



European  
Social  
Charter

Charte  
sociale  
européenne



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## **EUROPEAN SOCIAL CHARTER**

**Answers to additional questions related to the**

**2<sup>nd</sup> National Report on the implementation of the European  
Social Charter (Revised)**

submitted by

**THE GOVERNMENT OF GERMANY**

Articles 2, 3, 4, 5, 6, and 20

**CYCLE 2024**

# **Additional Information to the Report on the Application of the Revised European Social Charter 2024**

**submitted by the Government  
of the Federal Republic of Germany**

**for the period from 1 January 2021 to 31 December 2024**

In accordance with the provisions of Article C  
of the European Social Charter (revised), the instrument of ratification of  
which was deposited on 29 March 2021.

In accordance with the provisions of Article 21  
of the European Social Charter, the instrument of ratification of which  
was deposited on 27 January 1965.

## **I. Question regarding Article 2.1**

*Please provide information on sectors and functions where it is possible to extend weekly working hours to 60 and where the reference period can reach or exceed 12 months.*

### **Answer:**

The possibility of extending weekly working hours to 60 (48 weekly working hours cannot be exceeded in the reference period) exists across all sectors and functions. The reference period can reach 12 months in the context and safeguard of a collective bargaining agreement. This is justified by the social control and equality of power between employees and employer (parity of negotiation through social partners) which are secured by a collective bargaining agreement. The most extensive deviations are possible by means of a collective agreement for on-call duty and standby duty.

## **II. Question regarding Article 3.1**

*Please provide more information with regard to the following:*

- *whether labour inspectorates have a duty to share the knowledge about occupational hazards and risk prevention acquired during inspection and investigation, as part of preventive activities (information, education, prevention);*
- *involvement of public authorities in training (qualified professionals), information (statistical systems and dissemination of knowledge), and quality assurance (professional qualifications, certification systems for facilities and equipment), with a view to improving occupational health and safety.*

### **Answer:**

As outlined in the report, Germany's dual system shares health and safety enforcement and prevention between the *Länder* and the statutory accident insurers. According to Section 21 of the German OSH Act (Arbeitsschutzgesetz, ArbSchG) *Länder* and the statutory accident insurers monitor compliance and advise employers. They cooperate closely on the basis of a Joint Advisory and Supervisory Strategy. The *Länder*, while also mandated to advise employers, have a stronger focus on OSH inspections. The accident insurers have a much broader mandate to prevent workplace accidents and work-related diseases through any available means. This includes activities in line with the question above, such as research into occupational hazards and risk prevention as well as disseminating information, offering education, certifications or professional qualifications e.g. for "Sicherheitsbeauftragte" within businesses. The *Länder* are also required to cooperate with other competent bodies, such as the main customs office (see section 23 of the German OSH act).

As part of their generic prevention mandate and training mandate under Sections 14 (1) and 23 respectively of Volume VII of the German Social Code (Siebtes Buch Sozialgesetzbuch), the German Social Accident Insurance Institutions and their umbrella association, the DGUV, offer a wealth of training measures. Topics relevant to workplace prevention activity are addressed in a practical way in over 20,000 seminars. The German Social Accident Insurance Institutions are among the largest providers of training and education in Germany, delivering training to some 350,000 individuals each year.

Here you will find an overview on the sector-specific qualification measures:

<https://www.dguv.de/en/prevention/initial-further-training/osh/index.jsp>

As set forth in the German Occupational Safety Act and DGUV Provision 2 "Company Doctors and Safety Engineers", employers and company owners are required to appoint an occupational safety specialist.

An occupational safety and health specialist performs an important role in employee OSH. As an "OSH manager" they not only help companies to embed OSH across all hierarchical levels, they also provide them with guidance on the safe, healthy design of company systems, starting with the planning phase and going right through to implementation. The work done by an OSH specialist makes a key contribution to the level of OSH experienced by employees at their companies.

### **III. Question regarding the police and army in Germany with respect to 6.4 ESC**

*Please, indicate whether armed forces and police have the right to strike or there is a restriction on the right to strike of armed forces and police.*

*If there is a restriction on the right to strike, please indicate if the restriction is established by law, and why is it necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals (Article G of the Charter).*

*In addition, please indicate whether the members of armed forces have other means through which they can effectively negotiate the terms and conditions of employment, including remuneration.*

#### **Answer:**

Regarding the above questions, it can be said that police officers and members of the armed forces (the latter being referred to in Germany as "soldiers") do not have the right to strike under German constitutional law. This central principle ensures the functioning of the state and its armed forces and is based on the constitutionally guaranteed rights and duties of the professional civil service in Germany.

German police officers and soldiers serve under completely different conditions to contractual employees in terms of their employment and their relationship to their employer which is the state.

They are not dependent on industrial action in order to secure the rights they are entitled to under the European Social Charter (ESC). Rather, their rights and duties are determined by law and are especially well protected. They are also protected effectively by other measures which do not apply to contractual employees. In view of their privileged position and the protections they enjoy, it is possible, based on Article G of the revised European Social Charter (RESC), to exempt police officers and soldiers from the right to take direct strike action.

#### **a. General remarks on the Public Sector in Germany**

Police officers and soldiers belong to Germany's public service. Germany's public service personnel, both at federal and state level, fall into two categories: contractual employees and civil servants.

Contractual employees are subject to general labour law and the Collective Agreement for the Public Service, which is negotiated by the "social partners" (organisations representing employers and workers). Some three fifths of personnel in the public service at federal, state and local government level are contractual employees and are thus subject to general labour law.<sup>1</sup>

Regarding the employment of civil servants, special legal rules apply which are based on Germany's constitution, or Basic Law (*Grundgesetz*, GG), and on simple federal and state law. According to Germany's Basic Law, in areas where the functioning of the state is dependent on the unrestricted service and sovereign authority of its personnel, the German state can appoint "members of the public service who stand in a relationship of service and loyalty defined by public law" (Article 33 para. 4 of the Basic Law). This "relationship of service and loyalty defined by public law" applies not only to civil servants (which include police officers) but also to soldiers (i.e. members of the armed forces). These personnel ensure the functioning of the state and protect Germany's free democratic order.

#### **b. Restriction on the right to strike for armed forces and police and its justification**

The right to strike is guaranteed in the European Convention on Human Rights (ECHR) and in the RESC, as well as by the German Basic law as an unwritten element of the right to freedom of association (see Article 9 of the Basic Law).

However, this right, like other German basic rights, can be restricted if it conflicts with the basic rights of third parties and other constitutionally guaranteed rights. This right is restricted by the ban on strikes for members of the civil service, which is a necessary and traditional principle of the professional civil service (see Article 33 para. 5 of the Basic Law).

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<sup>1</sup> For details, see page 102 onwards in the "Report on the Application of the Revised European Social Charter 2024" submitted by the Government of the Federal Republic of Germany for the period from 1 January 2021 to 31 December 2024. Those details still apply.

The German Federal Constitutional Court has ruled that German legislation may not make any structural changes in this regard, as a right to strike would undermine the essential functional principles of German civil service law.

The ban on strikes – like the other traditional principles of the professional civil service referred to in Article 33 para. 5 of the Basic Law – serves to ensure the stability of the public administration and the fulfilment of state tasks, thereby ensuring the functioning of the state and its institutions. Similarly, the right of soldiers to strike is restricted under the constitution in order to ensure the functioning of the armed forces.

The reason for this constitutional rule is that a strike by civil servants and soldiers could compromise the functioning of the state and its ability to act in key areas such as public security and order. Police officers and soldiers in particular have a special role in ensuring public security and order and in maintaining Germany's democratic society and rule of law. For this reason, police officers and soldiers do not have the right to strike.

### **c. Privileges for civil servants and armed forces**

The prohibition of strikes is appropriate given other constitutional provisions which grant civil servants and soldiers special rights not enjoyed by any other category of personnel. For example, the duty of loyalty owed by civil servants and soldiers is offset by their employer's duty of care, life-long employment, and remuneration commensurate with their position, among other things. For soldiers, this well-balanced relationship is governed by Division 1, Subdivision 2, sections 6 to 36 of the Act on the Legal Status of Military Personnel (*Soldatengesetz*, SG). Statutory duties are counterbalanced by numerous rights.

The maintenance principle inferred from Article 33 para. 5 of the Basic Law obliges public employers to appropriately support civil servants and judges and their families commensurate with their grade, the level of responsibility their office carries with it and the significance of the judiciary and career civil service to public life in line with general economic and financial trends and the general standard of living. The maintenance principle applies to career soldiers by virtue of Article 14 of the Basic Law in an equivalent manner. Providing legal and financial guarantees, including remuneration and care commensurate with the individual position as required by the maintenance principle, as well as the possibility to enforce these guarantees in court, is the prerequisite and justification for the life-long duty of loyalty and the prohibition of strikes.

Civil servants and soldiers thus enjoy special rights that private-sector employees and contractual employees (working in the public service) do not have. Civil servants and soldiers do not need the right to strike because their special status means that the goal of strikes – which is to force employers to improve working conditions – is not relevant for them. Their working conditions are not specified in collective agreements and employment contracts but in laws adopted by parliament.

Furthermore, police officers and soldiers have various options to advocate for their occupational interests:

- They have the right to form and to join unions.

- The unions' umbrella organisations must always be consulted in preparing general provisions governing matters of civil service law (section 118 of the Act on Federal Civil Servants (*Bundesbeamtengesetz*, BBG); section 53 of the Act on the Status of Civil Servants (*Beamtenstatusgesetz*, BeamStG); section 35a of the Act on the Legal Status of Military Personnel).
- In addition, the responsible ministry and the unions are in regular contact at the executive and working levels. Their discussions focus on issues affecting the occupational interests of the personnel concerned.
- These personnel are just as entitled as any other employees to have their remuneration reviewed by courts.
- Moreover, civil servants are entitled by law to staff representation (section 117 of the Act on Federal Civil Servants; section 51 of the Act on the Status of Civil Servants). This also fully applies to police officers. For soldiers, this right is granted under section 35 of the Act on the Legal Status of Military Personnel. Under the Military Personnel Representation Act (*Soldatinnen- und Soldatenbeteiligungsgesetz*, SBG), soldiers are entitled to elect either a spokesperson or staff representatives.

In summary, even without the right to strike, police officers and soldiers in Germany have numerous possibilities to advocate for and enforce their occupational interests.

#### **d. Additional comments on Article 6.4 of the RESC and restrictions under Article G of the RESC**

##### *(a) Scope of Article 6.4 of the RESC*

Article 6.4 of the RESC grants employees the right to bargain collectively, including the right to strike.

According to Germany's interpretation of this provision, civil servants and soldiers are not employees within the meaning of this provision because their employment is not based on a contract deriving from a collective bargaining process but solely on public law. Instead of signing an employment contract, civil servants are officially appointed in a unilateral sovereign act. Their rights and duties are specified by law and are non-negotiable.

Therefore, Germany, in view of the special status of its civil servants, has declared a reservation with regard to Article 6 of the 1961 ESC. Germany maintains this position.<sup>2</sup>

##### *(b) Exceptions under Article G of the RESC*

Even if it is held that civil servants are not in principle excluded from the scope of Article 6 of the RESC, Article G of the RESC provides that restrictions may be made by law to protect the rights and freedoms of others or to protect public interest, national security, public health or morals. Civil

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<sup>2</sup> Cf. Declaration contained in a letter from the Permanent Representative of the Federal Republic of Germany, dated 28 September 1961 – Or. Ger. Available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=035&codeNature=0>

servants working for the police as well as soldiers meet these requirements due to their tasks described above which are related to public safety and order.

Prohibiting strikes in sectors that are essential for society serves a legitimate purpose when strikes in these sectors pose a threat to the public interest, national security or public health.

In the case of civil servants whose duties and functions are directly related to national security or a public interest, the restriction of the right to strike is also recognised by the Committee (Collective Complaint of 16 October 2006 – 32/2005 margin no. 44 et seq.– Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour “Podkrepa” and European Trade Union Confederation/Bulgaria; Conclusions I, 1969, 38 et seq.; Digest 2008, 57). This applies in particular to the police, armed forces, judges and senior administrative civil servants (Conclusions I, 1969, 38 et seq.; Conclusions XX-3, 2014, 26 – Germany; Council of Europe 138).

In the case of bans on strikes for police officers and soldiers, it should be noted that a mere situational restriction of the right to strike is not constructive in view of the ability to act that is necessary to ensure public safety and order. A general consideration must be possible to ensure the functioning of the police and armed forces.

#### **e. Jurisprudence of the European Court of Human Rights regarding Article 11 of the ECHR**

In December 2023, the European Court of Human Rights ruled that the ECHR did not preclude German civil servants from being prohibited from strike action on account of their special legal status (Grand Chamber of the European Court of Human Rights, *Humpert and Others v. Germany*, nos. 59433/18, 59477/18, 59481/18 and 59494/18, 14 December 2023).

The Court found that the ban on strikes for civil servants in Germany did not violate the ECHR since the German legal framework puts a variety of different institutional safeguards in place to enable civil servants and their unions to defend occupational interests. While the right to strike certainly is an important element of trade-union freedom and collective action, strike action is not the only means by which trade unions and their members can protect their occupational interests. Hence, Member States are in principle free to decide what measures they wish to take in order to ensure compliance with the right to freedom of association as long as they ensure that trade-union freedom does not become devoid of substance.

This ruling therefore comes to the seminal conclusion that in Germany, the social rights of employees in a relationship of service and loyalty defined by public law are sufficiently guaranteed by other means.

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