



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

March 2020

European Social Charter
European Committee of Social Rights
Conclusions XXI-4 (2019)
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:

Mr Giuseppe PALMISANO (Italian)
President
Professor of International Law
Department of Law
University of Roma Tre, Rome (Italy)

Ms Karin LUKAS (Austrian)
Vice-President
Senior Legal Researcher and Head of Department
Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Mr François VANDAMME (Belgian)
Former Director International Affairs, Federal Public Service Employment, Labour and Social Dialogue, Brussels
Former visiting professor, College of Europe (Bruges, (1998-2012)
Former invited "*Maître de conférences*" (2008-2014) in Labour Law, Catholic University of Louvain, Louvain-la-Neuve, (Belgium)

Ms Eliane CHEMLA (French)
General Rapporteur
Conseiller d'Etat honoraire
State Council, Paris (France)

Mr Petros STANGOS (Greek)
Professor of European Union law,
Holder of the Jean Monnet Chair "European human rights law"
School of Law, Department of International studies
Aristotle University, Thessaloniki (Greece)

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

Ms Krassimira SREDKOVA (Bulgarian)
Professor of Labour Law and Social Security
University of Sofia (Bulgaria)

Mr Raul CANOSA USERA (Spanish)
Professor of Constitutional Law
University Complutense, Madrid (Spain)

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 Aoife NOLAN (Irish)
Professor of International Human Rights Law, School of Law, University of Nottingham (United Kingdom)

Ms Karin Møhl LARSEN (Danish)
Specialist in European Union law and social security coordination,
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 at MGIMO law school,
European law department,
Moscow (Russian Federation)

Ms Tatiana PUIU (Moldovan)
Attorney at law, Human Rights Specialist
(Republic of Moldova)

assisted by Mr Jan MALINOWSKI, Executive Secretary,

between March 2019 and January 2020 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 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 bound by the collective complaint's procedure.

4. Thus, the conclusions adopted by the Committee in January 2020 concern the accepted provisions of the following articles of the 1961 European Social Charter ("the 1961 Charter") belonging to the thematic group "Children, Family and Migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection, (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17)
- the right of migrant workers and their families to social, legal and economic protection (Article 19),

5. The following States Parties submitted a report: Denmark, Germany, Iceland, Luxembourg, the Netherlands in respect of Curaçao, Poland, Spain and the United Kingdom.

6. As noted above, States which have accepted the collective complaints procedure shall henceforth submit a simplified report every two years. In order to avoid excessive fluctuations in the workload of the Committee from year to year, the 15 States 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 seven States: Croatia, Cyprus, the Czech Republic, the Netherlands, Norway, Slovenia and Sweden.

On this basis, the States belonging to Group B were invited to submit reports on follow-up to collective complaints by 31 October 2018. The findings adopted by the Committee in this respect thus concern the following States Parties: Croatia, Cyprus, the Czech Republic, the Netherlands, Norway, Slovenia and Sweden. The findings will be made public separately in March 2020.

7. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and national human rights institutions (see introduction to the individual country chapters). The Committee wishes to acknowledge the importance of these various comments, which were often crucial in gaining a proper understanding of the national situations concerned.

8. 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 database that is also available on this site. A summary table of the Committee's Conclusions XXI-4 (2019) as well as the state of signature and ratification of the Charter and the 1961 Charter appear below.

Statements of interpretation

9. The Committee makes the following statement of interpretation.

- **Statement of interpretation on Article 8§4**

Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity. The aim of such protection is the protection of the health of a mother and a child. Such protection is possible where employed women are entitled to safe and healthy working conditions, i.e. such working conditions which take due regard to their specific needs during respective periods. Safe and healthy working conditions include also protection against less favourable treatment due to pregnancy and maternity.

Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination.

It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

General Questions from the Committee

10. The Committee refers to the questions below. These questions should be answered by all States Parties concerned.

- **General Question on Article 7§1**

Detection of illegal child labour

The Committee notes that many states' legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the Committee is concerned about the situation in practice. There is data that suggests that in many countries there are significant numbers of children working illegally. However, there is little official data on the extent of the problem. Therefore, the Committee requests all states to provide information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. In this regard, the Committee asks all states to provide information on the number of children actually working (either from existing statistics on this issue or from surveys to be conducted to obtain such information), as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.

- **General Question on Article 17**

Legal status of the Child

The Committee has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals. Therefore, the Committee asks what measures have been taken by the State to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth). The Committee asks further what measures have been taken to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.

Right to Assistance

The prevalence of child poverty in a state party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of states to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

The Committee asks the next report to provide information on the measures adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the cases of health, education, housing etc. Information should also be provided on measures focused on combatting discrimination against and promoting equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.

States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty and social inclusion.

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

11. The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. 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.

Next reports

12. The next reports on the accepted provisions, which were due by 31 December 2019, concern the following Articles belonging to the thematic group "Employment, Training and Equal Opportunities": 1, 9, 10, 15, 18, 20, 24 and 25. States having accepted the collective complaints procedure and belonging to Group A were due to submit a simplified report on follow-up to complaints also before 31 December 2019.

CONCLUSIONS 2019

Article	Germany	Denmark	Spain	United Kingdom	Iceland	Luxembourg	Netherlands in respect of Curaçao	Poland
Article 7.1			+			+		
Article 7.2	+		+	+		+		0
Article 7.3	0		0	-		-		
Article 7.4	0		+			+		+
Article 7.5	-		-	-		+		
Article 7.6	+		+	+		+		+
Article 7.7	+		+			+		+
Article 7.8	+		+			+		+
Article 7.9	+		0	+		+		+
Article 7.10	+		0	-		+		0
Article 8.1	+	+	+	-		+		+
Article 8.2			-			+		+
Article 8.3	+		-			+		+
Article 8.4			+					
Article 16	+	0	-	0	+	+	-	-
Article 17	+	-	0	-	+	+		-
Article 19.1	0		+	+		+		0
Article 19.2	+		0	0		-		0
Article 19.3	+		0	0		+		0
Article 19.4	0		-	+		+		+
Article 19.5	+		+	+		0		+
Article 19.6	-		-	-		-		-
Article 19.7	+		+	+		+		+
Article 19.8	0		+	0		-		-
Article 19.9	+		0	0		-		+
Article 19.10	-		-	0		-		-
+	Conformity	- non-Conformity		0 Deferral		Non-accepted provision		

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

Situation on 28 February 2019

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	26/02/03	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	03/11/99	04/04/12
Denmark	*	03/05/96	03/03/65
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany	*	29/06/07	27/01/65
Greece	03/05/96	18/03/16	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	15/01/76	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein		09/10/91	
Lithuania	08/09/97	29/06/01	
Luxembourg	*	11/02/98	10/10/91
Malta		27/07/05	27/07/05
Republic of Moldova		03/11/98	08/11/01
Monaco		05/10/04	
Montenegro		22/03/05	03/03/10
Netherlands		23/01/04	03/05/06
“The former Yugoslav Republic of Macedonia” ¹		27/05/09	06/01/12
Norway		07/05/01	07/05/01
Poland		25/10/05	25/06/97
Portugal		03/05/96	30/05/02
Romania		14/05/97	07/05/99
Russian Federation		14/09/00	16/10/09
San Marino		18/10/01	
Serbia		22/03/05	14/09/09
Slovak Republic		18/11/99	23/04/09
Slovenia		11/10/97	07/05/99
Spain		23/10/00	06/05/80
Sweden		03/05/96	29/05/98
Switzerland		06/05/76	
Turkey		06/10/04	27/06/07
Ukraine		07/05/99	21/12/06
United Kingdom	*	07/11/97	11/07/62
Number of States	47	2+ 45 = 47	10 + 33 = 43
			15

The **dates in bold** on a grey background 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, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.

¹ As of 12 February 2019, the official name of the country changed to North Macedonia.