



18/03/2019

## **EUROPEAN SOCIAL CHARTER**

Comments by NSZZ “Solidarność”

on the 18th national report

on the implementation of the European Social Charter

submitted by

**THE GOVERNMENT OF POLAND**

(Article 8 and Article 16  
for the period 01/01/2014 – 31/12/2017)

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**CYCLE 2019**



Decision of the Presidium  
of the National Commission of NSZZ "Solidarność"  
No 23/19

on the comments to the 18th Report on the actions taken by the Republic of Poland to implement  
the ratified provisions of the European Social Charter

Comments from NSZZ "Solidarność" to the 18th Report on actions taken by the Republic of Poland to implement the ratified provisions of the European Social Charter (Articles 7, 8, 16, 17, 19) adopted by the Council of Ministers on November 9, 2018.

NSZZ "Solidarność" would like to present the following comments on:

**Art. 8 – THE RIGHT OF WOMEN-EMPLOYEES TO PROTECTION**

First of all, it should be noted, that the answers (to individual questions concerning the area resulting from Article 8 of ESC) were restricted by the Polish government to employees within the meaning of the Labor Code, i.e. persons performing subordinate work. We would like to draw your attention to the wide occurrence in Poland of work in the economic sense (activities in which an individual engages his or her labor and not capital) on the basis of civil law contracts. The contractor performs work either exclusively under this contract (the person performs work only on the basis of a contract of mandate) or such a contract co-exists with the employment contract (the person performs various types of work, simultaneously on the basis of an employment contract and a contract of mandate and the recipients of his/her work are different entities). The lack of any explanation of the legal situation of such women-contractors in relation to broadly understood working conditions at night or during pregnancy or in periods related to motherhood (for example breast-feeding) constitutes a serious flaw of the presented answers, which results in a comprehensive but distorted picture of the situation in Poland.

Therefore, it should be noted in the answers to questions concerning Art. 8 section 3 that according to the prevailing interpretation of the law (and undoubtedly in practice), breastfeeding breaks are not available to the contractors on contracts of mandate. The issue of occupational health and safety of workers in gainful employment but outside the labor law employment relationship is regulated by the Polish legislator in Art. 304 of the Labor Code. The article reads:

**Art. 304. § 1.** The employer is obliged to ensure safe and hygienic working conditions, referred to in Art. 207 § 2, to all natural persons performing work on a basis other than the employment

relationship at the workplace or in a place designated by the employer, as well as to self-employed persons, performing economic activity in the enterprise or in a place designated by the employer.

(...)

**§ 3.** The obligations specified in Art. 207 § 2 shall apply accordingly to entrepreneurs who are not employers, but who organize work performed by natural persons:

- 1) on a different basis than the employment relationship
- 2) as self-employed workers.

**§ 4.** If work is carried out in a place with access of individuals not taking part in the work process, the employer is obliged to apply necessary measures to ensure the protection of life and health of such individuals.

According to the dominant interpretation of the labor law (and practice), this article does not constitute grounds for deriving rights related to the organization of the work process, such as the right to breastfeeding breaks for women who are not employees within the meaning of the Labor Code.

The same remarks can be repeated in relation to the issue of the ban on night work for pregnant workers, which will apply only to female employees within the meaning of the Labor Code and will not apply to contractors. Similarly, protection against night work of carers of children up to 4 years of age (based on the obligation to obtain consent to such work) does not apply to contractors.

NSZZ “Solidarność” would like to stress that specific processes on the labor market (primarily technological change) entail a growing phenomenon of employment on civil law contracts not characterized by classical subordination. At this point, we emphasize not so much the problem of false civil law contracts or bogus self-employment, but the lack of protection related to motherhood in case of performing work characterized by partial autonomy.

#### **Art. 16 – THE RIGHT OF THE FAMILY TO SOCIAL, LEGAL AND ECONOMIC PROTECTION**

Despite the judgment of the Constitutional Tribunal from 2014, the benefits for carers of disabled persons were not equated. If disability arose in childhood, then the guardian of such a person resigning from work currently receives 1583 PLN (nursing benefit). On the other hand, carers of people whose disability arose in adulthood, when they resign from work they currently receive 620 PLN (caregiver allowance, special attendance allowance). The government side argues that it cannot implement the judgment of the Constitutional Tribunal until the changes in the system of award of disability certificates are introduced. However, even the draft of planned changes in this system has not been announced yet.

A similar situation occurs in the case of the so-called EWK pensions. The 1989 Regulation granted the right to early retirement to employees taking care of children requiring constant care.

This entitlement was granted if met were health situation prerequisites for the child to be considered as requiring constant care and if the child was disabled since birth or became disabled before 18 years of age. There were also two other requirements: minimum period of employment for the caregiver (20 years for women and 25 years for men) and taking care of the child in person. These pensions were granted until 1999. According to the provisions of the *Act on Family Benefits*, nursing benefit (1583 PLN) is not payable if the person providing care is entitled to pension. The amount of EWK pensions in the vast majority is much lower than the nursing benefit. At the Senates' legislative initiative a bill was created (Senate publication No 1016) aimed at supplementing EWK pensions to the amount of the nursing benefit. However, again the argument was used that before changes are introduced it is necessary to reform the system of award of disability certificates. Thus, we are still facing inequalities in the economic situation of guardians of disabled people, which according to NSZZ "Solidarność" constitutes gross social injustice.

Limited effectiveness of the *Act on Family Benefits* from the very beginning resulted from the underfunding of this family support system and then also from the failure of successive governments to uprate family benefits and income thresholds qualifying for them, and from high fragmentation of the benefits themselves. Further amendments to this Act abolished the provision on the minimum amount of the family allowance. Introduced, under a new Law on State support in raising children (the so-called Family 500Plus Program), new benefit for bringing up a child has become an alternative to the system based on the *Act on Family Benefits*, which has greatly marginalized it. Benefits dedicated to families struggling with income difficulties (family benefits) have become an addition to the Family 500Plus Program. However, among the beneficiaries of the latter program there are no students/learners over the age of 18, which means that the limited impact of family benefits has a negative impact on support for families with older children. The undeniable success of the Family 500Plus Program, implemented in 2016, contributed to a significant reduction of poverty among children, but according to NSZZ "Solidarność" certain restrictions of the program entail discrimination of some families. This mainly applies to children raised by single parents: very often their income, due to the smaller number of family members, is too high to qualify for the benefit for the first child. In addition, under the Act, the parent – guardian of children, is obliged to take court action against the other parent for the award of alimony, even if it is paid regularly and without delay. In the opinion of the courts, this requirement is unjustified, taking into account the fact that the program is universal and applies to all second and subsequent children under 18 years of age in a family. The Ministry of Family, Labor and Social Policy is of a different opinion.

In addition, most measures aiming at improvement of the income situation of single parents introduced by the Act of 6 December 2018 on *Amending certain laws to improve the effectiveness of enforcement of alimony* refer primarily to penalizing and making life difficult for maintenance

debtors, while the eligibility criterion for granting support in the form of alimony has remained unchanged for the last 12 years until 2018; hence, the declining numbers in statistics on the beneficiaries of this support shown in the report.