



March 2019

European Social Charter

European Committee of Social Rights

Conclusions 2018

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
Board member in the Public Oversight Authority, Ankara (Turkey)

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

assisted by Mr Jan MALINOWSKI, Executive Secretary,

between January 2018 and January 2019 examined the reports on the application of
the Revised 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 complaints
procedure.

4. Thus, the conclusions adopted by the Committee in January 2019 concern the
accepted provisions of the following articles of the Revised European Social Charter
("the Charter") belonging to the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working
conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and
facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy
procedures (Article 29).

5. The following States Parties submitted a report: Andorra, Armenia, Austria,
Azerbaijan, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Hungary, Latvia,
Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway,

Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, “the former Yugoslav Republic of Macedonia”¹, Turkey, and Ukraine.

Albania did not submit a report and therefore the Committee was unable to reach any conclusions on its conformity with the relevant provisions for this cycle. The Committee notes the failure of Albania to respect its obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in Albania as regards the provisions concerned is in conformity with the Revised Charter.

Hungary submitted its report too late for examination and the Committee will examine it together with Hungary’s next report on the provisions concerned. The Committee invites Hungary to scrupulously observe the reporting deadlines so as not to undermine the impact of the Charter’s supervisory mechanism.

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: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland.
- Group B, made up of seven States: the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, the Czech Republic.²

On this basis, the States belonging to Group A were invited to submit reports on follow-up to collective complaints by 31 October 2017. The findings adopted by the Committee in this respect thus concern the following States Parties: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland. The findings were made public in January 2019.

7. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and 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 case law database that is also available on this site. A summary table of the Committee’s Conclusions 2018 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 statements of interpretation which follow below.

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

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, as the Committee has held on a number of occasions. The

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

² Croatia and Czech Republic are Parties to the 1961 Charter.

question of the reasonableness of the notice periods will no longer be examined in detail on the main basis of criteria setting varied lengths according to specific circumstances. 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 will assess the national situation regarding Art 4§4 on the basis of the following aspects:

- 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.

- 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;

- The components of the employee's remuneration during the notice period.

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 5 concerning the right of members of the armed forces to organise**

“Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as through the imposition of a blanket prohibition of professional associations of a trade union nature and prohibition of the affiliation of such associations to national federations/confederations (military representative

associations should under certain conditions be entitled to affiliate with national employees organisations).³

Therefore the Committee asks states to provide information in their next report on Article 5 on the right of members of the armed forces to organise.”

- **General question on Article 6§4 concerning the right of members of the police to strike**

“As regards police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. However, the imposition of restrictions as to the mode and form of such strike action can be in conformity with the Charter.⁴

The Committee asks the next report to provide information on the right of members of the police to strike and any restrictions.”

- **General question on Article 6§2 concerning self-employed workers and collective bargaining**

The Committee observes that the world of work is changing rapidly and fundamentally with a proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, of shifting risk from the labour engager to the labour provider. This has resulted in an increasing number of workers falling outside the definition of a dependent employee, including low-paid workers or service providers who are de facto “dependent” on one or more labour engagers. These developments must be taken into account when determining the scope of Article 6§2 in respect of self-employed workers.

Moreover, the Committee emphasises that collective mechanisms in the field of work are justified by the comparably weak position of an individual supplier of labour in establishing the terms and conditions of their contract. In establishing the type of collective bargaining that is protected by the Charter, it is not sufficient to rely on distinctions between worker and self-employed, the decisive criterion is rather whether there is an imbalance of power between the providers and engagers of labour. Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining.

The Committee considers that even without developing the precise circumstances under which categories of self-employed workers fall under the personal scope of Article 6§2, an outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of this provision (see *ICTU v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §§37-40).

In view of the above principles, the Committee asks that all States Parties concerned in their next report provide information on measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

³ European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §82, European Organisation of Military Associations (EUROMIL) v. Ireland Complaint No. 112/2014, Decision on the merits of 12 September 2017.

⁴ European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, § 211

Election of members to the Committee

11. The composition of the Committee is governed by Article 25 pursuant to which its 15 members are appointed by the Committee of Ministers for mandates of six years, renewable once.

12. It is recalled that pursuant to Article 3 of the Turin Protocol members shall be elected by the Parliamentary Assembly. However, this provision alone is still not being applied in practice (pending the formal entry into force of the Protocol).

13. Members shall be “independent experts of the highest integrity and of recognised competence in international social questions”. Election takes place every second year with a third of the seats (5) being up for election.

14. At the 1332nd meeting of the Ministers’ Deputies on 12 December 2018, the Committee of Ministers held the election to fill the five seats falling vacant on 31 December 2018 and the seat vacant due to the resignation of a member. Ms Eliane CHEMLA (French) and Mr József HAJDÚ (Hungarian) were elected for a second term, and Ms Karin Møhl LARSEN (Danish) was elected to the seat vacant following the resignation of a member (see below). Mr Yusuf BALCI (Turkish) and Ms Ekaterina TORKUNOVA (Russian) were elected as members for a first term of office. The term of office for Ms Karin Møhl LARSEN began upon election and ends on 31 December 2020 and for Mr Yusuf BALCI and Ms Ekaterina TORKUNOVA the term of office begins on 1 January 2019 and ends on 31 December 2024. The deadline for nominating candidates for the remaining vacant seat in Group V was fixed at 31 January 2019. At the 1339th meeting of the Ministers’ Deputies on 6 March 2019, Ms Tatiana PUIU was elected.

15. The Committee wishes to express its appreciation and gratitude to the outgoing members, Vice-President Ms Monika SCHLACHTER (German), Ms Birgitta NYSTRÖM (Swedish), and Mr Marcin WUJCZYK (Polish) for their contribution to the Committee’s work and for their tireless efforts to promote social rights. Mr Marcin WUJCZYK joined the Committee in 2013 and served for one term of office. Ms Monika SCHLACHTER and Ms Birgitta NYSTRÖM were both members of the Committee from 2007 to 2018.

16. Ms Marit FROGNER resigned from the Committee on 1 August 2018. She had been a member of the Committee since 1 January 2015. The Committee wishes to express its appreciation and gratitude for her valuable contribution to the Committee’s work.

17. On 5 December 2018 a workshop in honour of the four outgoing members was organized in Strasbourg on the topic of “Social Rights in Times of Turbulence”.

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

18. 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

19. The next reports on the accepted provisions, which were due by 31 October 2018, concern the following Articles belonging to the thematic group "Children, families and migrants": 7, 8, 16, 17, 19, 27 and 31. States 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 October 2018.

CONCLUSIONS 2018

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BOSNIA AND HERZEGOVINA	CYPRUS	ESTONIA	GEORGIA	LATVIA	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	NETHERLANDS	NORWAY	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"the former Yugoslav Republic of Macedonia"	TURKEY	UKRAINE
Article 2.1	+	-			0	-	-	-	+	-	-	+	0	-	-	+	+	-	-	-		0	-	+
Article 2.2	+	+	+		-	+	+	-	+	+	-	-	+	-	-	0		+	-	0		+	+	+
Article 2.3	+	+	+		-	-	+		+	+	+	-		-	+		-	+	+	+	+	+		
Article 2.4	0	-	+		-				+	+		0		-	+	+	+		+	+		+	+	0
Article 2.5	+	+	+		0	+	+	-	+	+	+	+		-	+	+	-	+	0	0	+	-	+	-
Article 2.6	+	+	+		-	+	+		+	+	+	+	0	+	+	+	+	0	+	+	+	+	+	0
Article 2.7	-		+		-	+	-	-	+	+		-		+		+	+	-	+	+		-	+	-
Article 4.1	-		+	-						-	-			-	0	-		-	0	0	+			
Article 4.2	0	-	+	+			-	0	+	-	0		+	-	+	+	+	+	-	+		-	-	+
Article 4.3	0	-	0	-	0		-	-	0	0	-	-	0	0	0	0	-	0	0	0	0	0	0	-
Article 4.4	-	-		-			-	-	-	-	-	-		-	-	-	-	-	-	-	+		-	-
Article 4.5	+	-	+	-		-	-		-	-	-	-	0	-	+	-	-	-	-	0		-	-	-
Article 5	+	-	+	-	0	+	+	-	-	+	0	-	+	+	+	+	+	-	+	+	+	+		-
Article 6.1		0	+	-	-	+	+	-	+	+	0	+	+	+	+	+	+	+	+	+	+	+		+
Article 6.2		-	+	-	0	0	-	-	-	-	0	0	+	+	+	0	0	+	0	+	+	+		+
Article 6.3		+	+	+	0	+	+	+	+	+	-	-	+	+	+	+	0	+	+	+	+	+		+
Article 6.4		-		-	-	-	-	-	0	0	-	-	-	+	+	-	-	-	-	+	+	0		-
Article 21				+	-		+		+	+		+		+	+	+	+	0	+	+	+	0	+	+
Article 22		+		-	-	+	+		0	+				+	+		+	-	+	+	+		0	+
Article 26.1	+		+	-			+	-	+	-	0	+	0	0				0	+	0	+	+	0	-
Article 26.2	+			-			0	-	+	-	-	+		0				0	0	0	0	0	0	-
Article 28		-	-	-	-	+	+		0	-	+	-	0	+	-	-	-	+	0	+		-	-	-
Article 29				-		0	+	-	0	+	+	+	0	+		+	+	0	0	0	0	0	+	+

+ Conformité	- Non-conformité	0 Ajournement	 Disposition non acceptée
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**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	03/05/06	
Norway		07/05/01	07/05/01	20/03/97	
Poland		25/10/05	25/06/97		
Portugal		03/05/96	30/05/02	20/03/98	
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	07/05/99	
Spain		23/10/00	06/05/80		
Sweden		03/05/96	29/05/98	29/05/98	
Switzerland		06/05/76			
“the former Yugoslav Republic of Macedonia” ⁵		27/05/09	06/01/12		
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.

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