EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉEUROPÉEN DES DROITSSOCIAUX

October 2018

FIRST REPORT

ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

HUNGARY

Meeting in Budapest on 6 March 2018

TABLE OF CONTENTS

I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights would examine - in a meeting or by written procedure - the level of conformity of the country's situation, in law and in practice, with non-accepted provisions. This review would be done for the first time five years after the ratification of the Revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

Hungary ratified the European Social Charter (revised) on 20/04/2009 accepting 51 of the Charter's 98 paragraphs. It has not accepted the system of collective complaints..

The meeting focused on the actual situation in Hungary, in law and in practice as regards Articles 4, 7, 24, 25, 27, 28, 29 and 31. The selection of the following provisions with a view to their acceptance by Hungary was made in consultation with the authorities:

- **Article 4§1, 2,3 and 4** (*Right to a fair remuneration)*
- **Article 7§ 2,3,4,5,7,8 and 9** (*Right of children and young persons to protection)*
- **Article 24** (R*ight to protection in cases of termination of employment)*
- **Article 25** (*Right of workers to protection of their claims in the event of the insolvency of their employer*);
- **Article 27§1, 27§2 and 3** (*Right of workers with family responsibilities to equal opportunity and treatment);*
- **Article 28 (***Right of workers representatives to protection in the undertaking)*
- **Article 29** *(Right to information and consultation in collective redundancy procedures)*
- **Articles 31§1** *(Right to housing)*

The European Committee of Social Rights proceeded to the examination of the situation on the basis of information provided orally by the government during the meeting and in writing (information submitted in 2014), and considered the following:

- in case of Articles 4§2, 4§5, 7§3, 25, 28 and 29 – Hungary is in a position to accept these provisions
- in case of Articles 4§1, 4§3, 4§4, 7§2, 7§4, 7§5, 7§10, 27 and 31§1– further clarification of the situation in law and practice would be required. The Committee invited Hungary to continue its consideration of these provisions with a view to their possible acceptance in the near future.

An exchange of views also took place concerning the 1995 Additional Protocol to the Charter providing for a system of collective complaints.

In view of the conclusions of this report, the Committee wishes to encourage Hungary to consider accepting additional provisions of the Charter and the 1995 Additional Protocol as soon as possible, so as to consolidate the paramount role of the Charter in guaranteeing and promoting social rights.

The European Committee of Social Rights remains at the disposal of the authorities for continued dialogue on the non-accepted provisions.

The detailed programme of the meeting, including the list of speakers, appears in Appendix I.

The situation of Hungary with respect to the Charter appears in Appendix II.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The meeting was opened byMrsJuditRézműves, Deputy Head of Department, Ministry of Human Capacities of Hungary. Interventions were made by representatives of the Ministries of the National Economy, Human Capacities andDefense.

The Committee's delegation consisted of Mr Giuseppe Palmisano, President ofthe European Committee of Social Rights,Ms Monika Schlachter, Vice-President of the European Committee of Social Rights, MrJozsefHajdu, member of the European Committee of Social Rights and MsCsillaKollonay-Lehoczky, former member of the European Committee of Social Rights.

The Secretariat was represented by Mr Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights and Ms Nino Chitashvili, administrator. They presented the main aspects of the case-law with regard to the non-accepted provisions and the possible acceptance of these provisions by Hungary. Full information on the case-law is available in the Digest of the Case-Law of the European Committee of Social Rights.

Article 4§1-the right to a fair remuneration

Situation in Hungary

The Government provided information concerning the statutory minimum wage, the amount of which is set by taking into account the labour market situation. Several supplements are envisaged in the Civil Service Act, depending on qualifications and hierarchy. Wage increases have been carried out for the employees in law enforcement, teachers, public administration. In the course of 2013-2018 700 billion HUF were spent in wage increases, which indicates that the wage policy is in the direction to ensure that civil service employees receive fair remuneration. Tax policy measures are also in place, as well as targeted forms of support. The representative of the Ministry of Defense also noted positive developments as concerns wage increases in 2015.

Opinion of the Committee

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for migrant workers).

The concept of "decent standard of living" goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the State Party concerned to conduct the needed enquiries or to provide estimates.

The Committee takes the view that acceptance of this provision is an inspiration for the Government to ensure fair and decent remuneration and therefore, this provision should be accepted even where the minimum wage falls below 50% of the average wage. Information should be provided on net values of both minimum and national average wages. References to representative sectors are important (such as, public service, manufacturing, health care services).

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation in Hungary. The Committee took note of the dynamic growth of wages as well as the employment rate. The gross and net wage increases went hand in hand with an increase of the number of people in active employment. However, less information was provided in this respect concerning the wages in the private sector. Additional information may be necessary regarding the net values of the minimum and average wages in both public and private sectors. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 4§2 – the right to an increase rate of remuneration for overtime work

Situation in Hungary

According to the Government, as regard remuneration for overtime – the main rule is 50% supplement that is added to the wage or 50% of supplementary rest period that is granted. This is provided for in the Labour Code.

Opinion of the Committee

Article 4§2 is inextricably linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime is work performed in addition to normal working hours.

The principle of this provision is that work performed outside normal working hours because it requires an increased effort on the part of the worker, who should be paid at a rate higher than the normal wage.This increase must apply in all cases.

Granting leave to compensate for overtime (instead of granting an increased remuneration) is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as it is closely linked with Article 2§1 which Hungary has accepted. Additional information may be necessary regarding flexible working time arrangements.

Article 4§3- the right of men and women to equal pay for work of equal value

Situation in Hungary

According to the Government equal pay for equal work is guaranteed by the Labour Code and by the Act CXXV. of 22 December 2003 on equal treatment and promotion of equal opportunities. There are clear rules in civil service – equal treatment in remuneration must be guaranteed. In the civil service, equal pay for men and women is guaranteed throughout the career. There have been very few cases where violation of the right to equal treatment has been identified.

Opinion of the Committee

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex. Women are entitled to equal pay for work of equal value, as men are. This means that the equal pay principle applies to the same work, but also to different works of the same value.

The principle of equality should cover all the elements of pay, that is wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.The right of women and men to "equal pay for work of equal value" must be expressly provided for in legislation.Domestic law must provide for appropriate and effective

remedies in the event of alleged wage discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court.

Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay. When the dismissal is the consequence of a worker's claim about equal wages, the employee can file a complaint for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If this reinstatement is not possible, he has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to fix the amount of this compensation, not the legislator.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation in Hungary, especially as regards the situation concerning equal pay in practice, including in the private sector. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 4§4-the right to a reasonable period of notice for termination of employment

Situation in Hungary

The Government stated that in accordance with the Labour Code, the legal employment relationship between the employer and employee can cease or can be terminated by the parties. The main difference between cessation or termination of the employment relationship is that in case of cessation of the employment relationship, the relationship ceases automatically by law while termination is initiated voluntarily by any or both parties, i.e. termination of the employment relationship is effected by the unilateral legal statement of any parties or agreement of both parties.

The Labour Code intends to ensure that the employee shall be able to prepare properly for the termination of employment relationship in case of termination by the employer, therefore the employer shall exempt the employee concerned from work duty for at least half of the notice period. For the period of dismissal from his duties the employee shall be entitled to absentee pay (except if he would not be eligible for any wages otherwise) [Section 70 (1) - (4) of the Labour Code].

According to the Government, reasonable period of notice is considered to be 30 days, which is extended after 20 years of service by another 60 days.

Opinion of the Committee

This paragraph forms part of the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages.

The concept of "reasonable" notice has not been defined *in abstracto* nor ruled on the function of the period of notice or the compensation in lieu thereof. It assesses the situations on a case by case basis. The major criterion for the assessment of reasonableness is length of service. It has concluded, for example, that the following periods of notice and/or compensation in lieu thereof were not in conformity to the Charter:

- five days' notice after less than three months of service;
- one week's notice after less than six months of service;
- two weeks' notice after more than six months of service;
- less than one month's notice after one year of service;
- eight weeks' notice after at least ten years of service;

- twelve weeks' notice for workers dismissed for long-term working incapacity who have five or more years of service.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation of Hungary, in particular the link between the length of service and the dismissal notice. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 4§5-deductions from wages

Situation in Hungary

The Labour Code provides that deductions from wages shall only be made on the basis of the relevant legislation, or up to the deduction-free part of the wages on the basis of an enforceable decision. Concerning wages, the employer may enforce directly only his claims arising from the provision of advance payments and only with the consent of the employee. The contribution or based on that, the deduction (claim enforcement) is only valid for wages on the deduction-free part of the wages [Section 161 (1) and (2) of the Labour Code]. No derogation is allowed from the rules for the deduction from wages neither based on the relevant agreement of the parties nor collective agreement [Section 165 (1) g) of the Labour Code].

Rules relating to public service officers

In the case of persons subject to the Public Service Officers Act, deductions from salary may be exclusively performed in accordance with the provisions of the Public Service Officers Act, however, taking into consideration that it is not possible to conclude a collective agreement in the case of persons subject to the Public Service Officers Act, furthermore, no "arbitration judgements" like this exist, the last term of the point cannot be interpreted in relation to the Public Service Officers Act.

Section 149 of the Public Service Officers Act shall determine the cases for deduction from salary. Accordingly, deductions from salaries, up to the deduction-free part thereof shall only be made on the basis of the relevant legislation or on an enforceable decision.

The employer shall be entitled to deduct his claim from the salary – up to the deduction-free part thereof – with the consent of the public service officer, respectively, if his claim arises from the provision of advance payments.

It is forbidden to perform deductions from salary, which serves for the advantage of the employer, its representative or an intermediary person in order that the public service officer may establish or maintain a public service relationship. With regard to the deduction from the salary, among others, the legislation on judicial enforcement applies.

Opinion of the Committee

Article 4§5 guarantees workers the right to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award). Therefore, workers should not be allowed to waive their right to limitation of deductions from their wage and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract. Article 4§5 applies also to civil servants and contractual staff in the civil service.

Such deductions must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence.

All forms of deduction are covered by this provision, including trade union dues, disciplinary fines, maintenance payments, repayment or wage advances, tax debts, compensation for benefits in kind, wage assignments or transfers, etc.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the wages may be subject to deductions only in circumstances which are well-defined in a legal instrument. Accordingly, the Committee recommended acceptance of Article 4§5.

Article 7 – the right to special protection for children against the physical and moral hazards to which they are exposed

7§2- minimum age of admission to employment with respect to occupations regarded as dangerous or unhealthy

Situation in Hungary

Act I of 2012 on the Labour Code and acts relating to health and safety at work and occupational safety contain specific provisions for young workers. Pursuant to the Labour Code, a young worker shall mean any worker under the age of eighteen [Section 294 (1) a) of the Labour Code]. The Labour Code establishes that workers must be at least sixteen years of age, and any person of at least fifteen years of age receiving full-time school education may enter into an employment relationship during the school holidays. By authorization of the guardianship authority, young persons under sixteen years of age may be employed for the purpose of performance in cultural, artistic, sports or advertising activities [Section 34 (2) and (3) of the Labour Code].

Opinion of the Committee

In application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work. However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation Hungary, in particular as regards the existence of an adequate statutory framework listing potentially hazardous work. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

7§3 – employment of persons who are still subject to compulsory education

Situation in Hungary

According to the Government the fundamental law prohibits child labour. The age of admission to employment is set at 16. At 15 youngsters can perform light work during school holidays. The Labour Inspection has the duty to monitor and issue sanctions. The Government has put together a list of work that is considered as light, which will be codified and introduced in the legislation.

Opinion of the Committee

In application of Article 7§1 domestic law must set the minimum age of admission to employment at 15 years. Article 7§3 guarantees the right of every child to education by safeguarding its

capacity to learn. Only light work is permissible for schoolchildren under this provision. The notion of “light work” is the same as under article 7§1.

In the case of States Parties that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article.

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

In order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 weeks during the summer holidays. Furthermore the assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of uninterrupted period of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate.

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.
In addition, the Committee recalls that, in any case, children should be guaranteed at least two consecutive weeks of rest during summer holiday.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the list of light work is clearly defined and also the fact that Hungary has already accepted Article 7§1, which is closely linked with 7§3. Accordingly, the Committee recommended acceptance of Article 7§3.

Article 7§4 - working hours of persons under 18 years of age in accordance with the needs of their development, and particularly with their need for vocational training

Opinion of the Committee

Under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice.

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article. However, for persons over 16 years of age, the same limits are in conformity with the article.

In the light of these requirements and in the absence of any information on this issue, the Committee considered that further information would be needed in order to properly assess the situation Hungary, in particular as regards the limits to working hours of children between 16-18 years of age. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 7§5- right of young workers to a fair wage

Situation in Hungary

According to the Government, as regards 7§5, there has been no case where a young employee has received a wage which falls below the minimum statutory wage.

Opinion of the Committee

In application of Article 7§5, domestic law must provide for the right of youngworkers to a fair wage and of apprentices appropriate allowances. This rightmay result from statutory law, collective agreements or other means.The “Fair” or “appropriate” character of the wage is assessed by comparingyoung workers' remuneration with the starting wage or minimum wage paid toadults (aged eighteen or above).

The young worker’s wage may be less than the adult starting wage, but anydifference must be reasonable and the gap must close quickly. Forfifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage isacceptable. For sixteen/eighteen year-olds, the difference may not exceed20%.
The adult reference wage must in all cases be sufficient to comply withArticle 4§1 of the Charter. If the reference wage is too low, even a youngworker’s wage which respects these percentage differentials is not consideredfair.

Apprentices may be paid lower wages, since the value of the on-the-job trainingthey receive must be taken into account. However, the apprenticeship systemmust not be deflected from its purpose and be used to underpay young workers.

Accordingly, the terms of apprenticeships should not last too long and, as skillsare acquired, the allowance should be gradually increased throughout thecontract period: starting from at least one-third of the adult starting wage orminimum wage at the commencement of the apprenticeship, and arriving atleast at two-thirds at the end.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation Hungary, in particular as regards the wages of young workers in proportion to the adult minimum wage and also, in relation to the fairness criteria established by Article 4§1. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

7§8 - prohibition of employment of persons under 18 years of age in night work

Situation in Hungary

According to the Government the Labour Code protects the right of workers, including young workers. Legislation prohibits young worker’s employment at night- from 10 pm to 6 am. The Act on vocational training stipulates the rules relating to the organisation of working time, prohibition of night shift in vocational training. Labour Inspection monitors compliance with these rules.

Opinion of the Committee

In application of Article 7§8, domestic law must provide that under–eighteen year olds are not employed in night work.

Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations, if they are explicitly provided in domestic law, necessary for the proper functioning of the economic sector and if the number of young workers concerned is low.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the legislation prohibits employment of young workers in night shifts. Accordingly, the Committee recommended acceptance of Article 7§8.

7§9 - persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control

Situation in Hungary

Section 86 (8/A) of Act XCIII of 1993 on labour safety, juveniles are listed in the vulnerable groups of workers, in respect of whom the Ministry of Public Welfare Decree 33/1998 (VI 24) on the medical examination and reporting of job, professional and personal hygienic aptitude contains special requirements and the list of loads that are potentially harmful to the health of the co-called vulnerable groups that should be prohibited.
On the basis of the Decree on medical aptitude examination, the employer must provide a medical aptitude examination to young workers before taking up work and on a regular basis during the employment relationship. As regards young workers, the Decree also defines the frequency of the periodic medical aptitude tests for jobs involving special hazards or health related risks as listed in the Schedule to the Decree.

Opinion of the Committee

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by domestic laws or regulations.

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. They may, however, be carried out by the occupational health services, if these services have the specific training to do so.

The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long. In this regard, an interval of two years has been considered to be too long.

The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the legislation imposes an obligation on the employer to provide medical examination for young workers before the take up of the work and at regular intervals afterwards. Accordingly, the Committee recommended acceptance of Article 7§9.

Article 7§10 protection of children and young persons against physical and moral dangers

Situation in Hungary

According to the Government, the Penal Code was amended in 2017 to take into account the obligations stemming from international treates as well as the EU law as regards sexual exploitation of children, including through information technologies.

Opinion of the Committee

Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies. This Article covers also the trafficking of human beings since this is a form of exploitation.

The fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10.

The obligation of States Parties under Article 7§10, in relation to protection against physical hazards, applies to all minors presents on the territory of the State, whether he is a foreigner or not and whether he is a legal resident or not, according to the link between this protection and the right to life and to physical integrity.

In order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

The following are minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised. In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States Parties must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent. Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.
- a national action plan combating the sexual exploitation of children should be adopted.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation Hungary, in particular as regards the existence of the legislative framework prohibiting all forms of sexual exploitation of children. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 24 - the right to protection in cases of termination of employment

Situation in Hungary

According to the Government, the Labour Code provisions are flexible and realistic in respect of termination of employment. Most conflicts arise in connection with termination and there has been a significant number of labour litigation cases. The legislation provides for the obligation of an employer to give a valid reason for termination, such as the professional conduct of the employee and operational requirements.

According to the Government, the Civil Service Act sufficiently governs unlawful termination. Redundancy and reorganisation have been the most important valid reasons for termination by notice. There are safeguards that guarantee protection against unlawful dismissal in the civic service.

The representative of the Ministry of the Interior also provided information regarding the amendments that were introduced in January 2017 concerning valid reasons for dismissal, such as disability and national security reasons.

As regards available remedies and redress, according to the Labour Code if internal remedy (complaint to the superior) is rejected, then the legal remedy service (court) opens. As regards compensation, its amount is limited to 12 months of wage.There is no possibility of reinstatement.

Opinion of the Committee

Article 24 relates to termination of employment at the initiative of the employer. Under Article 24, the following are regarded as valid reasons for termination of an employment contract:

i. reasons connected with the capacity or conduct of the employee

A prison sentence delivered in court for employment-related offences can be considered a valid reason for dismissal. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid

reasons unless the length of the custodial sentence prevents the person from carrying out their work.

ii. certain economic reasons

Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service. The assessment relies on the domestic courts' interpretation of the law. The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law.

Prohibition of termination of employment for certain reasons

Two reasons are examined only under Article 24, namely:

i. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities

National legislation or case-law must contain express safeguards against retaliatory dismissal. Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, States Parties must be able to show how national legislation conforms to the requirement of the Charter.

ii. temporary absence from work due to illness or injury

A time limit can be placed on protection against dismissal in such cases. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.

Any employee who considers him- or herself to have been dismissed without valid reason must have the right to appeal to an impartial body. The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.

Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate if they include the following provisions:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- the possibility of reinstatement; and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

In the light of these requirements, the Committee noted that there is a ceiling to the compensation that can be granted in cases of unlawful dismissal. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 25 - right of workers to protection of their claims in the event of the insolvency of their employer

Situation in Hungary

According to the Government, the wage guarantee fund has been set up, to satisfy the workers claims in case of bankfupcy when no other assets are available to pay wages. Liquidator collects claims related to wages and the Government office receives applications. The wage guarantee fund provides proper protection of claims. As regards the average time for satisfaction of claim, according to the Government the liquidator has to turn immediately to the guarantee fund once the data are available and the law provides that within 10 days the state body should make a decision. The state will pay the wage arrearsthrough the guarantee fund. Since 2016 the workers have been able to get their reimbursement directly.

Opinion of the Committee

The Committee recalled that Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States Parties having accepted this provision benefit from a margin of discretion as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution.

However, the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Guarantees must exist for workers that their claims will be satisfied in such cases. The protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.

A privilege system, on its own cannot be regarded as an effective form of protection in situations where there is no alternative to it and alone it cannot provide effective guarantee of protection, due to the fact that the employer has no assets.

The Committee has found that a privilege system where workers' claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs did not amount to an effective protection under the Charter.

In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.

States Parties may limit the protection of workers' claims to a prescribed amount. Domestic laws or regulations may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level, namely not less than three months wage under a privilege system and eight weeks under a guarantee system.The workers' claims covered should also include holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred.

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. The assessment of the conformity of such exclusion is done on a case-by-case basis.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the guarantee fund has been set up and the timeframe for reimbursement of claims has been reasonable. Accordingly, the Committee recommended acceptance of Article 25.

Article 27 –the rights of workers with family responsibilities (§1,2 and 3)

Situation in Hungary

According to the Government the Protection of Families Act provides for special protection measures as regards parental leave with a view to fine-tuning work and family life:

- family tax concessions: 54% of women use tax credit possibility contributing to economic independence of women;
- coordination of private and family life;
- fathers can also use parental leave after six months. The proportion of men using this parental leave possibility has been in the rise.
- better employment of women, byencouraging them to go back to the labour market and byby providing part-time work possibilities.

Moreover, the central budget supports and funds daycare facilities for children. According to the representative of the Child Welfare Department, before 2014 childcare was an autonomous activity of small communities. Child welfare basic services were reorganized and provide basic support for people living within community. Child welfare centres have been set up.

Opinion of the Committee

Under Article 27§1a of the Charter, States Parties should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities.

Therefore, measures need to be taken by States Parties to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training.

Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities.

.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security.

Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.
Article 27§2 provide for the right to parental leave which is distinct from maternity leave.

Article 27§2 requires States Parties to provide the possibility for either parent to obtain parental leave, as an important element for the reconciliation of professional, private and family life. The duration of parental leave should be determined by States Parties.

Domestic law should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent. The States Parties are under a positive obligation to encourage the use of parental leave by either parent.

States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave. The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations.

Family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation in Hungary concerning all paragraphs of Article 27. In particular, information is needed as concerns whether the right to parental leave is guaranteed to each parent and whether parents taking parental leave retain their social security rights. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

Article 28 - the right of workers' representatives to protection in the undertaking and facilities to be accorded to them

Situation in Hungary

The Government stated that according to the Labour Code the representatives of the employees are entitled to labour law protection. If an employee (public servant, public service officer, etc.) holds an elected trade union office, or is a member of the works council (public servant council), or is a shop steward, a representative of public servants or a work safety representative, before the termination of the employment relationship of such an employee by ordinary termination or by dismissal, the employer is obligated to obtain the preliminary approval of the competent body [Article 273 (1) of the Labour Code, Section 76 (3) of Act XCIII of 1993].

The representatives of the employees are entitled to such protection during their mandate and for six months following the termination of their mandate, provided that they held their office for at least twelve months [Article 273 (1) of the Labour Code].

Employers may employ the officers of interest representing organisations in a position, workplace or at an employer other than what is specified in the employment contract, only if such approval (the consent of the direct superior trade union body) is obtained [Sections 273 (1) and 53 of the Labour Code].

Furthermore, the same protection is due to officers employed at a fixed establishment that is considered independent, whose number is determined by the average statistical number of employees calculated on the first day of the calendar year with regard to the preceding calendar year, and to the official appointed by the supreme body of the trade union represented at the employer, specified in the statutes [Article 273 (3) and (4) of the Labour Code]. In such cases the trade union has the right to appoint another official instead of the above official, if the official's employment relationship or trade union office has terminated [Article 273 (5) of the Labour Code].

The trade union communicates its position on the above measures of the employer (its approval or rejection) in writing, within eight days following receipt of the employer's written notice. If the trade

union does not agree with the planned measure, it must be stated in the communication. If the trade union fails to communicate its opinion within the above deadline, it shall be regarded as an approval of the planned measure [Article 273 (6) of the Labour Code].

Representatives of the employees are entitled to benefits concerning working time in the interest of performing their trade union and interest representing activities, and they are exempted from their obligation to work during the period when they consult with the employer. Such reduction in working time is one hour per month in respect of every two trade union members employed at the employer, and the number of hours must be determined on the basis of the number of trade union members on 1 January of the given year, and the reduction can be asserted until the end of the year in question. Time off work cannot be redeemed.

The trade union is obligated to notify the employer about working time reduction (not including unforeseeable, pressing and absolutely justified cases) at least five days in advance. Absentee pay shall be provided for the duration of working time reduction and for the duration of consultation with the employer [Article 274 (1) - (5) of the Labour Code].

The Labour Code provides that a person acting on behalf of the trade union, with no employment relationship can enter the employer's site, if the trade union has members employed by the employer [Article 275 of the Labour Code].

Opinion of the Committee

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States Parties may therefore establish different kinds of workers' representatives either trade union representatives or other types of representatives or both. Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.

The protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office. The extension of the protection granted to workers' representatives to at least six months after the end of their mandate is considered reasonable.

Remedies must be available to worker representatives to allow them to contest their dismissal.

Where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the representatives of employees are provided legal protection. Accordingly, the Committee recommended acceptance of Article 28.

Article 29 - the right to information and consultation in collective redundancy procedures

Situation in Hungary

According to the Government, this issue is regulated by the EUlaw and the Hungarian legislation meets the standards of the Charter. The law defines what is regarded as collective redundancy. Employer is obliged to notify/consult the works council in case of a massive redundancy. The legislation also establishes deadlines.

The employer has to strike an agreement with the works council. If there is an agreement, it has to be put in writing and sent to the public employment service, including the number of persons concernedand the schedule of termination of employment. Any dismissal beyond these requirements shall be considered as unlawful.

The Government also noted that the termination of employment for redundancy may not take place if information and consultation has not taken place.

Opinion of the Committee

Under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.

Redundancies concerned

Under Article 29 the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.

Domestic law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular workplace by a trade union or other representative body. Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.

Under Article 29, consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies.

Article 29 requires that the States Parties establish an information and consultation procedure which should precede the process of collective redundancies. Its provisions are directed – on the one hand – towards ensuring that workers are made aware of reasons and scale of planned redundancies, and – on the other hand – towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.

Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.

Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.

In view of these requirements, the Committee considered that Hungary is in a position to accept this provision as long as the legislation provides for the information and consultation in case of termination of employment as a result of collective redundancy procedures. Accordingly, the Committee recommended acceptance of Article 25.

Article 31§1– the right to housing

Situation in Hungary

The Government provided the following information:

Housing is a significant element of National Social Inclusion Strategy and of the associated action plan for the period 2012-14. National Social Inclusion Strategy handles housing poverty by a complex method, linking housing to employment, community development, healthcare measures, and the improvement of the availability of community services.

The City Council of Budapest and the Ministry of Interior have created an institution providing accommodation for the homeless persons in four locations in Budapest in the framework of the "Heated Street" programme. The Ministry of Human Capacities granted 500 million HUF support for the program in the end of 2011.

Home maintenance support is a contribution to households in need of social assistance to meet the regular costs related to the maintenance of their home or non-residential property. This support may be granted for the payment of gas, electricity and water consumption, district heating, the sewage charges and garbage collection, rent, sublet fee, instalments to pay off a housing loan from a financial institution, the common costs, or fuel. Home maintenance support shall primarily be provided in the form of social benefits in kind, for the regular home maintenance expenses which would pose the greatest risk to housing if they were not paid. Home maintenance support may be provided to those households whose monthly income per consumption unit does not exceed 250% of the prevailing minimum old age pension (currently 71,250 HUF) and none of the members of the household have any assets. The amount varies depending on the income of the family and the size of the apartment, but its minimum amount is 2,500 HUF.

The Government stated that theState guarantee for housing as a subjective right to everyone is not a viable option for Hungary in the current economic circumstances. In the short term it would entail such additional burden on the budget which cannot be financed without jeopardizing economic and social stability.

Opinion of the Committee

Definition and Material scope

States Parties must guarantee to everyone the right to adequate housing. They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.

The notion of adequate housing must be defined in law. “Adequate housing” means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.

Positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers. As a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They, therefore,

require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.

A problem of non-conformity under this provision in several countries has resulted from the failure to provide a sufficient number of halting sites for Travellers as well as the poor living conditions on such sites.

Likewise, housing policies which have resulted in the spatial and social segregation of Roma (poorly built housing, on the outskirts of towns, segregated from the rest of the population), have also led to breaches of the Charter.

Effectiveness

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.

Legal protection

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies. Any appeal procedure must be effective.

In the light of these requirements, the Committee considered that further information would be needed in order to properly assess the situation in Hungary concerning Article 31§1. In particular, information is needed as concerns the definition of adequate housing. The Committee invited Hungary to continue its consideration of this provision with a view to its possible acceptance in the near future.

III. EXCHANGE OF VIEWS ON THE COLLECTIVE COMPLAINTS PROCEDURE

Presentation by the Council of Europe delegation

The collective complaints procedure, which came into force in 1998 under an Additional Protocol to the European Social Charter, complemented the judicial procedure under the European Convention of Human Rights. However, it was not a system of individual applications.

The aim of the procedure was to increase the effectiveness and the speed of the implementation of the European Social Charter and also to increase the role of the Social partners and NGOs by giving them a more prominent role in enabling them to directly apply to the Committee when they consider that the Charter is not correctly applied in a country.

The complainant organisation is not necessarily a victim and there is no obligation to exhaust domestic remedies.

The organisations entitled to lodge collective complaints are as follows:

- the European social partners: European Trade Union Confederation (ETUC), for employees; Business Europe and International Organisation of Employers (OIE), for employers;
- certain international non-governmental organisations (INGOs) holding participatory status with the Council of Europe;
- social partners at national level.

Furthermore, any State may grant representative national non-governmental organisations (NGOs) within its jurisdiction the right to lodge complaints against it. So far, only Finland has done so.

A complaint may be declared admissible even if a similar case has already been submitted to another national or international body. The fact that the substance of a complaint has been examined as part of the Charter supervision procedure based on government reports does not constitute an impediment to the complaint's admissibility.

The fact that a complaint relates to a claim already examined in the context of a previous complaint is not in itself a reason for inadmissibility; the submission of new evidence during the examination of a complaint may prompt the Committee to re-assess a situation it has already examined in the context of previous complaints and, where appropriate, take decisions which may differ from the conclusions it adopted previously.

Decision on the merits

If the complaint is declared admissible, the Committee asks the respondent State to make written submissions on the merits of the complaint within a time limit which it sets. The President then invites the organisation that lodged the complaint to submit, on the same conditions, a response to these submissions. The President may then invite the respondent State to submit a further response. It is a real adversarial procedure.

International organisations of employers and trade unions are invited to make observations on complaints lodged by national organisations of employers and trade unions or by non-governmental organisations. The observations submitted here are transmitted to the organisation that lodged the complaint and to the respondent State.

The Committee may also invite any organisation, institution or person to submit observations. Any observation received by the Committee is transmitted to the respondent State and to the organisation that lodged the complaint.

In the course of the examination of the complaint, the European Committee of Social Rights may organise a hearing. The hearing may be held at the request of one of the parties or on the Committee's initiative. The hearing is public unless the President decides otherwise.

Following deliberation, the Committee adopts a decision on the merits of the complaint. It decides whether or not the Charter has been violated. The decision is notified to the parties and the Committee of Ministers.

Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter and the Protocol providing for the system of complaints, the decisions of the European Committee of Social Rights must be taken into consideration by the States concerned; however, they are not enforceable in the domestic legal system. In practice, this means that when the Committee rules that the situation in a country is not in compliance with the Charter, the complainant organisation cannot require the committee's decision to be enforced in domestic law as would be the case with a ruling by a court in the State concerned.

The decisions of the Committee – like its Conclusions in the reporting system - are declaratory; in other words, they set out the law. On this basis, national authorities are required to take measures to give them effect under domestic law. In this connection, domestic courts could declare invalid or

set aside domestic legislation if the Committee has ruled that it is not in compliance with the Charter, depending on the internal legal system of the State.

In the event of violation of the Charter, the State is asked to notify the Committee of Ministers of the Council of Europe of the measures taken or planned to bring the situation into conformity.

The Committee of Ministers may adopt a resolution, by a majority of those voting. The resolution takes account of the respondent State's declared intention to take appropriate measures to bring the situation into conformity. The Committee of Ministers' decision is based on social and economic policy considerations not on legal considerations.

If the State in question does not indicate its intention to bring the situation into conformity, the Committee of Ministers may also adopt a recommendation to the State. In view of the importance of this decision, a two-thirds majority of those voting is required here. In the case of both resolutions and recommendations, only States party to the Charter may take part in the vote.

The European Committee of Social Rights' decision on the merits of the complaint is made public at the latest four months after the report is transmitted to the Committee of Ministers and is published on the Council of Europe website.

Ultimately, it falls to the Committee to determine whether the situation has been brought into compliance with the Charter.

The collective complaints procedure is intimately linked to core democratic values and to the rule of law. Fully-fledged participation of the social partners and of civil society, including the possibility for them to seek legal remedies for real or perceived injustices, is a defining characteristic of any functioning democracy.

The collective complaints procedure brings the Charter closer to civil society and to European citizens at large and may thus contribute to regaining the trust of citizens in the European construction.

The procedure provides practice that is of relevance to national and European courts, which are invited to give weight to the fundamental rights guaranteed by the Charter.

As from 2014, States Parties that have accepted the complaints procedure benefit from a simplified reporting procedure every second year, when they report exclusively on the follow-up to the decisions in collective complaints concerning them. This will alleviate the work-load under the reporting procedure of both the Committee and the States Parties.

Experience has shown that, since the introduction of the procedure, the number of complaints over time had been relatively limited and has not created an undue burden on governments.

It was also recalled that, in the framework of the Turin process launched in 2014, reinforcement of the collective complaints procedure was a priority and all member States had been called on to ratify the Protocol. It provided a legal tool for guaranteeing the full enjoyment of fundamental social and economic rights and had important implications for improving democracy through the involvement of civil society as actors.

The position of Hungary

The Government representatives welcomed the information provided on the collective complaints procedure. Hungary in principle recognises the interest and potential of the complaints procedure and has given it careful consideration. On two occasions, in 2007 and 2009, the Government undertook a specific legal analysis of the procedure and the feasibility of Hungary accepting it. On both occasions it was concluded that the Hungarian legal and judicial framework for the time being was not adequately geared to integrating with this international procedure and it was also the view

that it could entail an administrative burden which the Hungarian Government would not be able to absorb.

However, in view of the information and the arguments provided by the Council of Europe delegation, the Government would keep the situation under review and follow the further developments of the procedure and the experience of the States Parties who had accepted this procedure with a view to possible acceptance in the future.

APPENDIX I: Programme of the meeting on thenon-accepted provisions ofthe European Social Charter

PROGRAMME

MEETING ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

organised by

Department of the European Social Charter, DG I
Council of Europe,
Ministry of Human Capacities
Hungary

Budapest, 6 March 2018

Venue: Council of Europe Youth Centre, Budapest (1024 Budapest, Zivatar street 1-3),

Working languages: English and Hungarian

The meeting is organised in the framework of the procedure provided for by Article 22 of the Charter on “non-accepted provisions”. It will consist of an exchange of views and information on the provisions not accepted by Hungary as well as on the collective complaints procedure.

9.30 Opening of the meeting

Exchange of views on provisions of the European Social Charter not yet accepted by Hungary

MrsJuditRézműves, Deputy Head of Department, Ministry of Human Capacities of Hungary

Mr Giuseppe Palmisano, President of the European Committee of Social Rights (or Mr Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights, Department of European Social Charter)

9.45 Thematic group 1 - Employment, training and equal opportunities

Articles 24 and 25

The situation in law and in practice in Hungary – presentations by:
Article 24 – MrsMónikaMoskó Deputy Head of Department and MrsIldikóBodgál senior adviser (Ministry for National Economy)
Article 25 – MrsMónikaMoskó Deputy Head of Department and MrsIldikóBodgál senior adviser (Ministry for national Economy)

Presentations by:
Article 24 – The European Committee of Social Rights (Ms Monika Schlachter)

Article 25 – The European Committee of Social Rights (MsCsillaKollonay-Lehoczky)

Discussion

10.30 Coffee break

11.00 Thematic group 3 – Labour rights

Article 4§1-5, Article 28 and Article 29

The situation in law and in practice Hungary – presentations by:
Article 4 - MrsMónikaMoskó– Deputy Head of Department and MrsIldikóBodgál – senior adviser (Ministry for National Economy), MrsCsillaHuszár – legal officer (Ministry of Defence), MrFerenc Kiss – legal officer (Ministry of Justice), Mrs/Mr ….. (Ministry of Interior)
Article 28 – MrsMónikaMoskó Deputy Head of Department and MrsIldikóBodgál senior adviser (Ministry for National Economy)
Article 29 – MrsMónikaMoskó Deputy Head of Department and MrsIldikóBodgál senior adviser (Ministry for National Economy)

Presentations by:
Article 4 – The European Committee of Social Rights (Mr Giuseppe Palmisano)
Article 28 – The European Committee of Social Rights (MrJozsefHajdu)
Article 29 – The European Committee of Social Rights(MrJozsefHajdu)

Discussion

12.30 Lunch break

14.00 **Thematic Group 4 – Children, family, migrants**

Article 7§2, 3, 4, 5, 7, 8, 9 and 10, Article 27§1-3andArticle 31§1

The situation in law and in practice in Hungary- presentations by:
Article 7 – MrsZsuzsannaDebreceniKormos – Head of Unit, MrsSzabó-HallaNikoletta – legal officer, MrsIldikóBárányKovács – Head of Department, MrAndrásGyöre– officer of child protection and guardianship (Ministry of Human Capacities)
Article 27 – MrsZsuzsannaDebreceniKormos – Head of Unit, MrsSzabó-HallaNikoletta – legal officer, MrsIldikóBárányKovács – Head of Department (Ministry of Human Capacities)
Article 31 –MrBalázsVéghelyi – professional adviser and Ms Edina Molnár – social policy officer (Ministry of Human Capacities), MrsCsillaHuszár – legal officer (Ministry of Defence), MrFerenc Kiss – legal officer (Ministry of Justice), Mrs/Mr ….. (Ministry of Interior)

Presentations by:
Article 7 – The European Committee of Social Rights (Ms Monika Schlachter: 7§4, 7§8, 7§9) and Department of the European Social Charter (Ms Nino Chitashvili: 7§2, 7§3, 7§10, Mr Henrik Kristensen: 7§5)
Article 27 – The European Committee of Social Rights(MsCsillaKollonay-Lehoczky)
Article 31 – The European Committee of Social Rights (JozsefHajdu: 31§1)

Discussion

15.30 Coffee break

16.00 The collective complaints procedure

Introduction by Mr Henrik Kristensen, Deputy Executive Secretary of the European Committee of Social Rights

MrsIldikóPákozdi – senior adviser (Ministry of Human Capacities)
MrsIldikóBodgál – senior adviser (Ministry for National Economy)

Discussion with the members of the European Committee of Social Rights

17.00 Concluding remarks
- MrsJuditRézműves, MrsIldikóPákozdi (Ministry of Human Capacities)
- Mr Giuseppe Palmisano, President of the European Committee of Social Rights

APPENDIX II: Situation of Hungary with respect to the European Social Charter

— Hungary and the European Social Charter —

Signatures, ratifications and accepted provisions

Hungary ratified the European Social Charter on 08/07/1999 and the Additional Protocol to the Charter on 01/06/2005.

It ratified the Amending Protocol to the Charter on 04/02/2004

Hungary ratified the Revised European Social Charter on 20/04/2009 accepting 51 of the Revised Charter's 98 paragraphs.

It has not accepted the system of collective complaints.

The Charter in domestic law

Article 7§1 of the Constitution: "The legal system of the Republic of Hungary shall ensure harmony between the assumed international law obligations and domestic law'."

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 1

I. Reporting system 2

Reports submitted by Hungary

Between 2002 and 2017, Hungary submitted 7 reports on the application of the 1961 Charter and 6 reports on the application of the Revised Charter.

The 7th report, submitted by 27/02/2017, concerns the accepted provisions relating to Thematic Group 2 "Health, social security and social protection", namely:

- 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 23),
- the right to protection against poverty and social exclusion (Article 30).

Conclusions with respect to these provisions will be published in January 2018.

The 7th report, which should be submitted by 31/10/2018, should concern the accepted provisions relating to Thematic Group 3 "Labour Rights", namely:

- 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 take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right of 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).

The conclusions related to these provisions will be published in January 2019.

---

[1]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 foundon the HUDOC database and in the Digest of the case law of the Committee.

[2]Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.
Following a decision taken by the Committee of Ministers in April 2014, States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.
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.

Situations of non-conformity [3]

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2012

► *Article 1§4 – Right to work- Vocational guidance, training and rehabilitation*
It has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

► *Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities*
It has not been established that the right of persons with disabilities to mainstream training is effectively guaranteed.

► *Article 15§2 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities*
- It has not been established that the legal obligation to provide reasonable accommodation was respected during the reference period;
- It has not been established that persons with disabilities are guaranteed an effective equal access to employment.

Thematic Group 2 "Health, social security and social protection" - Conclusions 2017

►*Article 3§2 – Right to safe and healthy working conditions - Safety and health regulations*
Self-employed and domestic workers as well as other categories of workers are not protected by occupational health and safety regulations.

►*Article 11§1- Right to protection of health - Removal of the causes of ill-health*
Measures taken to reduce the maternal mortality have been insufficient.

►*Article 12§1 - Right to social security - Existence of a social security system*
- the minimum amount of old-age pensions is inadequate;
- the minimum amount of jobseeker's aid is inadequate;
- the maximum duration of payment of jobseeker's allowance is too short;
- the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate.

►*Article 13§1 - Adequate assistance for every person in need*
The level of social assistance paid to a single person without resources, including elderly persons, is not adequate.

►*Article 14§1 - Promotion or provision of social services*
Equal access to social services is not guaranteed for lawfully resident nationals of all States Parties.**(Conclusions 2017)**

► *Article 16 - Right of the family to social, legal and economic protection*
It has not been established that there is an adequate supply of housing for vulnerable families.

Thematic Group 3 "Labour rights" - Conclusions 2014

► *Article 2§1 – Right to just conditions of work - Reasonable working time*
The working hours of employees on on-call and stand-by duty may be up to 24 hours a day; the weekly working hours of employees on stand-by duty may be up to 72 hours.

► *Article 2§3 – Right to just conditions of work - Annual holiday with pay*
It has not been established that the workers' right to take at least two weeks uninterrupted holidays during the year the holidays were due is sufficiently guaranteed.

[3] Further information on the situations of non-conformity is available on the HUDOC database.

► *Article 6§2– Negotiation procedures*
No promoting measures have been taken in order to facilitate and encourage the conclusion of collective agreements, even though the coverage of workers by collective agreements is manifestly low.

► *Article 6§4 – Right to bargain collectively - Collective action*
In the civil service, the right to call a strike is restricted to trade unions which are parties to the agreement concluded with the Government; the criteria used to define civil servant officials who are denied the right to strike go beyond the scope of Article G of the Charter; civil service trade unions may only call strikes with the approval of a majority of the staff concerned.

Thematic Group 4 "Children, families, migrants" - Conclusions 2015

► *Article 7§1 - Right of children and young persons to protection- Prohibition of employment under the age of 15*
The definition of light work is not sufficiently precise.

► *Article 16 - Right of the family to social, legal and economic protection*
- Evicted families can be left homeless;
- It has not been established that there is an adequate supply of housing for vulnerable families;
- Roma families do not have access to adequate housing;

► *Article 17§1 - Right of children and young persons to social, legal and economic protection - assistance, education and training*
The maximum period of pre-trial detention for minors is excessive.

► *Article 17§2 - Right of children and young persons to social, legal and economic protection - Free primary and secondary education - regular attendance at school*
Roma children are subject to segregation in the educational field.

The Committee has been unable to assess compliance with the following rights and has invited the Hungarian Government to provide more information in the next report in respect of the following provisions:

Thematic Group 1 "Employment, training and equal opportunities"

►Article 1§1 - Conclusions 2012
►Article 10§4 - Conclusions 2012
►Article 15§3 - Conclusions 2012
►Article 20 - Conclusions 2012

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

►Article 3§3 - Conclusions 2017

Thematic Group 3 "Labour rights"

►Article 2§2 - Conclusions 2014
►Article 2§5 - Conclusions 2014
►Article 21 - Conclusions 2014
►Article 22 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

►Article 8§1 - Conclusions 2015

II. Examples of progress achieved in the implementation of rights under the Charter
(update in progress)

Thematic Group 3 "Labour rights"

► Restrictions on daily or weekly exposure time in the case of occupations subject to extreme temperatures and vibration (Decree no. 26/1996).

Thematic Group 4 "Children, families, migrants"

► Measures taken to enable nationals of other States Parties to have equal entitlement to specific emergency assistance (amendment of the Health Insurance Benefits Act in 2004).

►The child protection law of 1997 was amended in 2004 (effective as of 1 January 2005) so as to prohibit all forms of corporal punishment, therefore including such punishment in the home.

►The Criminal Code, that entered into force on 1 July 2013, introduced the crime of "domestic violence".

►Pursuant to the legal provisions on asylum and child protection in effect from 1 May 2011, unaccompanied minors requesting their recognition shall be placed in child protection institutes under the legal regulations on child protection. As a result, the scope of the Child Protection Act extends to unaccompanied minors requesting their recognition as well as children with an admitted status and children recognised as refugees or protected by the Hungarian authorities.

Thematic Group 2
Social security

►In accordance with the Act CXXII of 2015 on Primary Health Service, school health services are now part of the primary health service which is a mandatory responsibility of municipal governments

APPENDIX III - Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011
at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on Governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.