



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

March 2022

European Social Charter

European Committee of Social Rights

Conclusions XXII-2 (2021)

General Introduction

This text may be subject to editorial revision.

GENERAL INTRODUCTION

1. The European Committee of Social Rights, established by Article 25 of the European Social Charter, composed of:

Ms Karin LUKAS (Austrian)
President
Senior Legal Researcher and Head of Department
Ludwig Boltzmann Institute of Human Rights, Vienna
Visiting Professor, Central European University, Vienna (Austria)

Ms Eliane CHEMLA (French)
Vice-President
Honorary State Councillor
State Council, Paris (France)

Ms Aoife NOLAN (Irish)
Vice-President
Professor of International Human Rights Law, School of Law
Co-Director of the Human Rights Law Centre
University of Nottingham (United Kingdom)

Mr Giuseppe PALMISANO (Italian)
General Rapporteur
Professor of International Law, Law Faculty
Roma Tre University, Rome (Italy)

Mr József HAJDÚ (Hungarian)
Professor of Labour Law and Social Security, Faculty of Law
University of Szeged (Hungary)

Ms Barbara KRESAL (Slovenian)
Associate Professor of Labour Law and Social Security
University of Ljubljana (Slovenia)

Ms Kristine DUPATE (Latvian)
Associate Professor, International and European Law, Faculty of Law
University of Latvia, Riga (Latvia)

Ms Karin Møhl LARSEN (Danish)
Adviser on International Social Security issues and European Union Law
Copenhagen (Denmark)

Mr Yusuf BALCI (Turkish)
Professor of Labour Economics and Social Policy, Faculty of Business
Istanbul Commerce University (Turkey)

Ms Ekaterina TORKUNOVA (Russian)
Attorney at Law
Associate professor, European Law department
MGIMO Law school, Moscow (Russian Federation)

Ms Tatiana PUIU (Moldovan)
Attorney at Law
Human Rights specialist (Republic of Moldova)

Mr Paul RIETJENS (Belgian)
Former Director general of Legal Affairs of the Federal Public Service of Foreign Affairs, Foreign Trade and Development Cooperation, Brussels (Belgium)

Mr George N. THEODOSIS (Greek)
Assistant Professor of Labour and Employment Law
Director of the Laboratory of Comparative and European Social Law
Democritus University of Thrace, Komotini (Greece)

Mr Mario VINKOVIĆ (Croatian)
Professor of Labour and Social Security Law, Faculty of Law
University of Osijek (Croatia)

Ms Miriam KULLMANN (German)
Assistant Professor,
Free University of Amsterdam (*Vrije Universiteit Amsterdam*), (the Netherlands)

assisted by Mr Jan MALINOWSKI, Executive Secretary,

between March 2021 and January 2022 examined the reports on the application of the 1961 European Social Charter.

2. The role of the European Committee of Social Rights is to rule on the conformity of the situations in States Parties with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

3. Following the changes to the reporting system adopted by the Committee of Ministers at the 1996th meeting of the Ministers' Deputies on 2-3 April 2014 the system henceforth comprises two types of reports. Firstly, the reports on a thematic group of Charter provisions, and secondly simplified reports every two years on follow-up to collective complaints for States Parties bound by the collective complaint's procedure.

4. Thus, the conclusions adopted by the Committee in January 2022 concern the accepted provisions of the following articles of the 1961 European Social Charter ("the 1961 Charter") and the 1988 Additional Protocol belonging to the thematic group "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 4 of the 1988 Additional Protocol).

5. The Committee recalls that States Parties were asked to reply to the specific targeted questions posed under various provisions (see letter to states of 3 June 2020,). The Committee therefore focused specifically on the information relating to those questions. In addition, it also assessed the replies to all findings of non-conformity or deferrals in its previous conclusions (Conclusions XXI-2 (2017) or Conclusions XX-2 (2013) depending on the country concerned). The Committee recalls that no targeted questions were asked under certain provisions. If the previous

conclusion (Conclusions XXI-2 (2017) or Conclusions XX-2 (2013) was a finding of conformity, there was no examination of the situation in 2021.

6. The following States Parties submitted a report: Croatia, the Czech Republic, Denmark, Luxembourg, Poland, Spain and the United Kingdom.

7. Germany and Iceland also submitted reports, however they arrived too late to be examined by the Committee. The Committee therefore notes the failure of Germany and Iceland to respect their obligation, under the Charter, to report on the implementation of this treaty within the deadline. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in these States Parties as regards the provisions concerned is in conformity with the 1961 Charter.

8. As noted above, States Parties which have accepted the collective complaints procedure are to submit a simplified report every two years. In order to avoid excessive fluctuations in the workload of the Committee from year to year, the 16 States Parties which have accepted the complaints procedure were divided into two groups as follows:

- Group A, made up of eight States: Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal.

- Group B, made up of eight States: Croatia, Cyprus, the Czech Republic, the Netherlands, Norway, Slovenia, Spain and Sweden.

On this basis, the States Parties belonging to Group A were invited to submit reports on follow-up to collective complaints by 31 December 2020. The findings adopted by the Committee in this respect thus concern the following States Parties: Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy and Portugal. The findings will be made public in March 2022.

9. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions human rights institutions and organisations (see introduction to the individual country chapters). The Committee wishes to acknowledge the value of these various comments.

10. The Committee's conclusions as outlined above are published in chapters by State. The conclusions are also available on the website of the European Social Charter and in the Hudoc case law database that is also available on this website. A summary table of the Committee's Conclusions XXII-2 (2021) as well as the state of signature and ratification of the Charter and the 1961 Charter appear below.

Statements of interpretation

11. The Committee makes the following statements of interpretation:

- **Statement of interpretation on Article 3§1 - Digital disconnect and electronic monitoring of workers**

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Lockdown and movement restrictions also expanded or intensified considerably the phenomenon of remote working, including outside of normal work hours. The Committee's Statement on Covid-19 notes that teleworking

or remote working in the Covid-19 pandemic may be associated with specific health and safety risks, including unsuitable workplace ergonomics and psychosocial stress factors such as isolation, electronic surveillance and “hyperconnected” working methods (Statement on Covid-19 and social rights, March 2021). Teleworking or remote working may also lead to excessive working hours.

The Committee considers that, consistent with States Parties’ obligations in terms of Article 3§1, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the “right to disconnect”). The Committee recalls that one of the primary aims of Article 2 of the Charter - which guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3), and weekly rest periods (Article 2§5) - is to protect a worker’s safety and health.

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. The expectation from the employers that workers will be available outside their working hours, if implemented in practice, is hazardous to the workers’ health. States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform (e.g. those during probationary periods or for those on temporary or precarious contracts).

In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods. This may have a positive effect on workers’ health, since it is likely to reduce burn-outs and overload.

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life.

The Committee recalls that it has already stated that under Article 1§2 of the Charter individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation, in particular through modern electronic communication and data collection techniques.¹

The Committee notes that in addition to interfering with the right to privacy the electronic monitoring of workers may have implications for the health of workers, including their physical and mental health. Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

¹ [Conclusions 2006, Statement of Interpretation on Article 1§2](#); [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

- **Statement of interpretation on Article 12§3 - Social coverage for digital platform workers**

The Committee recalls that it put a question to all States Parties under Article 12§3 of the Charter on social security coverage for persons employed or whose work is managed through digital platforms. There may be (or there are) cases where platform work (also referred to as “gig work”) is a legitimate response to the nature of the tasks and the needs of employer and worker. However, developments in the platform economy have led in particular to a practice of fragmenting work that has resulted in contracting for services for (micro) tasks. This fragmentation bears the danger of disguising that workers perform a job and have an employment relationship by being misclassified as self-employed workers.

The use of algorithmic management by digital platforms (or employing entities) often leads to a weakening of the position of workers. In particular, platform work may have an adverse impact on access to and enjoyment of a range of rights guaranteed under the Charter for the workers concerned. This includes not least the right to social security under Article 12 of the Charter.

In order to counteract these negative effects, States Parties must take all necessary steps to ensure that all workers in new forms of employment such as platform work have a legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers concerned.

- **Statement of interpretation on Article 12§4 - Child benefit**

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is an unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

- **Statement of Interpretation on Article 4 of the 1988 Additional Protocol to the 1961 Charter – Ageism**

The Committee recalls that Article 4 of the 1988 Additional Protocol to the 1961 Charter requires State 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 for as long as possible. The expression “full members of society” used in Article 4 of the 1988 Additional Protocol requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, “... ageism has serious and far-reaching consequences for people’s health, well-being and human rights“(WHO report on Ageism, 2021, p. XVI).

The Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

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

Article 4 of the 1988 Additional Protocol of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article 4 of the 1988 Additional Protocol in conjunction with the Preamble.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and other measures which reflect or reinforce ageism. The Committee considers that States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

- **Statement on Covid-19 and social rights**

The Committee adopted a [Statement on Covid-19 and social rights \(March 2021\)](#).

General Question from the Committee

12. The Committee refers to the question below. This question should be answered by all States Parties concerned.

- **General Question on Article 11 and gender identity**

The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that State recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health and is integral to autonomy and human dignity and the obligation to protect the right to health (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§78 and 82).

The Committee invites States Parties to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity.

The Committee also invites States Parties to provide information on measures taken to ensure that access to health care in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

Statement on information in national reports and information provided to the Governmental Committee

13. The Committee draws the attention of States Parties to the obligation to systematically include in the national reports replies to requests for information by the Committee. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

60th Anniversary of the European Social Charter

14. The European Social Charter celebrated its 60th anniversary in 2021. It was opened for signature in Turin on 18 October 1961. The year also marked the 25th anniversary of the opening for signature of the revised European Social Charter on 3 May 1996. During the year a number of events took place to mark this anniversary, including a High-level Panel on the future of the European Social Charter. 2021 also saw the launch at Committee of Ministers level of a process of reform of the Charter to which the Committee is actively contributing.

New Ratifications

15. The Committee welcomes the ratification of the Revised Social Charter by Germany (29 March 2021) and Spain (17 May 2021) and the acceptance of the collective complaints procedure by Spain (17 May 2021). This brings the number of States Parties to the revised Charter to 36 and the number of States Parties having accepted the collective complaints procedure to 16.

Next reports

16. The next reports on the accepted provisions, which were due by 31 December 2021, concern the Articles belonging to the thematic group "Labour rights" (Articles 2, 4, 5, 6, and Article 2 and 3 of the 1988 Additional protocol to the 1961 Charter). The Committee notes that for the purposes of the report, States Parties were asked to reply to the targeted questions posed to States for this thematic group (questions included in the [appendix](#) to the letter of 9 June 2021, whereby the Committee requested a report on the implementation of the abovementioned provisions of the Charter). States Parties were also asked to reply to previous conclusions of non-conformity, deferrals or conclusions of conformity pending receipt of information requested.

States Parties having accepted the collective complaints procedure and belonging to Group B were due to submit a simplified report on follow-up to complaints also before 31 December 2021.

CONCLUSIONS XXII-2 (2021)

State Partie	Conformity	Non-conformity	Deferral
CROATIA	1	3	3
CZECH REPUBLIC	5	4	6
DENMARK	7	3	2
LUXEMBOURG	5	0	8
POLAND	1	4	6
SPAIN	5	5	4
UNITED KINGDOM	3	3	3

Summary of the Committee's Conclusions

	HRV	CZE	DNK	LUX	POL	ESP	GBR
Article 3.1		+	+	0	0	0	-
Article 3.2		0	0	0	0	-	0
Article 3.3		Nex	Nex	Nex	Nex	+	Nex
Article 11.1	0	0	+	+	0	0	+
Article 11.2	+	0	+	+	0	+	+
Article 11.3	0	0	+	0	0	0	0
Article 12.1		-	Nex	0	-	-	-
Article 12.2		+	+	+	+	+	
Article 12.3		+	+	0	0	0	
Article 12.4		0	-	+	-	-	
Article 13.1	-	-	-	0		-	-
Article 13.2	Nex	Nex	Nex	Nex	Nex	Nex	Nex
Article 13.3	Nex	+	Nex	Nex	-	Nex	Nex
Article 13.4	-	0	Nex	0		Nex	Nex
Article 14.1	-	-	+	+	-	+	+
Article 14.2	0	+	0	0		+	0
Article 23/P-4		-	-			-	

	Non-accepted provisions
Nex	Non-examined provisions
+	Conformity
-	Non-conformity
0	Deferral

**MEMBER STATES OF THE COUNCIL OF EUROPE
AND THE EUROPEAN SOCIAL CHARTER**

Member states		Signatures	Ratifications	Acceptance of the collective complaints	
Albania		21/09/1998	14/11/2002		
Andorra		04/11/2000	12/11/2004		
Armenia		18/10/2001	21/01/2004		
Austria		07/05/1999	20/05/2011		
Azerbaijan		18/10/2001	02/09/2004		
Belgium		03/05/1996	02/03/2004	23/06/2003	
Bosnia and		11/05/2004	07/10/2008		
Bulgaria		21/09/1998	07/06/2000	07/06/2000	
Croatia		06/11/2009	26/02/2003	26/02/2003	
Cyprus		03/05/1996	27/09/2000	06/08/1996	
Czech Republic		04/11/2000	03/11/1999	04/04/2012	
Denmark	*	03/05/1996	03/03/1965		
Estonia		04/05/1998	11/09/2000		
Finland		03/05/1996	21/06/2002	17/07/1998	X
France		03/05/1996	07/05/1999	07/05/1999	
Georgia		30/06/2000	22/08/2005		
Germany	*	29/06/2007	29/03/2021		
Greece		03/05/1996	18/03/2016	18/06/1998	
Hungary		07/10/2004	20/04/2009		
Iceland		04/11/1998	15/01/1976		
Ireland		04/11/2000	04/11/2000	04/11/2000	
Italy		03/05/1996	05/07/1999	03/11/1997	
Latvia		29/05/2007	26/03/2013		
Liechtenstein		09/10/1991			
Lithuania		08/09/1997	29/06/2001		
Luxembourg*	*	11/02/1998	10/10/1991		
Malta		27/07/2005	27/07/2005		
Republic of Moldova		03/11/1998	08/11/2001		
Monaco		05/10/2004			
Montenegro		22/03/2005	03/03/2010		
Netherlands		23/01/2004	03/05/2006	03/05/2006	
Norway		07/05/2001	07/05/2001	20/03/1997	
North Macedonia		27/05/2009	06/01/2012		
Poland		25/10/2005	25/06/1997		
Portugal		03/05/1996	30/05/2002	20/03/1998	
Romania		14/05/1997	07/05/1999		
Russian Federation		14/09/2000	16/10/2009		
San Marino		18/10/2001			
Serbia		22/03/2005	14/09/2009		
Slovak Republic		18/11/1999	23/04/2009		
Slovenia		11/10/1997	07/05/1999	07/05/1999	
Spain		23/10/2000	17/05/2021	17/05/2021	
Sweden		03/05/1996	29/05/1998	29/05/1998	
Switzerland		06/05/1976			
Turkey		06/10/2004	27/06/2007		
Ukraine		07/05/1999	21/12/2006		
United Kingdom	*	07/11/1997	11/07/1962		
Number of States	47	2 + 45 = 47	7 + 36 = 43	16	

The dates in bold correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a [decision](#) taken by the Committee of Ministers on 11 December 1991, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it. This table is regularly updated on the Charter's website: www.coe.int/socialcharter