

## – Poland and the European Social Charter –

### Signatures, ratifications and accepted provisions

Poland ratified the 1961 European Social Charter on 25/06/1997 accepting 58 of the Charter's 72 paragraphs.

It ratified the Amending Protocol to the Charter on 25/06/1997.

It has signed, but not yet ratified the Revised European Social Charter on 25/10/2005.

It has not signed the Additional Protocol to the European Social Charter, nor the Additional Protocol providing for a system of collective complaints.

### Table of accepted provisions

|      |      |      |      |                          |      |      |      |                            |      |      |       |
|------|------|------|------|--------------------------|------|------|------|----------------------------|------|------|-------|
| 1.1  | 1.2  | 1.3  | 1.4  | 2.1                      | 2.2  | 2.3  | 2.4  | 2.5                        | 3.1  | 3.2  | 3.3   |
| 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*  |
| 9    | 10.1 | 10.2 | 10.3 | 10.4                     | 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 | 16                         | 17   | 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 |
| AP1  | AP2  | AP3  | AP4  | AP = Additional protocol |      |      |      | Grey = Accepted provisions |      |      |       |

\* On 27/01/2011, Poland denounced Article 8§4b (prohibition of the employment of women in certain dangerous occupations).

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

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

### Reports submitted by Poland

Between 1999 and 2024, Poland has submitted 23 reports on the application of the 1961 Charter.

The [22<sup>nd</sup> report](#), which was submitted on 17/11/2023, concerns the accepted provisions relating to thematic group 4 "Children, families and migrants" (Articles 7, 8, 16, 17 and 19).

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

On 13 February 2024, an [ad hoc report on the cost-of-living crisis was submitted by Poland](#)<sup>3</sup>.

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

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

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

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

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

► *Article 10§1 - Right to vocational training - technical and vocational training - Access to higher technical and university education*

There are no specific instruments deployed to integrate migrants and refugees into vocational education and training.

► *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*

The right of children with disabilities to mainstream education is not effectively guaranteed.

### Thematic Group 2 "Health, social security and social protection" - Conclusions XXII-2 (2021)

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

The minimum level of unemployment benefit is inadequate.

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

The right to maintenance of accruing rights is not guaranteed.

► *Article 13§3 - Right to social and medical assistance - Prevention, abolition or alleviation of need*

It has not been established that there are mechanisms in place to ensure that persons in need can receive personal assistance and counselling services free of charge.

► *Article 14§1 – Right to benefit from social services - Promotion or provision of social welfare services*

Access to social services by nationals of other States Parties is subject to an excessively long residence requirement.

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

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

- In some jobs the working day can exceed 16 hours and even be as long as 24 hours;
- On-call periods where no effective work is performed are considered as rest periods.

► *Article 4§2 – Right to a fair remuneration - Increased remuneration for overtime work*

The workers in both the public and private sectors do not have a right to increased compensatory time-off for overtime hours.

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

Pay comparisons are not possible across companies.

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

No notice period is required in cases where a worker is dismissed due to (i) long-term illness; (ii) occupational accident.

► *Article 5 – Right to organise*

- Civil servants exercising public powers listed in section 52 of the 2008 Civil Service Act cannot hold trade union positions;
- Members of the Internal Security Agency (ABW), the Secret Service Agency, the Central Anti-Corruption Bureau, the Military Counter-Intelligence Service and the Military Intelligence Service are prohibited from joining and forming organizations for furthering and defending their interests.

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

#### **Thematic Group 4 “Children, families, migrants” - Conclusions XXII-4 (2023)**

► *Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers*

Child victims of sexual exploitation can be criminally prosecuted.

► *Article 8§4 – Right of employed women to protection - Regulation of night work and prohibition of dangerous, unhealthy or arduous types of work*

The regulation of night work for women in industrial employment is inadequate.

► *Article 17 - Right of mothers and children to social and economic protection*

- Bone testing is used to assess the age of children in irregular migration situation;
- Children in an irregular migration situation can be detained;
- Immediate expulsion of children in an irregular migration situation can be carried out by the authorities without providing them with any assistance;
- The length of pre-trial detention of children is excessive.

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

- Family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion;
- Social benefits are excluded from the calculation of the level of means required to bring in the family or certain family members.

► *Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation*

- A permit to reside may be revoked where an individual has insufficient personal resources;
- The right to appeal against expulsion orders is not effectively guaranteed.

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

The ground of non-conformity under Articles 19§6 and 19§8 applies also to self-employed migrant workers.

The Committee also considered that the failure to provide requested information on Article 16 amounts to a breach by Poland of its reporting obligations under Article 21 of the 1961 Charter.

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

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

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

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

- ▶ Article 3§1 - Conclusions XXII-2 (2021)
- ▶ Article 3§2 - Conclusions XXII-2 (2021)
- ▶ Article 11§1 - Conclusions XXII-2 (2021)
- ▶ Article 11§2 - Conclusions XXII-2 (2021)
- ▶ Article 11§3 - Conclusions XXII-2 (2021)
- ▶ Article 12§3 - Conclusions XXII-2 (2021)

**Thematic Group 3 "Labour rights"**

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

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

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

- ▶ With Poland's accession to the European Union, there is no longer a nationality requirement for access to the professions of sworn translator or to paramedics.
- ▶ The 2004 legislation on employment promotion and labour market institutions makes everyone eligible for vocational guidance, irrespective of nationality. Nationals of other States party to the European Social Charter are therefore entitled to equal treatment.
- ▶ The Act of 8 December 2000 amending the 1990 Higher Education Act lays down procedures by which foreign nationals can follow a course offered by a Polish higher education establishment. Nationals of other States party to the Social Charter may undertake and continue studies at higher education establishments in Poland in accordance with international agreements and their provisions, including the European Social Charter.
- ▶ Since the amendment to the Road Traffic Act of 20 April 2004, it has no longer been necessary to have Polish nationality to be a driving test examiner.
- ▶ Under the Act adopted on 24 August 2007, foreign nationals wishing to practise medicine in Poland must still obtain authorisation from the Chamber of Physicians, but authorisation must now be granted if the person concerned meets certain conditions, none of which depend on the applicant's nationality.
- ▶ The 2010 Act on Equal Treatment introduced into the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons an expressly worded duty of reasonable accommodation for a person with disabilities who is employed, participates in the recruitment process or undergoes training, internship, etc. unless such measures would impose a disproportionate burden on the employer.

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

- ▶ The Act of 23 January 2003 is expected to remedy previous shortcomings concerning waiting time for some medical treatment, as well as mismanagement of waiting lists.
- ▶ The National Labour Inspection Act of 13 April 2007 came into force on 1 July 2007. The act amended articles 304§1 of the Labour Code to extend the health and safety at work requirements applicable to self-employed persons. Employers who assign work to self-employed persons that has to be performed in an undertaking or any other specified location must ensure that the working conditions are healthy and safe, in accordance with Article 207 § 2 of the Labour Code. This article requires employers to protect the life and health of persons working there by supplying machinery, equipment and products that reflect scientific and technical progress.
- ▶ In 2008 the unemployment benefit was increased.
- ▶ The Regulation of the Minister of Health of 21 December 2012 on granting authorisation for radiological protection inspectors in laboratories using X-ray equipment for medical purposes and the Regulation of the Council of Ministers of 10 August 2012 on posts which are critical for nuclear safety and radiation protection and radiation protection inspectors were adopted during the reference period.
- ▶ The Council for Social Dialogue replaced the Tripartite Commission for Socio-Economic Affairs in accordance with the Law of 24 July 2015. The Council is made up of representatives of the government, workers represented by members of representative trade union organisations, and employers represented by members of representative employers' organisations. It conducts dialogue in order to lay the foundations for socio-economic development and increase economic competitiveness and social cohesion in Poland.

► The extension of certain health care benefits to refugees, their families, pregnant women and women who have just given birth and children under 18 years with refugee status or enjoying additional protection (law of 26 June 2014).

► Between 2016 and 2019, the National Labour Inspection developed a programme "Prevention of harmful effects of stress and other psychosocial risks in the workplace". The Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation was transposed into Polish law on 13 June 2019.

► The minimum retirement pension was increased in 2016 and 2018, and the adjustment mechanism was modified. As a result of these changes, the minimum retirement pension has increased by 25% since 2016.

Implementation of the Retirement Pension+ programme began in 2019. This programme provides for the payment of a one-off supplementary benefit to any person in receipt of a retirement or other pension, regardless of its amount. In 2019, 9.74 million people received this benefit (including 6.7 million retired persons, 2.62 million pensioners and 282,000 persons in receipt of social assistance pensions).

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

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

► The Act of 1 July 2001 expressly guarantees the right to family reunion of the migrant workers' family members.

► Article 2 of the Act of 10 June 2010 *amending the act on the countering domestic violence and certain other acts* introduced a new article to the Polish Family and Guardianship Code (Article 96<sup>1</sup>) which prohibits corporal punishment in childrearing (no sanctions are provided either in civil or penal law, unless the punishment may be qualified as violence): "*Persons exercising parental authority, guardianship or care over a minor are forbidden to use corporal punishment*".

The law entered into force on 1 August 2010.

► Amendments to the Criminal Code were introduced in 2012; in particular, the new Article 202§4 b stipulates that whoever produces, distributes, presents, stores or possesses content showing pornographic image of minors (under the age of 18) shall be subject to a fine, or imprisonment of up to 2 years.

► The Law of 28 May 2013 amended the provisions on maternity leave, in particular by introducing parental leave.

► The Law on Foreigners 2013 has inter alia streamlined the process for applying for residence permits, and transposed Directive 2011/98/EU concerning third-country nationals into Polish law.

► Section 186 of the Law on Foreigners 2013, which entered into force after the reference period, expressly provides that the right to family reunion shall be granted in accordance with the Social Charter.