



January 2015

## **European Social Charter**

European Committee of Social Rights

Conclusions (2014)

General Introduction

*This text may be subject to editorial revision.*



## **GENERAL INTRODUCTION**

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

Mr Luis JIMENA QUESADA (Spanish)  
President  
Professor of Constitutional Law  
University of Valencia (Spain)  
Substitute Judge at the High Court of Justice of the region of Valencia,  
Administrative Chamber (Spain)

Ms Monika SCHLACHTER (German)  
Vice-President  
Professor of Civil, Labour and International Law  
Director of Legal Studies  
Institute for Labour Law and Industrial Relations in the European Community  
University of Trier (Germany)

Mr Petros STANGOS (Greek)  
Vice-President  
Professor of European Union law,  
Holder of the Jean Monnet Chair "European human rights law"  
School of Law, Department of International studies  
Aristotle University, Thessaloniki (Greece)

Mr Colm O'CONNOR (Irish)  
General Rapporteur  
Reader in Law  
Faculty of Laws  
University College, London (United Kingdom)

Mr Lauri LEPPIK (Estonian)  
Professor of Social Policy  
Tallinn University (Estonia)

Ms Birgitta NYSTRÖM (Swedish)  
Professor of Private Law, especially Labour Law  
University of Lund (Sweden)

Mr Rüchan IŞIK (Turkish)  
Professor of Labour Law, Faculty of Law  
Bilkent University, Ankara (Turkey)

Mr Alexandru ATHANASIU (Romanian)  
Professor,  
Law School, Private Law Department  
Center for Comparative Social Law  
University of Bucharest (Romania)

Ms Jarna PETMAN (Finnish)  
Professor ad interim in International Law  
Deputy Director of the Erik Castrén Institute  
Faculty of Law  
University of Helsinki (Finland)

Ms Elena MACHULSKAYA (Russian)  
Professor, Department of Labour and Social Law  
Lomonosov State University, Moscow (Russian Federation)

Mr Giuseppe PALMISANO (Italian)  
Professor of International Law and EU law  
Director of the Institute for International Legal Studies  
National Research Council of Italy, Rome (Italy)

Ms Karin LUKAS (Austrian)  
Senior Legal Researcher and Head of Team  
Ludwig Boltzmann Institute of Human Rights, Vienna (Austria)

Ms Eliane CHEMLA  
*Conseillère d'Etat*  
*Conseil d'Etat*, Paris (France)

Mr József HAJDU (Hungarian)  
Dean for International Affairs and Science  
University of Szeged (Hungary)

Mr Marcin WUJCZYK (Polish)  
Lecturer in labour law and social policy  
Jagiellonian University, Cracow (Poland)

assisted by Mr Régis BRILLAT, Executive Secretary,

between January 2014 and December 2014 examined the reports on the application of the Revised European Social Charter by Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Hungary, Ireland, Italy, Lithuania, Malta, the Republic of Moldova, Montenegro, the Netherlands, Norway, Portugal, Romania, the Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and “the former Yugoslav republic of Macedonia”. Albania did not submit a report and therefore the Committee was unable to reach any conclusions on its conformity with the relevant provisions for this cycle. The Committee notes the failure of Albania to respect its obligation, under the Charter, to report on the implementation of this treaty. Under the circumstances the Committee considers that there is nothing to demonstrate that the situation in Albania as regards the provisions concerned is in conformity with the Revised Charter.

2. The role of the European Committee of Social Rights is to rule on the conformity of the situations in States with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter. Its conclusions appear in the following chapters by State. They are also

available on the website of the European Social Charter and in the case law database that is also available on this site. A summary table of the Committee's Conclusions 2014 as well as the state of signature and ratification of the Charter and the 1961 Charter appear below.

3. The conclusions adopted by the Committee in December 2014 concern the accepted provisions of the following articles of the Revised European Social Charter ("the Charter") belonging to the thematic group group "Labour rights":

- 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 information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to 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).

4. In addition to the state reports, the Committee had at its disposal comments on the reports submitted by different trade unions and non-governmental organisations (see introduction to the individual country chapters). The Committee wishes to acknowledge the importance of these various comments, which were often crucial in gaining a proper understanding of the national situations concerned.

### **Statements of Interpretation**

5. The Committee makes the following Statement of Interpretation:

#### **6. Statement of Interpretation on Article 29:**

*"With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.*

Article 29 of the Charter requires that state 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.

In order to give effect to the requirements of Article 29, national law must thus provide for the following guarantees.

When employers implement information and consultation procedures preceding collective redundancies, employees should be represented by persons acting on behalf of all workers employed in the workplace. Such representatives may be either bodies operating in the employer's enterprise (for example, trade unions or workers' councils) or ad hoc representatives appointed to take part in this processes. National 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.

Employers should be required to provide employees' representatives with all the relevant information necessary to ensure the integrity and effectiveness of the information and consultation process. This information should in particular include the reasons for the proposed redundancies, the criteria for determining which employees are to be made redundant, the proposed order and scheduling of such redundancies, the amount of any cash benefits or other forms of compensation and the scope and content of any planned social measures which are designed to mitigate the consequences of this process.

In principle, all relevant information should be provided to employees' representatives prior to the commencement of the consultation process, but national law should also guarantee the right of employees' representatives to be provided with all relevant information throughout the entire duration of the consultation process.

The information and consultation process should be conducted 'in good time prior to collective redundancies' as required by the text of Article 29. National law should thus ensure that employers are obliged to provide employees with information about planned collective redundancies sufficiently far in advance of the process, so as to enable employees and their representatives to become familiar with the key aspects of the planned redundancies. Consultation should also be conducted within a time period that is sufficient to ensure that employees' representatives have an opportunity to present suitable proposals with a view to avoiding, limiting or mitigating the effect of the proposed redundancies.

The information and consultation process should be directed towards not only the possible avoidance or minimisation of the scope of collective redundancies, but also at mitigating their consequences. It should therefore cover the possibility of undertaking actions aimed at retraining and redeployment of the workers concerned. As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job."

### **General Questions from the Committee**

7. The Committee does not ask any General Questions in this volume of Conclusions.

### **Statement on information in national reports and information provided to the Governmental Committee**

8. The Committee draws the attention of the States Parties to the obligation to systematically include replies to information requests by the Committee in the national reports. Moreover, the Committee invites the States Parties to always include in the report any relevant information previously provided to the Governmental Committee, whether in writing or orally, or at least to refer to such information, and of course to indicate any developments or changes that may have intervened in the period since the information was provided to the Governmental Committee.

### **Statement on deferred conclusions**

9. The Committee recalls that its assessments of national situations in accordance with Article 24 of the Charter as amended by the Turin Protocol give rise to two types of conclusions only: conclusions of conformity and conclusions of non-conformity. Having regard to the fact that the Committee in several cases had to defer its conclusion due to lack of information in the national report, it wishes to emphasise that the absence of the requisite information amounts to a breach of the reporting obligation entered into by the States Parties concerned under the Charter.

### **Non-accepted provisions (the procedure provided for by Article 22 of the 1961 Charter)**

10. The Committee recalls that Article A of the Charter (Article 20 of the 1961 Charter) provides that States Parties may at any moment following the ratification of the treaty notify the Secretary General of their acceptance of any additional articles or paragraphs. In order to promote and facilitate progressive acceptance of any provisions not accepted by the States Parties Article 22 of the 1961 Charter sets out a particular supervision procedure. Under Article 22, States Parties have the obligation to submit reports at intervals to be determined by the Committee of Ministers on the Charter provisions which they did not accept at the time of ratification or subsequently.

11. In December 2002 the Committee of Ministers decided on a new procedure for the implementation of Article 22. Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights will review the non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Past experience had shown that governments tended to overlook that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation on a continuous basis and encourage them to accept more provisions whenever possible.

12. In 2014 the procedure concerned 11 States Parties: Andorra, Armenia, Azerbaijan, Belgium, Hungary, Italy, Russian Federation, Romania, Serbia, Slovak Republic and Slovenia. The reports containing the Committee's opinions on the compatibility of national situations with the non-accepted provisions for these two countries shall be made public on the Council of Europe website. The Committee wishes to encourage these countries to proceed to the acceptance of additional provisions as soon as possible, at least in so far as those

provisions where the Committee identified no obstacles in law and practice are concerned.

### **Election of members to the Committee**

13. The composition of the Committee is governed by Article 25 pursuant to which its 15 members are appointed by the Committee of Ministers for mandates of six years, renewable once.

14. It is recalled that pursuant to Article 3 of the Turin Protocol members shall be elected by the Parliamentary Assembly. However, this provision alone is still not being applied in practice (pending the formal entry into force of the Protocol).

15. Members shall be “independent experts of the highest integrity and of recognised competence in international social questions”. Election takes place every second year with a third of the seats (5) being up for election.

16. At the 1212<sup>th</sup> meeting of the Ministers’ Deputies on 19 November 2014, the Committee of Ministers held the election to fill the five seats falling vacant on 31 December 2014. Mr Petros STANGOS (Greek) was elected for a second term, and Mr François VANDAMME (Belgian), Ms Krassimira SREDKOVA (Bulgarian) Ms Marit FROGNER (Norwegian) and Mr Raul CANOSA USERA (Spanish) were elected as members for a first term of office. The term of office for these members begins on 1 January 2015 and ends on 31 December 2020. In order to respect the requirement of independence and impartiality Mr VANDAMME will only take up his duties in the Committee after his retirement from government office.

17. The Committee wishes to express its appreciation and gratitude to the four outgoing members, President Mr Luis JIMENA QUESADA (Spanish), Mr Rüchan ISIK (Turkish), Mr Alexandru ATHANASIU (Romanian), and Ms Jarna PETMAN (Finnish) for their contribution to the Committee’s work and for their tireless efforts to promote social rights. They all joined the Committee in 2009 and served for one term of office. Mr JIMENA QUESADA was President of the Committee from 2011 to 2014.

18. On 4 December 2014 a workshop in honour of the four outgoing members was organized in Strasbourg on the topic of the “Turin Process”.

### **Declaration on protecting the independent status of the members of the European Committee of Social Rights**

19. The European Committee of Social Rights was set up under the European Social Charter as a body of independent experts whose main task – similar to that of the European Court of Human Rights in relation to the Convention for the Protection of Human Rights and Fundamental Freedoms – is to interpret the international legal commitments entered into by the States Parties.

20. This arrangement is highlighted by the Committee of Ministers when it elects the members of the committee, who must meet the required conditions of competence, independence, impartiality and availability and make solemn declarations to that effect upon taking up their duties.

21. While the consolidation of the reporting system and the development of the collective complaints procedure have enhanced the Committee’s judicial method of operation, at the same time and paradoxically, the vital characteristic



of independence is sometimes undermined because of more or less explicit attempts by certain political, institutional or administrative players both inside and outside the Council of Europe to interfere with or exert undue pressure on the Committee and its secretariat.

22. In this context, given that the European Committee of Social Rights plays a vital part in ensuring compliance with the Charter through its authoritative interpretations, any interference with or undue pressure exerted on the committee or the secretariat also undermines the realisation of human rights, democracy and the rule of law, which are the pillars of the Council of Europe.

23. For these reasons, the Committee reasserts the independent status of its members and of its secretariat when assisting the Committee in accordance with Rule 13 of the Committee's Rules and asks all institutions and bodies, both inside and outside the Council of Europe, to make sure that this independence is preserved. Accordingly, whenever that independence is interfered with, the Committee will issue this declaration to the parties concerned.

#### **Next reports**

24. The next reports on the accepted provisions, which were due before 31 October 2013, concern the following Articles belonging to the thematic group "Children, families and migrants": 7, 8, 16, 17, 19, 27 and 31.

CONCLUSIONS 2014

Article	ANDORRA	ARMENIA	AUSTRIA	AZERBAIJAN	BELGIUM	BOSNIA-HERZEGOVINA	BULGARIA	CYPRUS	ESTONIA	FINLAND	FRANCE	GEORGIA	HUNGARY	IRELAND	ITALY	LITHUANIA	MALTA	REPUBLIC OF MOLDOVA	MONTENEGRO	NETHERLANDS	NORWAY	PORTUGAL	ROMANIA	RUSSIAN FEDERATION	SERBIA	SLOVAK REPUBLIC	SLOVENIA	SWEDEN	"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	TURKEY	UKRAINE	
Article 2.1	+	-			+	+		0	-	-	-	-	-	-	-	-	-	+	+	-	-	+	+	+	-	-		-	-	+		
Article 2.2	+	+	+		+	0	+	+	+	+	0	-	0	+	0	+	-	0	0	-	0	-	0		0	-	0		+	+	+	
Article 2.3	+	+	+		-	-	+	0	+	+	+		-	+	+	+	+	-		-	+	+		0	+	+	+	+	+	+		
Article 2.4	+	0	-		+	-	+			0	+		+	-	-	+		0		-	+	-	+	-		+	+		+	+	+	
Article 2.5	+	-	+		-	0	+	+	+	-	-	-	+	-	+	+	0	+		-	+	+	+	+	+	-	+	+	+	+	0	
Article 2.6	+	-	+		+	0	+	+	+	+	+		+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	-	+
Article 2.7	-		+		+	-	+	+	+	+	+	-	+	+	+	+		-		+		+	+	0	+	+	+		+	+	-	
Article 4.1	-		-	-	-						0			-	0	-	0			-	0	-	-		0	-	0	+				
Article 4.2	+	-	+	+	-		+		-	-	-	0		-	+	-	-		0	-	+	-	+	-	+	-	+		0	-	+	
Article 4.3	0	0	0	-	+	0	-		-	-	+	-		+	0	0	0	0	0	+	-	0	0	0	0	+	0	+	0	0	0	
Article 4.4	-	-		-	0		-		-		-	-		-	-	-	-	-		-	-	-	-	-	-	-	-	0		-	-	
Article 4.5	+	-	0	-	0		-	-	-	-	0			-	-	-	0	-	0	0	-	-	-	-	0	-	0		0	-	-	
Article 5	+	-	+	-	+	0	-	+	-	+	0	-	0	-	+	+	-	-	0	+	+	-	-	0	-	+	+	+	+	+	-	
Article 6.1		-	+	-	+	0	-	+	+	+	+	-	+	+	+	+	+	+	0	+	+	-	+	0	0	+	+	+	-		+	
Article 6.2		0	+	-	+	0	-	+	-	+	+	-	-	-	+	-	+	-	0	+	+	+	0	+	0	-	+	-	0		+	
Article 6.3		-	+	-	+	0	-	+	+	+	+	-	+	+	0	+	-	0	0	+	+	-	+	0	0	+	+	+	+	+	+	
Article 6.4		-		-	-	0	-	-	0	0	-	-	-	-	-	+	0	-	0	+	-	-	-	0	-	-	+	-	+		-	
Article 21				+	+	0	+		+	+	-		0		-	+		+		+	-	+	+	0	0	+	+	+	0	+	+	
Article 22		-		-	+	0	-	+	0	0	+		0	0	-	+				+	-	+		0	0	+	+	+		-	+	
Article 26.1	+		+	-	+		+		+	+	+	-		+	+	0	+	0	+			+			0	+	+	+	0	-	-	
Article 26.2	+			-			+		+	-	+	-		+	+	-	0	-		-		+			+	+	+	+	0	-	-	
Article 28		-	-	-		0	-	+	+	-	+			+	+	-	0	-	0	+	-	+	-	0	0	-	+		0	0	-	
Article 29				0	+		+	0	+	+	+	-		+	+	+	+	0	+	+		+	+	0	+	+	+	-	0	+	0	

+ Conformité	- Non-conformité	0 Ajournement	<input type="checkbox"/> Disposition non acceptée
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**MEMBER STATES OF THE COUNCIL OF EUROPE  
AND THE EUROPEAN SOCIAL CHARTER**

*Situation on 31 December 2015*

MEMBER STATES	SIGNATURES	RATIFICATIONS	Acceptance of the collective complaints procedure
Albania	21/09/98	14/11/02	
Andorra	04/11/00	12/11/04	
Armenia	18/10/01	21/01/04	
Austria	07/05/99	20/05/11	
Azerbaijan	18/10/01	02/09/04	
Belgium	03/05/96	02/03/04	23/06/03
Bosnia and Herzegovina	11/05/04	07/10/08	
Bulgaria	21/09/98	07/06/00	07/06/00
Croatia	06/11/09	<b>26/02/03</b>	26/02/03
Cyprus	03/05/96	27/09/00	06/08/96
Czech Republic	04/11/00	<b>03/11/99</b>	04/04/12
Denmark	*	03/05/96	<b>03/03/65</b>
Estonia	04/05/98	11/09/00	
Finland	03/05/96	21/06/02	17/07/98 X
France	03/05/96	07/05/99	07/05/99
Georgia	30/06/00	22/08/05	
Germany	*	29/06/07	<b>27/01/65</b>
Greece	03/05/96	<b>06/06/84</b>	18/06/98
Hungary	07/10/04	20/04/09	
Iceland	04/11/98	<b>15/01/76</b>	
Ireland	04/11/00	04/11/00	04/11/00
Italy	03/05/96	05/07/99	03/11/97
Latvia	29/05/07	26/03/13	
Liechtenstein	<b>09/10/91</b>		
Lithuania	08/09/97	29/06/01	
Luxembourg	*	11/02/98	<b>10/10/91</b>
Malta	27/07/05	27/07/05	
Moldova	03/11/98	08/11/01	
Monaco	05/10/04		
Montenegro	22/03/05	03/03/10	
Netherlands	23/01/04	03/05/06	03/05/06
Norway	07/05/01	07/05/01	20/03/97
Poland	25/10/05	<b>25/06/97</b>	
Portugal	03/05/96	30/05/02	20/03/98
Romania	14/05/97	07/05/99	
Russian Federation	14/09/00	16/10/09	
San Marino	18/10/01		
Serbia	22/03/05	14/09/09	
Slovak Republic	18/11/99	23/04/09	
Slovenia	11/10/97	07/05/99	07/05/99
Spain	23/10/00	<b>06/05/80</b>	
Sweden	03/05/96	29/05/98	29/05/98
Switzerland	<b>06/05/76</b>		
«the former Yugoslav Republic of Macedonia»	27/05/09	06/01/12	
Turkey	06/10/04	27/06/07	
Ukraine	07/05/99	21/12/06	
United Kingdom	*	07/11/97	<b>11/07/62</b>
Number of States	47	<b>2</b> + 45 = 47	<b>10</b> + 33 = 43

The **dates in bold** on a grey background correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

\* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.