

## — Germany and the European Social Charter —

### Signatures, ratifications and accepted provisions

Germany ratified the European Social Charter on 27/01/1965 and the Revised European Social Charter on 29/03/2021 accepting 88 of its 98 paragraphs.

It has signed but not ratified the Additional Protocol of 1988.

It has neither signed nor ratified the Amending Protocol of 1991 and the Additional Protocol of 1995 providing for a system of collective complaints.

### The Charter in domestic law

Statutory *ad hoc* incorporation by specific implementing legislation.

### Table of 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						Grey = accepted provisions					

# Monitoring the implementation of the European Social Charter <sup>1</sup>

## I. Reporting system <sup>2</sup>

### Reports submitted by Germany

Between 1965 and 2024, Germany submitted 39 reports on the application of the 1961 Charter and 2 reports on the application of the Revised Charter.

The [1st report](#), which was submitted on 24/02/2023, concerns the accepted provisions relating to thematic group 4 "Children, families and migrants" (Articles 7, 8, 16, 17, 16, 19, 27 and 31).

Conclusions with respect to these provisions have been published in March 2024.

On 31 December 2023, an [ad hoc report on the cost-of-living crisis was submitted by Germany](#)<sup>3</sup>.

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<sup>1</sup> The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. 2. It adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

<sup>3</sup> In accordance with the [decision of the Ministers' Deputies](#) adopted on 27 September 2022 concerning the [new system](#) for the presentation of reports under the European Social Charter, the European Committee of Social Rights and the Governmental Committee have decided to request an *ad hoc* report on the cost-of-living crisis to all State parties.

## Situations of non-conformity <sup>4</sup>

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXII-1 (2020)

► *Article 18§1 – Right to engage in a gainful occupation in the territory of other States Parties - Applying existing regulations in a spirit of liberality*

It has not been established that the regulations governing the right to engage in a gainful occupation are applied in a spirit of liberality.

### Thematic Group 2 "Health, social security and social protection" - Conclusions XXI-2 (2017)

No report<sup>5</sup> was submitted concerning the Articles in thematic group 2 in 2021; therefore, the Committee was unable to adopt Conclusions in the XXII-2 (2021) cycle.

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-2 (2017).

► *Article 3§1 – Right to safe and healthy working conditions – Safety and health regulations*

Certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

► *Article 12§1 – Right to social security – Existence of a Social security system*

It has not been established that the level of old age and invalidity pensions is adequate in all cases.

► *Article 12§4 – Right to social security – Social security of persons moving between states*

- Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- The right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

► *Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need*

The total level of social assistance, including the basic and additional benefits is not adequate.

### Thematic Group 3 "Labour rights" - Conclusions XXII-3 (2022)

► *Article 2§1 - Right to just conditions of work - Reasonable working time*

It has not been established in certain cases that the reference period for the calculation of average working hours cannot be extended beyond 12 months.

► *Article 4§3 – Right to a fair remuneration – Non-discrimination between women and men workers with respect to remuneration*

- There is an upper limit on compensation for employees who are dismissed as a result of making a claim of gender discrimination which may preclude damages from making good the loss suffered and from being sufficiently deterrent;
- The obligation to make measurable progress in order to reduce the gender pay gap is not complied with.

► *Article 6§4 – Right to bargain collectively – Collective action*

- The prohibition on all strikes not aimed at achieving a collective agreement constitutes an excessive restriction on the right to strike;
- The requirements to be met by a group of workers in order to form a union satisfying the conditions for calling a strike constitute an excessive restriction on the right to strike;
- All civil servants, regardless of whether they exercise public authority, are denied the right to strike.

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<sup>4</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

<sup>5</sup> Germany submitted report, however it arrived too late to be examined by the Committee.

#### **Thematic Group 4 "Children, families, migrants" – Conclusions 2023**

▶ *Article 7§3 - Right of children and young persons to protection - Prohibition of employment of children subject to compulsory education*

The duration of light work performed by children still subject to compulsory schooling is excessive and may deprive them of the full benefit of education.

▶ *Article 7§5 – Right of children and young persons to protection – Fair pay*

Allowances paid to apprentices at the end of the apprenticeship in some sectors are too low.

▶ *Article 17§1 – Right of children and young persons to social, legal and economic protection – Assistance, education and training*

The measures taken to reduce institutionalisation of children are insufficient.

▶ *Article 19§6 – Right of migrant workers and their families to protection and assistance - Family reunion*

- The requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive;
- The requirements to prove language proficiency for family reunion of children over 16 wishing to move to Germany present an obstacle to family reunion;
- Spouses do not enjoy an independent right of residence in case of expulsion of a migrant worker.

▶ *Article 19§10 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

The grounds of non-conformity under Articles 19§6, 19§9 and 19§12 apply also to self-employed migrants.

The Committee also considered that the failure to provide requested information on Articles 7§8, 8§§1-2, 16, 17§1, 19§6, 19§9, 19§12, 27§1 and 27§3 amounts to a breach by Germany of its reporting obligations under Article C of the Charter.

**The Committee has been unable to assess compliance with the following provisions:**

**Thematic Group 1 "Employment, training and equal opportunities"**

- ▶ Article 1§2 - Conclusions XXII-1 (2020)
- ▶ Article 1§4 - Conclusions XXII-1 (2020)
- ▶ Article 9 - Conclusions XXII-1 (2020)
- ▶ Article 18§3 - Conclusions XXII-1 (2020)

**Thematic Group 2 "Health, social security and social protection"**

No report was submitted concerning the Articles in thematic group 2 in 2021; therefore, the Committee was unable to adopt Conclusions in the XXII-2 (2021) cycle.

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-2 (2017).

- ▶ Article 3§2 - Conclusions XXI-2 (2017)
- ▶ Article 11§1 - Conclusions XXI-2 (2017)
- ▶ Article 11§2 - Conclusions XXI-2 (2017)
- ▶ Article 11§3 - Conclusions XXI-2 (2017)
- ▶ Article 13§3 - Conclusions XXI-2 (2017)
- ▶ Article 14§1 - Conclusions XXI-2 (2017)
- ▶ Article 14§2 - Conclusions XXI-2 (2017)

**Thematic Group 3 "Labour rights"**

- ▶ Article 4§1 - Conclusions XXII-3 (2022)

**Thematic Group 4 "Children, families, migrants"**

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## **II. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

### **Thematic Group 1 "Employment, training and equal opportunities"**

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### **Thematic Group 2 "Health, social security and social protection"**

▶Two clarifying provisions on psychological stress in the Safety and Health at Work Act (*Arbeitsschutzgesetz*) entered into force on 25 October 2013 (Article 8 (1) of the Act of 19 October 2013, ). Section 4 (1) of the Safety and Health at Work Act stipulates that work shall be shaped so as to avoid, as far as possible, any risk to life and physical and mental health and to keep the remaining risk as low as possible. A new point 6 "psychological stress at work" was incorporated into Section 5(3) on Assessment of the condition of work of the Act.

▶The insurance coverage of the Statutory occupational accident insurance scheme was extended, in 2012 and 2015, to new categories of persons and four additional occupational illnesses were recognised as such in 2015.

### **Thematic Group 3 "Labour rights"**

▶In the public service sector trainees are now entitled to leave with continued payment of their training allowance, with the provision that the entitlement to leave amounts to 29 days per calendar year if the weekly working time is spread over five days in the calendar week.

### **Thematic Group 4 "Children, families, migrants"**

▶The Bavarian legislator introduced a new Act which entered into force on 30 August 2012. The new Act provides for an entitlement to Land child-raising allowance of parents of foreign origin without the characteristic of "nationality" being taken into account.

▶On 25 September 2012 the Council of Ministers of the Land of Baden-Württemberg decided to end the eligibility for state child-raising allowance for all children born on or after 1 October 2012.

▶The Law governing the expansion of assistance for pregnant women and the regulation of anonymous childbirth, which came into force on 1 May 2014, reinforces the rights of the child. The fundamental right of the child to know his or her origins is guaranteed in that he or she is able to inspect the mother's data and obtain information on her name, address and date of birth.