



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

March 2017

**THIRD REPORT
ON THE NON-ACCEPTED PROVISIONS
OF THE EUROPEAN SOCIAL CHARTER**

NORWAY

Written procedure

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OPINION

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.

As Norway ratified the Charter on 7 May 2001, accepting 80 of the 98 paragraphs, the procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Norwegian ministries in Oslo on 28 March 2006.

Following this meeting, the European Committee of Social Rights at the time concluded that, from the point of view of the situation in law and in practice, there were no obstacles to the immediate acceptance of Articles 2§7, 3§1, 18§1, 18§4, 27§1 (a and b) and 27§3. Moreover, the Committee considered – subject to certain clarifications – that there were no significant or insurmountable obstacles to acceptance of Articles 3§4, 7§4, 7§9, 8§4 and 26§1.

With a view to carrying out the procedure for the second time in 2011, the Committee invited the Norwegian authorities to provide written information on the non-accepted provisions. Having examined the written information, the Committee confirmed its opinion adopted in 2006.

With a view to carrying out the procedure for the third time in 2016, the Norwegian authorities were invited, by letter of 4 December 2015, to provide written information on the non-accepted provisions before 31 May 2016. The Norwegian Ministry of Labour and Social Affairs informed the Committee about the ongoing process of preparing the written information by letters dated 19 September 2016 and 20 December 2016, a process that was delayed by *inter alia* the need for coordination between several ministries.

By letter of 31 January 2017, the Norwegian authorities advised that they were aware of the opinion of the Committee as regards the possibility of accepting of Articles 2§7, 3§1, 18§1, 18§4, 27§1 and 27§3. However, they intended to undertake a more in-depth analysis before initiating a formal ratification process. This work has been delayed for various reasons but will now be given priority by the Ministry that has already taken an initiative to hold a meeting with other relevant ministries to clarify the further process. The Ministry will then notify the Committee of the outcome of the ratification process.

As regards the remaining non-accepted provisions – Articles 3§4, 7§4, 7§9, 8§2, 8§4, 8§5, 18§2, 18§3, 19§8, 26§1, 26§2 and 29 - the Norwegian authorities informed the Committee that no substantial changes have been made in the relevant legislation and practice since 2011.

The Committee notes with interest the Government's statement that it is working actively on the ratification of Articles 2§7, 3§1, 18§1, 18§4, 27§1 and 27§3. It welcomes the fact that, compared with the statement made in 2011, two additional provisions are under consideration (Article 18§§1 and 4). The Committee wishes to encourage the Norwegian authorities to complete this work with a hopefully positive result as soon as possible thus consolidating the paramount role of the Charter in guaranteeing and promoting social rights.

Furthermore, the Committee invites Norway to consider recognising the right of national NGOs to lodge complaints before the Committee in the framework of the collective complaints procedure, as foreseen by Article 2 of the Additional Protocol providing for a system of collective complaints.

The next examination of the provisions not accepted by Norway will take place in 2021.

APPENDIX I

— Norway and the European Social Charter —

Signatures, ratifications and accepted provisions

Norway ratified the European Social Charter on 26/10/1962; it accepted 60 of the Charter's 72 paragraphs.

Norway ratified the Additional Protocol providing for a system of collective complaints on 20/03/1997. It has not yet made a declaration enabling national NGOs to submit complaints.

Norway ratified the Revised Charter on 07/05/2001; it accepted 80 of the Revised Charter's 98 paragraphs.

The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	
8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1	
15.2	15.3	16	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3	
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20	21	22	
23	24	25	26.1	26.2	27.1*	27.2	27.3	28	29	30	31.1	
31.2	31.3							Grey = Accepted provisions				

* Sub-para. c.

Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning Norway](#) in 2006 and in 2013. The Committee considers that there are no obstacles to the immediate acceptance of Articles 2§7, 3§1, 18§1, 18§4, 27§1 (a and b) and 27§3. Moreover, it considers that there are no significant or insurmountable obstacles to acceptance of Articles 3§4, 7§4, 7§9, 8§4 and 26§1.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

MONITORING THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER ¹

I. COLLECTIVE COMPLAINTS PROCEDURE ²

Collective complaints (under examination)

Collective complaints (proceeding completed)

1. Complaints inadmissible or where the Committee has found no violation

Bedriftsforbundet v. Norway (Complaint No. 103/2013)

The Committee [declared](#) the complaint admissible on 14 May 2014. The Committee adopted the decision on the merits on 17 May 2016 and found no violation.

[Decision on the merits of 17 May 2016](#)

Follow up:

Resolution Res ChS (2016) 6 on 5 October 2016 of the Committee of Ministers

Fellesforbundet for Sjøfolk (FFFS) v. Norway (Complaint No. 120/2016)

The complaint was registered on 11 March 2016. It was declared inadmissible by decision of 18 October 2016.

[Decision on admissibility of 18 October 2016](#)

2. Complaints where the Committee has found a violation, which has been remedied

3. Complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee

Fellesforbundet for Sjøfolk (FFFS) v. Norway (Complaint No. 74/2011)

- Violation of Article 24 (right to protection in case of dismissal)
- Violation of Article 1§2 (right to work – freely undertaken work – non-discrimination, prohibition of forced labour, other aspects)

[Decision on the merits of 2 July 2013.](#)

Follow up:

- Resolution Res ChS (2013) 17 on 16 October 2013 of the Committee of Ministers;

- [Findings 2016, Norway](#): the Committee reserved its position pending further information.

4. Complaints where the Committee has found a violation, which has not yet been remedied

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

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

² Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

II. Reporting system³

Reports submitted by Norway

Between 1964 and 2015, Norway submitted 22 reports on the application of the 1961 Charter and 13 reports on the application of the Revised Charter.

The [13th report](#), submitted on 09/11/2015, concerns the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure.

The assessments of the Committee on the follow up to decisions in complaints will be published at the latest in January 2017 and the Conclusions with respect to the provisions concerned, relating to the Thematic group 3 "Labour rights, will be published in January 2017.

Norway's 14th report, which was submitted on 6 December 2016, again concerns the follow-up given to the relevant decisions of the Committee in the framework of the collective complaints procedure. The assessments of the Committee on the follow up to decisions will be published at the latest in January 2018.

The 15th Report, to be submitted before 31/10/2017, should concern accepted provisions belonging to the Thematic Group 3, "Labour rights".

³ 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 4

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

► *Article 10§5 - Right to vocational training - Full use of facilities available*

A length of residence and employment requirement is imposed on nationals of certain other States Parties lawfully resident or regularly working in Norway as a condition for entitlement to financial assistance for education.

► *Article 24 – Right to protection in case of dismissal*

It has not been established that there is an appropriate adjustment of the burden of proof between employee and employer in dismissal cases.

Thematic Group 2 "Health, social security and social protection" - Conclusions 2013

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

- Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;
- equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties;
- the length of residence required for the retention of accrued non-contributory old-age, invalidity and survivors' benefits is excessive;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

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

The level of social assistance is inadequate.

► *Article 23 – Right of the elderly to social protection*

There is no adequate legal framework to combat age discrimination outside employment.

Thematic Group 3 "Labour rights" - Conclusions 2014

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

Legislation provides that total working hours in a twenty-four hour period may, in certain circumstances, be up to sixteen hours.

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

Equal pay litigation cases pay comparisons cannot be made with companies other than the company directly concerned.

► *Article 4§4 – Right to a fair remuneration - Reasonable notice of termination of employment*

The following notice periods are not reasonable:

- general notice periods, for workers with more than three years of service and those with ten years of service who are younger than 60;
- notice periods applicable to temporary workers with less than one year and those with more than three years of service;
- notice periods applicable to civil servants with more than seven years of service.

► *Article 4§5 – Right to a fair remuneration - Limits to deduction from wages*

There are insufficient guarantees in place to prevent workers from waiving their right to limits to deduction from wages.

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

Legislation was enacted during the reference period in order to terminate collective action in circumstances which do not comply with the conditions established by Article G of the Charter.

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

► *Article 21 – Right of workers to be informed and consulted*

It has not been established that all categories of workers enjoy the right to information and consultation.

► *Article 22 – Right of workers to take part in the determination and improvement of working conditions and working environment*

It has not been established that workers and/or their representatives have legal remedies when their right to take part in the determination and improvement of working conditions is not respected.

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

There is no specific protection afforded to worker representatives for a period after the end of their mandate (Conclusions 2016).

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 daily and weekly duration of light work permitted during school holidays for children under the age of 15 is excessive and therefore cannot be qualified as light work.

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

- The daily and weekly working time during school holidays for children subject to compulsory education is excessive and therefore cannot be qualified as light work;
- It is possible for children who are still subject to compulsory education to deliver newspapers, before school, from 6 a.m. for up to 2 hours per day, 5 days per week;
- Young persons under 18 years of age who are still subject to compulsory education are not guaranteed an uninterrupted rest period of at least two weeks during summer holiday.

► *Article 16 - Right of the family to social, legal and economic protection*

Equal treatment of nationals of other States Parties regarding the payment of child benefit is not ensured because the length of residence requirement is excessive.

► *Article 19§4 - Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation and Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*

A two-year residence requirement for eligibility for municipal housing, as applied by some municipalities, is excessive and constitutes a discrimination against migrant workers and their families.

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

Thematic Group 1 "Employment, training and equal opportunities"

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

▶ Article 3§3 - Conclusions 2013

Thematic Group 3 "Labour rights"

▶ Article 2§2 - Conclusions 2014

▶ Article 4§1 - Conclusions 2014

Thematic Group 4 "Children, families, migrants"

▶ Article 7§5 - Conclusions 2015

▶ Article 7§8 - Conclusions 2015

▶ Article 17§1 - Conclusions 2015

▶ Article 19§2 - Conclusions 2015

▶ Article 31§2 - Conclusions 2015

III. EXAMPLES OF PROGRESS ACHIEVED IN THE APPLICATION OF RIGHTS UNDER THE CHARTER

(UPDATE IN PROGRESS)

Employment

- ▶ Repeal of the Seafarers Act of 17 July 1953, which allowed criminal sanctions to be imposed on seafarers who deserted their post or committed disciplinary offences, even in cases where neither the safety of the vessel nor the lives or healths of those on board were in danger (Act of 30 May 1975). Abolition of compulsory service for dentists. *Article 1§2 – prohibition of forced labour.*
- ▶ Amendment in 2002 of the 1958 Civil Service Disputes Act improves employees' representation in wage negotiations. *Article 6§2 – negotiation procedures*
- ▶ The Labour Disputes Act, amended in 2002, provides in its Section 35.9 that the mediator can now only join up ballots (*kobling av avstemninger*) relating to several sectors if the parties concerned agree. *Article 6§3 – right to bargain collectively (conciliation and arbitration).*

Movement of persons

- ▶ Extension of the scope of family reunion to include children only one of whose parents is living in Norway (1991 immigration directives, as amended in 1997). *Article 19§6 – right to family reunion.*

Non-discrimination (nationality)

- ▶ Various practical measures to assist foreigners in finding accommodation, such as reserving quotas of existing housing stock for refugees and immigrants, promoting research into multicultural living environments and disseminating information on the legislation providing for equal treatment in access to housing. *Article 19§4 – right to equal treatment with regard to access to housing.*

Education/Health

- ▶ Amendment to the Working Environment Act. Section 54 B establishes a prohibition against direct and indirect discrimination on the basis of disability. *Article 15§2 – right to employment of persons with disabilities.*
- ▶ Regulation No. 1255 of 2011 relating to the right to health and care services for people without permanent residence: children who are unlawfully present have the same rights to health and care services as children who live in Norway.

APPENDIX II

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;

Emphasizing 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. Recognizes 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.