-2 (2017)

**Thematic Group 3 "Labour rights"**

- ▶ Article 4§3 - Conclusions XXI-3 (2018)

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

- ▶ Article 7§2 - Conclusions XXI-4 (2019)
- ▶ Article 7§10 - Conclusions XXI-4 (2019)
- ▶ Article 19§1 - Conclusions XXI-4 (2019)
- ▶ Article 19§2 - Conclusions XXI-4 (2019)
- ▶ Article 19§3 - Conclusions XXI-4 (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"**

- ▶ With Poland's accession to the European Union, there is no longer a nationality requirement for access to the professions of sworn translator or to paramedics.
- ▶ The 2004 legislation on employment promotion and labour market institutions makes everyone eligible for vocational guidance, irrespective of nationality. Nationals of other States party to the European Social Charter are therefore entitled to equal treatment.
- ▶ The Act of 8 December 2000 amending the 1990 Higher Education Act lays down procedures by which foreign nationals can follow a course offered by a Polish higher education establishment. Nationals of other States party to the Social Charter may undertake and continue studies at higher education establishments in Poland in accordance with international agreements and their provisions, including the European Social Charter.
- ▶ Since the amendment to the Road Traffic Act of 20 April 2004, it has no longer been necessary to have Polish nationality to be a driving test examiner.
- ▶ Under the Act adopted on 24 August 2007, foreign nationals wishing to practise medicine in Poland must still obtain authorisation from the Chamber of Physicians, but authorisation must now be granted if the person concerned meets certain conditions, none of which depend on the applicant's nationality.
- ▶ The 2010 Act on Equal Treatment introduced into the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons an expressly worded duty of reasonable accommodation for a person with disabilities who is employed, participates in the recruitment process or undergoes training, internship, etc. unless such measures would impose a disproportionate burden on the employer.

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

- ▶ The Act of 23 January 2003 is expected to remedy previous shortcomings concerning waiting time for some medical treatment, as well as mismanagement of waiting lists.
- ▶ The National Labour Inspection Act of 13 April 2007 came into force on 1 July 2007. The act amended articles 304§1 of the Labour Code to extend the health and safety at work requirements applicable to self-employed persons. Employers who assign work to self-employed persons that has to be performed in an undertaking or any other specified location must ensure that the working conditions are healthy and safe, in accordance with Article 207 § 2 of the Labour Code. This article requires employers to protect the life and health of persons working there by supplying machinery, equipment and products that reflect scientific and technical progress.
- ▶ In 2008 the unemployment benefit was increased.
- ▶ The Regulation of the Minister of Health of 21 December 2012 on granting authorisation for radiological protection inspectors in laboratories using X-ray equipment for medical purposes and the Regulation of the Council of Ministers of 10 August 2012 on posts which are critical for nuclear safety and radiation protection and radiation protection inspectors were adopted during the reference period.
- ▶ The Council for Social Dialogue replaced the Tripartite Commission for Socio-Economic Affairs in accordance with the Law of 24 July 2015. The Council is made up of representatives of the government, workers represented by members of representative trade union organisations, and employers represented by members of representative employers' organisations. It conducts dialogue in order to lay the foundations for socio-economic development and increase economic competitiveness and social cohesion in Poland.

► The extension of certain health care benefits to refugees, their families, pregnant women and women who have just given birth and children under 18 years with refugee status or enjoying additional protection (law of 26 June 2014).

### **Thematic Group 3 "Labour rights"**

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

► The Act of 1 July 2001 expressly guarantees the right to family reunion of the migrant workers' family members.

► Article 2 of the Act of 10 June 2010 *amending the act on the countering domestic violence and certain other acts* introduced a new article to the Polish Family and Guardianship Code (Article 96<sup>1</sup>) which prohibits corporal punishment in childrearing (no sanctions are provided either in civil or penal law, unless the punishment may be qualified as violence): *"Persons exercising parental authority, guardianship or care over a minor are forbidden to use corporal punishment"*.

The law entered into force on 1 August 2010.

► Amendments to the Criminal Code were introduced in 2012; in particular, the new Article 202§4 b stipulates that whoever produces, distributes, presents, stores or possesses content showing pornographic image of minors (under the age of 18) shall be subject to a fine, or imprisonment of up to 2 years.

► The Law of 28 May 2013 amended the provisions on maternity leave, in particular by introducing parental leave.

► The Law on Foreigners 2013 has inter alia streamlined the process for applying for residence permits, and transposed Directive 2011/98/EU concerning third-country nationals into Polish law.

► Section 186 of the Law on Foreigners 2013, which entered into force after the reference period, expressly provides that the right to family reunion shall be granted in accordance with the Social Charter.