

General Introduction

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

Mr Jean-Michel BELORGEY, President,

President of the Reports and Studies' Section,

Conseil d'Etat, Paris (France)

Mr Gerard QUINN, First Vice-President

Professor, Law Faculty,

National University of Ireland, Galway (Ireland)

Mr Andrzej SWIATKOWSKI, Second Vice-President

Professor of Labour Law,

Law Faculty,

Jagiellonian University, Krakow (Poland)

Mr Stein EVJU, General Rapporteur,

Professor of Labour Law,

Department of Private Law

University of Oslo (Norway)

Mr Rolf BIRK

Professor of Labour Law,

Director of the Institute of Labour Law and Industrial Relations

in the European Community,

University of Trier (Germany)

Mr Matti MIKKOLA,

Professor of Labour Law,

Department of Private Law, University of Helsinki (Finland)

Mr. Alfredo BRUTO DA COSTA

President of the Social and Economic Council,

Lisbon (Portugal)

Mr Nikitas ALIPRANTIS

Professor, Law Faculty,

Director of the Centre for Comparative and European Labour Law,

Democritos University of Thrace, Komotini (Greece)

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Central European University, Budapest (Hungary),

Head of the Labour and Social Law Department,

Law Faculty, Eötvös Lorand University, Budapest (Hungary)

Ms Polonca KONCAR

Professor of Labour Law, Law Faculty,

University of Ljubljana (Slovenia)

Mr Lucien FRANCOIS

Judge Emeritus at the Belgian constitutional court, Brussels

Professor Emeritus at the University of Liège (Belgium)

Mr Lauri LEPPIK

Social Policy Analyst, PRAXIS Centre for Policy Studies

Tallinn (Estonia)

Ms Beatrix KARL

Professor of Labour Law

University of Graz (Austria)

assisted by Mr. Régis BRILLAT, Executive Secretary of the European Social Charter,

with the participation of Mr Alexandre EGOROV, representative of the International Labour Organisation,

between September 2005 and June 2006 examined the reports on the application of the European Social Charter by Austria, Belgium, Croatia, the Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Luxembourg, Malta, Netherlands (including Aruba and the Antilles), Poland, Spain, Turkey and the United Kingdom.

2. The function of the European Committee of Social Rights is to decide on the conformity with this treaty of the law and practice of states. Its decisions appear in the following chapters by State. They are also available on the website of the Council of Europe www.coe.int and in the case law database that is also available on this site. A summary table of the Committee's Conclusions XVIII-1 as well as the state of signature and ratification of the 1961 European Social Charter and the 1996 revised European Social Charter appears below.

3. These reports relating to supervision cycle XVIII-1 concerned the hard-core provisions of the Charter:

- right to work (Article 1);
- right to organise (Article 5);
- right to bargain collectively (Article 6);
- right to social security (Article 12);
- right to social and medical assistance (Article 13);
- rights of the family to legal, economic and social protection (Article 16);
- rights of migrant workers (Article 19).

4. The first part of the conclusions adopted by the Committee in March 2006 and made public in April 2006 concerned the following States: Austria, Belgium, the Czech Republic, Denmark, Germany, Hungary, Iceland, Malta, Poland, Spain, Turkey and the United Kingdom. The second part of the conclusions was adopted in June 2006 and made public in July 2006. The following countries were concerned: Croatia, Greece, Luxembourg and the Netherlands (including Aruba and the Antilles).

General Comments

5. The Committee makes the following comments:

Comments of a general nature

6. In recent years, whether at the request of certain States party to the Charter or of certain groups of countries, or on its own initiative, the Committee has received national delegations or visited certain states on a number of occasions.

7. Such meetings have provided an opportunity to recall the fundamental principles governing the Committee's interpretation of the Charter, which have gradually emerged from its decisions on the compliance of national situations with the Charter on the basis of its examinations of national reports or, later, collective complaints.

8. The Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a complement to the European Convention on Human Rights. It reflects the concern of countries that have ratified it to give real meaning to the notion of the indivisibility and interdependence of human rights.

9. While recognising, therefore, the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and should not be undermined by the Charter or its application, it is important to:

- strengthen commitment to the shared values of solidarity, non-discrimination and participation;
- identify principles to ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

10. Primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, if they are not accompanied by appropriate safeguards, such implementation arrangements may threaten compliance with undertakings under the Charter.

11. The 10th anniversary of the Revised European Social Charter could be an opportunity to intensify the dialogue between the Committee and the countries concerned, to secure broader understanding and recognition of these principles and their scope.

b. Change in terminology

12. Since Conclusions 2006 and XVIII-1 are being published in the year of the 10th anniversary of the Revised Charter and bearing in mind the growing number of states that have ratified or will ratify the Revised Charter, the Committee has decided that when it refers to the "States party to the Charter" the reference is to be understood as including the Contracting Parties to the 1961 Charter and the Parties to the Revised Charter.

Comment on Article 1§2 – Right to Private Life

13. Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation. Modern electronic communication and data collection techniques have increased the chances of such interference.

14. Since the term “private life” may be defined with varying degrees of strictness it may be preferable to speak of “infringements of private or personal life”.

15. In the first place, employers may place unnecessary restrictions on their employees’ freedom of action. These include interference in their personal, or non-working, lives, even though the activities included in this autonomous sphere may be viewed as “public” because they occur in public. Examples include dismissing employees for attending a political rally or for buying a make of car in competition with that sold by their employer. The Charter’s insistence that anyone is entitled to earn his living in an occupation freely entered upon (revised Social Charter, Part I, 26 and Article 1§2) means that employees must remain free persons, in the sense that their employment obligations, and hence the powers of management, are limited in scope.

16. The principle is indisputable, even though it is sometimes difficult to determine the precise boundary between the occupational and non-occupational spheres, bearing in mind the nature of the work and the purpose of the business.

17. Admittedly, Article 1§2 only refers explicitly to the time when workers enter into employment. Logically, though, the fundamental principle of freedom which the Charter refers to with respect to this particular occasion must continue to apply thereafter in the non-work sphere. According to the Committee’s case-law, “the discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action)” (Conclusions XVI-1, Vol. 1, p. 313).

18. Secondly, employees must be protected against infringements of their dignity, as embodied in the Charter (Part I, Article 26, in which “dignity” appears in the title). What is at issue here is people’s private lives in the strictest sense. For example, certain employers, taking advantage of their dominant position over employees, intercept oral or written conversations of their employees or of job seekers between themselves or with third parties or question them about their sexual relationships or their religious or political beliefs.

19. Infringements of the two principles described above take many diverse forms. They may arise from questions to employees or job seekers about their family situation or background, their associates, their opinions, their sexual orientation or behaviour and their health or that of members of their family and about how they spend their time away from work. They may also arise from the storage, temporarily or permanently, and processing of such data by the employer, from their being shared with third parties and from their use for purposes of taking measures regarding the employees.

20. In Articles 1§2 and 26, as cited above, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms. However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the revised Social Charter. This applies in particular to Article 3 (one of whose aims is to counter threats to workers’ health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of

harassment).

21. Quite apart from the fact that the various types of conduct described above are sometimes aggravated by an intention to discriminate, they may in themselves upset the balance between the needs of the workplace and the individual's right to protection.

Comment on Article 12§4

22. The Committee has again considered whether the payment of child benefits may be made conditional on the children's residence. After a thorough examination, it decided that a residence requirement in respect of children is in conformity with Article 12§4.

Comments on Article 16

23. The Committee examines the means used by states to ensure the social, legal and economic protection of the various types of families in the population, especially single parent families, with a particular emphasis on vulnerable families, including Roma ones. States can choose such means freely, with the proviso that they must not jeopardise the effective protection of Roma families.

24. Since the focus of Article 16 is family protection, the Committee only deals with the housing question from this standpoint. The Committee examines in particular whether Roma families enjoy such protection in practice. It considers *inter alia* the availability of suitable temporary and permanent accommodation, and whether evictions that do not comply with the relevant procedural safeguards are prohibited. It points out that, as it stated in its decision on the merits of complaint *ERRC v. Greece* of 8 December 2004 (Complaint No. 15/2003), "even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States party to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised. [...] ultimate responsibility for implementation of official policy lies with the [...] state." (§29).

25. Article 16 applies to all forms of domestic violence. Since violence against children is more specifically addressed by Article 17, the Committee examines the issue under this provision.

26. With a view to interpreting States' obligations in this field, the Committee refers to the European Court of Human Rights ("the Court") judgement *X and Y v. the Netherlands* of 26 March 1985. The Court pointed out that Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life, does not merely compel the state to abstain from arbitrary interference but also implies positive obligations to ensure effective respect for the rights guaranteed by Article 8. "These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves" (§23).

27. The same applies to Article 16. Hence, the Committee examines whether women are offered protection, both in law (appropriate measures – including restraining orders – and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and

rehabilitate victims). The Committee assesses these issues in the light of the principles laid down in Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.

28. In the context of the present Conclusions, and in the interests of equal treatment between states, the Committee has decided not to conclude on the situation regarding domestic violence until it has full information on this issue. It asks for the next reports on Article 16 to provide a comprehensive description of the situation (measures in law and practice, data, decisions of justice), which the Committee will examine in the light of the aforementioned principles of interpretation. It will attach particular importance to measures that have improved the situation.

29. The Committee examines the conditions governing access to family mediation services, which help settle disputes and ensure that future relations between parents and between them and their children are not unduly damaged, whether such services are free of charge and cover the whole country, and how effective they are.

30. To ensure consistency between the conclusions on Articles 12§1, 13§1 and 16, the Committee has decided to use the "median equivalised income" indicator as calculated by Eurostat in its assessment under all three provisions. It is recalled that the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.

31. To ensure that the views of families are taken into account when family policies are drawn up, the Committee asks whether all the civil organisations representing families are consulted.

General Questions from the Committee

32. The Committee addresses the following general questions to all the States party and invites them to provide replies in the next report on the provisions concerned:

a. All areas where discrimination may occur

33. The Committee asks for national reports to provide comprehensive information on any measures introduced to take account of the fact that certain groups of the population, such as nomads, are particularly vulnerable and to secure for them the effective enjoyment of the rights enshrined in the Charter.

b. Article 1§2 – Restrictions

34. The Committee recalls that it has previously raised issues relating to state of emergency and anti-terrorism legislation, including legislation authorising the denial of employment for the purpose of safeguarding national security or protecting public safety or public order. Any restrictions on the right guaranteed by Article 1§2 must remain within the limits set by Article G and in particular comply with the principle of proportionality.

35. In view of the measures currently being taken by European states to combat terrorism, the Committee asks whether any legislation aimed at terrorism (or incitement to terrorism) explicitly precludes persons from taking up certain employment and, if so, under what circumstances such legislation is applied.

36. The Committee has already previously considered the general issue of prison labour. However, for an accurate examination and assessment of the situation, it requires certain specific items of information::

- Can a prisoner be required to work (irrespective of consent)?
- For a private undertaking / enterprise?
- within the prison?
- outside the prison?
- For a public/ state undertaking?

i) within the prison?

ii) outside the prison?

- What types of work may a prisoner be obliged to perform?
- What are the conditions of employment and how are they determined?

c. Article 1§2 – Right to Private Life

37. To provide the Committee with sufficient information to determine whether this balance is maintained, States party are invited to include in their next report information allowing the Committee to assess how employees' individual dignity and freedom are protected by legislation or through case law of courts from interference in their private or personal lives that might be associated with or result from the employment relationship (see §§ 13 – 21 above, comments on Article 1§2).

d. Article 13§4

38. The Committee asks whether unlawfully present foreign nationals, including persons whose applications for refugee or stateless person status have been rejected, are eligible for social and medical assistance in case of need, where necessary until they are repatriated.

Recent developments

39. At the 957th meeting of the Ministers' Deputies on 1 March 2006 the Committee of Ministers held an election to fill the seat which had become vacant following the

resignation of Ms Lenia SAMUEL effective as from 1 July 2005. The new member, Ms Ersiliagrazia SPATAFORA took up office on 1 March 2006 for a term that will come to an end on 31 December 2010.

40. In April 2006, Mr Gerard QUINN, First Vice-President, resigned from the Committee having been a member since 2001. The Committee wishes to express its appreciation and gratitude for the commitment of Mr QUINN to the Committee's work and for his lasting contribution to the development of its case law.

41. Following the resignation of Mr QUINN, the Committee elected Mrs Polonca KONCAR as First Vice-President of the Committee during the 215th session. The Bureau of the Committee henceforth has the following composition:

Mr Jean-Michel BELORGEY, President

Mrs Polonca KONCAR, First Vice-President

Mr Andrzej SWIATKOWSKI, Second Vice-President

Mr Stein EVJU, General Rapporteur

42. On the occasion of the 10th anniversary of the revised European Social Charter the Committee of Ministers at the 963rd meeting of the Ministers' Deputies on 3 May 2006 adopted a new reporting system effective as from 31 October 2007. The new system is as follows:

1. States shall present a report annually on a part of the provisions of the Charter (whether it be the 1961 Charter or the 1996 Revised Charter), the provisions having been divided into four thematic groups. In this way, each provision of the Charter will be reported on once every four years. The four groups of provisions shall be composed as follows:

Group 1

Employment, training and equal opportunities

- Article 1

- Article 9

- Article 10

- Article 15

- Article 18

- Article 20

- Article 24

- Article 25

Group 2

Health, social security and social protection

- Article 3
- Article 11
- Article 12
- Article 13
- Article 14
- Article 23
- Article 30

Group 3

Labour rights

- Article 2
- Article 4
- Article 5
- Article 6
- Article 21
- Article 22
- Article 26
- Article 28
- Article 29

Group 4

Children, families, migrants

- Article 7
- Article 8
- Article 16

- Article 17

- Article 19

- Article 27

- Article 31

2. The reports shall be presented on 31 October of each year. The European Committee of Social Rights shall be invited to publish its conclusions before the end of the following year.

3. The system enters into force as from 2007.

4. There will no longer be full reports for states having recently ratified the 1961 Social Charter and there will no longer be reports on all the non-hard core provisions for states having recently ratified the 1996 revised Social Charter.

Next report

43. The next reports submitted on the application of the Charter that will be examined by the Committee are the last under the present reporting system and will concern Articles 1§4, 2, 3, 4, 9, 10 and 15[1].

[1] Reports should be submitted before 31 March 2006.