EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

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

FINLAND

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I. SUMMARY

1. Background

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions – the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter (RESC) should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights (ECSR) to arrange the practical presentation and examination of reports with the states concerned" (decision of the Committee of Ministers of 11 December 2002).

Following this decision, five years after ratification of the Revised European Social Charter (hereafter, the Revised Charter) and every five years thereafter, the European Committee of Social Rights (hereafter, the Committee) reviews the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance, given that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the Article 22 procedure is therefore to review the national situation every five years and encourage acceptance of more provisions.

Finland ratified the Revised Charter on 21 June 2002, accepting 88 of the 98 paragraphs. The Revised Charter entered into force on 1 August 2002. Finland has currently not accepted the following 10 numbered paragraphs: Article 3§§2-3, Article 4§§1 and 4, Article 7§§6 and 9, Article 8§§1, 3 and 5 and Article 19§10.

2. Previous Examinations

The procedure on non-accepted provisions was applied for the first time in the context of a meeting between the Committee and representatives of various Finnish ministries held in Helsinki on 15-16 November 2007.

With a view to carrying out the procedure for the second time in 2012, the Finnish authorities submitted written information on the aforementioned non-accepted provisions on 29 June 2012.

Having examined the written information, the Committee confirmed its opinion adopted in 2007 that, in the light of the situation in law and practice, there were no obstacles to the immediate acceptance of Articles 4§1, 8§3 and 19§10. Moreover, having regard to developments in the Committee's case law and/or developments in Finnish law since ratification, the Committee considered – subject to certain clarifications – that there were no significant or insurmountable obstacles to acceptance of Articles 7§6, 7§9 and 8§1.

With a view to carrying out the procedure for the third time in 2017, the Finnish authorities were invited to organise a second meeting on the non-accepted provisions, which was held in Helsinki on 15 June 2017.

Following this meeting, the Committee concluded that Articles 8§1 and 19§10 could be accepted immediately and there were no significant obstacles in law and in practice to the acceptance of Articles 4§1, 7§6, 7§9 and 8§3. As regards Articles 3§2, 4§4, 8§5 and, to a lesser extent, Article 3§3, the Committee confirmed its previous opinion that legislative changes seemed required to bring the situation into conformity with the Charter. In this context, the Committee welcomed the Finnish Government's statement that it was actively working on the acceptance of Article 19§10.

3. Current Examination

The current fourth examination of non-accepted provisions of the Revised Charter is based on a written procedure. The Finnish authorities were invited on 6 October 2021 to submit written information before 31 March 2022.

Based on the report submitted by the authorities of Finland on 30 March 2022, the situation in respect of the following non-accepted provisions of the Revised Charter is assessed:

- The right to safe and healthy working conditions - safety and health regulations (Art. 3§2)
- The right to safe and healthy working conditions -enforcement of safety and health regulations security system (Art. 3§3)
- The right to a fair remuneration- decent remuneration (Art. 4§1)
- The right to a fair remuneration -reasonable notice of termination of employment (Art. 4§4)
- The right of children and young persons to protection -inclusion of time spent on vocational training in the normal working time (Art. 7§6)
- The right of children and young persons to protection -regular medical examination (Art. 7§9)
- The right of employed women to protection of maternity- maternity leave (Art. 8§1)
- The right of employed women to protection of maternity- time off for nursing mothers (Art. 8§3)
- The right of employed women to protection of maternity - prohibition of dangerous, unhealthy or arduous work (Art. 8§5)
- The right of migrant workers and their families to protection and assistance- Equal treatment for the self-employed (Art. 19§10)

Having examined the written information provided by the Government of Finland, the Committee considers that Article 19§10 can be accepted immediately and that there are no significant obstacles in law and in practice to acceptance of Articles 4§1, 7§§ 6 and 9 and 8§§ 1 and 3.

As regards Articles 3§§2 and 3, the Committee confirms its previous opinion that legislative changes seem required to bring the situation into conformity with the Revised Charter. However, it encourages the Finnish Government to consider it without delay given the recent increase in new forms of self-employment nurtured by digital technologies and new business models, and also magnified by the Covid-19 pandemic.

Regarding Articles 8§5, and 4§4 the Committee considers that legislative changes are required to bring the situation into conformity with the Charter and calls on the Finnish Government to look into these matters.

The Committee invites Finland to consider accepting additional provisions of the Revised Charter as soon as possible so as to consolidate the role of the Charter in guaranteeing and promoting social rights.

The Committee remains at the disposal of the authorities of Finland for continued dialogue on the non-accepted provisions.

The factsheet on the provisions of the Revised Charter accepted by Finland appears in Appendix I.

The next examination of the provisions not yet accepted by Finland will take place in 2027 through the adjusted procedure on non-accepted provisions decided by the Committee in September 2022.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Article 3§2 – *The right to safe and healthy working conditions: safety and health regulations*

Situation in Finland

The Government informs the Committee that the situation remains the same as described in the previous report from 2017. It points out that the reasoning stated in connection with its previous report remains valid. In 2017, the government stated that Finland implemented Article 3§2 in relation to the right to safe and healthy working conditions for all categories of workers, with the exception of self-employed persons, to the extent required by Article 3§2.

The Government specifies that the relevant legislation has not been amended in this respect after the previous reporting period.

As this is a ground of non-conformity, the Government considers that it would not be possible to accept Article 3§2 at this stage.

Opinion of the Committee

In assessing risks covered by the legal framework under Article 3§2, the Committee refers to international technical reference standards, such as the ILO Conventions and EU Directives on health and safety at work. With regard to the requirements of the legislation under Article 3§2, it is important to ensure that the existing legislation is geared to new circumstances and changes in the work environment as well as related risks. With regards to the personal scope of the framework law and specific regulations, the Committee reminds that all workers, all workplaces and all sectors of activity must be covered by occupational safety and health regulations.[1] The term "workers" used in Article 3 covers both employed and self-employed persons, especially as the latter are often employed in high-risk sectors, as well as temporary workers.[2] The aim is to ensure that the working environment is safe and healthy for all operators, where necessary by adopting rules adapted to the operators' specific situation.

The Committee takes note of the information provided by Finnish authorities and reiterates its views expressed in the previous report, specifically that changes are necessary before acceptance of Article 3§2, in particular with regard to the legislation concerning self-employed persons.

Article 3§3 – *The right to safe and healthy working conditions: enforcement of safety and health regulations*

Situation in Finland

The Government informs that the reasoning stated in connection with the previous report from 2017 remains valid.

The supervision of compliance with regulations on occupational safety and health is required to also cover self-employed persons/entrepreneurs. In Finland, self-employed entrepreneurs are not subject to the supervisory jurisdiction of occupational safety and health authorities to the extent required by the Charter, and the legislation has not been amended in this respect after the previous reporting period.

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[1] Conclusions II (1971), Statement of Interpretation on Article3§2 (i.e. on Article 3§1 of the 1961Charter).
[2] Conclusions 2005 - Estonia - Article 3§2.

As this is a ground of non-conformity, the Finnish Government considered that it would not be appropriate or possible at this stage to accept Art.3§3.

Opinion of the Committee

The Committee reiterates that Article 3 being designed to guarantee the right to safe and healthy working conditions not only for employed persons but also for the self-employed,[3] it ought to apply to all sectors of the economy if only on account of the technical advances and increasing mechanisation manifest in every branch of activity. While different rules may apply to employees and the self-employed, the objective of providing a safe and healthy working environment must be the same, and the regulations and their enforcement must be adequate and suitable in view of the work being done.

The Committee takes note of the information provided by the Government and confirms the views expressed in its previous report. The Committee maintains that the exclusion of a specific category of workers from the supervision of the Labour Inspection, such as the self-employed in this case, is contrary to this provision of the Charter. The Committee encourages the Government to consider extending the personal scope of health and safety regulations and their enforcement in line with the requirements of the Charter.

Article 4§1 – *The right to fair remuneration: decent remuneration*

Situation in Finland

In respect of Article 4§1, the Government indicates that the legislation and the situation in Finland have not changed since the previous report.

The government considers that Finland would not be in conformity with this provision given that: (i) it has no control or information on the minimum wage, which is established through a collective agreement-based system, or (ii) in the absence of that, in accordance with the Employment Contract Act (55/2001), the employee must be paid a reasonable normal remuneration for the work performed, considering the nature of the work, and because Finnish statistics do not compile pay statistics on net pay but gross pay.[4]

Therefore, the Government considers that it cannot commit to accepting this provision.

Opinion of the Committee

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for migrant workers).

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.[5]

“Remuneration” relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and

[3] Conclusions 2005 - Estonia - Article 3§2
[4] Third Report on the Non-Accepted Provisions of the European Social Charter - Finland (2017)

[5] Conclusions 2010 - Statement of interpretation - Article 4§1

gratuities. On the other hand, social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair within the meaning of Article 4§1, the minimum wage paid in the labour market must not fall below 60% of the net average national wage.[6] The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions.[7] Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of this amount.[8]

When a statutory national minimum wage exists, its net value for a full-time worker is used as a basis for comparison with the net average full-time wage, but otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.[9] This may be the lowest wage in a representative sector, for example, the manufacturing industry.[10] If the lowest wage in a given State Party does not satisfy the 60% threshold, but does not fall very far below (in practice between 50% and 60%), the government in question will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold.[11] In particular, consideration will be given to the costs of having health care, education, transport, etc.

In extreme cases, for instance where the lowest wage is less than half the average wage the situation is held to be in breach of Charter independently of such evidence.[12]

It should be noted that providing for a lower minimum wage to younger workers who are under 25 years old is not contrary to the Charter if, and only if it furthers a legitimate aim of employment policy and is proportionate to achieve that aim.[13] The Committee has considered a reduction of the minimum wage below the poverty level and applied to all workers under the age of 25 to be disproportionate.[14]

As regards the situation in Finland, the Committee confirms its views as expressed in the reports adopted in 2012 and 2017 where it explained that the fact that wages in Finland are determined by generally applicable or normally applicable collective agreements did not pose any legal problem with regard to the Charter. It also considered that the absence of regular statistics did not cause a problem of acceptance of the provision by the State.

The Committee therefore considers that there are no significant obstacles, legal or practical, to acceptance by Finland of Article 4§1.

Article 4§4 – *Reasonable notice of termination of employment*

Situation in Finland

The Government indicates that legislation has not changed in respect of Article 4§4 since the last examination.

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[6] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[7] Ibid.
[8] Conclusions XVI-2 - Denmark - Article 4§1
[9] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[10] Ibid.
[11] Conclusions XXI-3 - Denmark - Article 4§1
[12] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[13] General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Collective Complaint No. 66/2011, decision on the merits of 23 May 2012, §§ 60, 68
[14] Ibid.

In the previous report, the Finnish authorities informed the Committee that, according to Chapter 7, section 8 of the Employment Contracts Act, if the employer dies or is declared bankrupt, the period of notice for terminating the employment contract is 14 days regardless of the length of the employment relationship. Moreover, the notice of 14 days applies to all workers, regardless of length of service.

The Government considers that Article 4§4 cannot be accepted.

Opinion of the Committee

The Committee held on a number of occasions that the right of all workers to a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration – a right that performs a key social function.

The Committee draws attention to the developments in its case-law since the last examination. In a Statement of Interpretation[15] of 2018, the Committee indicated that the reasonableness of the notice periods would no longer be examined in detail on the main basis of criteria setting varied lengths according to specific circumstances.

In this Statement of Interpretation, the Committee goes on to say that a reasonable notice period is one which takes account of the employees' length of service, the need not to deprive them abruptly of their means of subsistence and the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration. It is for governments to prove that these elements have been taken into account when devising and applying the basic rules on notice periods. The Committee is also concerned about the situation of workers in insecure employment relationships.

Therefore, the Committee assesses the national situation regarding Article 4§4 on the basis of the following aspects:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
    a. according to the source, namely the law, collective agreements, individual contracts and court judgments;
    b. during any probationary periods, including those in the public service; the Committee wishes to see an explicit minimum period of notice even if the length of the probationary employment period is short or has recently been reduced by law;
    c. with regard to the treatment of employees in insecure jobs;
    d. in the event of termination of employment for reasons outside the parties' control (including insolvency, death of the employer if he/she is a natural person); in principle such circumstances may not warrant failure to give notice;
    e. and any circumstances in which employees can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract, of length of service, whether with the same employer or in circumstances of successive precarious forms of employment relations;
3. The components of the employee's remuneration during the notice period.

The Committee underlines that the receipt of wages instead of notice is possible, provided that the amount is equivalent to what the worker would have earned during the corresponding period of notice. In order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to the discretion of the parties to

[15] Statement of interpretation on Article 4§4

the employment contract but should be governed by legal instruments such as legislation, case law, regulations or collective agreements.

The Committee also points out that the only exception to the right to a reasonable notice period is immediate dismissal for a "serious offence" as stipulated in the Appendix to the Charter.

The Committee takes note of the information provided by Finland. The Committee recalls that a notice of termination of employment of 14 days which applied to all workers, independently of length of service, and in the event of bankruptcy, death or invalidity of employer death, was assessed as not being in conformity with the Charter. Therefore, the Committee considers that the existing blanket notice period applying to all workers continues to be problematic, and it calls on the authorities to examine what changes to the national framework would be needed to bring it into conformity with Article 4§4 in accordance with the abovementioned criteria.

Article 7§6 – *The right of children and young persons to protection: inclusion of time spent on vocational training in the normal working time*

The Government indicates that the Young Workers Act (998/1993) does not contain provisions on the time treated as working hours. According to section 4 of the Act, the total length of the time spent by an apprentice on theoretical training and working hours in apprenticeship training must not exceed eight hours a day or 40 hours a week. However, the provision does not mean that the time spent on training constitutes working hours.

The authorities specify that the time spent on training is only included in working hours in cases referred to in the Working Time Act (872/2019). The Working Hours Act (605/1996), referred to in the third report of the Committee of Social Rights on non-accepted provisions of the Charter, was repealed by the Working Time Act, currently in force, but the contents of the legislation remained unchanged in this respect. Under section 3, subsection 1 of the Working Time Act, the time spent working and the time an employee is obliged to be present at a place of work at the employer's disposal will constitute working time.

Training events are included in working hours mainly when participation in them is compulsory. However, Article 7 of the Charter requires that the time spent by young workers in vocational training during the normal working hours with the consent of the employer must equally be treated as part of the working day. Under Finnish legislation, the time spent participating in such training need not be counted as part of working hours.

The Government maintains that domestic legislation does not fully comply with the requirement of Article 7§6, and therefore that this provision cannot be accepted.

Opinion of the Committee

The Committee reiterates that according to Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day.[16] Such training should, in principle, be done with the employer's consent and be related to the young person's work. This right also applies if it is not financed by the employer.

Training time must thus be remunerated as normal working time, and there can be no obligation to make up for the time spent in training, which would *de facto* increase the total number of hours worked.[17]

[16] Conclusions XV-2 - Netherlands - Article 7§6
[17] Conclusions V - Statement of interpretation - Article 7§6

The Committee took note that the Working Time Act (872/2019), which is currently in force and repealed the Working Hours Act (605/1996) mentioned in the Third report, does not change the approach as to what constitutes working time.

The Committee reiterates the views presented in its previous report, where it considered that the situation in Finland could be in line with Article 7§6 as the time spent on training in Finland is part of the working day and remunerated when it is compulsory and agreed to by the employer. The Committee underlined that it saw no major obstacles to acceptance of the paragraph, however, would welcome the government's further efforts to further align the domestic legislation with the requirements of Article 7§6.

Article 7§9 – *The right of children and young persons to protection: regular medical examination*

Situation in Finland

The Government indicates that the reasoning given for the previous report remains valid. Persons under 18 years of age employed in specifically defined occupations are not subject to medical controls to the extent required by Article 7§9. Finnish legislation has not been amended in this respect since the previous reporting period.

Opinion of the Committee

The Committee referred in the previous report to the requirement under Article 7§9 to provide for compulsory regular medical check-ups for under-18-year-olds employed in occupations specified by domestic laws or regulations.[18] These check-ups must be adapted to the specific situation of young workers and the particular risk to which they are exposed,[19] and they could be carried out by the occupational health services, if these services have the specific training to do so. The Committee underlined that the obligations entail a full medical examination on recruitment and regular check-ups thereafter.[20] It pointed out that due to the young age of the workers, the check-ups must be on a regular basis although a fixed period for intervals was not required. The Committee looks at situations on a case-by-case basis and it drew attention to the case-law, in this respect, where an interval of two years has been considered by the Committee as too long.[21]

The Committee takes note that the authorities indicate that no change have occurred in legislation and practice compared to the previous reporting period. The Committee reiterates the views expressed in its Third report on non-accepted provisions, where it considered that the situation was mainly in conformity with Article 7§9, except with regard to intervals, due to the length of time between check-ups. The Committee reiterated that legislation did not require regular medical examinations of under-18-year-olds employees, for reasons related to their young age. Apart from the issue of intervals, the Committee considered that there were no major obstacles to Finland's acceptance of Article 7§9.

Article 8§1 – *The right of employed women to protection of maternity: maternity leave*

Situation in Finland

[18] Conclusions IV - Statement of interpretation - Article 7§9; Conclusions 2006 - Albania - Article 7§9
[19] Conclusions 2006 - Albania - Article 7§9
[20] Conclusions XIII-1 - Sweden - Article 7§9
[21] Conclusions 2011 - Estonia - Article 7§9

The Government refers to the third report of the Committee on non-accepted provisions of the Charter, which describes the legislation in force regarding work during the family leave and maternity leave provided by the Employment Contracts Act (55/2001).

The Employment Contracts Act safeguards the right of employees to take leave from work during maternity, special maternity, paternity and parental allowance periods as referred to in the Sickness Insurance Act (1224/2004). According to Chapter 4, section 2 of the Employment Contracts Act, an employee is not permitted to work during a period of two weeks before the expected date of childbirth and two weeks after giving birth. Otherwise, with the employer's consent, the employee has the right to work during maternity leave. During the maternity and parental allowance periods, the employee is only entitled to perform work that does not pose a safety risk to her or to the unborn or newly born child. Parental allowance is payable if the parent has been entitled to coverage under the Finnish social security system for at least 180 days immediately before the expected date of childbirth.

Mothers have the right to be absent from work continuously for at least 14 weeks, as required by the Pregnant Workers Directive. Under the Employment Contracts Act, employees may, however, return to work two weeks after childbirth if they so wish and if the work does not endanger the safety of the mother or the child. In this respect, the legislation has not been amended since the 2017 report.

Parliament has passed acts on the reform of family leaves. The aim of the reform is to promote a more even distribution of family leaves and care responsibilities between both parents. The Act will enter into force on 1 August 2022. With the reform, the provisions on family leave in the Employment Contracts Act are to be amended because of the amendments to the provisions on benefits in the Health Insurance Act (1224/2004). At the same time, Finland implements Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ("the Work-life Balance Directive").

According to the new provisions of the Employment Contracts Act, employees have the right to take leave from work due to pregnancy or childbirth or to care for a child during the pregnancy allowance days (pregnancy leave), special pregnancy allowance days (special pregnancy leave) and parental allowance days (parental leave) referred to in the Health Insurance Act. The duration of the leave and the period which can be taken continue to be determined in accordance with the provisions on benefits in the Health Insurance Act. A daily allowance is paid for the leaves in accordance with the Health Insurance Act.

Under the new legislation, mothers are entitled to a total of 200 days of pregnancy allowance and parental allowance and leave. The new provisions also ensure that Finnish legislation fulfils the requirement of a total leave of at least 14 weeks before and after childbirth.

As a result of the family leave reform, employees will be able to begin pregnancy leave (the current maternity leave) more flexibly. Currently, the maternity leave and maternity allowance period always begin 30 working days before the expected date of delivery at the latest. After the reform, the employer and the employee may agree to postpone the pregnancy leave so that it begins no later than 14 days before the expected date of delivery. As a rule, the pregnancy leave will still begin 30 days before the expected date of delivery, but the employee may also take the leave later if so agreed with the employer. With the reform, the pregnancy leave and the pregnancy allowance period will be set at 40 working days, and thereafter, both parents will be entitled to parental leave and parental allowance for 160 working days per parent. Thus, the names of the leave and the benefit will change, but a mother who has given birth will have the right to be absent from work continuously for at least 14 weeks, as required by the Pregnant Workers Directive.

Chapter 4, section 2 of the Employment Contracts Act, which will enter into force on 1 August 2022, lays down provisions on restrictions on work in order to protect pregnant workers, workers who have recently given birth, and children. Section 2 provides that, during 14 weeks from the date when an employee's pregnancy leave began, she may, with the employer's consent, only perform work that does not pose a safety risk to her or to the unborn or newly born child. Both the employer and the employee have the right at any time to discontinue work performed during that period. However, work is not permitted during a period of two weeks before the expected time of childbirth and two weeks after giving birth.

In Finland, family leaves are long and mothers are, as a rule, absent from work for more than 14 weeks after childbirth. However, in the same way as the current legislation, Chapter 4, section 2 allows an employee to return to work two weeks after childbirth if the work does not endanger her safety or the safety of the newly born child. Thus, the Finnish legislation does not fully comply with Article 8§1.

Opinion of the Committee

Article 8§1 of the Charter recognises the right of employed women to maternity leave and maternity benefits. The Committee recalls that the right to maternity leave of at least 14 weeks must be guaranteed through legislation.[22] It must be guaranteed for all categories of employees in maternity[23] and the leave must be maternity leave and not sick leave.

National legislation, on the one hand, must allow women the right to use all or part of their recognised entitlement to cease work for a period of at least 14 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliges the employer to respect the free choice of women.

The Committee accepts that legislation may permit women to opt for a shorter period of maternity leave. The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Article 8. Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 May be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).[24]

In order to be in conformity with Article 8§1, States Parties must ensure that:

- legal safeguards exist to avoid any pressure from employers on women to shorten their maternity leave;[25]
- there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, who should be protected in law and practice from undue pressure inciting them to take less than six weeks' postnatal leave;[26] collective agreements offer additional protection.[27]

[22] Conclusions 2015 - Statement of interpretation - Article 8§1 1
[23] Conclusions XV-2 (2001), Statement of interpretation on Article 8§1; Conclusions XV-2 - Statement of interpretation - Article 8§1
[24] Conclusions XIX-4 - Statement of interpretation - Article 8§1
[25] Conclusions XXI-4 - United Kingdom - Article 8§1
[26] Conclusions XXI-4 - United Kingdom - Article 8§1; Conclusions 2015 - Ukraine - Article 8§1
[27] Conclusions XXI-4 - United Kingdom - Article 8§1

The Committee takes note of the legislative changes regarding family leave reform and the Employment Contracts Act. In the light of these requirements, and bearing in mind the margin of appreciation enjoyed by States, the Committee is of the view that the Finland could comply with Article 8§1. At the same time, more information would be needed on legal safeguards to avoid any pressure from employers on women to shorten their maternity leave and on whether there are guarantees to avoid any undue pressure on women to take less than six weeks' postnatal leave.

Article 8§3 – *The right of employed women to protection of maternity: time off for nursing mothers*

Situation in Finland

The Government indicates that, under the Employment Contracts Act, employees are entitled to take leave from work during maternity, special maternity, paternity and parental allowance periods as referred to in the Sickness Insurance Act.

Since the previous report, Parliament passed legislation on the reform of family leaves, aiming at promoting a more even distribution of family leaves and care responsibilities between both parents. The relevant amending Act entered into force on 1 August 2022. With the reform, the provisions on family leave in the Employment Contracts Act are amended because of the modifications to the provisions on benefits in the Health Insurance Act (1224/2004). At the same time, Finland implements EU Directive 2019/1158 of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU ("the Work-life Balance Directive").

Under the new legislation, mothers are entitled to a total of 200 days of pregnancy allowance and parental allowance and leave. The pregnancy leave and the pregnancy allowance period is set at 40 working days, and thereafter, both parents are entitled to parental leave and parental allowance for 160 working days per parent.

The family leave reform has not introduced any new types of leave, such as separate breastfeeding leave. However, the eligibility criteria for partial allowance have been broadened, which will make it easier to get partial allowance and take partial parental leave. During the partial parental leave, the parent will be allowed to work for a maximum of five hours per day. If the mother is working part-time and is on partial parental leave, it may be easier for her to breastfeed without taking time-off during the workday.

The Government indicates that a separate right to leave for breastfeeding is not considered necessary in Finland, because long family leaves with decent compensation for loss of earnings are provided – the family leave reform also further extends the mother's leave – and offers flexible opportunities for reduced working hours, which make breastfeeding sufficiently possible.

The Government considers that the legislation does not comply with the requirement of Article 8§3, and therefore do not consider it appropriate or possible at this stage to accept it.

Opinion of the Committee

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.[28]

[28] Conclusions XVII-2 - Spain - Article 8§3

Time off for nursing should in principle be given during working hours, should be treated as normal working time and remunerated as such.[29] However for women working part-time, time outside working hours is in conformity with the Charter if the loss of income is compensated by adequate benefits.[30]

Time off for nursing must be granted at least until the child reaches the age of nine months.[31]

The practical ways of implementing this Article are appreciated on a case-by-case basis: legislation providing for two daily breaks for a period of one year for breastfeeding, two half-hour breaks where the employer provides a nursery or room for breastfeeding, one-hour daily breaks and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter.

In the light of the above, considering for example the possibility of partial parental leave and allowance, even in the absence of a specific provision on the time off for nursing mothers, the situation could be in conformity with Article 8§3. The Committee therefore continues to recommend acceptance of this provision.

Article 8§5 – *The right of employed women to protection of maternity: prohibition of dangerous, unhealthy or arduous work*

Situation in Finland

The Government indicates that the situation described in the previous report and the reasoning behind the non-acceptance of Article 8§5. are still valid. The occupational safety and health legislation has not been amended since the last examination, and Article 8§5. is not compatible with the requirements of the legislation on gender equality and current understanding and developments as regards gender equality.

Finland has issued a Government Decree on Agents Posing a Risk to Reproductive Health at Work and Measures to Prevent the Risk (603/2015). According to section 1 of the decree, work under pressure, including underground mining, is one of the agents posing a risk to reproductive health at work.

Finnish legislation still does not contain any specific prohibition, as required by Article 8§5, against the employment of pregnant women or women who have recently given birth or are nursing their infants in underground mining or other dangerous work.

Opinion of the Committee

The Committee recalls that Article 8§5 applies to all pregnant women, women who have recently given birth or who are nursing their infant, in paid.

This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines.[32] This applies to actual manual work, but not to women who:

– occupy managerial posts and do not perform manual work;
– work in health and welfare services;

[29] Conclusions XIII-4 - Netherlands - Article 8§3
[30] Conclusions 2005 - Sweden - Article 8§3
[31] Conclusions 2005 - Cyprus - Article 8§3
[32] Conclusions X-2 - Statement of interpretation - Article 8§4

– spend brief training periods in underground sections of mines.[33]

Certain other dangerous activities, such as those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work.[34] Domestic law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.[35]

Domestic law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay.[36] If this is not possible such women should be entitled to paid leave or social security benefit amounting to 100% of their previous average pay.[37] The employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.[38]

The Committee takes note that the existing occupational safety and health legislation has not been amended since the previous report. It also notes that the Government Decree on agents Posing Risks to Reproductive Health at work and Measures to Prevent the Risk (603/2015), section 1, specify work under pressure, including underground mining, as one of the agents posing a risk to reproductive health at work. However, there is no prohibition in legislation against the employment of pregnant women or women who have recently given birth or are nursing their infants in underground mining or other dangerous work. The Committee notes that the Government maintains that Article 8§5 of the Charter conflicts with the requirements of the legislation on gender equality.

The Committee considers that legislative changes are required to bring the situation into conformity with Article 8§5 of the Charter.

Article 19§10 – *The right of migrant workers and their families to protection and assistance: equal treatment for the self-employed*

Situation in Finland

Article 19§10 requires that the protection and assistance provided for in Article 19 be extended to self-employed migrants insofar as such measures apply.

Section 79 of the Aliens Act (301/2004) regulates employment in certain occupations without a residence permit for an employed person.

In its 2012 report on non-accepted provisions, the authorities referred to the regulation of business licences, which prevented the ratification of this provision. However, in its evaluation, the Committee held that paragraph 10 of Article 19 did not apply to the granting of residence permits and/or work permits or business licences to self-employed persons.

In its 2017 report, the authorities were of the opinion that there were no obstacles to the acceptance of Article 19§10.

The authorities indicate that preparations for the ratification of Article 19§10 have not started, as the government considers that, when assessing whether ratification is possible, all

[33] Ibid.
[34] Conclusions 2019 - Ukraine - Article 8§5
[35] Conclusions 2003 - Bulgaria - Article 8§5
[36] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[37] Ibid.
[38] Conclusions 2019 - Ukraine - Article 8§5

paragraphs of Article 19 should be thoroughly examined and the meaning of the expression "insofar as such measures apply" in Article 19§10 should be clear.

Opinion of the Committee

Article 19§10 applies to migrants who move from one state party to another to carry out activities as self-employed persons. The provision requires that the State Parties extend the rights provided for in paragraphs 1 to 9, 11 and 12 to self-employed migrant workers and their families "insofar as such measures apply".[39]

The Committee reiterates that Article 19§10 on equal treatment of self-employed migrants is based on a rule prohibiting all type of discrimination in law or in practice, between migrant employees and self-employed migrants, either direct or indirect. In addition, equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.[40]

The expression "insofar as such measures apply" acknowledges that there might be exceptional circumstances where the situation between employed persons and self-employed persons vary. For instance, a finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10, unless there is a difference in law or practice regarding self-employed workers, which allows them the rights otherwise denied to employed migrant workers. Furthermore, regarding paragraph 4, which deals with the right to collective bargaining, there may be situations where the right applies only to employed workers, and non-conformity under this paragraph would not lead to non-conformity regarding self-employed workers.[41]

The Committee reiterates that Article 19§10 is concerned neither with the granting of residence and/or work permits nor with the granting of permits for the exercise of a trade as self-employed.

On this basis, the Committee reiterates its invitation to the Government to consider accepting Article 19§10 of the Charter.

[39] Conclusions I - Norway - Article 19-10 (coe.int)
[40] Conclusions 2011 - Georgia - Article 19-10 (coe.int)
[41] Conclusions 2015 - Sweden - Article 19-10 (coe.int)

APPENDIX I

SITUATION OF FINLAND WITH RESPECT TO THE EUROPEAN SOCIAL CHARTER

Signatures, ratifications and accepted provisions

Finland ratified the Revised European Social Charter on 21/06/2002, accepting 88 of the 98 paragraphs of the Revised Charter.

It ratified the Additional Protocol providing for a system of Collective Complaints on 17/07/1998. Finland has made a declaration enabling national NGOs to submit collective complaints.

Finland ratified the European Social Charter and the Additional Protocol to the Charter on 29/04/1991. It ratified the Amending Protocol to the Charter on 18/08/1994

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

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										

Meetings and reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted reports concerning Finland in 2007, 2012 and in 2017.

- 1st Report on non-accepted provisions of the European Social Charter by Finland, 2007
- 2nd Report on non-accepted provisions of the European Social Charter by Finland, 2012
- 3rd Report on non-accepted provisions of the European Social Charter by Finland, 2017

APPENDIX II

Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.