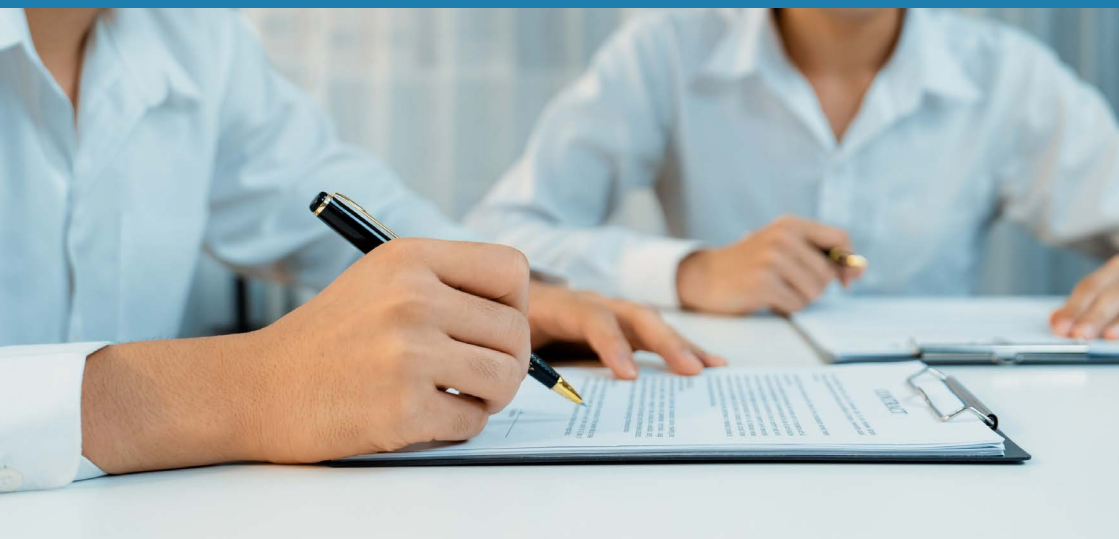


THE COLLECTIVE COMPLAINTS PROCEDURE OF THE EUROPEAN SOCIAL CHARTER: **A TOOL FOR GOOD GOVERNANCE**



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THE COLLECTIVE COMPLAINTS PROCEDURE OF THE EUROPEAN SOCIAL CHARTER: **A TOOL FOR GOOD GOVERNANCE**

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INTRODUCTION

About the initiative

The brochure is developed in the context of the Council of Europe Project “Further Enhancement of Social and Economic Rights in Georgia”.

The project aims to support the Georgian authorities in addressing existing challenges concerning the protection of social and economic rights in Georgia. The project runs from January 2024 until December 2025. It builds on the [results achieved](#) under the [previous action](#) “Strengthening Protection of Social and Economic Rights in Georgia” implemented between March 2021 and December 2023.

The project focuses on strengthening the capacities of the Georgian authorities, the Office of the Public Defender, civil society organisations (CSOs), and other relevant stakeholders responsible for providing and promoting social and economic rights, with a particular focus on social rights of persons with disabilities and older persons.

In addition, the project aims to promote and raise awareness of social rights and the European Social Charter among target groups and the public in general, addressing, among other aspects, the non-take-up of rights.

The project is implemented using a combination of tailored advisory expertise, needs assessments/recommendations, the preparation of publications, and capacity-building and awareness-raising activities.

The project is expected to result in the following:

- ▶ the Georgian authorities taking steps to align legislation on the protection of social and economic rights, with a primary emphasis on labour rights, in a gender-sensitive manner, in line with the relevant Council of Europe and international standards;
- ▶ relevant government authorities and non-governmental sector representatives (the Public Defender’s Office, trade unions, and other relevant institutions and civil society organisations) improving the quality of the national and alternative reports that are submitted to the ECSR;

- ▶ national authorities and non-governmental sector representatives (policymakers, labour inspectors, the Public Defender's Office, legal professionals (including judges) and other relevant institutions and civil society organisations), promoting and improving the protection of social rights (with a special emphasis on the protection of the social rights of vulnerable groups) in line with European standards and best practices.

About the author

The brochure has been developed by Alla Fedorova, member of the European Committee of Social Rights.¹

Alla Fedorova is an Associate Professor at the Institute of International Relations, Taras Shevchenko National University of Kyiv. Currently, Ms Fedorova is a MSCA4Ukraine postdoc fellow at the Faculty of Law of the Palacký University, Olomouc, in Czechia.

Alla Fedorova is a member of the European Committee of Social Rights (ECSR), and was recently re-elected by the Committee of Ministers with a term of office running until 31 December 2030.

Ms Fedorova holds a PhD in International Law and has extensive expertise in European social rights, particularly their implementation in Ukraine. She has actively contributed as a consultant to the Council of Europe, providing insights into the European Social Charter and its application, including the Additional Protocol on collective complaints.

Methodology and purpose of the brochure

This brochure has been developed using available public data and information, and aims to effectively engage policymakers, legal practitioners and civil society in Georgia. The brochure provides an in-depth explanation of the Additional Protocol to the European Social Charter providing for a system of collective complaints. It highlights the quasi-judicial nature of the procedure and showcases its unique role in ensuring compliance with social rights obligations. Drawing on good practices from States Parties that have adopted the Additional Protocol, the brochure provides concrete examples of how the collective complaints procedure has contributed to resolving systemic social rights issues. These examples are intended to illustrate the practical benefits of ratifying the Protocol. The brochure includes statistical data on registered complaints, decisions adopted by the European Committee of Social Rights (ECSR), and recent reforms.

1 The views and opinions expressed in this brochure are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe and/or its bodies.

The brochure aims to raise awareness of the collective complaints procedure among key stakeholders in Georgia and to support its ratification. It seeks to:

1. inform policymakers, legal professionals, and the public about the nature and benefits of the collective complaints procedure;
2. show how the procedure can promote social justice, strengthen Georgia's compliance with the European Social Charter, and help resolve systemic social rights issues through dialogue and cooperation;
3. provide civil society organisations with the tools and arguments needed to advocate for the ratification of the Additional Protocol; and
4. highlight the importance of adopting the procedure, clarifying common misunderstandings about it, and further strengthening Georgia's integration with the Council of Europe framework.

By emphasising the transformative potential of the collective complaints procedure, the brochure seeks to inspire action, illustrate how Georgia can leverage this mechanism to uphold and advance social rights in line with European good practices.

Lastly, given the resistance to the adoption of the Additional Protocol because of misconceptions of an overwhelming burden, the brochure aims to debunk these myths by presenting factual evidence, including statistical data, showing that the European Committee of Social Rights issues only 10-20 decisions per year.

I. GENERAL OVERVIEW OF THE SYSTEM OF THE EUROPEAN SOCIAL CHARTER

1. The importance of the European Social Charter in protecting social and economic rights in Europe

Overview of the European Social Charter as a key Council of Europe treaty for the protection of social and economic rights

The European Social Charter ("the Charter" or "ESC") is a Council of Europe treaty which guarantees fundamental social and economic rights which, in other words, refers to the human rights of daily life. These rights complement the civil and political rights of the 1950 European Convention on Human Rights. Like the Convention's rights, the Charter's rights derive from the Universal Declaration of Human Rights, adopted in 1948, and can be applied by national courts.

The Charter contains 31 articles and 98 numbered paragraphs covering a wide range of human rights in relation to employment, working conditions, housing, education, healthcare and social protection. It places particular emphasis on the protection of vulnerable groups, such as older people, children, persons with disabilities and migrants. It requires States Parties to guarantee these rights to all and to ensure that they can be exercised on an equal basis without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status, including disability.

No other legal instrument at pan-European level can provide such an extensive and complete protection of social rights. This is the reason why the Charter is seen as the Social Constitution of Europe. The Charter is also a reference point for European Union law, in particular the EU Charter of Fundamental Rights, most of the rights of which are based on those of the Charter.

The Charter was initially adopted in 1961 and subsequently revised in

1996 (Revised Charter). It has been ratified by 42 of the 46 States Parties of the Council of Europe. Currently, 36 of those 42 countries are bound by the Revised Charter, with the remaining 6 still bound by the 1961 Charter.

Unlike other human rights treaties, the Charter allows for “à la carte” ratification. According to Article A of the 1961 Charter, each State Party must accept certain “core articles”, namely Articles 1, 5, 6, 12, 13, 16 and 19. In the corresponding provision of the Revised Charter, the core articles are 1, 5, 6, 7, 12, 13, 16, 19 and 20.

In addition, a State Party must undertake to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter it may select, provided that the total number of articles or numbered paragraphs by which it is bound is no fewer than 16 articles or 63 numbered paragraphs (in the corresponding provision of the 1961 Charter, the total number of articles or numbered paragraphs was supposed to be no fewer than 10 articles or 45 numbered paragraphs).

The system of *à la carte* ratification results in a “protection patchwork” meaning that certain rights may be left out depending on the selection made by the State in question. For example, France, Spain and Portugal have accepted all the Revised Charter provisions, whereas Georgia has only committed itself to 63 numbered paragraphs.²

Two procedures for monitoring compliance with the Charter

The honouring of commitments entered under the Charter is subject to supervision by the European Committee of Social Rights (“The Committee” or the “ECSR”). The Committee’s 15 independent, impartial members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once.

The European Committee of Social Rights monitors whether the national situations are in compliance with the Charter under two separate procedures: the reporting procedure, where States Parties submit periodic reports, and the collective complaints procedure, which allows social partners and other non-governmental organisations to submit complaints. According to Rule 2 of the Committee’s rules of procedure:

1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter.

² Georgia and the European Social Charter <<https://rm.coe.int/georgia-april2024-en-2751-6538-0105-1/1680b0e5a8>>

2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

The reporting procedure under the European Social Charter is a core mechanism for monitoring the compliance of States Parties with their obligations. It is regulated by Articles 21-29 of the 1961 Charter and has been updated in subsequent reforms, including the Turin Protocol.

States Parties submit periodic reports on the implementation of accepted Charter provisions in law and in practice. These reports are examined by the European Committee of Social Rights. The ECSR evaluates whether the situations described are in conformity with the Charter and issues “conclusions”, which are publicly available and stored in the HUDOC database. Non-conformity conclusions require States to align their legislation or practice with Charter standards.

Since 2023, as a result of the 2022 reform, provisions of the Charter have been divided into two groups. States Parties which have not accepted the collective complaints procedure report on one group every two years. This means that all accepted provisions are reported on every four years. States Parties which have accepted the collective complaints procedure report on one group of provisions every four years. This means that all accepted provisions are reported on every eight years.

The two groups of provisions are divided as follows:

Group 1: Article 1 – Article 2 – Article 3 – Article 4 – Article 5 – Article 6 – Article 8 – Article 9 – Article 10 – Article 18 – Article 19 – Article 20 – Article 21 – Article 22 – Article 24 – Article – 25 – Article 28 – Article 29.

Group 2: Article 7 - Article 11 - Article 12 - Article 13 - Article 14 - Article 15 - Article 16 - Article 17 - Article 23 - Article 26 - Article 27 - Article 30 - Article 31.

Recent reforms have introduced targeted questions for reporting and enhanced dialogue between monitoring bodies, States and stakeholders, including trade unions and NGOs. These changes have improved focus and fostered collaborative problem-solving on social rights issues.

When new or critical issues arise with a broad or transversal scope or a pan-European dimension, such as economic crises or specific rights violations, States Parties may be asked to submit an ad hoc report for examination by the Committee. The subject and timing of ad hoc reports will be decided by the European Committee of Social Rights and the Governmental Committee. For instance, in 2023, after consultation with the

Governmental Committee, the ECSR decided to request an ad hoc report on the cost-of-living crisis.

The **procedure on non-accepted provisions** is intended to encourage States Parties to progressively accept all the Chapter's provisions, in the spirit of the Charter. This procedure is applied by the European Committee of Social Rights in accordance with Article 22 of the 1961 Charter, as set out in Part IV of the 1961 Charter and amended by the 1991 Turin Protocol:

"The Contracting Parties shall send to the Secretary General, at appropriate intervals as requested 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 their ratification or approval or in a subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided."

This procedure serves two main purposes. First, it complements the reporting mechanism for accepted provisions by enabling an assessment of the overall compliance of States Parties with the Charter's requirements. Second, it actively promotes the gradual acceptance of additional Charter provisions.

The procedure is also intended to encourage States Parties to review any national legislation or practices they currently consider inconsistent with the Charter, with a view to aligning them with the Charter's standards.

The **collective complaints procedure** was introduced by the Additional Protocol providing for a system of collective complaints, adopted in 1995. The purpose of this procedure was to increase the effectiveness, speed and impact of the Charter's implementation. The collective complaints procedure provides for the possibility to submit complaints against a State Party regarding the inconsistency of the legislation or practice that the latter has adopted. Complaints can be submitted by the international employers' and trade union organisations (International Organisation of Employers and Business Europe, and the European Trade Union Confederation), certain international non-governmental organisations holding participatory status with the Council of Europe and included at their request in the list drawn up by the Governmental Committee of the European Social Charter and the European Code of Social Security and representative national employers' and trade union organisations under the jurisdiction of the State Party against which they submit a complaint.

Furthermore, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. So far, only Finland has done so.

If a complaint has been considered admissible by the ECSR, the grounds of the complaint are then examined and a decision on the merits is adopted by the ECSR. This decision establishes whether a State's law and/or practice is or is not in compliance with one or more provisions of the Charter.

This brochure will focus on the collective complaints procedure and its relevance.

2. The role of the European Committee of Social Rights

The importance of the European Committee of Social Rights' jurisprudence in interpreting the European Social Charter and guiding States in fulfilling their obligations. The impact of the Committee's practice on States Parties' national legislation and practice

The European Committee of Social Rights is the monitoring body responsible for interpreting the European Social Charter and assessing States Parties' compliance. Its **jurisprudence plays a critical role** in clarifying the scope and application of the Charter's provisions. Through its conclusions and decisions, the Committee provides essential guidance to States Parties on fulfilling their obligations under the Charter, promoting alignment with European human rights standards.

The Committee's case law consists of all the sources in which the ECSR sets out its interpretation of the Charter's provisions. These include:

- 1) decisions on collective complaints: decisions on admissibility, decisions on the merits, striking-out decisions and decisions on immediate measures;
- 2) conclusions, arising from the reporting procedure;
- 3) statements of interpretation.

Since 2006, the Committee's statements of interpretation have appeared in the general introduction to the conclusions.

All of the above-mentioned documents are available on the Council of Europe HUDOC database, which can be accessed at: www.coe.int/socialcharter.

The Committee's jurisprudence has a significant impact on **national legislation and practices**, driving reforms in areas such as labour rights, social security, housing and equality. The Committee's non-conformity findings can prompt legislative changes in the States Parties to improve working conditions or ensure equal treatment. The Committee's interpretative role helps to embed social rights in domestic law, aligning national policies with broader European principles of social justice.

This dynamic jurisprudence underpins the Charter's role as a **"living instrument"**, evolving to address emerging social challenges, such as the rights of migrants, the impact of economic crises, and issues arising from armed conflict.

Council of Europe initiatives to expand the adoption of the collective complaints procedure among States Parties. Data on the number of applications registered and decisions adopted.

The collective complaints procedure, introduced by the 1995 Additional Protocol, allows specific organisations such as trade unions and NGOs to bring cases directly to the European Committee of Social Rights. This mechanism enhances the Charter's implementation and enforcement, enabling civil society to hold States accountable for their commitments.

Recognising the potential of this procedure, the Council of Europe has prioritised expanding its adoption, in particular as part of recent reforms. Currently, only 16 of the 46 States Parties have accepted the protocol, highlighting a critical area for growth.

As mentioned earlier, to replace the procedure for reviewing State reports with the consideration of collective complaints, the Council of Europe calls on States to recognise this procedure, including by reducing the number of reports: from 2024, once every 4 years in a simplified mode – for States that have recognised the collective complaints procedure.

The Committee takes between 10 and 20 decisions per year, e.g. 14 in 2022. A total of 243 complaints have been registered so far (at November 2024).

Since 2023, certain procedural adjustments have been made with respect to reporting on the follow-up to collective complaints. In particular, if the European Committee of Social Rights finds a violation of the European Social Charter in its decision on the merits of a complaint, the State concerned is required to provide information on the measures taken to address this decision in the form of a follow-up report (one per decision in which violations were found) two years after the Committee of Ministers has issued a recommendation based on the decision.

The European Committee of Social Rights reviews the follow-up report to assess whether the State has brought the situation into compliance with the Charter, and it forwards its findings to the Committee of Ministers. Based on the European Committee of Social Rights' assessment, the Committee of Ministers may either close the case with a resolution or adopt a second recommendation.

The follow-up reports submitted by States Parties, along with the findings of the European Committee of Social Rights based on these reports, are made publicly available on the website.

II. COLLECTIVE COMPLAINTS PROCEDURE

1. General explanation of the Additional Protocol providing for a system of collective complaints. Uniqueness of the collective complaints procedure as a quasi-judicial monitoring mechanism. Basis and objectives.

The collective complaints procedure introduced by the Additional Protocol represents a unique form of collective legal action within the human rights protection system. It reflects a systemic approach to addressing challenges related to the effective enjoyment of social rights, encouraging and guiding States to resolve structural problems and shortcomings.

According to Article 1 of the Additional Protocol, specific organisations are entitled to submit complaints alleging that a State Party has breached its obligations under the Charter.

The collective complaints procedure incorporates several features of a judicial process: it involves the consideration of arguments from both parties, the application of legal norms to the facts, and the delivery of reasoned decisions. It can thus be considered as a quasi-judicial mechanism — the first such complaints mechanism in international law specifically dedicated to social rights.

Key features highlighting its quasi-judicial character include:

- ▶ it does not require individual victims to submit complaints, focusing instead on structural deficiencies in law or practice;
- ▶ it avoids excessive formalities typically associated with judicial procedures;
- ▶ it enables the examination of overarching policies and widespread practices that may lead to social rights violations;

- ▶ although the ECSR's case law is not legally binding, it carries substantial moral and political authority, influencing national policies and prompting legislative reforms.

The collective complaints procedure is grounded in the Council of Europe's mission to advance social justice and to uphold the commitments enshrined in the European Social Charter. Its primary objectives are to:

- ▶ encourage States, social partners, and civil society organisations to engage cooperatively in addressing social rights issues;
- ▶ bring to light systemic violations of social rights, fostering public debate and advocacy for enhanced protection.

Through this mechanism, the Council of Europe emphasises the importance of collective action and systemic solutions to address complex social challenges, thereby enhancing the practical effectiveness of the European Social Charter. This approach not only complements traditional reporting systems but also exemplifies innovative human rights monitoring within international law.

2. Procedure of lodging a complaint under the European Social Charter system

Applicants and respondents: organisations entitled to submit complaints and responding States

The collective complaints procedure established in the Additional Protocol to the European Social Charter allows specific organisations to submit complaints against States Parties that have accepted the procedure.

These organisations include international organisations, national and international non-governmental organisations (NGOs), and trade unions.

1. International organisations of trade unions and employers (e.g. ETUC, BusinessEurope, IOE)

These organisations are referenced in Article 27.2 of the 1961 Charter. They have the right to submit complaints against any State Party that has accepted the collective complaints procedure, on any matter within the scope of the European Social Charter. This broad mandate reflects their significant role in representing workers' and employers' interests at an international level.

2. International non-governmental organisations (INGOs)

INGOs included in the list of organisations drawn up by the Governmental Committee of the European Social Charter and the European Code of Social Security are entitled to submit complaints against any State Party that has accepted the complaints procedure. However, the complaint must relate to issues in which they have demonstrated particular competence, thus ensuring relevance and expertise in the matters raised.

3. Representative national trade unions and employers' organisations

These organisations may only submit complaints against States within whose jurisdiction they operate. The concept of "representativeness" is defined autonomously, meaning it is assessed independently of national criteria. This provision emphasises the importance of local representation in addressing issues under the Charter.

4. Representative national non-governmental organisations (NGOs)

National NGOs can submit complaints only if the State in which they are based has explicitly made a declaration permitting such action. To date, Finland is the only State Party to have made this declaration. Like INGOs, these NGOs must focus on issues in which they have particular competence, and their representativeness is assessed autonomously by the Committee.

This system ensures a diverse and inclusive mechanism for monitoring and enforcing social rights, while also maintaining rigorous standards for participation to uphold the credibility and effectiveness of the complaints process.

When States grant this right, they may not make any distinctions or restrictions between the various national NGOs.

Admissibility conditions and main elements of the complaints

The **European Committee of Social Rights** ensures that collective complaints submitted under the Additional Protocol to the European Social Charter meet admissibility criteria.

As per Article 4 of the 1995 Additional Protocol, the complaint shall: (i) be submitted in writing, (ii) relate to a provision of the Charter accepted by the State Party concerned, and (iii) indicate in what respect the latter has not ensured the satisfactory application of this provision.

These conditions³ are crucial to maintaining the procedural integrity of the collective complaints system and ensuring that it serves its purpose as a tool for protecting social rights effectively.

5. Submission format and representation:

- ▶ The complaint must be lodged in writing and clearly indicate the name and contact details of the complainant organisation.
- ▶ It must be signed by a person authorised to represent the complainant organisation. Proof of such authorisation must be provided.
- ▶ Complaints by international organisations must be submitted in one of the Council of Europe's official languages (English or French).
- ▶ National organisations may submit complaints in the official language(s) of the respondent State.
- ▶ Complaints must be addressed to the Executive Secretary of the European Committee of Social Rights, acting on behalf of the Secretary General of the Council of Europe.

6. State acceptance of the complaints procedure and scope of provisions:

- ▶ Complaints can only be submitted against States Parties that have explicitly accepted the collective complaints procedure by ratifying the Additional Protocol.
- ▶ Complaints must concern one or more provisions of the ESC that the respondent State has accepted. The scope of the complaint must align with the obligations recognised under the Charter. It can reference provisions from:
 - Part II of the 1961 Charter or its 1988 Additional Protocol.
 - Articles 1-31 of Part II and Article E of Part V of the Revised Charter.

7. Eligibility of the complainant organisation:

- ▶ National trade unions' and employers' organisations: these bodies must demonstrate that they are representative within the jurisdiction of the State Party in question. The organisation must

3 Rule 29 of the Rules of procedure of the European Committee of Social Rights: <https://rm.coe.int/rules-rev-343-en/1680b2726c>

demonstrate representativeness as defined by the ECSR. Representativeness is treated as an autonomous concept, not necessarily aligning with domestic legal definitions (e.g. *Confédération française de l'Encadrement "CFE-CGC" v. France*). In cases where no clear national registration system exists, such as in Italy, trade unions may still qualify based on their functional activities.

- ▶ International and national NGOs: organisations must provide evidence of their particular competence in the field covered by the provisions invoked in the complaint. For example, NGOs included on the official list of those entitled to submit complaints must substantiate their expertise in relevant areas of social rights.

8. Content of the complaint:

- ▶ The complaint must outline the alleged failure of the State in question to implement the ESC provisions effectively.
- ▶ It should include detailed evidence, arguments, and supporting documents indicating:
 - the lack of a legal framework for implementation;
 - gaps or inadequacies in the existing framework;
 - non-compliance in practical application.

The procedure is collective in nature and does not accommodate complaints from individuals or those addressing single individual situations. Instead, it focuses on systemic issues affecting groups or categories of persons. Challenges may arise concerning:

- ▶ the legal definition and recognition of trade unions or employers' organisations in certain jurisdictions; for example, in Italy, trade unions operate as non-registered associations, which may complicate the proof of representativeness;
- ▶ the interpretation of "particular competence" for NGOs, which is assessed based on their demonstrated expertise and field of work.

Unlike the individual applications lodged before the European Court of Human Rights, the collective complaints procedure does not require the exhaustion of domestic remedies, even where such remedies exist.⁴

⁴ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 11 and 12, see also *European Roma Rights Center (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §10

In adhering to these conditions, the collective complaints procedure ensures a structured approach to addressing violations of social rights, fostering accountability and compliance among States Parties. This approach also strengthens the credibility of the procedure as a quasi-judicial mechanism for upholding the values enshrined in the European Social Charter.

Examination of complaints by the European Committee of Social Rights

Registration

Once the complaint is submitted, it must be registered in accordance with Rule 26 of the ECSR's Rules of Procedure.

Complaints must be registered with the Secretariat of the Department of Social Rights of the Council of Europe in the order in which they are received. The Committee must deal with complaints in the order in which they become ready for examination. The Committee may, however, decide to give priority to examining a particular complaint.

Admissibility

Once a collective complaint has been registered, the European Committee of Social Rights undertakes a thorough review to determine whether it meets the criteria for admissibility. The process is guided by the ECSR's Rules 29 and 30, which outline the key steps and procedural safeguards.

Before deciding on admissibility, the President of the ECSR may ask the respondent State to submit written observations within a specified time-frame regarding the complaint's admissibility.

To ensure the timely handling of cases, the President can request the respondent State to provide submissions on the merits of the complaint simultaneously with its observations on admissibility, assuming that the complaint may be declared admissible.

The complainant organisation may be invited to respond to the State's observations under similar conditions. The State may then reply to the organisation's response.

If the Committee considers that the conditions of admissibility are manifestly fulfilled or manifestly unfulfilled, it can decide on admissibility without inviting observations from the respondent State.

The decision shall be made public and published on the website of the European Social Charter. The publication of the decision on the internet site of the Council of Europe will be regarded as the notification of other

States Parties to the Charter who have not accepted the collective complaints procedure. All decisions adopted by the Committee are published in the [European Social Charter Caselaw Database](#) (HUDOC-ESC).

Examination of the merits

Once a collective complaint is deemed admissible, the European Committee of Social Rights proceeds with examining the merits of the complaint. The procedure is designed to ensure transparency, impartiality and fairness, while allowing for contributions from both parties and relevant third parties.

1. Written procedure between the parties

- ▶ Following the declaration of admissibility, the ECSR requests the respondent State to submit written observations on the merits within a specific timeframe (Rule 31§1).
- ▶ The complainant organisation is then invited to respond to the State's observations under similar conditions (Rule 31§2).
- ▶ The State may provide a reply to the complainant organisation's response (Rule 31§3).
- ▶ Once all submissions are received, the ECSR may declare the written procedure closed. After this point, further submissions are permitted only in exceptional circumstances and with justified reasons (Rule 31§4).

2. Third-party interventions

- ▶ States that are parties to the Protocol on collective complaints and international organisations of employers and trade unions can submit observations on the case (Rule 32§1-2).
- ▶ The ECSR may also invite any organisation, institution, or individual (*amici curiae*) it deems appropriate to submit observations that can inform its decision (Rule 32A). Additionally, organisations may also indicate to the Committee their interest in submitting observations as third parties on a pending collective complaint. To do so, they are invited to contact the Secretariat of the European Social Charter.
- ▶ All observations are shared with the parties, who may respond within a timeframe set by the ECSR (Rule 32§3-4, Rule 32A§2).

3. Public hearing

- ▶ A public hearing may be requested by either party or initiated by the ECSR itself (Rule 33§1). Requests must be made during the written procedure or within two weeks after its closure.
- ▶ Both the respondent State and the complainant organisation are invited to participate. Additionally, third parties (e.g. intervening States or organisations) may be permitted to take part (Rule 33§2, §4).
- ▶ Hearings are generally public unless the ECSR President decides otherwise (Rule 33§3).

4. Deliberation and decision

- ▶ Following the submissions and hearing (if held), the Committee deliberates on the merits of the complaint.
- ▶ The decision is notified to the parties involved and the Committee of Ministers of the Council of Europe. It is also published on the website of the European Social Charter and HUDOC-ESC.
- ▶ The decision addresses whether the respondent State has complied with its obligations under the European Social Charter and may include recommendations.

Immediate measures

Under Rule 36 of the Rules of Procedure of the European Committee of Social Rights, the mechanism of immediate measures is designed to prevent irreparable harm or injury to individuals affected by the issues raised in a collective complaint.

The Committee may indicate the need for immediate measures at any point in the process, either on its own initiative or at the request of a party (Rule 36§1).

When submitted by a complainant organisation, the request must:

- clearly specify the reasons for the request;
- highlight the possible consequences of not granting the measures;
- detail the proposed immediate measures (Rule 36§2).

The request is promptly transmitted to the respondent State, which is invited to provide written submissions. A deadline for this submission is set by the President (Rule 36§2). Requests for immediate measures are often assessed alongside the admissibility of the complaint to avoid procedural delays. The Committee's decision on immediate measures is reasoned, signed by the President, the Rapporteur, and the Executive Secretary, and then notified to the parties (Rule 36§3).

The Committee specifies a deadline for the respondent State to provide comprehensive information on the steps taken to implement the immediate measures (Rule 36§3). To date, 20 requests for immediate measures have been submitted under this mechanism. The ECSR has granted immediate measures in five complaints and acted on its own initiative only once, in the case of *Amnesty International v. Italy* (Complaint No. 178/2019).

This mechanism ensures that the rights and wellbeing of individuals are protected while a complaint is under consideration, demonstrating the ECSR's commitment to safeguarding social rights under urgent circumstances.

3. Decisions of the European Committee of Social Rights

The European Committee of Social Rights plays a pivotal role in monitoring compliance with the European Social Charter through its decisions and conclusions. These determinations, while not legally binding, carry significant moral and political weight, guiding States Parties toward the fulfilment of their social rights obligations.

In the context of the collective complaints procedure, the Committee may adopt decisions that fall under the following headings:

- ▶ decisions on admissibility,
- ▶ decisions on immediate measures,
- ▶ decisions on admissibility and immediate measures,
- ▶ decisions on merits,
- ▶ decisions on admissibility and merits,
- ▶ decisions to strike out complaints.

In the majority of cases, the European Committee of Social Rights issues two separate decisions — one on admissibility and one on merits. However, in exceptional cases, the Committee may deliver a single decision

on both admissibility and merits.⁵ In other situations, the Committee may also grant immediate measures — either by means of a stand-alone decision or at the same time, along with its decision on admissibility.

Following deliberation, the European Committee of Social Rights adopts a decision on the merits of the complaint, determining whether or not a violation of the European Social Charter has occurred. This decision includes the Committee's reasoning and is signed by the Committee's President, the Rapporteur and the Executive Secretary. Any dissenting opinions are appended to the Committee's decision.

The European Committee of Social Rights then transmits a report containing its decision to both of the parties to the complaint and to the Committee of Ministers of the Council of Europe.

The ECSR's decision on the merits becomes public once the Committee of Ministers adopts a resolution or recommendation. In any event, the decision is made public no later than four months after it is transmitted to the Committee of Ministers.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the European Social Charter and the Protocol providing for the system of collective complaints, the decisions of the European Committee of Social Rights must be respected by the States concerned; however, they are not enforceable in the domestic legal system. Nevertheless, the Committee of Ministers of the Council of Europe monitors the implementation of these decisions, thereby reinforcing their influence and promoting compliance.

4. Follow-up to the Committee's decisions on the merits

Following the reform adopted by the Committee of Ministers in September 2022, when the ECSR finds a violation of the European Social Charter and the Committee of Ministers issues a recommendation, the State Party concerned is required to submit a single follow-up report approximately two years after the adoption of the recommendation, detailing the measures taken to address the violation.

The European Committee of Social Rights then examines the follow-up report to determine whether the State concerned has brought the situation into compliance with the European Social Charter and publishes its "findings" in this respect. These findings are transmitted to the Committee

⁵ Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint No. 109/2014, decision on admissibility and the merits of 10 October 2017

of Ministers and, depending on the European Committee of Social Rights' assessment, the Committee of Ministers may then close the case with a resolution or adopt a (second) recommendation.

The reports on follow-up submitted by States Parties, as well as the findings (assessments) of the European Committee of Social Rights on the basis of these reports, are made available on the European Social Charter's website.

5. Debunking the myths about the collective complaints procedure. Concerns and advantages.

Even though the collective complaints procedure under the European Social Charter has been a transformative tool for promoting social rights across Europe, only 16 States have ratified the Additional Protocol to the European Social Charter. Its adoption has faced some resistance due to myths and misconceptions about its purpose, function and impact. This section addresses these concerns and highlights the advantages of the procedure.

Myth 1: The procedure overburdens States with complaints

Concern: States fear being overwhelmed by an excessive number of complaints.

Reality: The collective complaints procedure has proven manageable, with only 243 complaints submitted over a period of 26 years (at November 2024). This equates to about 10 complaints annually on average. The rigorous admissibility criteria ensure that only well-founded and serious complaints reach the European Committee of Social Rights. Additionally, the number of potential complainants is limited to designated organisations, a factor which further restricts the volume of cases.

Myth 2: Decisions are ineffective because they are not legally binding

Concern: Critics argue that the Committee's decisions lack enforcement power.

Reality: While the decisions are not binding in the manner of European Court of Human Rights judgments, they are based on the **binding legal provisions** of the Charter and require States to implement the necessary measures. Many States have amended their laws, policies and practices following ECSR decisions. National courts in some countries have even declared domestic legislation invalid when it conflicts with ECSR findings.

The Committee of Ministers' role in issuing resolutions and recommendations ensures strong political pressure for compliance.

Myth 3: Social rights are less justiciable than civil and political rights

Concern: It is often claimed that social rights are inherently less suitable for adjudication.

Reality: Social rights are no less justiciable than civil and political rights. Numerous international bodies, such as the UN Committees (CEDAW, CERD), the ILO, and regional courts, have long addressed social rights cases. The Charter's rights, like those of the European Convention on Human Rights, derive from the Universal Declaration of Human Rights, affirming their equal status. The collective complaints procedure enhances the indivisibility of all human rights, ensuring that economic and social rights receive the same level of protection.

Myth 4: The national system is sufficient for supervising social rights

Concern: Some argue that domestic mechanisms adequately safeguard social rights.**Reality:** The collective complaints procedure complements national systems by addressing gaps where domestic remedies are insufficient. It strengthens the role of **social partners** and **civil society** by enabling direct access to an international mechanism, empowering vulnerable groups such as children, migrants, and persons with disabilities. Additionally, ECSR decisions provide a framework for national and European courts, offering authoritative interpretations that enhance local enforcement.

Myth 5: The procedure creates new obligations for States

Concern: Critics suggest that the ECSR imposes obligations beyond the scope of the Charter.

Reality: The ECSR interprets the Charter as a "living instrument," adapting its meaning to contemporary values and standards, much like the European Court of Human Rights. This approach ensures the Charter remains relevant and effective in addressing modern challenges, while remaining grounded in its original text and purpose. Far from creating new obligations, the ECSR's decisions reaffirm States' commitments to dignity, equality and social justice.

Myth 6: The procedure is too complicated

Concern: Some view the process as overly bureaucratic and inaccessible.

Reality: The procedure is designed to involve minimal bureaucracy and to be easily accessible for eligible organisations. Complaints from international organisations can be lodged in English or French, while national organisations can use their official language(s). There is no requirement to exhaust domestic remedies; nor does the complainant need to demonstrate victim status. Additionally, the average duration of proceedings compares favourably to other international mechanisms.

Advantages of the collective complaints procedure

1. By directly addressing violations, the procedure holds States accountable for their obligations under the Charter.
2. Unlike individual complaints, the collective nature of the procedure allows for the identification and resolution of widespread or structural issues, benefiting broader segments of the population.
3. The procedure has been instrumental in protecting the rights of children, migrants, persons with disabilities and other disadvantaged groups.
4. By enabling social partners and NGOs to submit complaints, the procedure enhances democratic participation and encourages constructive dialogue between civil society and public authorities.
5. The procedure alleviates pressure on the European Court of Human Rights by addressing systemic issues before they escalate into multiple individual complaints.

The collective complaints procedure is an effective and accessible mechanism for advancing social rights across Europe. Addressing existing concerns and misconceptions about the mechanism is crucial to encouraging more States to adopt the procedure, thereby strengthening the shared commitment to social justice, accountability and the rule of law.

III. CONSEQUENCES OF THE ADOPTION OF THE COLLECTIVE COMPLAINTS PROCEDURE FOR GEORGIA

1. General overview of Georgia's obligations under the European Social Charter

Georgia's obligation to sign and ratify the European Social Charter, and to pursue policies aligned with its principles, was outlined in the Parliamentary Assembly Opinion 209(1999) on Georgia's application for membership to the Council of Europe.

Georgia signed the Revised European Social Charter in 2000 and ratified it on 22 August 2005, accepting 63 of the 98 paragraphs.

Thus, Georgia considers itself bound by the following articles and paragraphs:

Article 1 – The right to work

Article 2 – The right to just conditions of work, paragraphs 2.1, 2.2, 2.5 and 2.7

Article 4 – The right to a fair remuneration, paragraphs 4.2, 4.3 and 4.4

Article 5 – The right to organise

Article 6 – The right to bargain collectively

Article 7 – The right of children and young persons to protection

Article 8 – The right of employed women to protection of maternity, paragraphs 8.3, 8.4 and 8.5

Article 10 – The right vocational training, paragraphs 10.2 and 10.4

Article 11 – The right to health

Article 12 – The right to social security, paragraphs 12.1 and 12.3

- Article 14** – The right to benefit from social welfare services
- Article 15** – The right of persons with disabilities to independence, social integration and participation in the life of the community, paragraph 15.3
- Article 17** – The right of children and young persons to social, legal and economic protection, paragraph 17.1
- Article 18** – The right to engage in a gainful occupation in the territory of other Parties
- Article 19** – The right of migrant workers and their families to protection and assistance
- Article 20** – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
- Article 26** – The right to dignity at work
- Article 27** – The right of workers with family responsibilities to equal opportunities and equal treatment
- Article 29** – The right to information and consultation in collective redundancy procedures

Georgia has not yet accepted the following articles and paragraphs:

- Article 2** – The right to just conditions of work, paragraphs 2.3 and 2.4
- Article 3** – The right to safe and healthy working conditions
- Article 4** – The right to a fair remuneration, paragraph 4.5
- Article 8** – The right of employed women to protection of maternity, paragraphs 8.1 and 8.2
- Article 9** – The right to vocational guidance
- Article 10** – The right to vocational training, paragraphs 10.1 and 10.3
- Article 12** – The right to social security, paragraphs 12.2 and 12.4
- Article 13** – The right to social and medical assistance, paragraphs 13.1-13.4
- Article 15** – The right of persons with disabilities to independence, social integration and participation in the life of the community, paragraphs 15.1 and 15.2
- Article 16** – The right of the family to social, legal and economic protection

Article 17 – The right of children and young persons to social, legal and economic protection, paragraph 17.2

Article 21 – The right to information and consultation

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Article 23 – The right of elderly persons to social protection

Article 24 – The right to protection in cases of termination of employment

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Article 30 – The right to protection against poverty and social exclusion

Article 31 – The right to housing

The Additional Protocol providing for a system of collective complaints has not been ratified by Georgia.

Table of Accepted Provisions

grey=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										

During the 2012, 2015 and 2021 reviews of the provisions of the European Social Charter not accepted by Georgia, the European Committee of Social Rights identified a number of provisions that do not present any major legal obstacles for acceptance⁶. In some cases, the Committee was unable to assess compliance due to insufficient information provided by the State.⁷

In the provisions not yet accepted by Georgia, the Committee reiterated the importance of the collective complaints procedure and encouraged Georgia to consider ratifying the relevant Additional Protocol.

2. General statistics on the compliance/non-compliance of Georgian legislation — and the implementation thereof — with the European Social Charter standards

Since ratifying the Revised European Social Charter in 2005, Georgia has submitted 16 regular national reports and one ad hoc report on the cost-of-living crisis, in line with the reformed Charter system.

In addition to the national reports, various third parties — the Georgian Trade Union Confederation, the Georgian Young Lawyers' Association, the Social Justice Center, and the Partnership for Human Rights, Educators and Scientists Free Trade Union of Georgia — have regularly submitted comments and additional information to the European Committee of Social Rights.

Since 2021, each national report has been accompanied by one or more third-party reports. The Public Defender's Office of Georgia has submitted four consecutive reports in recent years, making it one of the most active national ombudsperson institutions among States Parties.

This high level of engagement from social partners and civil society in Georgia demonstrates their readiness to participate in the collective complaints procedure and to contribute to improving national legislation and practice in accordance with the Charter's standards.

At the same time, despite this active participation, Georgia's overall degree of fulfilment of its obligations under the Charter remains moderate.

6 Georgia and the European Social Charter. <<https://www.coe.int/en/web/european-social-charter/georgia-and-the-european-social-charter>>

7 Third Report on the non-accepted provisions of the European Social Charter. Georgia, 29 September 2021. European Committee of Social Rights. <<https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629>>

Conclusions	Total number of provisions examined	Conformity	Deferral (lack of information)	Non-conformity
2018	15	1	1	13
2019	29	5	5	19
2020	8		2	6
2021	7	1	2	4
2022	15	2	2	11
2023	29	12		17

According to Conclusions 2023⁸, more than half of the 17 conclusions of non-conformity adopted by the European Committee of Social Rights related to different paragraphs of just two articles: Article 7 (the right of children and young persons to protection) and Article 19 (the right of migrant workers and their families to protection and assistance). In addition, the majority of the grounds for non-conformity due to a lack of information were also related to these two articles.

Although there was a general improvement compared with the 2019 Conclusions for the same thematic group, the overall situation in Georgia did not change significantly. Nevertheless, this group of provisions showed Georgia's strongest performance, with a compliance rate exceeding 40%.

Regarding the thematic group "Labour Rights", in its 2022 Conclusions, the ECSR largely reiterated its 2018 findings. Among other areas of non-compliance, the Committee found that Georgia does not conform with Articles 2.1, 4.3, 6.1, 6.2, and 6.4, and it deferred its conclusion on Article 5.

All of these provisions are included in the Committee's targeted questions issued to States Parties that have not accepted the collective complaints procedure for the statutory report on Group 1 provisions. These questions were formulated based on the Committee's previous inquiries and repeated findings of non-conformity across multiple States.

In several instances, the European Committee of Social Rights has repeatedly reiterated its conclusions and questions. For instance, in its Conclu-

⁸ The Conclusions 2023 "Children, families and migrants" were the last to be adopted according to the old reporting procedure, covering the 4 thematic groups of the Charter's provisions.

sions for 2009, 2013, 2017 and 2021, the Committee consistently found that the situation in Georgia was not in conformity with Article 12.1 of the Revised Charter. Across these conclusions, the Committee highlighted various shortcomings in Georgia's social security system, explained its approaches to distinguishing between social security and social assistance and, in the 2021 Conclusions, it recalled the criteria that a social security system must meet under Article 12.1. The Committee has repeatedly underlined that Georgia's social security system fails to cover an adequate number of risks, does not guarantee protection to all workers, and provides inadequate minimum levels for various social benefits.

3. The role and impact of adopting the collective complaints procedure

The adoption of the collective complaints procedure under the European Social Charter significantly strengthens the protection of social rights and reinforces the broader human rights mandate of the Council of Europe. It introduces a structured and efficient mechanism that enables States to address potential violations proactively while promoting inclusivity, transparency and better governance.

9. Enhancing social rights protection

The procedure affirms that social rights are fundamental human rights, ensuring that violations are addressed in a timely and systematic manner. It underscores the indivisibility of rights and contributes to the Charter's effective implementation.

10. Inclusive stakeholder engagement

By empowering social partners (e.g. trade unions, employers' organisations) and civil society organisations to participate directly in the complaints process, the procedure strengthens democratic processes. This inclusive approach promotes legitimacy, transparency and better-informed policy-making.

11. Lighter reporting burden for States that have accepted the collective complaints procedure:

- ▶ Since 2023, the Charter's provisions are divided into two groups. States Parties that have not accepted the collective complaints procedure report on one group of provisions every two years, which means that all accepted provisions are reported on every four years. States Parties that have accepted the collective complaints procedure report on one group of provisions every four

years. This means that all accepted provisions are reported on every eight years.

- ▶ The reporting requirements are tied to decisions on collective complaints, ensuring focused and relevant updates rather than a burdensome process.
- ▶ Follow-up reports are required **two years** after the adoption of recommendations on violations, promoting accountability without overloading States with administrative obligations.

12. Addressing systemic issues, not individual cases: the procedure focuses on issues of a **general or systemic nature and not on individual allegations**. This ensures that States address structural problems with wide-reaching effects before they give rise to repetitive individual cases before the European Convention of Human Rights.

13. Strengthening policy through reasoned guidance: the European Committee of Social Rights' decisions offer clear and actionable recommendations for States to improve their social policies. These reasoned decisions are based on evidence, align with the provisions of the Charter and provide a roadmap for States to address deficiencies.

14. Promoting good governance and social dialogue: the procedure fosters a "tripartite dialogue" between governments, civil society (including social partners) and the European Committee of Social Rights, helping to identify challenges and to facilitate co-operative solutions. This process not only enhances the implementation of the Charter but also contributes to the development of better social policies and practices.

15. Encouraging State accountability and commitment: adopting the collective complaints procedure demonstrates a State's commitment to human rights and accountability. Participating in the procedure demonstrates a State's willingness to engage with the international community and adhere to the Council of Europe's human rights standards.

16. Practical and effective mechanism: experience shows that the procedure is manageable, fair, and effective. It strikes a balance between robust enforcement and practical considerations for States, ensuring that their obligations under the Charter are met without placing an overwhelming burden on governments.

By adopting the collective complaints procedure, States not only enhance the protection of social rights but also strengthen democratic stability, social justice and accountability in line with the Council of Europe's values.

States that have adopted the Additional Protocol providing for a system of collective complaints should achieve the following results:

- ▶ **improved social policy frameworks** through practical and actionable guidance provided by the European Committee of Social Rights.
- ▶ **strengthened legitimacy of public policies** through the active involvement of civil society and social partners in the monitoring process.
- ▶ **systematic protection of social rights**, ensuring compliance with the European Social Charter without placing an undue burden on States.
- ▶ **enhanced international credibility**, reflecting a strong commitment to human rights, transparency and good governance.

4. Benefits of the collective complaints procedure

- ✓ A positive image of Georgia as a country that implements European social and labour standards.
- ✓ Drawing attention to Georgia as the first post-Soviet state to recognise the collective action procedure.
- ✓ Drawing Europe's attention to Georgia and its progress in harmonising its legislation with the EU *acquis*.
- ✓ Increased reporting periods – for States Parties bound by the collective complaints procedure, reporting on the two groups of provisions takes place every four years, which means that all accepted Charter provisions are examined for each of these States every eight years instead of four.
- ✓ No additional financial costs, which is explained by the absence of an increase in substantive obligations under the European Social Charter when recognising the collective complaints procedure.
- ✓ No compensation mechanism for applicants.

- ✓ Lack of legally binding nature of the European Committee of Social Rights' decisions on collective complaints. Even if violations are found, there is no strict time limit for the implementation of the Committee's decisions.
- ✓ The possibility to receive targeted recommendations. The Committee provides detailed explanations of the inconsistencies between the current legislation and practice in Georgia and the provisions of the Charter
- ✓ **Acceptance of the procedure does not necessarily mean that there will be many collective complaints. On the contrary, for most countries, for most countries, the number of complaints registered has been low, and therefore the number of decisions is also low.** After the acceptance of the collective complaints procedure by Bulgaria in 2000 and Croatia in 2003, eight substantive decisions were adopted regarding Bulgaria and four regarding Croatia over a period of more than 20 years (at November 2024).
- ✓ Stimulating the development of Georgian civil society and trade unions and improving the protection of social and labour rights.

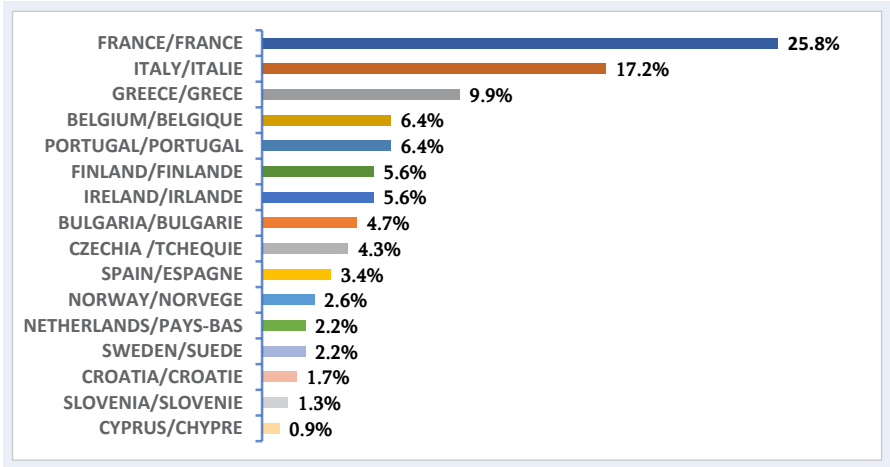
IV. GOOD PRACTICES IN THE IMPLEMENTATION OF THE COLLECTIVE COMPLAINTS PROCEDURE

1. Statistics on the rights concerned by the collective complaints submitted before the European Committee of Social Rights

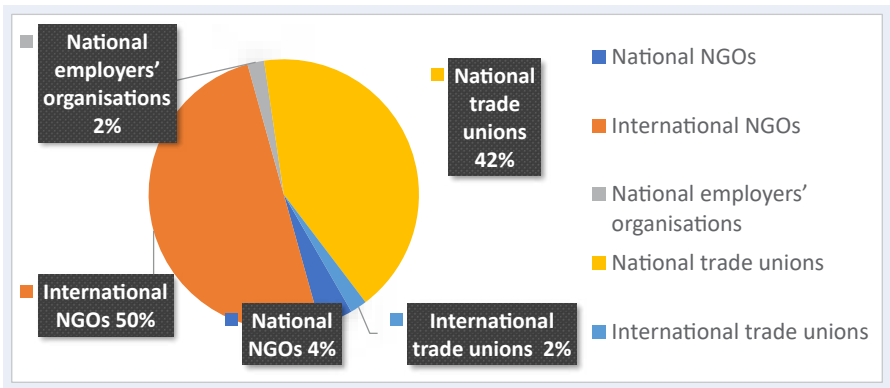
The **collective complaints procedure** was introduced by the [Additional Protocol providing for a system of collective complaints](#). The protocol was adopted in 1995 and entered into force in 1998. By 2006, 39 applications had been registered. The figure gradually increased to 104 between 2016 and 2023. Between 1998 and 2023, a total of 233 collective complaints had been registered. In 2023, 14 complaints were registered, and a further 10 followed between January and November 2024. Thus, by the end of November 2024, the total number of complaints had reached 243.

Almost half of all collective complaints were lodged against France (25.8 %) and Italy (17.2%). Greece ranked tenth with 9.9% of complaints. More than 5% of the complaints were submitted against four countries: Belgium and Portugal (6.4%), and Finland and Ireland (5.6%). Cyprus (0.9%) was subject to the least number of complaints.

Collective complaints broken down by country – 1998-2023

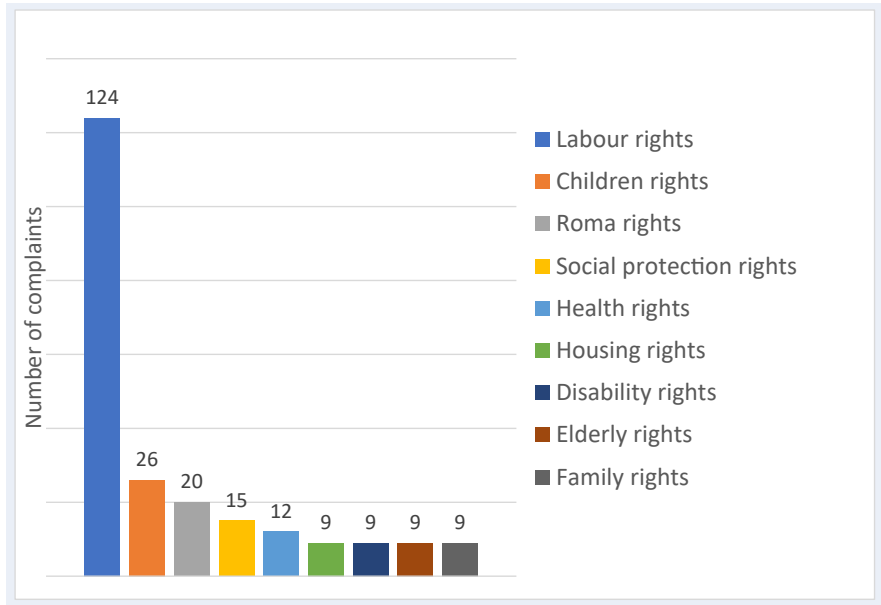


More than 90% of collective complaints were submitted by two groups of applicants: international NGOs (50%) and national trade unions (42%). At the same time, it should be noted that national employers' organisations filed only 2% of collective complaints.



The collective complaints concerned various rights enshrined in the 1961 Charter and the revised 1996 Charter. The vast majority of these complaints related to labour rights, in particular Articles 1 (the right to work), 2 (the right to just conditions of work), 4 (the right to a fair remuneration), 5 (the right to organise), 6 (the right to bargain collectively), 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex). Conversely, some provisions have never been the subject of collective complaints,

such as Article 8 (the right of employed women to protection of maternity) and Article 25 (the right of workers to the protection of their claims in the event of the insolvency of their employer).



In tandem with the increase in the number of complaints registered, the average duration of their examination has risen. While the average time for admissibility decisions was 6.3 months and 21.3 months for decisions on the merits over the entire period from 1998 to 2023, in 2024, the average time exceeded 8 months for admissibility decisions and 33 months for decisions on the merits. At the same time, the percentage of complaints declared admissible has fallen from 92% (1998-2023) to 83% (2019-2023), and the percentage of violations found has dropped from 74% to 67%. In addition, the increase in intervals between national reports and the differentiation of these intervals based on the acceptance of the collective complaints procedure, as introduced under the 2022 reform, was able to help address the issue of case overload.

2. Examples of implemented decisions relating to collective complaints brought before the European Committee of Social Rights

Each decision of the European Committee of Social Rights includes a unique and detailed analysis of the national situation to which the applicants' complaint applies and refers to the relevant standards of the Charter and jurisprudence of the Committee and other international standards. Each individual decision can therefore serve as a valuable instrument for improving national legislation and practice. The effectiveness of the Committee's decisions depends on their implementation by respondent States.

To execute a decision, States often need to adopt changes to their legislation or practice, a process that can take several years. Unfortunately, some States have failed to bring the situation into conformity with the Charter for years or have only partially implemented the decision. If a State succeeds in bringing its situation into conformity with the European Social Charter standards, the Committee decides to close the follow-up to the decision, and the process is terminated. In other cases, the Committee has emphasised the need to continue monitoring the situation through the regular reporting procedure.

1) *Association for the Protection of all Children (APPROACH) Ltd v. Slovenia* (Complaint No. 95/2013, decision on the merits of 5 December 2014)

The complainant organisation alleged that Slovenia did not comply with its obligations under Article 17 (the right of children and young persons to social, legal and economic protection) of the European Social Charter because of the lack of explicit and effective prohibition of all corporal punishment of children, in the family, schools and other settings, and because Slovenia had failed to act with due diligence to eliminate such punishment in practice.

The ECSR's decision noted that the provisions of the Family Violence Prevention Act and the Criminal Code, referred to in the context of this complaint, prohibited serious acts of violence against children, and the fact that national courts could sanction corporal punishment provided it reached a specific threshold of gravity. When corporal punishment failed to fulfil those criteria, it might nevertheless be addressed as a minor offence (§51). The Committee concluded that Article 17 of the Charter had been violated on the ground that none of the legislation referred to by the Government set out an express and comprehensive prohibition on all forms of corporal punishment of children.

During the first assessment of the follow-up process, in May 2016, the Committee welcomed the Georgian Government's intention to incorporate an explicit prohibition of corporal punishment of children and the initiation of drafting legislative amendments.

The Government amended two acts and included the explicit prohibition of all forms of the punishment of children in domestic and other settings in national legislation later that year. The explicit prohibition of all corporal punishment of children in the domestic environment was included in the Act amending the Act on the prevention of domestic violence, which entered into force in November 2016. Article 3a of the Act provides for the following:

“- Corporal punishment of children shall be strictly prohibited.

- Corporal punishment of children shall be considered as any physical, cruel or degrading punishment or any other act with the intention to punish children containing elements of physical, psychological or sexual violence or neglect as an educational method”.

During the second assessment of the follow-up, in September 2017, the Committee noted the positive amendments that were enshrined in the two adopted acts. The Committee, therefore, recognised that the situation had been brought into conformity with the Charter and decided to terminate the examination of the decision.⁹

2) Centre on Housing Rights and Evictions (COHRE) v. Croatia (Complaint No. 52/2008, decision on the merits of 22 June 2010)

The complaint concerned the alleged violation of Article 16 of the Charter (the right of the family to social, legal and economic protection), read alone or in conjunction with Article E (non-discrimination) of the Charter. This was on the grounds that the ethnic Serb population displaced during the war in Croatia had been subjected to discriminatory treatment as they had not been allowed to reoccupy their former dwellings prior to the conflict. In addition, they had not been granted financial compensation for the loss of their homes.

The ECSR's decision found the violation of Article 16 of the 1961 Charter (the right of the family to social, legal and economic protection) due to the slow pace of the housing programme and the lack of clarity as to when housing would be provided under the programme and a failure to take

9 2nd assessment of the follow-up (2017): *Association for the Protection of all Children (AP-PROACH) Ltd v. Slovenia*, Complaint No. 95/2013. <<https://hudoc.esc.coe.int/eng?i=cc-95-2013-Assessment2-en>>

into account the heightened vulnerabilities of many displaced families, and of ethnic Serb families in particular.

While acknowledging the efforts made to more effectively regulate housing in Croatia, including the adoption of the Regional Housing Programme (RHP) aimed at meeting the permanent housing needs of the most vulnerable categories of refugees and internally displaced persons, the Committee, in 2017, reiterated its concern regarding the slow pace of the housing programme.

In 2018, the Government adopted the Annual Plan and the Three-Year Housing Plan, which planned to secure housing for 1 150 families under the Regional Housing Programme. Additionally, the Government adopted the Operational Programme for National Minorities 2017-2020, which included measures and activities to safeguard and improve the existing level of rights of all national minorities, along with operational programmes for Serbian, Italian, Czech, Slovak, Hungarian, Albanian and Roma national minorities. Beneficiaries under the Regional Housing Programme (RHP) and the National Housing Programme were selected during sessions of the Joint Working Group for the Selection of Beneficiaries (UNHCR and SDUOSZ), in accordance with pre-established procedures defined by the Framework Agreement, with vulnerability criteria being the primary consideration.

The Government stated that €76 million had been invested in providing replacement housing for temporary occupants over the previous 17 years, making it possible for owners to recover their property. Effective remedies had been set up for occupied property to be repossessed and for compensation for the losses arising from confiscation. There are currently no pending eviction proceedings under the 1995 Takeover Act. The case law of the Constitutional Court and of the Supreme Court have made adjustments with regard to compensation for losses resulting from confiscation.

According to all the above-mentioned, the Committee noted the substantial efforts made to provide housing to all returnees, displaced persons, refugees and other target groups in the war-affected areas and decided to terminate the follow-up and examination of the decision in 2019.

3) *Associazione Nazionale Giudici di Pace v. Italy* (Complaint No. 102/2013, decision on the merits of 5 July 2016)

The complaint related to Article 12 (right to social security) of the European Social Charter. The complainant organisation, the *Associazione Nazionale Giudici di Pace* (the National Association of Justices of the Peace), alleged that Italian law did not provide any social security and welfare

protection for this category of honorary Judges, in violation of the Charter provision relied on.

The ECSR's decision found that there was a violation of Article E read in conjunction with Article 12.1 of the Charter against persons who performed the duties of Justice of the Peace and had no alternative social security coverage, insofar as some of them, while performing duties equivalent to those of tenured judges and other categories of lay judges, were denied social security protection (for sickness, maternity and old-age pension).

The Government reported that a new legislative decree – No. 116 of 13 July 2017 – had been adopted, including transitional rules on serving lay judges and under its Article 25, Justices of the Peace (serving lay judges) who were not covered by the National Lawyers' Welfare and Assistance Fund (*Cassa Forense*) were affiliated to the Separate Management Scheme of the National Social Welfare Institute (INPS) and benefited from an insurance coverage comparable to that of self-employed workers. The Government described in its report all the changes that have been made, in particular, those to the contribution rate (minimum, ceiling), to the dependence of the amount of the benefits on the length of contribution, to the rules for maternity allowance, etc.

The Committee also noted that the Court of Justice of the European Union also considered, in its judgment of 16 July 2020 (case *UX v. Italy*, C-658/18), that Justices of the Peace in Italy might be considered "fixed-term workers", inasmuch as they perform "real and genuine services which are neither purely marginal nor ancillary, and for which they receive compensation representing remuneration" and that therefore they should not be treated differently than ordinary judges, "unless such a difference of treatment is justified by the differences in the qualifications required and the nature of the duties undertaken by those duties".

By virtue of the information provided, the Committee welcomed the introduction of compulsory insurance coverage, which addressed the main issue at stake — namely, the total lack of coverage for some Justices of the Peace (those without other side activities or whose side activities did not qualify them for an insurance scheme). In 2020, the Committee determined that the situation had been brought into conformity and decided to terminate the follow-up to the decision regarding this complaint. However, it emphasised that monitoring the implementation of the Separate Management Scheme would continue within the context of the ordinary reporting procedure, specifically through thematic reports on Article 12.

4) Defence for Children International (DCI) v. the Netherlands (Complaint No. 47/2008, decision on the merits of 20 October 2009)

The complaint alleged that Dutch legislation deprived children residing illegally in the Netherlands of the right to housing (Article 31) and consequently of a series of additional rights laid down in Articles 11 (right to health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 30 (right to protection against poverty and social exclusion) alone or read in conjunction with Article E (non-discrimination) of the European Social Charter (revised).

The ECSR's decision concerning the right to shelter of children unlawfully present in the territory held that Articles 31.2 and 17.1 of the Charter were violated on the ground that shelter was not provided to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.

The Supreme Court of the Netherlands ruled on 21 September 2012 that the State had an obligation to protect the rights and interests of children in its jurisdiction, including children unlawfully present in the Netherlands, and that children could not be held responsible for their parents' behaviour. On the basis of this judgment, the Netherlands expanded the reception facilities for families and children and their parents. Children are now provided with shelter so that they do not find themselves in an urgent humanitarian situation as a result of their parents' decisions.

The Government also noted that families who are forcibly removed can be placed in the closed family centre (opened in October 2014), but only as a last resort to realise return and only under strict criteria¹⁰. Furthermore, unaccompanied minors have a right to shelter until they reach the age of majority. To ensure that proper care is provided, unaccompanied minors will be placed in the care of the Central Agency for the Reception of Asylum Seekers who will place them with a foster family.

In this respect, the Committee held that the situation had been brought into conformity with Articles 31.2 and 17.1 of the Charter. Therefore, the examination of this case was terminated in 2016.

While in some cases States Parties have managed to change the national legislation and bring the situation in conformity with the relevant provisions of the Charter that were found to have been violated over the course of several years, some decisions have not been executed for years.

¹⁰ Assessment of the follow-up: Defence for Children International (DCI) v. The Netherlands, Collective Complaint No.47/2008. <https://hudoc.esc.coe.int/eng?i=cc-47-2008-Assessment-en>

5) *International Association Autism-Europe v. France* (Complaint No. 13/2002, decision on the merits of 4 November 2003)

The complaint related to Article 15 (the right of persons with disabilities), Article 17 (the right of children and young persons to social, legal and economic protection), and to Article E (non-discrimination) of the Revised European Social Charter. It was alleged there was insufficient educational provision for autistic persons, thus constituting a violation of the above provisions.

In its decision, the Committee found a violation of Articles 15.1 and 17.1, read alone or in conjunction with Article E of the Charter, on the two grounds: A) the proportion of children with autism being educated in either mainstream or specialist schools was extremely low and much lower than in the case of other children, whether disabled or not, and B) there was a chronic shortage of care and support facilities for autistic adults.

During the fourth follow-up in 2022, the Committee noted that the French authorities' efforts to provide education for children with autism had continued as part of the 2018-2022 Autism Plan. Over this period, the number of children with autism enrolled in mainstream schools increased as did the number of ASD teaching units opened in nursery and primary schools. It also noted that systems to promote the integration of children with autism at school and their individual supervision and support had been devised and set up. The Committee also stressed that current statistics provided only limited information about the number of care and support facilities for autistic adults. The French authorities, thus, are in the process of setting up other information collection systems. The Committee asked for updated information in the next report on the number of care and support facilities for autistic adults (and the number of places on offer) and the needs in this area. Therefore, the Committee considered that the situation had not yet been brought into conformity with the violated articles, and the follow-up has been continued.

3. Examples of good practices relating to labour rights

The vast majority of collective complaints submitted to the ECSR have concerned various labour rights enshrined in the European Social Charter. Many complaints concerned the right to work (Article 1), especially Article 1.2 in the context of the eradication of all forms of discrimination in employment, the rights to fair working conditions (Article 2), the rights to fair remuneration (Article 4), the right to freedom of association (Article 5), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

(Article 20), the right to collective bargaining (Article 6), and the right to protection in cases of termination of employment (Article 24), etc.

1) *Syndicat national des Professions du Tourisme v. France* (Complaint No. 6/1999, decision on the merits of 10 October 2000)

The complaint related to Articles 1.2 (prohibition against all forms of discrimination in access to employment), 10 (the right to vocational training) and E (non-discrimination) of the Revised European Social Charter. It concerned alleged discrimination in access to work and vocational training for guide-interpreters and national lecturers.

In its decision, the Committee underlined that the effective protection of right of workers to earn their living in an occupation freely entered upon required, *inter alia*, the obligation to eliminate all forms of discrimination in employment whatever the legal nature of the professional relationship. A difference in treatment between people in comparable situations constitutes discrimination in breach of the revised Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds (§24-25). To resolve the situation in question regarding differences in treatment between approved lecturer guides of the *Villes et Pays d'Art et d'Histoire* network and interpreter guides and lecturers with a state diploma, on the freedom to conduct guided tours in conformity with Article 1.2, France introduced reforms with respect to the profession of guide. In 2015, the Committee decided that the situation had been brought in conformity with Article 1.2 of the Charter.

2) *Confédération générale du travail (CGT) v. France* (Complaint No. 55/2009, decision on the merits of 23 June 2010)

The complaint related to Articles 2 (the right to just conditions of work) and 4 (the right to a fair remuneration). The CGT (*Confédération Générale du Travail*) claimed that the new regulations on working time introduced in France on 20 August 2008 (Act No. 2008-789) violated these provisions).

In its decision, the Committee assessed the annual working days system and examined the assimilation of on-call periods to rest periods.

It was noted that three criteria had to be fulfilled by national laws or regulations in accordance with the ESC, including providing reasonable reference periods for calculating average working time (§ 50). The Committee reiterated its position given in the decision on the merits of 7 December 2004 in Complaint No. 22/2003 *CGT v. France* and stressed that the “*périodes d’astreinte*” (periods of on-call duty) during which employees were not required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as rest periods with-

in the meaning of Article 2 of the Charter. On-call duty refers to periods during which employees are required to remain at the employer's disposal to carry out work if requested. However, this obligation, even when the likelihood of having to perform work is purely hypothetical, undeniably prevents the employee from engaging in activities of their own choosing, planned within the time available prior to a fixed work period, and is subject to the uncertainty inherent in such dependency. Furthermore, the absence of effective work, determined retrospectively for a period that employees did not have at their disposal in advance, cannot be considered a valid criterion for classifying such a period as a rest period (§ 65).

The Committee held in this case that the assimilation of on-call periods to rest periods constitutes a violation of the right to reasonable working time provided in Article 2.1 of the Revised Charter.

3) *University Women of Europe (UWE) v. Ireland* (Complaint No. 132/2016, decision on the merits of 5 December 2019)

In 2016, 16 complaints were submitted by the University Women of Europe to different States concerning Articles 1, 4, 20 and Article E of the Charter in the context of non-discrimination in the area of employment on the ground of sex.

In its decision, the Committee emphasised the importance of the right of women and men to equal pay for equal work or work of equal value as one of the constituent elements of fair remuneration. It assessed the allegations concerning this from two angles of States' obligations: the recognition and the enforcement of the right to equal pay under Articles 4.3 and 20.c of the ESC, the adoption of measures to promote the right to equal pay and insurance and to promote the right to equal opportunities and equal treatment in the field of career development, including in relation to the representation of women in decision-making positions within private companies under Article 20.d of the ESC. The Committee stressed that the concept of remuneration must cover all elements of pay, i.e. basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment. Moreover, transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations, as well as by the relevant authorities. The lack of pay transparency is a major obstacle for victims of pay discrimination to proving discrimination and thus effectively enforcing their rights. Pay transparency is an enabling tool for workers or social partners to take appropriate action, such as to challenge pay discrimination before the national courts and must be guaranteed in practice.

The Committee concluded that, as far as recognising and enforcing the right to equal pay for work of equal value were concerned, there had been a violation of Articles 4.3 and 20 of the Charter on the ground that pay transparency was not ensured in practice and that there had been an absence of indicators showing measurable progress in promoting equal opportunities between women and men in respect of equal pay and there had been insufficient progress made in ensuring a balanced representation of women in decision-making positions within private companies.

In its Findings 2023 report, the ECSR noted that the introduction and gradual implementation of the Gender Pay Gap Information Act represented progress in strengthening pay transparency. Also, the positive trend had shown measurable progress. Therefore, the Committee found that the situation has been brought into conformity.

4) *Finnish Society of Social Rights v. Finland* (Complaint No. 106/2014, decision on the merits of 8 September 2016)

The complaint related to Article 24 (right to protection in cases of termination of employment) of the Revised European Social Charter. The complainant organisation alleged that, in case of unlawful dismissal, the Finnish legislation did not provide any possibility to reinstatement and required the dismissal indemnity to be capped, in breach of the above-mentioned provision.

In its decision, the Committee assessed the situation of the lack of provision in Finnish legislation for reinstatement in the event of unlawful dismissal and of the Employment Contracts Act which provided for a ceiling on the amount of compensation that could be awarded in the event of unlawful dismissal.

The Committee underlined that employees dismissed without a valid reason must be granted adequate compensation or other appropriate relief. Moreover, compensation should include the following elements to be in conformity with the Charter: (i) the reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body, (ii) the possibility of reinstatement, (iii) compensation at a level sufficiently high to dissuade the employer and make good the damage suffered by the employee. Any upper limit on compensation that would preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is, in principle, contrary to the Charter. However, if there were such a ceiling on compensation for pecuniary damage, the victim should be able to seek compensation for non-pecuniary damage by means of other legal avenues.

The Committee held that there was a violation of Article 24 of the Charter

on two grounds: the upper limit on compensation in cases of unlawful dismissal provided for by the Employment Contracts Act could result in situations where the compensation awarded is not commensurate with the loss suffered; under Finnish legislation, reinstatement is not made available as a possible remedy in cases of unlawful dismissal.

5) *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece* (Complaint No. 66/2011, decision on the merits of 23 May 2012)

According to the complainant trade unions, the measures relating to remuneration and working conditions contained in Act No. 3899/2010 of 17 December 2010 were in violation of Articles 1 (right to work), 4 (right to a fair remuneration), 7 (the right of children and young persons to protection), 10 (right to vocational training), and 12 (right to social security) of the European Social Charter.

In its decision, the Committee considered that the young persons on apprenticeship contracts were excluded from the scope of the labour legislation and were not entitled to three weeks' annual holiday with pay. In particular, the Committee noted that it is open to a State to demonstrate an objective justification for the payment of a lower minimum wage to younger workers, if this can be shown to further a legitimate aim of employment policy and be proportionate to achieve that aim. Applying this test to the facts at issue, the Committee was of the view that the less favourable treatment of younger workers at issue was designed to give effect to a legitimate aim of employment policy, namely, to integrate younger workers into the labour market in a time of serious economic crisis. In this case, the Committee considered that the extent of the reduction in the minimum wage, and the manner in which it was applied to all workers under the age of 25, was disproportionate even when taking into account the particular economic circumstances in question.

The Committee held that there was a violation of several provisions of the Charter: Article 7.7, 10.2, 12.3 and 4.1 of the 1961 Charter. In 2023, in the context of the follow-up process, the Committee took into account the Government's submissions and also referred to its Finding in the *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, and took the view that Law 4763/2020 on the National System of Vocational Education, Training and Lifelong Learning providing for the dual system of learning and training for the apprentices, ensured that their working time and rest time were adapted to the needs of this specific group of young workers. It therefore considered that the situation had been brought into conformity with the Charter.

6) *European Confederation of Police (EuroCOP) v. Ireland* (Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013)

The complainant organisation alleged that police representative associations in Ireland and, more specifically, the Association of Garda Sergeants and Inspectors (AGSI), did not enjoy full trade unions rights, which include, in particular, the right to join an umbrella organisation and the right to bargain collectively. The complainant organisation alleged a violation of Articles 5 (the right to organise), 6 (the right to bargain collectively), and 21 (the right to information and consultation) of the European Social Charter (Revised).

In its decision, the Committee examined the prohibition from affiliating with national employees' organisations for police representative associations and from establishing police trade unions, the insufficient access to pay agreement discussions, the denial of access to the Labour Relations Commission and the Labour Court, as well as the denial of the right to take collective action. The Committee reiterated its previous position that the police may not have been entirely exempted from the safeguards provided for by Article 5 and, as was held in *European Council of Police Trade Unions (CESP) v. Portugal* (Complaint No. 60/2010), States are permitted to restrict — but not to completely deny — police officers' right to organise.

The Committee concluded that there was a violation of Article 5 of the Charter on the grounds of the prohibition on police representative associations from joining national employees' organisations, with the effect of depriving them from being represented by national organisations to negotiate on pay, pensions and service conditions. In addition, it was also found that the situation was not in conformity with Article 6.2 of the Charter on the ground that the police representative associations were not provided with a means to effectively represent their members in all matters concerning their material and moral interests. Likewise, Article 6.4 of the Charter had been violated on the ground that the domestic legislation amounted to a complete abolition of the right to strike as far as the police was concerned.

In the context of the follow-up procedure, the Committee, in 2021, noted that although the implementation of the legislation was still ongoing, it allowed *An Garda Síochána* (the Irish Police) to participate in national public service pay negotiations. Therefore, the situation was found to be compatible with Article 5.

7) Confederazione Generale Italiana del Lavoro (CGIL) v. Italy (Complaint No. 140/2016, decision on the merits of 22 January 2019)

The complaint concerned Articles 5 (the right to organise) and 6 (the right to bargain collectively) of the Revised European Social Charter. The complainant trade union, CGIL, alleged that, in Italy, the *Guardia di Finanza* Regulations deprived its members of their rights to organise and to bargain collectively in violation of the aforementioned provisions.

In its decision, the Committee reiterated that States Parties were allowed to impose restrictions upon the right to organise of members of the armed forces, in accordance with Article 5 of the Charter, and granted a wide margin of appreciation in this regard. However, trade unions must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply.

The Committee stated that there was, however, a violation of Article 5 of the Charter on account of the fact that the restriction on the right of members of the *Guardia di Finanza* to organise was excessive in that the creation of trade unions or professional organisations by its members is subject to the prior consent of the Minister of Defence, in the absence of administrative and judicial remedies against an arbitrary refusal of registration. Moreover, the absolute ban on members of *Guardia di Finanza* to join “other trade unions”, given it is functionally equivalent to a police force or to an armed force, is disproportionate since it deprives its members of an effective means of asserting their economic and social interests and is not necessary in a democratic society.

Furthermore, not providing the representative bodies of *Guardia di Finanza* with the means to effectively negotiate the terms and conditions of employment, including remuneration, constituted a violation of Article 6.2. In particular, the Committee held that it had not been demonstrated that this procedure effectively ensured meaningful negotiations as opposed to a mere hearing and the ability to meet frequently with the Ministers concerned or their representatives in order to negotiate on matters relating to working conditions and pay. The Committee also concluded that there had been a violation of Article 6.4 of the Charter on account of the absolute prohibition of the right to strike imposed on members of the *Guardia di Finanza*.

The Committee considered in this case that although restrictions on the right to strike in the context of “minimum service” requirements in the event of a strike in the defence sector, or the provision of a regular and effective procedure of negotiations, would be proportionate and compatible with the Charter, the absolute prohibition of the right to strike imposed on members of the *Guardia di Finanza* could not be considered as being necessary in a democratic society.

Within the follow-up process, the Committee noted that the new Law on the exercise of freedom of association by Armed Force and Police Force personnel had come into force. This gave professional associations with a trade union character the possibility to be recognised as representative at national level, granting them negotiating powers for the purposes of sectoral collective bargaining. In view of the above-mentioned changes, the situation was found in partial conformity with the Charter in 2023.

4. Examples of good practice relating to the rights of people with disabilities

The European Social Charter of 1961 was the first international treaty to enshrine the protection of the rights of persons with disabilities in a separate article. In the revised Charter, a broader provision on the right of persons with disabilities to independence, social integration and participation in the life of the community is set out in Article 15. Approximately ten collective complaints have been submitted against France, Finland, Belgium, Spain and Italy regarding violations of their obligations under Article 15.

1) *Defence for Children International (DCI), European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL), Confederación Sindical de Comisiones Obreras and International Movement ATD Fourth World v. Spain* (Complaint No. 206/2022, decision on admissibility and immediate measures of 19 October 2022)

The complaint concerned Articles 31 (the right to housing), 16 (the right of the family to social, legal and economic protection), 17 (the right of children and young persons to social, legal and economic protection), 30 (the right to protection against poverty and social exclusion), 23 (the right of elderly persons to social protection), 11 (the right to protection of health), 15 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex), 27 (the right of workers with family responsibilities to equal opportunities and equal treatment) and to Article E (non-discrimination) in conjunction with each of the provisions of the Revised European Social Charter concerned.

The complaint related to the protracted power outage in two sectors of the shantytown of the Cañada Real Galiana in Madrid, Spain. The complainant organisations alleged that the State, in its capacity as regulator, had not taken any steps aimed at restoring the power or providing the

persons concerned with alternative sources of electricity. The power outage had a serious impact on the lives of the 4 500 inhabitants, including about 1 800 are children, leading to serious medical problems and worsening pre-existing health conditions. Children and adolescents, women and girls, the elderly, persons with disabilities and persons belonging to vulnerable population groups - such as Roma - living in the areas in question were disproportionately affected by the electricity deprivation in breach of the aforementioned provisions of the Charter.

In its decision, the Committee found it necessary to indicate immediate measures. The Committee considered that the prolonged and recurring lack of electricity in parts of the Cañada Real Galiana shantytown had affected the lives of at least 4 500 inhabitants, including about 1 800 children, as well as members of other different vulnerable groups, including older persons, persons with disabilities, persons with medical conditions, persons of foreign origin and Roma. The residents, who were wholly or partially deprived of electricity, were at risk of serious and irreparable harm to their lives due to the lack of access to electricity.

2) *Mental Disability Advocacy Centre (MDAC) v. Belgium* (Complaint No. 109/2014, decision on admissibility and the merits of 29 March 2018)

The complaint related to Articles 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) and 17 (right of children and young persons to social, legal and economic protection) of the Revised European Social Charter. The complaint alleged that Belgium had failed to provide education and training for children with intellectual and mental disabilities who were denied access to mainstream education and to the supports necessary to ensure such inclusion, in violation of the above mentioned provisions.

In its decision concerning the Flemish Community of Belgium's refusal access to mainstream education to disabled children, in particular to children with intellectual disabilities, and its failure to provide the necessary accommodation to ensure such inclusion, the Committee found violations of Article 15.1 and of 17.2 of the Charter.

The Committee reiterated that the underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, that the primary rights are those of "independence, social integration and participation in the life of the community" (*European Action of the Disabled (AEH) v. France*, Complaint No. 81/2012) and the Charter does not allow States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and

participation of persons with disabilities, since this must primarily be in a mainstream school.

The Committee recalls that inclusive education requires the provision of support and reasonable accommodations that persons with disabilities are entitled to access schools effectively. Discrimination based on intellectual disabilities also arises from the refusal to introduce such reasonable adjustments — individualised measures designed to correct “factual inequalities”. The Committee recognises that national authorities are, in principle, better placed to evaluate individual needs and conditions in this regard.

With respect to the obligation under Article 15 of the Charter, States must make maximum use of available resources to ensure the right to inclusive education. The Committee noted that persons with disabilities are more likely to depend on community care, funded through the State budget, to live independently and in dignity compared with other individuals receiving such care. Budget restrictions in social policy matters are likely to disadvantage persons with disabilities and may result in a difference in treatment indirectly based on disability (*AEH v. France*, op. cit., §144).

In this case, the Committee also underlined the difference between integration and inclusion: integration is when the child is required to adapt to the mainstream system while inclusion means the child’s right to participate in ordinary schooling and the school’s obligation to accept the child, taking into account the best interests of the child as well as their abilities and educational needs.

3) *European Action of the Disabled (AEH) v. France* (Complaint No. 81/2012, decision on the merits of 11 September 2013)

There has been a significant number of the main positions and interpretations of the right of persons with disabilities to education under Article 15.1 of the Charter.

This complaint concerned the problems regarding the access of autistic children and adolescents to education and the access of young adults with autism to vocational training. The complainant organisation alleged that France had not complied with its obligations under Articles 10 (right to vocational training), 15 (right of persons with disabilities to independence, social integration and participation in the life of the community), taken alone or in combination with Article E (non-discrimination) of the European Social Charter (Revised).

In its decision, the ECSR confirmed the right of children and adolescents with autism to be educated as a priority in mainstream schools and the right to vocational training for young people with autism. The decision

also addressed the direct discrimination of families who had been forced to leave the national territory in order to send autistic children to school and the restricted budgetary context applied to the Autism Plan concerning the schooling of autistic children and adolescents, which indirectly disadvantaged these disabled persons (discrimination between persons with autism and persons with other disabilities).

The Committee emphasised that “securing a right to education for children and others with disabilities plays a patently important role in advancing these citizenship rights. This explains why education is now specifically mentioned in the revised Article 15 and why such an emphasis is placed on achieving that education ‘in the framework of general schemes, wherever possible’. It should be noted that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus clearly covers both children and adults with autism (*Autism-Europe v. France*, decision on the merits of 4 November 2003)”.

The Committee also recalled that States Parties were obliged to provide “education for persons with disabilities, together with vocational guidance and training, in one or other of the pillars of the education system, in other words mainstream or special schools”. Priority should be given to education in mainstream establishments, which, if interpreted “as it ordinarily would be and with due regard for the context and purpose of the provision, indicates to the public authorities that in order to secure the independence, social integration and participation in the life of the community of persons with disabilities through their education, they must take account of the type of disability concerned, how serious it is and a variety of individual circumstances to be examined on a case-by-case basis”. Thus, Article 15.1 of the Charter does not leave States Parties a wide margin of appreciation as regards their choice of school in which they can promote the independence, integration and participation of persons with disabilities. In view of the fact that achieving some of the Charter’s rights is “exceptionally complex and particularly expensive to resolve”, the Committee has reiterated the importance of meeting the following three key criteria that were formulated in the decision *Autism-Europe v. France* (Complaint No. 13/2002) and repeated in a series of other decisions, including *Mental Disability Advocacy Center (MDAC) v. Bulgaria* (Complaint No. 41/2007) and *FIDH v. Belgium* (Complaint No. 62/2010) in regard to persons with disabilities: “a reasonable timeframe, measurable progress and financing consistent with the maximum use of available resources” (§53).

The ECSR scrutinised the national legislation, practice and the data provided, and reached the conclusion that it was a violation of the Charter

(Article 15.1) “because the work done in specialised institutions caring for children and adolescents with autism is not predominantly educational in nature” (§121).

In the context of the violation of Article E of the Charter, taken in conjunction with Article 15.1, the necessity of families with autistic children to move to Belgium to educate their children in a specialised school due to France’s failure to give such people opportunity to satisfy the specific learning and communication needs at school within their own national territory, was considered a direct discrimination against them (§136-137). Moreover, the limited funds in the State’s social budget for the education of children and adolescents with autism indirectly disadvantages these persons with disabilities and this also constitutes a violation of Article E of the Charter, taken in conjunction with Article 15.1.

5. Examples of good practice regarding the rights of older persons to social protection

Article 23 is the first human rights treaty provision to specifically protect the rights of older persons. The core ideas that underpin it include the insistence on human autonomy and independence regardless of age. Also embedded in Article 23 is the concept of social inclusion and active citizenship. Article 23 of the Charter requires States Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society. The expression “full members of society” used in Article 23 requires that older persons must not suffer ostracism on account of their age. The right to take part in society’s various fields of activity should be guaranteed to everyone, whether active or retired, or whether they live in an institution or not.

The article is structured in three interconnected parts, encompassing various aspects of the wellbeing of older persons outside the workplace. It mandates States Parties to develop comprehensive, cross-sectoral measures that address the diverse needs of ageing populations across various domains such as health, social security and assistance, housing and protection against poverty and exclusion. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for older persons, obliging States Parties to devise and implement coherent actions in the various areas covered. Although Georgia has not yet accepted Article 23, this booklet provides useful information for diverse stakeholders willing to enhance the protection of older persons in Georgia.

Central Association of Carers in Finland v. Finland (Complaint No. 71/2011, decision on the merits of 4 December 2012)

The complaint concerned the situation of family and friend caregivers in Finland. The complainant organisation alleged that the lack of statutory pricing for service housing or service housing with 24-hour assistance prevents elderly people accessing the type of lodging that their condition would require in Finland violates the range of elderly persons' rights.

In its decision, the Committee concluded that there was a violation of Article 23 of the Charter on the ground that insufficient regulation of fees for service housing and service housing with 24-hour assistance, combined with the fact that demand for these services exceeded supply:

- ▶ there were legal uncertainties for older persons in need of care due to diverse and complex fee policies. While municipalities could adjust the fees, there were no effective safeguards to assure that effective access to services is guaranteed to every older person in need of services appropriate to their condition;
- ▶ this situation constituted an obstacle to the right to “the provision of information about services and facilities available for older persons and their opportunities to make use of them”, as guaranteed by Article 23b of the Charter.

The ECSR also reiterated that States Parties are committed to taking the necessary actions to enable elderly persons to remain full members of society and to lead independent lives in their familiar surroundings for as long as they wish. States should be able to provide housing services suited to the needs of elderly persons and their state of health, and to provide services and facilities appropriate to elderly persons, as well as to guarantee appropriate support to elderly persons living in institutions (§ 42).

Central Association of Carers in Finland v. Finland (Complaint No. 70/2011, decision on the merits of 4 December 2012).

The complaint concerned the situation of family and friend caregivers in Finland. The complainant organisation alleged that the system of financial support for family and friend caregivers is not equal, since it varied according to their place of residence in Finland.

The Committee held that the lack of consistency in the services provided for elderly persons throughout Finland resulting from the lack of uniformity in the funding of such services by municipalities did not, as such, violate Article 23 of the Charter. However, the fact that the legislation allowed

practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support constituted a violation of this Article.

International Federation of Associations of the Elderly (FIAPA) v. France
(Complaint No. 145/2017, decision on the merits of 25 May 2019)

The complaint concerned an allegation that French legislation on the repression of financial exploitation (*abus de faiblesse*) does not ensure the effective exercise of the right of elderly persons to social protection in violation of Articles 23 (the right of elderly persons to social protection) and E (non-discrimination) of the Revised European Social Charter.

The Committee stressed that “the purpose of Article 23 is to protect elderly persons from discrimination on the ground of age with regard to access to social security, health care, goods and services and guarantee elderly persons’ freedom to make their own decisions and live out their lives in dignity and independence. Such obligation also includes effective remedies. Considering the fact that age may be linked with the state of a particular vulnerability, elderly in their everyday lives might become victims of abuse of weakness. Therefore, to fully guarantee the rights under Article 23, national criminal legislations should include provisions making it an offence to abuse an individual’s position of weakness and provide effective remedies before national courts” (§48).

Validity Foundation – Mental Disability Advocacy Centre v. Czechia
(Complaint No. 188/2019, decision on the merits of 17 October 2023)

The complained concerned Article 11.1 (right to protection of health) of the European Social Charter (the 1961 Charter) and Article 4.3 (right of elderly persons to social protection) of the 1988 Additional Protocol to the 1961 Charter. The Validity Foundation alleges that the use of cage-beds and net-beds as a means of managing elderly persons and persons with disabilities in psychiatric hospitals in the Czech Republic constitutes a violation of the above-mentioned provisions of the 1961 Charter and its 1988 Additional Protocol.

The Committee recalled that during the period of transition towards deinstitutionalisation, institutionalisation is unavoidable, that living conditions and care must be adequate and that the following basic rights must be respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions (§96).

CONCLUSION AND RECOMMENDATIONS

Reaffirming the importance of the adoption of the collective complaints procedure and its recognition for the promotion of human rights and social justice in Georgia.

The adoption of the collective complaints procedure is a critical step toward advancing human rights and social justice in Georgia. While the country has made some progress in aligning its legislation and practice with European standards, integrating this mechanism into its legal and institutional framework will address gaps in the enforcement of social rights, ensure systemic accountability, and empower civil society organisations and social partners.

To promote and protect social rights, Georgia will need to take on additional obligations under the European Social Charter, including Article 15 and Article 23 of the Charter, and ratify the Additional Protocol on the collective complaints procedure.

Georgia stands at a unique juncture where the recognition of the collective complaints procedure can:

- ▶ strengthen the role of civil society, trade unions, and other social partners in promoting and safeguarding social rights;
- ▶ enhance compliance with international obligations under the European Social Charter;
- ▶ provide a platform for addressing systemic violations and resolving disputes collaboratively between the government and stakeholders;
- ▶ foster trust in European institutions by embracing democratic values and the rule of law.

Steps to be taken by Georgia for the adoption of the Additional Protocol

To ensure the successful adoption and implementation of the collective complaints procedure, Georgia should take the following steps:

1. Legislative and policy reforms

- ▶ Begin drafting amendments to existing legislation in order to ratify the **Additional Protocol** providing for the collective complaints procedure.
- ▶ Collaborate with legal experts, academics and relevant stakeholders to prepare a comprehensive explanatory memorandum for the legislative process.

2. Raising awareness and building capacity

- ▶ Organise **national and international conferences** to raise awareness of the collective complaints procedure. These should include representatives of ministries, trade unions, civil society organisations, judges, lawyers and academics from States that have ratified the procedure.
- ▶ Conduct **training sessions and workshops** on the European Social Charter and the jurisprudence of the European Committee of Social Rights for government officials, parliamentarians and legal professionals.
- ▶ Develop **educational programmes** in universities to include the European Social Charter and the collective complaints procedure in law and public administration curricula.

3. Public engagement and advocacy

- ▶ Launch a public awareness campaign to inform citizens about the procedure's benefits for vulnerable groups, such as children, persons with disabilities, and older persons.
- ▶ Invite civil society organisations and social partners to participate in the consultation and decision-making processes to build broad support.

4. Institutional and administrative arrangements

- ▶ Create a dedicated mechanism within relevant government ministries to manage responses to collective complaints and facilitate coordination with the ECSR.

- ▶ Establish a system for **translating and disseminating** ECSR conclusions and decisions in the Georgian language to enhance accessibility and understanding.

5. International cooperation and exchange of knowledge

- ▶ Facilitate **bilateral and multilateral exchanges** with States that have adopted the collective complaints procedure to learn from their experiences and best practices.
- ▶ Collaborate with the **Council of Europe** to receive technical support and capacity building assistance for the implementation of the procedure.

6. Fostering a proactive legal culture

- ▶ Encourage national courts to consider the decisions of the European Committee of Social Rights as authoritative interpretations of the Charter in their judgments.
- ▶ Promote the use of the European Committee of Social Rights' findings in legislation and policy-making to ensure compliance with the Charter.

The adoption of the collective complaints procedure will not overburden Georgia's legal or administrative systems. Instead, it will provide a structured framework for effectively addressing social rights breaches. It does not require financial compensation for violations, the establishment of new administrative bodies or the allocation of additional resources. On the contrary, it promotes dialogue, collaboration, accountability and incremental improvements in social and labour policies.

By taking these steps, Georgia can establish a robust mechanism for protecting social rights and strengthening its position as a democratic State committed to justice, equality and human rights. The collective complaints procedure will pave the way for transformative change, ensuring that social rights are not only protected on paper but upheld in practice.

This mechanism not only empowers citizens to seek justice but also ensures that the State remains accountable for its obligations in safeguarding the wellbeing of its people. In a democratic society, it is the State's duty to uphold the rights of all its citizens, and by embracing such a procedure, Georgia can affirm its commitment to inclusivity, fairness and transparency. This collective approach is essential for creating a more equitable society and promoting social cohesion, ultimately contributing to the overall stability and progress.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

The Charter is seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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