



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

June 2025

**FOURTH REPORT  
ON THE NON-ACCEPTED PROVISIONS  
OF THE REVISED EUROPEAN SOCIAL CHARTER**

**Belgium**

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## I. OVERVIEW AND EXECUTIVE SUMMARY

### 1. Overview of the adjusted procedure on the non-accepted provisions of the European Social Charter

The European Social Charter is based on a ratification system, which enables States Parties, subject to certain minimum requirements, to choose the provisions they are willing to accept as binding international legal obligations. This system is provided for by Article A of the revised European Social Charter (Article 20 of the 1961 Charter) and it allows States, at any time after their ratification of the treaty, to notify the Secretary General of their acceptance of additional articles or paragraphs.

It is in the spirit of the Charter for States Parties to progressively increase their commitments, tending towards acceptance of additional and eventually all provisions of the Charter where possible, as opposed to an *à la carte* stagnancy.<sup>1</sup>

The procedure for examining reports on the non-accepted provisions is set out in Article 22 of the European Social Charter of 1961 (ETS No. 35). According to this provision, the States Parties must send to the Secretary General, at appropriate intervals set by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of ratification or by subsequent notification. The Committee of Ministers shall determine from time to time those provisions for which such reports will be requested and the form in which the reports should be provided.

In September 2022, the ECSR adopted a decision to implement the procedure on non-accepted provisions in respect of all State Parties to either Charter, in a reinforced manner. The procedure now provides for the submission of written information by States Parties in accordance with a pre-established calendar, and additional bilateral meetings when it is deemed to represent an added value. The written information, submitted by the States Parties shall be made public upon its receipt, and the national and international social partners, non-governmental organisations, national human rights institutions, equality bodies and other stakeholders are given the possibility to provide comments within three months of receiving the written information.

### 2. The situation of Belgium in the context of the non-accepted provisions of the European Social Charter

Belgium ratified the European Social Charter on 16 October 1990 and the revised European Social Charter on 2 March 2004, accepting 87 of the revised Charter's 98 paragraphs. In June 2015, Belgium accepted to be bound by four additional provisions (Articles 26§2, 27§1, 27§2, and 28 of the revised Charter), bringing the total number of accepted provisions to 91 out of 98.

Belgium accepted the Additional Protocol of 1995 providing for a system of collective complaints on 23 June 2003 but has not yet made a declaration enabling national NGOs to submit collective complaints.

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<sup>1</sup> The opening paragraph of Part I reads "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised", followed by the heading of all rights contemplated by the European Social Charter. Part III, Article A, provides that "each of the Parties undertakes [...] to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part", followed by the rules on the choices available as regards provisions that Parties can declare to be bound by and which determine the modalities of monitoring under Part IV of the Charter. (See [CM\(2022\)196-final](#)).

Belgium has not yet accepted the following seven provisions of the revised Charter: Articles 19§12, 23, 24, 27§3, and 31§§1 to 3.

### **Previous examination**

Since Belgium ratified the revised European Social Charter on 2 March 2004, the procedure provided for in Article 22 of the 1961 Charter led to a first meeting between the European Committee of Social Rights and representatives of the Belgian Government in Brussels on 3 February 2009.

In preparation for renewing the procedure in 2014, the Belgian authorities were invited to provide written information regarding the progress made toward the acceptance of new provisions and, where applicable, the reasons for any delays in their acceptance.

In 2014, the Committee noted that the report received from the Belgian authorities reiterated the absence of any contradiction, as previously identified in 2009, between the Charter and the legal and practical situation in Belgium concerning the following provisions: Article 26§2, Article 27§§1 and 2, Article 28, and Article 31. The Committee welcomed with great satisfaction the Declaration of the Belgian Minister of Foreign and European Affairs, on 10 June 2015, stating that Belgium considers itself bound by Articles 26§2, 27§1 and 2, and 28 of the Charter.

In preparation for implementing the procedure for the third time in 2019, the Belgian authorities were invited to submit written information regarding the progress made toward the acceptance of new provisions and, where applicable, the reasons for any delays in their acceptance. The provisions concerned were Articles 19§12, 23, 24, 27§3, and 31 of the Charter.

After examining the written report submitted by the Belgian authorities on 30 April 2019, the Committee was of the opinion that Belgium was in a position to accept Articles 23 and 27§3, as well as Article 31 of the Charter. Regarding Article 24, the ECSR considered that legislative amendments to introduce a single status between workers and employees were necessary. Regarding Article 19§12 of the Charter, the ECSR considered that additional information on the current legal and practical situation in Belgium was necessary to allow for a proper assessment of the situation.

### **Current examination**

This examination of the non-accepted provisions is based on the adjusted procedure on non-accepted provisions. In terms of this procedure, Belgium was invited to submit written information, which was registered in March 2024 and subsequently published on the [CoE website](#).

The present examination covers the following non-accepted provisions of the revised Charter:

- 19§12 – The right of migrant workers and their families to protection and assistance
- Article 23 – The right of elderly persons to social protection
- Article 24 – The right to protection in cases of termination of employment
- Article 27§3 – The right of workers with family responsibilities to equal opportunities and equal treatment
- Article 31§§1 to 3 – The right to housing

After examining the written information submitted by Belgium, the ECSR considers that there are no obstacles to the immediate acceptance of Article 24 and 27§3 of the revised Charter and no major obstacles to the acceptance of Article 19§12, 23 and 31§§1,2 and 3 of the revised Charter, which can be accepted in 2025.

Furthermore, the ECSR invites Belgium to consider recognising the right of national NGOs to submit complaints in accordance with Article 2 of the Additional Protocol providing for a system of collective complaints.

The next review of the provisions not accepted by Belgium will take place in 2029.

## **II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS**

### **Article 19§12 - *Right of migrant workers and their families to protection and assistance***

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:**

**12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.**

#### **Situation in Belgium**

In Belgium, the Communities have limited competence in policies related to the reception and integration of immigrants, as outlined in Article 5, II, 3° of the Special Law of 8 August 1980. The approach to Article 19§12 of the revised European Social Charter, which concerns teaching the mother tongue to the children of migrant workers, varies across the Communities.

In Flanders, the focus is on learning Dutch as quickly as possible to ensure equal opportunities and integration. Reception classes (OAN and OKAN) provide intensive Dutch instruction for newcomer students, and a language assessment (KOALA) helps identify children needing additional support. While extracurricular mother tongue courses are offered by embassies and associations, the Flemish Community does not subsidize them, prioritizing proficiency in Dutch. Consequently, Flanders does not accept Article 19§12, arguing that it should be read in conjunction with Article 19§11, which emphasizes learning the host country's language.

In the French Community (Wallonia-Brussels Federation), the DASPA and FLA programs support newly arrived students with intensive French instruction and gradual integration into mainstream education. Additionally, the "Opening up to Languages and Cultures" (OLC) program, in partnership with ten countries, allows schools to offer optional language and cultural awareness courses. Unlike Flanders, the French Community acknowledges the importance of maintaining migrant languages alongside learning French.

In the German-speaking Community, there are no explicit provisions regarding the teaching of a migrant worker's mother tongue to their children. However, as the most represented migrants are German citizens, the promotion of the mother tongue is ensured for a large part of the population within the school system.

Social contact points have identified a demand for Arabic courses to help children maintain their linguistic and cultural ties. The German-speaking Community remains open to discussions on Article 19§12 but has no fixed position on its adoption.

Overall, Belgium's approach to this provision of the RESC is fragmented: while the French and German-speaking Communities acknowledge the value of mother tongue instruction, Flanders prioritizes Dutch as the key to integration and rejects Article 19§12.

For further information, please see <https://rm.coe.int/le-4e-rapport-dispositions-non-acceptees-de-la-charte-sociale-europeen/1680af6821>

## **ECSR interpretation**

The ECSR recalls that, under article 19§2, States Parties must promote and facilitate the teaching of the languages most widely spoken by migrants present on their territory within the framework of their school systems, or in other structures such as voluntary associations and non-governmental organisations<sup>2</sup>.

For a comprehensive assessment of the situation under this provision, the ECSR takes into consideration, in particular, the following detailed information:

- statistics on major migrant groups,<sup>3</sup>
- whether any measures or projects have been put in place in the framework of the school system or other structures to provide teaching of migrants' mother tongue,<sup>4</sup>
- whether the children of migrants have access to multilingual education and on what basis; what steps that government has taken to facilitate the access of migrants' children to these schools,<sup>5</sup>
- whether any non-governmental organizations or other bodies, such as local associations, cultural centers or private initiatives that teach migrant workers' children the language of their country of origin, and whether they receive support<sup>6</sup>.

## **ECSR opinion**

The ECSR thanks the Belgian Government for the additional information submitted, as requested in the last report for 2019.

The ECSR notes that concrete initiatives have been adopted, particularly in the French and German-speaking Communities, to promote the teaching of the mother tongues of migrants present on their territory. While the Flemish Community has chosen to concentrate its efforts on learning the Dutch language, this choice does not exclude the possibility of setting up or supporting similar schemes in the schools depending on the Flemish Community. [https://hudoc.esc.coe.int/eng?i=2011\\_163\\_10/Ob/EN](https://hudoc.esc.coe.int/eng?i=2011_163_10/Ob/EN)

The ECSR further recalls that the expected measures concern only the languages most widely spoken by migrants present on the territory.

The ECSR is therefore of the opinion that the situation in Belgium could be compatible with the requirements of Article 19§2 of the Charter, provided that reasonable efforts are made by all three Communities.

The ECSR asks the Belgian Government to report on the progress made in this respect in its next report and to provide it with complete and up-to-date statistics on the main groups of migrants and the number of pupils accessing these facilities<sup>7</sup> in order to enable it to better assess the situation.

The ECSR requests that the Belgian Government to report on the progress made in this regard in the next report and provide comprehensive and up-to-date statistics on the main migrant

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<sup>2</sup> [Conclusions 2002, Italy](#); [Conclusions 2011, Armenia](#); [Conclusions 2011, Statement of Interpretation on Article 19§12](#).

<sup>3</sup> [Conclusions 2019, Albania](#).

<sup>4</sup> [Conclusions 2019, Albania](#).

<sup>5</sup> [Conclusions 2019, Albania](#).

<sup>6</sup> [Conclusions 2019, Albania](#).

<sup>7</sup> [Conclusions 2019, Albania](#).

groups as well as the number of pupils accessing these schemes, in order to enable the ECSR to better assess the situation.

### **Article 23 - *The right of the elderly to social protection***

**With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organizations, appropriate measures designed in particular:**

**– to enable elderly persons to remain full members of society for as long as possible, by means of:**

**a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;**

**b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;**

**– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:**

**a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;**

**b) the health care and the services necessitated by their state;**

**– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.**

***Appendix: For the purpose of the application of this paragraph, the term « for as long as possible » refers to the elderly person's physical, psychological and intellectual capacities<sup>8</sup>***

### **Situation in Belgium**

The Government's report describes the situation in Flanders, the Walloon Region, the German-speaking Community and the Brussels-Capital Region and their views on the possibility of accepting Article 23 of the Charter.

Belgium has made various efforts to improve the welfare of its elderly population, including increasing pensions and introducing measures to support those losing their independence. At the federal level, guaranteed minimum pensions and income guarantees for the elderly (GRAPA) have been progressively increased, with specific adjustments made to address the COVID-19 crisis.

However, as in its last report in 2019, the report states that at the federal level, despite the measures put in place, there are at least two obstacles to the acceptance of this provision:

- a financial obstacle: extending the scope of the Income Guarantee for the Elderly (GRAPA) to nationals of States party to the Charter will have an impact on expenditure on this benefit, and
- a political obstacle: the forthcoming federal parliamentary elections scheduled for 9 June 2024 make it impossible to reach a political decision on the acceptance of Article 23, which will inevitably commit future governments.

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<sup>8</sup> [Appendix to the European Social Charter \(Revised\), European Treaty Series - No. 163](#)

At the regional level, the Flemish Community has developed a comprehensive policy for older adults, focusing on participation, quality care, accommodation, dementia care, and combating loneliness. However, it has not accepted all provisions, especially regarding housing adaptations.

The Walloon Region has introduced various policies to support elderly people, including mobility assistance and an integrated life path strategy. Wallonia has expressed its commitment to accepting Article 23 of the revised European Social Charter.

The German-speaking Community is open to further discussions on Article 23, while the Brussels-Capital Region has taken steps to improve housing and support for elderly individuals, focusing on autonomy, respect for rights, and privacy.

For further information, please see <https://rm.coe.int/le-4e-rapport-dispositions-non-acceptees-de-la-charte-sociale-europeen/1680af6821>

### **ECSR interpretation**

The ECSR recalls that Article 23 of the Charter requires States Parties to undertake or promote, either directly or in co-operation with public or private organisations, appropriate measures designed, inter alia, to enable elderly persons to remain full members of society for as long as possible.

The expression "full members of society" used in Article 23 means that older persons should not suffer any exclusion from society because of their age<sup>9</sup>. Every person, whether working or retired, whether living in an institution or not<sup>10</sup>, must be recognised as having the right to participate in the various areas of activity of society.

The ECSR takes due account of contemporary definitions of ageism which refer to stereotypes, prejudice and discrimination against others or oneself based on age (see for example the WHO report on ageism, 2021, p. XIX).

Equal treatment calls for an approach based on equal recognition of the value of the lives of older people in all areas covered by the Charter.

### **Legislative framework**

Article 23 of the Charter requires the existence of an adequate legal framework to combat age discrimination in a range of areas beyond employment, including access to goods, structures and services<sup>11</sup>. The overall emphasis of the Charter is on the use of social rights to enhance individual autonomy and respect for the dignity of older people and their right to flourish in society. This requires a commitment to identify and eliminate ageist attitudes and laws, policies and other measures that exemplify or reinforce ageism<sup>12</sup>.

The ECSR considers that States parties, in addition to adopting comprehensive legislation prohibiting age discrimination, must take a wide range of measures to combat ageism in society<sup>13</sup>. These measures should include reviewing (and, where necessary, amending) legislation and policies on age discrimination, adopting action plans to ensure equality for older

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<sup>9</sup> [Fellesforbundet for Sjøfolk \(FFFS\) v. Norway](#) Complaint No. 74/2011, decision on the merits of 2 July 2013, §116

<sup>10</sup> [Fellesforbundet for Sjøfolk \(FFFS\) v. Norway](#), Complaint No. 74/2011, decision on the merits of 2 July 2013, §116

<sup>11</sup> [Conclusions 2009, Andorra](#)

<sup>12</sup> [Conclusions 2009, Andorra](#)

<sup>13</sup> [Conclusions 2017, Andorra](#)

persons, promoting positive attitudes towards ageing through activities such as society-wide awareness-raising campaigns and promoting intergenerational solidarity.

Article 23 also requires the States Parties to provide a procedure for assistance in decision-making. The ECSR recalls that a national legal framework on assisted decision-making for older people is necessary to guarantee their right to be able to decide for themselves. Older people should not be presumed incapable of making a decision simply because they have a health problem or disability. States Parties must take measures to replace substitute decision-making regimes with supported decision-making that respects the autonomy, will and preferences of the person. This may be formal or informal<sup>14</sup>.

Older persons may need assistance to express their wishes and preferences, so all means of communication - language, images, signs - must be used before drawing the conclusion that they are unable to make the decision in question themselves. In this context, the national legal framework must provide the necessary safeguards to ensure that older people are not arbitrarily deprived of the opportunity to make autonomous decisions, even if their decision-making capacity is reduced. Care must be taken to ensure that anyone acting on behalf of an older person interferes as little as possible with their wishes and rights<sup>15</sup>.

Article 23 requires States Parties to take appropriate measures against the abuse of older persons<sup>16</sup>. They must take steps to assess the extent of the problem and raise awareness of the need to eradicate the abuse and neglect of older persons, and take legislative or other measures in this regard<sup>17</sup>.

In order to enable older persons to be full members of society for as long as possible, States must provide them with sufficient resources to enable them to lead a decent life and to participate actively in public, social and cultural life<sup>18</sup>. They must also disseminate information about the services and facilities available to older persons and the opportunities for them to make use of them<sup>19</sup>.

States must enable older persons to freely choose their lifestyle and lead an independent life in their usual environment for as long as they wish and as long as this is possible. This implies the provision of housing appropriate to their needs and state of health, or adequate assistance in adapting their homes, as well as the health care and services that their condition would require, in particular nursing care and home health care<sup>20</sup>.

The ECSR recalls that institutionalisation is a form of segregation, which often leads to a loss of autonomy, choice and independence. As a result, States parties urgently need to reinvest in community-based support and services as an alternative to institutions.

When placement in an institution is unavoidable, States must guarantee older persons appropriate assistance, with due respect for private life and the home, and participation in determining the living conditions in the institution. In particular, they must ensure the right to appropriate care and adequate services, the right to respect for private life and the home, the right to personal dignity, the right to take part in determining the living conditions in the institution concerned, the protection of property, the right to maintain personal contact with relatives, and the right to complain about institutional care and treatment<sup>21</sup>.

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<sup>14</sup> [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

<sup>15</sup> [Interpretative comment 2013](#)

<sup>16</sup> [Conclusions 2009, Andorra](#)

<sup>17</sup> [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

<sup>18</sup> [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

<sup>19</sup> [Conclusions 2003, France](#)

<sup>20</sup> [Conclusions 2003, France](#)

<sup>21</sup> [Conclusions 2017, Malta; Portugal](#)

There must be an adequate supply of care facilities (public or private) for older persons, care must be affordable and assistance must be available to cover these costs. All establishments must be approved or subject to a declaration or inspection system or any other mechanism that ensures adequate provision<sup>22</sup>.

### **ECSR opinion**

The ECSR takes note of the measures and policies adopted by the Government of Belgium, as well as by the federated entities, in favour of older persons.

As regards the personal scope of Article 23 of the Charter, which would mean extending the scope of the Income Guarantee for the Elderly (GRAPA) to nationals of States Parties to the Charter, the financial argument should not be insurmountable.

The GRAPA already benefits, subject to a condition of residence, nationals of States Parties to the Charter that are also members of the European Union, nationals of Switzerland and Norway with which Belgium has an agreement, foreign nationals with long-term resident status in Belgium, refugees and stateless persons.

Other foreign nationals also have access to the GRAPA provided they can show that they have worked at least 312 days full-time in Belgium. Acceptance of Article 23 would mean that this aid would be available to nationals of a dozen States party to the Charter who do not find themselves in any of these situations. The increase in the number of beneficiaries should therefore not be significant.

As for the political argument, any government decision necessarily commits subsequent governments and does not justify postponing a political choice until the next legislative elections.

With regard to other national measures, the Communities have all adopted strategies and/or regulations specifically benefiting older persons, as required by Article 23. The ECSR asks the Government to provide, in its next report, more precise information and figures concerning the situation and the policy specifically aimed at older persons on its territory.

The Flemish Region considers that the guarantees in Article 23 relating to housing for older persons would prevent acceptance of this provision. This is not the ECSR's view, as set out below (see Article 31).

The ECSR also notes that in a recent opinion on the human rights of older people<sup>23</sup>, the Flemish Institute for Human Rights stressed that the current housing situation for older people required a clear, long-term strategy to be drawn up by the Flemish Government in order to meet current and future needs.

In the light of the measures and policies adopted by the Government of Belgium, as well as by the federated entities, in favour of the elderly, the ECSR considers that there are no obstacles to Belgium's acceptance Article 23 of the Charter.

### **Article 24 - *Right to protection in cases of termination of employment***

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<sup>22</sup> [Conclusions 2005, Slovenia; Conclusions XX-2 \(2013\), Czech Republic](#)

<sup>23</sup> Vlaams Mensenrechteninstituut, "[Advies Ouderen en mensenrechten: tellen ouderen nog mee?](#)", Opinion no. 5 of 23 April 2024.

**With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:**

- a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;**
- b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief. To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.**

### **Situation in Belgium**

Belgium states that it cannot adhere to Article 24 of the revised European Social Charter because not all workers are covered by a system of grounds for dismissal at the time of its report, pending the vote on a bill relating to the dismissal of public sector workers with an employment contract. However, efforts have been made to strengthen protections against unfair dismissal.

The Act of 26 December 2013 mandated social partners within the National Labour Council to establish a framework on dismissal grounds. This led to the adoption of Collective Labour Agreement (CLA) No. 109 on 12 February 2014, which applies to private-sector workers. CLA No. 109 introduced a system where employees can request written reasons for dismissal, with penalties for employers who fail to comply or provide unreasonable justifications.

For public sector workers, similar legal protections had not yet been enacted yet at the time of the report. However, Article 38 of the 2013 Act encourages the adoption of a comparable system. A bill tabled on 18 January 2024 aims to address this gap by aligning public-sector regulations with CLA No. 109, while considering sector-specific requirements. As previously mentioned, this bill is still under discussion.

In the meantime, the Constitutional Court ruled that courts must ensure non-discriminatory protection for public-sector workers, drawing on CLA No. 109 where appropriate. Additionally, workers made redundant may qualify for unemployment benefits, but only after any redundancy compensation has been exhausted.

For further information, please see <https://rm.coe.int/le-4e-rapport-dispositions-non-acceptees-de-la-charte-sociale-europeen/1680af6821>

### **ECSR interpretation**

#### **Scope of protection**

Article 24 relates to termination of employment at the initiative of the employer.<sup>24</sup> A situation where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, does not fall within the scope of this provision. However, the termination of employment on the sole ground that the person has reached the pensionable age is not justified.<sup>25</sup>

#### **Definition of a “worker”**

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<sup>24</sup> [Conclusions 2012, Statement of Interpretation on Article 24](#)

<sup>25</sup> [Conclusions 2020, Malta ; Conclusions 2012, Statement of Interpretation on Article 24](#)

All workers who have signed an employment contract are entitled to protection in the event of termination of employment.<sup>26</sup> However, according to the Appendix, the State Party may exclude one or more of the following categories:

- workers engaged under a contract of employment for a specified period of time or a specified task.<sup>27</sup> In the public sector, the non-renewal of fixed-term contracts or the fact that such contracts are not converted into indefinite duration contracts, even though there are vacant positions within the workforce, cannot be regarded as dismissals contrary to Article 24 of the Charter.<sup>28</sup>
- workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration.<sup>29</sup> Under Article 24, exclusion of employees from protection against dismissal for six months during the probationary period is not reasonable if applied without discrimination, regardless of the employee's qualifications.<sup>30</sup> A one year period of exclusion is manifestly unreasonable and therefore not in conformity with the Charter.<sup>31</sup>
- workers engaged on a casual basis for a short period.<sup>32</sup>

This list is exhaustive. Exclusion of any other category of employees from protection against unfair dismissal, such as employees having reached the normal retiring age, is not in conformity with the Charter.<sup>33</sup>

Safeguards must exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them has the status of a self-employed contractor, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.<sup>34</sup>

### Definition of valid reasons

Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship.<sup>35</sup> Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the worker and on the other hand those based on the operational requirements of the enterprise (economic reasons).<sup>36</sup>

#### *i. reasons connected with the capacity or conduct of the employee*

A prison sentence delivered in court can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related offences.<sup>37</sup> This is not the case with prison sentences for offences unrelated to the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work.<sup>38</sup>

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<sup>26</sup> [Conclusions 2003, Italy](#)

<sup>27</sup> Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

<sup>28</sup> [Associazione Professionale e Sindacale \(ANIEF\) v. Italy](#), Complaint No. 146/2017, decision on the merits of 7 July 2020, §§ 104-106

<sup>29</sup> Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

<sup>30</sup> [Conclusions 2012, Ireland](#); [Conclusions 2012, Cyprus](#); [Conclusions 2003, Italy](#)

<sup>31</sup> [Conclusions 2012, Ireland](#)

<sup>32</sup> Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

<sup>33</sup> [Conclusions 2012, Ireland](#)

<sup>34</sup> [Conclusions 2020, Albania](#)

<sup>35</sup> [Conclusions 2012, Statement of Interpretation on Article 24](#)

<sup>36</sup> [Conclusions 2012, Statement of Interpretation on Article 24](#)

<sup>37</sup> [Conclusions 2008, Lithuania](#)

<sup>38</sup> [Conclusions 2008, Lithuania](#)

## *ii. certain economic reasons*

Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service.<sup>39</sup> The assessment relies on the domestic courts' interpretation of the law.<sup>40</sup> The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law.<sup>41</sup> Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run their enterprise as they see fit and the need to protect the rights of the workers.<sup>42</sup>

In cases of collective dismissals due to a reduction or change in the company's activities caused by a crisis such as a pandemic, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of the reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies.<sup>43</sup>

### Prohibited dismissals

A series of Charter provisions require increased protection against termination of employment on certain grounds:

- discrimination (Articles 1§2, 4§3, and 20);<sup>44</sup>
- trade union activities (Article 5);<sup>45</sup>
- participation in strikes (Article 6§4);<sup>46</sup>
- maternity (Article 8§2);<sup>47</sup>
- disability (Article 15);<sup>48</sup>
- family responsibilities (Article 27);<sup>49</sup>
- worker representation (Article 28).<sup>50</sup>

Only two reasons are examined under Article 24, namely:

*i. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;*

National legislation or case law must contain express safeguards against retaliatory dismissal.<sup>51</sup> Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law.<sup>52</sup> In the absence of any explicit statutory ban, States Parties must be able to show how national legislation conforms to the requirement of the Charter.

*ii. temporary absence from work due to illness or injury.*

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<sup>39</sup> [Conclusions 2016, Latvia](#)

<sup>40</sup> [Conclusions 2016, Latvia](#) citing [Conclusions 2012, Turkey](#)

<sup>41</sup> [Conclusions 2012, Turkey](#)

<sup>42</sup> [Conclusions 2016, Latvia](#)

<sup>43</sup> [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

<sup>44</sup> [Conclusions 2016, Latvia](#)

<sup>45</sup> [Conclusions 2016, Latvia](#)

<sup>46</sup> [Conclusions 2016, Latvia](#)

<sup>47</sup> [Conclusions 2016, Latvia](#)

<sup>48</sup> [Conclusions 2016, Latvia](#)

<sup>49</sup> [Conclusions 2016, Latvia](#)

<sup>50</sup> [Conclusions 2016, Latvia](#)

<sup>51</sup> [Conclusions 2016, Latvia](#)

<sup>52</sup> [Conclusions 2016, North Macedonia](#)

A time limit can be placed on protection against dismissal in such cases.<sup>53</sup> Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.<sup>54</sup>

As regards dismissal without notice in the event of permanent invalidity, the following factors are taken into consideration for the assessment:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?<sup>55</sup>
- are employers required to pay compensation for termination in such cases?<sup>56</sup>
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?<sup>57</sup>

*iii. Dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age*

States Parties should take adequate measures to ensure protection for all workers against dismissal on grounds of age.<sup>58</sup>

Dismissal on grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as an employment policy seeking to promote the arrival of young workers, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary.<sup>59</sup>

Legislation which enables dismissal directly on grounds of age and does not, therefore, effectively guarantee the right to protection in cases of termination of employment, is contrary to the Charter.<sup>60</sup> The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.<sup>61</sup>

#### Adequate compensation

#### *Right of appeal*

Any employee who considers themselves to have been dismissed without valid reason must have the right to appeal to an impartial body.<sup>62</sup> The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.<sup>63</sup>

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<sup>53</sup> [Conclusions 2012, Ukraine](#)

<sup>54</sup> [Conclusions 2016, Latvia](#)

<sup>55</sup> [Conclusions 2008, Azerbaijan](#)

<sup>56</sup> [Conclusions 2008, Azerbaijan](#)

<sup>57</sup> [Conclusions 2008, Azerbaijan](#)

<sup>58</sup> [Conclusions 2007, Statement of Interpretation on Article 24](#)

<sup>59</sup> [Conclusions 2008, Lithuania](#); [Conclusions 2007, Statement of Interpretation on Article 24](#)

<sup>60</sup> [Fellesforbundet for Sjøfolk \(FFFS\) v. Norway](#), Complaint No. 74/2011, decision on the merits of 2 July 2013, §§ 86, 89, 97, 99

<sup>61</sup> Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

<sup>62</sup> [Conclusions 2005, Cyprus, France, Estonia](#)

<sup>63</sup> [Conclusions 2008, Statement of Interpretation on Article 24](#) and [Statement of Interpretation on the burden of proof in discrimination cases](#)

## *Damages*

Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief.<sup>64</sup> In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.<sup>65</sup>

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is in principle contrary to the Charter.<sup>66</sup> If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.<sup>67</sup>

## **ECSR opinion**

The ECSR takes note of the information provided by the Government of Belgium in its report, but notes that in the meantime the law on the motivation of dismissals and manifestly unreasonable dismissals of contractual workers in the public sector was adopted on 13 March 2024, published on 20 March 2024 and entered into force on 1 May 2024.

In the light of the information provided by the Government, the ECSR considers that there are no longer any obstacles to the acceptance of Article 24 and strongly encourages Belgium to notify its willingness to be bound by this provision as soon as possible.

## ***Article 27§3 - Right of workers with family responsibilities to equal opportunities and equal treatment***

**With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:**

**3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.**

## **Situation in Belgium**

The Government states in its report that, following the partial implementation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, Belgium amended the Act of 10 May 2007 (Gender Act) to strengthen protection against discrimination related to family responsibilities.

This law recognizes "family responsibilities" as a protected criterion, ensuring that individuals cannot face unfavourable treatment due to their caregiving duties. While the law does not

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<sup>64</sup> [Conclusions 2016, North Macedonia](#)

<sup>65</sup> [Conclusions 2016, North Macedonia](#), [Finnish Society of Social Rights v. Finland](#), decision on the merits of 8 September 2016

<sup>66</sup> [Conclusions 2012, Slovenia](#); [Conclusions 2012, Finland](#), [Finnish Society of Social Rights v. Finland](#), decision on the merits of 8 September 2016

<sup>67</sup> [Conclusions 2012, Slovenia](#); [Conclusions 2012, Finland](#), [Finnish Society of Social Rights v. Finland](#), decision on the merits of 8 September 2016

define the term explicitly, it includes responsibilities for dependent children or relatives needing social, emotional, or family support.

Victims of discrimination on these grounds can claim compensation, choosing between a lump sum or proven damages. The law also guarantees:

- The right to return to the same or an equivalent job.
- The preservation of acquired rights and any ongoing improvements in working conditions.
- Compensation for any violation of these rights.

For further information, please see <https://rm.coe.int/le-4e-rapport-dispositions-non-acceptees-de-la-charte-sociale-europeen/1680af6821>

### **ECSR interpretation**

Family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of “family responsibilities” is to be understood as obligations in relation to dependent children as well as other members of the immediate family who need care and support (for instance older parents).<sup>68</sup>

The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement for workers with family responsibilities.<sup>69</sup>

Workers dismissed on such illegal grounds must be afforded the same level of protection as that afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.<sup>70</sup> In particular, courts or other competent bodies should be able to order reinstatement of an employee unlawfully dismissed and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.<sup>71</sup>

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is proscribed.<sup>72</sup> If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.<sup>73</sup>

### **ECSR opinion**

The ECSR welcomes the willingness expressed by the Government to accept to be bound by Article 27§3 of the revised Charter and invites it to notify this acceptance as soon as possible.

#### **Article 31 - *Right to housing***

**With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:**

##### **1. to promote access to housing of an adequate standard.**

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<sup>68</sup> Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g. Conclusions 2003, Bulgaria

<sup>69</sup> Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g. Conclusions 2003, Bulgaria

<sup>70</sup> [Conclusions 2007, Finland](#)

<sup>71</sup> [Conclusions 2007, Finland](#)

<sup>72</sup> [Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3](#)

<sup>73</sup> [Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3](#), see also [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy](#), Complaint No.158/2017, decision on the merits of 11 September 2019, §96

- 2. to prevent and reduce homelessness with a view to its gradual elimination**
- 3. to make the price of housing accessible to those without adequate resources.**

### **Situation in Belgium**

Housing policy is a regional competence in Belgium, in accordance with Article 6, IV of the Special Law of 8 August 1980 on institutional reforms. Since 1 January 2020, the German-speaking Community has also exercised housing-related powers, transferred from the Walloon Region.

According to the State's report, in Flanders, Article 31 of the revised European Social Charter is largely applied through extensive investments in social housing, rental allowances, and renovation grants. Additional efforts include subsidies to boost affordable housing on the private market and support for student accommodation.

However, Flanders does not accept Article 31, arguing that it imposes obligations only on the state and not on citizens, contrary to the Belgian constitutional principle that rights come with responsibilities.

The Walloon Region actively pursues the right to housing through various measures, including the construction of new public housing, large-scale renovation projects, and financial aid for homeowners and renters. It has invested heavily in energy-efficient housing, assistance for flood victims, and access to affordable homeownership.

Social housing agencies have been strengthened, and rental market regulations have been introduced. Additionally, Wallonia has implemented specific initiatives to combat homelessness, including a Housing First programme, and would have no objection to Belgium accepting Article 31 of the European Social Charter.

The Brussels-Capital Region has also made housing a priority, adopting an Emergency Housing Plan and introducing legislative reforms to support tenants. Key measures include rent allowances for those awaiting social housing, assistance for vulnerable individuals such as the homeless and victims of domestic violence, and restrictions on rent indexation for energy-inefficient homes. Given these efforts, Brussels supports the adoption of Article 31.

In the German-speaking Community, extensive legislative changes have been made to integrate housing policies, with a strong focus on expanding public housing and supporting social housing agencies.

The government has committed significant financial resources to increase and improve public housing stock while also conducting studies to assess and address homelessness. A new decree on housing and sustainable living is set to be introduced, ensuring compliance with Article 31.

Overall, all the Communities say they are ready to accept Article 31 of the European Social Charter, with the exception of Flanders, which reiterates the reason given in the 2019 report for the absence of any mention in Article 31 of the duties of citizens towards society.

For further information, please see <https://rm.coe.int/le-4e-rapport-dispositions-non-acceptees-de-la-charte-sociale-europeen/1680af6821>

## ECSR interpretation

The ECSR recalls that Article 31 guarantees the right to housing for everyone<sup>74</sup>.

To this end, the States Parties must take such legal and practical measures as may be necessary and meet the objective of effectively protecting the right to housing<sup>75</sup>. To this end, they enjoy a certain margin of appreciation to determine what needs to be done to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group, as well as the choices to be made in terms of priorities in the allocation of resources<sup>76</sup>. Article 31 is therefore not an absolute right, but may be restricted in order to guarantee respect for the rights and freedoms of others (Article G).

Article 31 does not impose an obligation of result on the States Parties. Nevertheless, the rights set out in the Social Charter are rights that must take a concrete and effective form, not a theoretical one<sup>77</sup>.

Therefore, compliance with Article 31 implies certain obligations for the States Parties, i.e. the obligation to:

a) mobilize the resources (regulatory, financial, operational) needed to make real progress towards achieving the objectives set out in the Charter<sup>78</sup>;

b) keep statistics worthy of the name so that needs, resources and results can be compared<sup>79</sup>;

c) regularly assess the effectiveness of the strategies adopted<sup>80</sup>;

d) define milestones and not postpone indefinitely the achievement of the targets they have set themselves<sup>81</sup>;

e) pay particular attention to the impact of the choices they make on all the categories of people concerned, especially those who are most vulnerable, in particular families and people experiencing exclusion or poverty.<sup>82</sup>

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<sup>74</sup> [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95

<sup>75</sup> [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95

<sup>76</sup> [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95

<sup>77</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §59; [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No 39/2006, decision on the merits of 5 December 2007 §53; [Médecins du Monde - International v. France](#), Complaint No. 67/2011, decision on the merits 11 September 2012, §55 citing [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §59

<sup>78</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

<sup>79</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

<sup>80</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

<sup>81</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

<sup>82</sup> [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

## **ECSR opinion**

The ECSR thanks the Government for the updated presentation of Community measures and legislation in the field of housing policy. This information confirms that there are no technical obstacles to Belgium's acceptance of Article 31 of the revised Charter.

The ECSR invites the Government and the federated entities to seriously consider accepting Article 31 of the Charter. It also notes that Belgian Community policies are already being assessed by the ECSR, in the context of the reporting procedure and the collective complaints procedure, particularly from the perspective of Articles 16 (Right of the family to social, legal and economic protection) and 30 (Right to protection against poverty and social exclusion) of the revised Charter, alone or in combination with Article E (Non-discrimination).

However, in Complaint No. 203/2021, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. Belgium*<sup>83</sup>, the ECSR found a violation of Article 16 and of Article E in conjunction with Article 16 of the Charter. This was due to the failure of the Flemish housing policy to improve housing affordability for vulnerable groups, the high proportion of inadequate housing, the failure to systematically collect data on evictions and homelessness, and the failure to ensure the practical implementation of the prohibition of discrimination as regards the access to rental accommodation.

Nevertheless, in the light of the information provided by the Government and while expecting appropriate remedial action concerning the above-mentioned decision in *FEANTSA v. Belgium*, the ECSR reiterates its opinion expressed already in 2009, 2014 and 2019 and recommends the acceptance of Article 31 as soon as possible.

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<sup>83</sup> [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. Belgium](#), Complaint No. 203/2021, decision on merits of 17 October 2024

## APPENDIX I



### — Belgium and the European Social Charter —

#### Signatures, ratifications and accepted provisions

Belgium ratified the European Social Charter on 16/10/1990 and the Revised European Social Charter on 02/03/2004, accepting 87 of the Revised Charter's 98 paragraphs.

In June 2015 Belgium accepted to be bound by 4 additional provisions (Articles 26§2, 27§1, 27§2 and 28 of the Revised Charter), bringing the total of accepted provisions to 91 of the 98 paragraphs.

It accepted the Additional Protocol of 1995 providing for a system of collective complaints on 23/06/2003, but has not yet made a declaration enabling national NGOs to submit collective complaints.

#### The Charter in domestic law

Automatic incorporation into domestic law based on case-law (Le Ski judgment, Court of Cassation, 27 May 1971).

#### 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 ECSR") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [Reports concerning Belgium](#) in 2009, 2014, 2019 and 2024. The ECSR is of the opinion that there are no obstacles in law and in practice to acceptance by Belgium of Articles 23, 27§3 and 31. Further information on the reports on non-accepted provisions is available on [the relevant webpage](#).

## I. Reporting system<sup>84</sup>

### Reports submitted by Belgium

Between 1992 and 2024, Belgium submitted 12 reports on the application of the 1961 Charter and 18 reports on the application of the Revised Charter.

The [17th report](#), submitted on 22/12/2022, concerns the follow-up given to the relevant decisions of the ECSR in the framework of the collective complaints procedure.

The assessments of the ECSR on the follow up to decisions in complaints have been published in March 2024.

On 21 December 2023, [an ad hoc report on the cost-of-living crisis was submitted by Belgium](#)<sup>85</sup>.

### Situations of non-conformity<sup>86</sup>

#### Thematic Group 1 “Employment, training and equal opportunities” - Conclusions 2016

According to the applicable rules, Conclusions 2020 only refer to the information submitted by the Belgium Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2016.

► *Article 1§2 - Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The restrictions on the access of foreign nationals, other than EEA, to civil service posts are excessive which constitutes a discrimination on grounds of nationality.

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

The non-EEA nationals are subject to a length of residence requirement of two years to be eligible for financial aid for education.

► *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 persons with disabilities to mainstream education is not effectively guaranteed.

► *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* The Brussels-Capital Region does not have legislation prohibiting discrimination in all the areas covered by Article 15§3 of the Charter.

► *Article 18§3 – Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations*

Early termination of the employment relationship of a foreign national result in the automatic withdrawal of that person’s residence permit with no possibility of seeking new employment.

<sup>84</sup> 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](#).

<sup>85</sup> In accordance with [the decision of the Ministers’ Deputies](#) adopted on 27 September 2022 concerning the [new system](#) for the presentation of reports under the European Social Charter, the European Committee of Social Rights and the Governmental Committee have decided to request an ad hoc report on the cost-of-living crisis to all State parties.

<sup>86</sup> Further information on the situations of non-conformity is available [on the HUDOC database](#)

► *Article 25 – Right of workers to protection of their claims in the event of the insolvency of their employer* The average time to satisfy workers' claims in case of insolvency of their employer is excessive.

## **Thematic Group 2 “Health, social security and social protection” - Conclusions 2017**

According to the applicable rules, Conclusions 2021 only refer to the information submitted by the Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2017.

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

The labour inspection system does not have sufficient human resources to adequately monitor compliance with occupational health and safety legislation.

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

- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- The retention of accrued benefits is not guaranteed to nationals of all other States Parties.

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

- There are significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;
- There is a lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels- Capital Region.

► *Article 30 - Right to protection against poverty and social exclusion*

There is no adequate overall and coordinated approach to combating poverty and social exclusion.

## **Thematic Group 3 “Labour rights” - Conclusions 2022**

► *Article 2§3 – Right to just conditions of work - Annual holiday with pay*

Workers who suffer from illness or injury while on holiday are not entitled to take the days lost at another time.

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

The obligation to recognise and respect the principle of transparency of remuneration in practice is not complied with.

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

There is no notice period for statutory employees in the public sector.

## **Thematic Group 4 “Children, families, migrants” - Conclusions 2019**

According to the applicable rules, Conclusions 2023 only refer to the information submitted by the Belgium Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2019.

► *Article 7§5 – Right to special working conditions between the ages of 15 and 18 – Fair pay*

The allowances paid to apprentices are not appropriate.

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

- An excessive length of residence (5 years) is required for nationals of non-EEA member states to be entitled to family benefits;
- Traveller families are not afforded adequate protection with respect to housing, including in terms of eviction conditions.

► *Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training*

- Not all forms of corporal punishment are prohibited in all settings;
- The maximum length of pre-trial detention is excessive;
- Children may be detained with adults.

► *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 sufficient and effective anti-propaganda measures, in particular addressing racial profiling by the police, have been adopted.

► *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.

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

The grounds of non-conformity under Articles 19§1 and 19§6 apply also to self-employed migrants.

**The ECSR has been unable to assess compliance with the following rights:**

### **Thematic Group 1 “Employment, training and equal opportunities”**

► Article 10§4 - Conclusions 2016

According to the applicable rules, Conclusions 2020 only refer to the information submitted by the Belgium Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

### **Thematic Group 2 “Health, social security and social protection”**

► Article 13§1 - Conclusions 2017

► Article 13§4 - Conclusions 2017

According to the applicable rules, Conclusions 2021 only refer to the information submitted by the Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above). For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2017.

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

► Article 2§1 - Conclusions 2022

► Article 4§1 - Conclusions 2022

► Article 4§2 - Conclusions 2022

► Article 5 - Conclusions 2022

► Article 6§2 - Conclusions 2022

► Article 26§1 - Conclusions 2022

► Article 26§2 - Conclusions 2022

► Article 28 - Conclusions 2022

### **Thematic Group 4 “Children, families, migrants”**

► Article 7§10 - Conclusions 2019

► Article 17§2 - Conclusions 2019

► Article 19§4 - 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”**

► Strengthening of safeguards against discrimination by the Act of 25 February 2003 (extension of the concept, possibility of reinstatement and proportionate compensation for victims, etc.) and by the Act of 10 May 2007.

► Abolition of compulsory work for prisoners (Act of 12 January 2005).  
► Introduction of financial measures to encourage people over 50 to return to work (such as employment and

back-to-work bonuses).

► On 19 March 2012, the German-speaking Community adopted a decree on the fight against certain forms of discrimination, which prohibits direct and indirect discrimination based on “nationality, alleged race, colour, descent or national or ethnic origin; age, sexual orientation, religious or philosophical belief or disability; sex and related criteria such as pregnancy, childbirth and maternity or transsexualism; civil status, birth, wealth, political ideas, trade union affiliation, language, current or future state of health, physical or genetic characteristics or social background”. It applies to all persons, both in the public and in the private sector, including in public bodies, with regard to labour and employment relations.

► At federal level, the law on combating the gender pay gap was adopted on 22 April 2012 and requires measures to combat the wage gap to be negotiated at inter-occupational, sectoral and company level.

### **Thematic Group 2 “Health, social security and social protection”**

► New legislation on the prevention of psychosocial risks at work was enacted during the reference period and entered into force on 1 September 2014, namely the Act of 28 February 2014 supplementing the Act of 4 August 1996, the Act of 28 March 2014 amending the Judicial Code and the Act of 4 August 1996, and the Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work.

► The Social Criminal Code contains offences relating to the prevention of psychological and social problems caused by work. It is based on the provisions of the Act of 4 August 1996 as amended by the Act of 28 February 2014, on the prevention of psychosocial risks at work including stress, violence and moral or sexual harassment at work. The Royal Decree of 10 April 2014 on the prevention of psychosocial risks at work supplements these new provisions. Under the Act of 26 February 2016 (outside the reference period), the criminal provisions of the Social Criminal Code have been adapted to these new requirements.

► The Royal Decree of 10 October 2012 (Belgian Official Gazette of 5 November 2012) stipulates the basic requirements to be met by workplaces, including notably the general rules on layout, lighting, ventilation, temperature, communal facilities including sanitary installations and chairs for working and resting.

► Under the Royal Decree of 10 July 2013 implementing Chapter 5 entitled “Regulation of certain aspects of the electronic exchange of information between those involved in combating illegal labour and social security fraud” of Title 5 of Book 1 of the Social Criminal Code, as amended by the Royal Decree of 26 December 2013, social inspectors from the Directorate General of Employee Well-being of Belgium’s Federal Public Service for Employment, Labour and Social Dialogue are allowed to issue infringement reports electronically.

► Measures have been taken in the field of health to moderate the price of medicines and offer better protection to persons with chronic conditions, particularly by making it compulsory to include these persons in the direct payment system.

► In the Flemish region, the Decree of 21 March 2003 on Combating Poverty was modified on 20 December 2013 allowing the Flemish Authorities to subsidise local governments with a view to developing and supporting local initiatives to combat specifically child poverty.

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► In the Walloon region, a number of measures have been taken since 2012 to adopt an overall and coordinated approach with a view to promoting access to social rights such as employment, housing, culture and medical assistance. In 2015, a first cross-cutting plan to combat poverty was adopted in order to provide concrete and effective answers to precise difficulties encountered by people living at risk of poverty.

► The Government of the German-speaking community prepared in 2013 an analysis of poverty and the social vulnerability of its community which led in 2014-2015 to action divided up into three phases: (1) identification of the characteristics of the population targeted by social action and the way in which assistance is deployed on the territory, following a comparison with the other Communities of the Federal State of Belgium; (2) collection of data using a sample of real life stories; (3) analytical phase, allowing the German-speaking community to set up a network of social action.

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

► Setting of an upper limit on weekly working hours as part of the “Extensive flexibility working time scheme” (Act of 4 December 1998).

► Extension of periods of notice for workers (collective agreement of 20 December 1999).

► Introduction of a rule under which dockworkers at Antwerp must only be recruited on the basis of their technical knowledge, not their trade union membership (Royal Decree of 19 December 2000).

► Prohibition of discrimination based on trade union membership, so any workers who rely on this ground will be able to claim compensation proportional to the real damage (sections 107 and 108 of the Act of 30 December 2009, amending the Anti-Discrimination Act of 10 May 2007).

### **Thematic Group 4 “Children, families, migrants”**

► Repeal, for minors at risk, of section 53 of the Young Persons Protection Act of 8 April 1965, which authorised juvenile judges to order that minors be held provisionally in remand prisons (for up to fifteen days) (Decree of 4 March 1991).

► Establishment of a system to combat and criminalise child pornography (Act of 13 April 1995, as amended by the Act of 28 November 2000; Article 383bis of the Criminal Code).

► Introduction of the right for children to be heard in adoption proceedings, in principle from the age of 12 onwards (Article 931 of the Judicial Code, as amended in 2003).

► Adoption of the collective labour agreement No. 80 bis, which brings the period during which the worker is entitled to take the nursing break, from seven to nine months (Article 6 of the collective agreement).

► Suppression of the five years residence requirement for granting “guaranteed family benefits” to non-EU and non-EEA nationals (Framework Act 24 December 2002).

► Introduction of the right to paid breastfeeding breaks (collective labour agreement No. 80/ 2001).

► The Federal State and the federated entities signed in 2014 a Cooperation Agreement on Homelessness and the Lack of Housing aiming at pursuing, coordinating and harmonising their policies to prevent and fight against homelessness and lack of accommodation

## APPENDIX II



PRESIDENCY OF LITHUANIA  
Council of Europe  
May – November 2024

PRÉSIDENCE DE LA LITUANIE  
Conseil de l'Europe  
Mai – Novembre 2024



MINISTRY  
OF SOCIAL SECURITY AND LABOUR  
REPUBLIC OF LITHUANIA



European  
Social  
Charter

Charte  
sociale  
européenne



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

### **High-Level Conference on the European Social Charter** *“a step by member States to take further commitments under the Charter”* 3-4 July 2024, Vilnius, Lithuania

## VILNIUS DECLARATION

1. In the Reykjavik Declaration (May 2023), the Heads of State and Government of the Council of Europe confirmed that “[s]ocial justice is crucial for democratic stability and security” and “reaffirm[ed] their] full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system”. They proposed the holding of a high-level conference on the European Social Charter (ETS No. 35, (revised) ETS No. 163, “the Charter”) “as a step to take further commitments under the Charter where possible”.
2. At the 133rd Ministerial Session on 17 May 2024, the Committee of Ministers reiterated that social justice and the Council of Europe’s action on social rights play a crucial role for democratic stability and security. The Ministers restated their commitment to the European Social Charter system and, in their decisions, underlined the importance of the Charter and its monitoring procedures, and welcomed the organisation of a high-level conference.
3. Following the principles set out in the Vienna Declaration and Programme of Action (adopted in 1993 at the World Conference on Human Rights), all “human rights are universal, indivisible, interdependent and interrelated”. These rights include social rights, such as rights related to work, education, housing, social protection, health and well-being, and the human rights aspects of the environment. Combating inequality and social exclusion is vital for all, especially for disadvantaged individuals. It is also crucial for the implementation of the Sustainable Development Goals as defined by the United Nations 2030 Agenda for Sustainable Development.
4. The Council of Europe was established in the belief “that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation”. Social progress was enshrined in the Statute of the Council of Europe (ETS No. 1) as a cornerstone of lasting peace. The Russian Federation’s ongoing war of aggression against Ukraine has had both immediate and lasting fallout as regards the enjoyment of human rights, including social rights for Ukrainians and all persons affected, and, very significantly, for women and children. The repercussions were and continue to be felt across Europe and throughout the world, including on the global economy and trade, particularly with increases in the cost of living and worsening food insecurity.
5. Social justice and the respect for, and the protection and implementation of social rights, as guaranteed in particular by the European Social Charter system, are crucial for promoting democratic security and stability. It is also very important to respond to new or emerging challenges

and avoid the risk of further erosion of social rights protection and increasing inequalities, in order to maintain social cohesion in our societies.

6. Through its monitoring, reporting and collective complaints mechanisms, the Charter provides effective governance inputs, through both the European Committee of Social Rights and the Governmental Committee of the European Social Charter and European Code of Social Security (“the Governmental Committee”), in the pursuit of social justice and the protection of social rights.
7. On the occasion of this High-Level Conference, which coincides with the 25th anniversary of the entry into force of the revised European Social Charter and the 75th anniversary of the Council of Europe, the representatives of Council of Europe member States:
  - a. underline the importance of having a robust and responsive social rights framework across Europe, underpinned in particular by relevant treaty law, including the European Social Charter system. It is the collective duty of member States to promote respect for, and the continuing development of, social rights, both as human rights and also as vectors of economic growth, social progress and social cohesion, peace, security and stability;
  - b. affirm that military aggression and breaches of peace are incompatible with States’ human rights obligations in general, and, in particular, with their social rights obligations; in this context, welcome the solidarity shown towards the people of Ukraine and the social protection offered by Council of Europe member States to those who are temporarily displaced;
  - c. acknowledge the possibility offered by the Charter for States Parties to increase progressively their commitments aimed at respecting, protecting and implementing social rights, a process that can and should be further strengthened through constructive and enhanced dialogue between the competent national authorities and the organs of the Charter, together with social partners;
  - d. welcome the commitment of member States of the Council of Europe to promote social justice and, in particular, the efforts made by member States to accept a high level of commitment to social rights, and the effective action taken by the States Parties to the European Social Charter to address the findings and conclusions of the European Committee of Social Rights when necessary;
  - e. recall that the Council of Europe Development Bank, in line with its unique social mandate, contributes to strengthening social cohesion through projects with social value in its member countries;
  - f. welcome the decisions adopted by the Council of Europe Committee of Ministers to improve the implementation of the Charter system and its monitoring arrangements. This includes an invitation to the European Committee of Social Rights to apply, where possible, the existing Charter provisions to new and emerging social policy challenges and to strengthen the role of the Governmental Committee in respect of follow-up and reflection;
  - g. acknowledge the crucial role of national executives and legislatures in strengthening the protection of social rights through legislative action, in particular the part parliaments play in the ratification process of international treaties, and the acceptance of additional commitments under the Charter.
8. Consequently, the representatives of Council of Europe member States:
  - a. commit to respect, protect and implement social rights in general and, for the States Parties to the Charter, to pay continued attention to the challenges and opportunities to implement the Charter’s requirements and, to this end, encourage States Parties to make full use of all available possibilities for enhanced dialogue between the organs of the Charter, States Parties and social partners;
  - b. encourage member States to consider ratifying the revised European Social Charter (1996) in an effort, alongside the policy approaches of member States, to support the Council of Europe’s stated aim of facilitating economic and social progress;

- c. propose to keep under review the possibilities for acceptance of additional commitments under the Charter, including the collective complaints procedure;
- d. invite the Committee of Ministers of the Council of Europe to:
  - i. enable further discussions with national as well as competent local and regional authorities, and social partners, in order to promote a rights-based approach to social policy and the sharing of knowledge and good practice in responding to persistent and emerging common problems and challenges. The following areas might be covered:
    - inequalities, low incomes and social exclusion, housing and demographic change;
    - any form of discrimination having an impact on the full enjoyment of social rights;
    - the social rights dimension related to the Reykjavik Declaration commitment “to [strengthen the] work on the human rights aspects of the environment”;
    - persistent and emerging challenges in the area of work, with the necessary attention being paid to freedom of association and collective bargaining, new forms of employment, the transition to a green economy, digitalisation, including the advent of artificial intelligence, technological change, work-life balance and, very significantly, the questions of participation and dignity (such as the protection against all forms of harassment, including sexual harassment) in the workplace;
  - ii. give increased priority to co-operation activities in the field of social rights with a view to improving the implementation of the Charter in the light of the monitoring outcomes of the European Committee of Social Rights and related Committee of Ministers recommendations. The “social rights” component of the Council of Europe Action Plan for Ukraine “Resilience, Recovery and Reconstruction” 2023-2026, is an inspiring example of such activities;
  - iii. ensure co-operation among Council of Europe entities and committees in the area of social rights, and continue to work together while exploring possibilities to increase co-operation with other international organisations as well as with the European Union in promoting social rights as guaranteed by the European Social Charter and its protocols;
  - iv. remain open to considering possible measures for further optimising the Charter system;
  - v. explore regularly the need to convene this High-Level Conference to address contemporary social policy challenges, also taking into account the expected outcomes.

## **APPENDIX III: Digest of the case law of the ECSR**

Link: [DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS](#)