

Contribution to the High-Level Conference of the European Social Charter on non-Accepted Provisions of the Charter

By the Federal Institute for the protection and promotion of Human Rights (Belgium)

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Institut Fédéral pour la
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Contribution by the Federal Institute for the protection and promotion of Human Rights to the High-Level Conference of the European Social Charter on non-accepted provisions of the Charter by Belgium – 15 March 2024

The Federal Institute for the protection and promotion of Human Rights (FIRM-IFDH)

FIRM-IFDH is an independent institution that, in collaboration with other organisations, watches over the respect, knowledge and awareness of human rights in Belgium. The FIRM was established by the Act of 12 May 2019. FIRM-IFDH was accredited by the Global Alliance of National Human Rights Institutions (GANHRI) in March 2023 as a national human rights institution (NHRI), with B status, in accordance with the Paris Principles. The FIRM currently has federal jurisdiction and a residuary mandate.

1. Introduction

On July 3 and 4, the signatory states of the (Revised) European Social Charter will meet in Vilnius for the High-Level Conference on the Charter. The conference intends to serve as a platform for discussing and strengthening state parties' commitments to the Charter provisions.

Belgium has long had a relatively proactive policy towards the European Social Charter. It ratified the treaty on 16 October 1990,¹ its additional protocol on 23 June 2003² and the revised Charter on 2 March 2004.³ However, Belgium's commitment to the Charter has stalled in recent years. The decisions of the European Committee of Social Rights are implemented with considerable delay and reluctance, as noted in a report sent to the Committee in June 2023 by FIRM-IFDH, Unia (the Centre for Equal Opportunities), the Institute for the Equality of Women and Men and the Delegate-General for Children's Rights (DGDE).⁴ Belgium has still not adopted declarations enabling national NGOs to bring collective complaints before the European Committee of Social Rights. Finally, the Belgian State has not accepted any new provisions of the Charter since June 2015, despite the absence of obstacles to the adoption of most of the rights remaining.

The Charter's ratification system allows States not to sign up to all the rights it contains provided the government authorities agree to be bound by the majority of the Charter's provisions.⁵ In total,

¹ Act of 11 July 1990 approving the European Social Charter and its Annex, *Belgian Official Bulletin*, 28 December 1990.

² Act of 26 June 2000 assenting to the Optional Protocol to the European Social Charter providing for a collective complaint mechanism, *Belgian Official Bulletin*, 24 July 2003.

³ Act of 15 March 2002 approving the Revised Social Charter and its Annex, *Belgian Official Bulletin*, 10 May 2004.

⁴ FIRM-IFDH, Unia, Institute for the Equality of Women and Men and DGDE, [Parallel Report to the European Committee of Social Rights on the seventeenth periodic report of Belgium](#), 30 June 2023.

⁵ Article A, Part III, of the Revised Social Charter states that each Party is at least bound by Part I of the Charter, which sets out its objectives, and by at least 16 articles or at least 63 paragraphs of Part II, which define the

Belgium has accepted 91 of the 98 paragraphs of the revised Social Charter, a fairly high acceptance rate within the Council of Europe. Five of these seven remaining provisions form part of the former group "Children, Families, Migrants", i.e. :⁶

1. Article 19.12: "*the Parties undertake (...) to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.*";
2. Article 27.3: "*the Parties undertake (...) to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.*";
3. And articles 31.1: "*the Parties undertake to take measures designed (...) to promote access to housing of an adequate standard.*";
4. 31.2: "*to prevent and reduce homelessness with a view to its gradual elimination.*";
5. And 31.3: "*to make the price of housing accessible to those without adequate resources.*".

The last report the Committee wrote on the Charter provisions Belgium did not accept dates from 2019. At the time, the Committee noted that no legal obstacle appear to remain that would stop Belgium from accepting several Charter provisions, particularly the right of elderly persons to social protection (art. 23), the right to employment protection from discrimination based on family responsibility (art. 27 §3), and the right to decent housing (art. 31 §§1-3).

The missions of FIRM-IFDH, as defined by the Act of 12 May 2019,⁷ include "*furthering ratification of new international instruments to promote and protect fundamental rights and adherence thereto*".⁸ Accordingly, FIRM-IFDH looked at the obstacles to acceptance of the five aforementioned paragraphs in a simplified parallel report it submitted, along with the children's ombudsmen DGDE⁹ and KRC¹⁰, to the European Committee of Social Rights in 2021¹¹. The report recommended that the Belgian State adopt a declaration accepting articles 27.3, 31.1, 31.2 and 31.3 of the European Social Charter, finding, as did the Committee, that the past reasons warranting the lack of acceptance were no longer relevant today. Furthermore, the 2021 simplified report urged the federal authorities to publish the reasons for its difficulties in accepting article 19.12 of the Charter and to make every effort to improve the compatibility of Community and regional legislation with this article, with a view to its future adoption.

On 20 August 2021, the Belgian government replied to these recommendations in a commentary on the parallel report submitted to the Committee, only revisiting the non-acceptance of article 27.3 of the Charter on the right to protection against dismissal on grounds of family responsibilities. This commentary is discussed below this paragraph. Belgian authorities did not respond to the other recommendations regarding other non-accepted provisions. This lack of progress in accepting further

rights in question. Furthermore, the Parties must accept all the rights set out in the original European Social Charter of 1961, which are incorporated in the Revised Social Charter.

⁶ See the report of the Council of Europe, Directorate General of Human Rights and Rule of Law, Department of the European Social Charter, "[Belgium and the European Social Charter](#)", March 2021.

⁷ Act of 12 May 2019 establishing a Federal Institute for the Protection and Promotion of Human Rights, *Belgian Official Bulletin*, 21st June 2019.

⁸ Art. 5, 4°, Act of 12 May 2019, *op. cit.*

⁹ The *Délégué général des droits de l'enfant*, the French-Speaking Ombudsman for Children.

¹⁰ The *Kinderrechtencommissariaat*, the Dutch-speaking Ombudsman for Children.

¹¹ ECSR, [Comments by the Federal Institute for the promotion and protection of Human Rights \(FIRM-IFDH\), the Délégué général aux Droits de l'Enfant \(DGDE\) and the Kinderrechtencommissariaat \(KRC\) on the 15th report on the implementation of the European Social Charter submitted by the Government of Belgium](#), 30 June 2021.

provisions has continued since. In 2023, FIRM-IFDH, along with the Institute for the Equality of Women and Men, Unia and DGDE, submitted a new simplified report updating the information regarding non-accepted provisions. The 2023 report again noted the lack of progress despite the obstacles to acceptance being removed.

The present report reiterates and updates a number of observations on Belgium's non-acceptance of several provisions of the European Social Charter, focusing on five of the seven unaccepted provisions are examined hereunder.

2. Comments on the non-accepted provisions of the European Social Charter by Belgium

Article 19.12: promoting and facilitating, as far as practicable, the teaching of migrant workers' mother tongue to the children of migrant workers

Article 19.12 requires the authorities to undertake to promote and facilitate the teaching of the languages most widely spoken by migrants on their territory, whether through official education or by supporting other structures such as non-governmental organisations and voluntary associations. Around a third of the population in Belgium are not of Belgian origin, i.e. they were not born Belgian to Belgian parents.¹² Most Belgians of foreign origin and foreigners in Belgium come from countries within the European Union, and this is also reflected in the foreign languages most widely spoken in Belgium. With significant variations within the three Belgian regions, some of the most widely spoken non-official Belgian languages are English, Italian, Arabic, Polish, Spanish and Romanian.¹³

Due to regional policy differences, acceptance of article 19.12 is complex¹⁴ as it exclusively falls under the competences of the Communities and Regions. In 2019, the Committee concluded that more information was required about the reasons that prevented acceptance of this provision. However, neither the Belgian State nor any regional or Community authorities appear to have acted upon this recommendation: acceptance of article 19.12 was not put on the parliamentary agenda, and, since 2021, there does not appear to have been sign of a political declaration on the freedom to teach the migrant worker's mother tongue to the children of migrant workers. The State did not provide any information on acceptance of this provision since 2019.

Furthermore, few official initiatives seem to have been implemented to facilitate access to the most widely used foreign languages. Yet, FIRM-IFDH has not identified any major legal obstacles that would prevent a more proactive policy in this respect. Accordingly, in its 2021 simplified report, FIRM-IFDH recommended that the State – via the federated entities – publicly explains the reasons for the

¹² Statbel, [Origine](#), 8 June 2023.

¹³ *Ibid.* See also Myria, [La migration en chiffres et en droits](#), annual report 2023, 24 April 2023.

¹⁴ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), 3 septembre 2019., p. 5.

difficulties in accepting article 19.12 of the Charter.¹⁵ The Belgian authorities were also asked to make every effort to facilitate the adoption of article 19.12.

In view of the lack of progress, these recommendations can be repeated. Accordingly, the Belgian State should be encouraged to publish the reasons for the difficulties in accepting article 19.12 of the Charter and to make every effort to further compliance of the community and regional legislation with the article in question with a view to its adoption.

Article 27.3: the right of workers with family responsibilities to equal opportunities and equal treatment

In its 2019 report on the non-accepted provisions by Belgium, the European Committee of Social Rights found that there was no inconsistency between Belgian law and articles 27.3 and 31.1, 31.2 and 31.3 of the Charter.¹⁶ As a result, there was nothing preventing acceptance of these provisions. The Committee therefore recommended Belgium accepts the four articles in question.¹⁷

In 2021, the Belgian government argued it could not accept article 27.3 because its legislation did not explicitly offer workers with family responsibilities protection against dismissal, apart from the sanctions against unfair or patently unreasonable dismissal.¹⁸ In its reply to the report by FIRM-IFDH, the DGDE and the KRC, it specified that “*this situation can also be catered for (...) by the more general protection mechanisms*”, referring in particular to the protection against unfair or patently unreasonable dismissal, and the protection against dismissal on the grounds of maternity leave, paternity leave, adoption leave, parental leave, social assistance or palliative care leave.¹⁹ These arguments do not cite any obstacle that would explain the impossibility to accept article 27.3. Quite the opposite, the Belgian State's response clearly shows that this provision is compatible with Belgian law. Furthermore, the federal anti-discrimination legislation has been amended to provide for the criterion “family responsibilities”,²⁰ following the examples of a number of federated entities who had anticipated this provision, like the Walloon Region²¹ and the German-speaking Community.²²

¹⁵ ECSR, [Comments by the Federal Institute for the promotion and protection of Human Rights, the Délégué général aux Droits de l'Enfant and the Kinderrechtencommissariaat](#) on the 15th report on the implementation of the European Social Charter submitted by the Government of Belgium, 30 June 2021.

¹⁶ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), 3 September 2019.

¹⁷ *Ibid.*

¹⁸ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), *op. cit.*, p. 10.

¹⁹ Federal Public Service Employment, Labour and Social Dialogue, Comments on the report by the Federal Institute for the protection and promotion of Human Rights, the Kinderrechtencommissariaat and the Délégué général aux Droits de l'Enfant to the European Committee of Social Rights on the 15th report on the implementation of the European Social Charter submitted by the Government of Belgium, 19 October 2021, RAP/RCha/BEL/15 (2021).

²⁰ Act of 15 November 2022 amending the Act of 10 May 2007 on the fight against discrimination between women and men and the Act of 16 December 2002 establishing the Institute for the Equality of Women and Men, *M.B.*, 9 January 2023.

²¹ Decree of the Walloon government of 2 May 2019 amending the Decree of 6 November 2008 on the fight against certain forms of discrimination, *M.B.*, 20 August 2019.

²² Decree of the German Community of 19 March 2012 on the fight against certain forms of discrimination, *M.B.*, 5 June 2012. It inter alia forbids discrimination on the grounds of “parenthood”, a criteria distinct from motherhood.

Accepting article 27.3 would strengthen the rights of workers with family responsibilities and would reinforce the coherence between the European Social Charter and Belgian law. Furthermore, it would also allow Belgium to bring its legislation fully in compliance with Convention No. 156 of the International Labour Organisation on workers with family responsibilities,²³ which it ratified in 2015. Belgium should adopt a declaration accepting article 27.3.

Articles 31.1, 31.2 and 31.3: the right to decent housing

As is the case with article 27.3 of the Charter, the reasons why the Belgian government has refused to accept the three paragraphs of article 31 remain unclear.

The right to decent housing is currently guaranteed by article 23 of the Constitution and by several instruments of international law that Belgium has ratified, such as article 11 of the International Covenant on Economic, Social and Cultural Rights. While article 31 of the Social Charter is more specific, it still does not amount to an obligation to achieve a result on the part of States. It does imply however that necessary measures must be taken to concretely and effectively realize the right to housing.²⁴ In the light thereof, the Belgian objections to accepting the three paragraphs of article 31 should be clarified. In 2019, the Belgian government itself stated that: *"Belgium's acceptance of article 31 of the Charter is purely a matter of political will as the legislative and practical steps have been taken with a view to its acceptance"*.²⁵

The matter was briefly mentioned since FIRM-IFDH's 2021 simplified report: in 2022, the Minister for Economy and Employment indicated that, as housing is one of the Regions' responsibilities, it is up to the Regions to accept the provisions of the Charter rather than a task for federal authorities.²⁶ However, the matter had failed to make it to the agenda of the Walloon and Brussels Parliaments by the end of 2023. The monitoring of the Flemish Region's possible adoption of a comparable provision would fall within the competence of the Flemish Human Rights Institute (VMRI), a regional independent public body which defends and promotes human rights regarding matters within the competences of the Flemish Region and the Flemish Community. Accordingly, FIRM-IFDH has not examined Flanders' commitment regarding the acceptance of article 31 of the Charter since the creation of VMRI in 2023, nor can it make recommendations to the Flemish authorities.

In 2019, the Committee strongly encouraged Belgium to accept these provisions so as to enhance the rights of workers with family responsibilities and to improve the guarantees of the right to housing. As did the European Committee, FIRM-IFDH recommends that the Walloon and Brussels authorities adopt a declaration accepting articles 31.1, 31.2 and 31.3 of the European Social Charter.

3. Conclusion

²³ International Labour Organisation, [Convention No. 156 on Workers with Family Responsibilities](#), adopted in Geneva on 23 June 1981.

²⁴ ECSR, [3rd report on non-accepted provisions of the European Social Charter by Belgium](#), *op. cit.*, pp. 11-12.

²⁵ *Ibid.*

²⁶ Chamber of Representatives, [Questions et réponses écrites, séance du 9 septembre 2022](#), [Written questions and answers, sitting of 9 September 2022] question no. 977 from MP Gaby Colebunders dd. 04 August 2022 (Fr.) to the Deputy Prime Minister and Minister for Economy and Employment pp. 105-106.

The process of accepting new rights enshrined in the European Social Charter seems to be stalling in Belgium. Since 2015, no new right has been accepted, despite some progress in the development of some of these rights, particularly the ban of discrimination on the basis of family responsibilities. In 2019, the Committee noted that 5 of the 7 provisions not accepted by Belgium could be accepted without substantial legal modifications. The Belgian State – whether at a federal or federated level – seems to be reluctant to accept new provisions of the Charter.

This lack of progress can also raise questions on the process of encouraging acceptance of new provisions by the Council of Europe and the European Committee of Social Rights. The processes of periodic review of unaccepted provisions do not result in the acceptance of new rights by Belgium, despite the absence of legal obstacles to this end. The Council of Europe should enhance its efforts to convince the signatory states of the added value of full ratification of the Charter. Finally, Belgian authorities should also make a firmer commitment to the Charter and the competences of the European Committee of Social Rights and to adopting all useful measures to enhance the conformity of the Belgian law with the Charter.

To this end, FIRM-IFDH formulates the following recommendations in relation to the five provisions of the Charter examined:

1. To the federal government : accept article 27.3 of the Charter;
2. To the Walloon and Brussels authorities: accept articles 31.1, 31.2 and 31.3 of the Charter;
3. To the federal government, French-speaking, German-speaking, Walloon and Brussels authorities : publish the reasons for the difficulties in accepting article 19.12 of the Charter and make every effort to enhance the compliance of community and regional legislation with the article in question with a view to its adoption;