

European Social Charter

Collective Complaints



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Charter

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The European Social Charter's procedure of collective complaints

The European Social Charter

The European Social Charter (“the Charter”) is a Council of Europe treaty adopted in 1961 and revised in 1996 which guarantees social and economic rights, in other words, the human rights of daily life.

These rights complement the civil and political rights of the 1950 European Convention on Human Rights. As the Convention’s rights, the Charter’s rights derive from the Universal Declaration of Human Rights.

The rights guaranteed under the Charter concern housing, health, education, employment, the movement of individuals as well as the protection, in particular, of the family, elderly people, children and people with disabilities.

The Charter provides that the enjoyment of these rights must be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status, including disability (principle of non-discrimination).

The honouring of commitments entered into under the Charter is subject to the supervision of the European Committee of Social Rights. Its 15 independent, impartial members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once.

The European Committee of Social Rights monitors compliance with the Charter under two separate procedures: through “reports” drawn up by States party and through “collective complaints” lodged by the social partners and other non-governmental organisations.

Box 1

Basis and objectives of the collective complaints procedure

The collective complaints procedure was introduced under an additional protocol to the Charter for the purpose of improving the enforcement of the rights guaranteed by the Charter. The Additional Protocol providing for a system of collective complaints – ETS No. 158 – was opened for signature by Council of Europe member States on 9 November 1995 and entered into force on 1 July 1998.

The aim pursued with the introduction of the system was to increase the effectiveness, speed and impact of the implementation of the Charter.

The collective complaints procedure strengthened the role of the social partners and non-governmental organisations by enabling them to directly apply to the European Committee of Social Rights for rulings on possible non-implementation of the Charter in the countries concerned, namely those States which have accepted its provisions and the complaints procedure.

The state of signatures and ratifications of the European Social Charter and its protocols, as well as the declarations and reservations made by States, are available at: www.coe.int/socialcharter and <http://www.conventions.coe.int>.

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 respected by the States concerned; however, they are not *enforceable* in the domestic legal system.

In practice, this means that when the European Committee of Social Rights 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 European Committee of Social Rights 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 can declare invalid or set aside domestic legislation if the European Committee of Social Rights has ruled that it is not in compliance with the Charter.

Two complementary human rights procedures at European level

The collective complaints procedure established under the Charter is a parallel protection system which complements the judicial protection provided under the European Convention on Human Rights.

However, unlike the situation with applications lodged before the European Court of Human Rights, the European Committee of Social Rights cannot consider individual applications.

Only certain non-governmental organisations are entitled to lodge collective complaints concerning the Charter (individuals are not entitled to do so).

Because of their *collective* nature, complaints may only raise questions concerning non-compliance of a State's law or practice with one of the provisions of the Charter. Individual situations may not be submitted.

In the light of this, complaints may be lodged without domestic remedies having been exhausted and without the claimant organisation necessarily being a victim of the relevant violation.

Organisations entitled to lodge complaints

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 (see box 2);
- 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. As at 1 January 2013, only Finland has done so.

When States grant this right, they may not make any distinctions or restrictions between the various national NGOs. However, the latter may lodge complaints only in respect of those matters regarding which they have been recognised as having particular competence.

Procedure for entitlement of INGOs

First request for entitlement

INGOs holding participatory status with the Council of Europe wishing to be included on the list of INGOs entitled to lodge collective complaints must submit an application letter duly signed by the person entitled to represent the INGO, stating his or her title and functions, by post to the following address:

Department of the European Social Charter
and the European Code of Social Security
Directorate General Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex

and by e-mail to:

social.charter@coe.int

including the following information: headquarters of the INGO; telephone; fax; e-mail; web site; the date the INGO was granted participatory status with the Council of Europe, and indicating that the INGO fulfils the conditions stated in paragraph 20 of the Explanatory Report to the Additional Protocol providing for a system of collective complaints (see box 3).

To this end, the INGO may refer to the following documents:

- Constitution/Statute of the INGO;
- rules of procedure;
- composition of its Administrative Council;
- composition of its Executive Board, if any;
- latest activity report;
- its participation in meetings of INGO bodies of the Council of Europe (meetings and dates);
- any other relevant document.

Upon receipt, all applications by INGOs are submitted for approval to the Governmental Committee of the European Social Charter and the European Code of Social Security (at its twice-yearly meetings), which draws up the list of INGOs entitled to lodge collective complaints for a four-year period. Each INGO is duly informed of the Governmental Committee's decision.

Renewal of entitlement

INGOs wishing to renew their entitlement should forward their request duly signed by the person entitled to represent the INGO, stating his or her title and functions, to the above-mentioned postal and e-mail addresses:

The list of INGOs entitled to lodge collective complaints may be consulted at: www.coe.int/socialcharter

Box 2

Conditions to be fulfilled for entitlement of INGOs

The Governmental Committee of the European Social Charter and the European Code of Social Security draws up the above-mentioned list, on the basis of the following principles:

- INGOs which hold participatory status with the Council of Europe and consider themselves particularly competent in any of the matters governed by the Charter are invited to express their wish to be included on a special list of INGOs entitled to submit complaints;
- each application must be supported by detailed and accurate documentation aiming to show in particular that the INGO has access to authoritative sources of information and is able to carry out the necessary verifications, to obtain appropriate legal opinions, etc., in order to draw up reliable and complete complaint files;
- all applications are transmitted to the Governmental Committee, accompanied by an opinion of the Secretary General which reflects the degree of interest and participation shown by the INGO in its normal dealings with the Council of Europe;
- an application is considered accepted by the Governmental Committee unless it is rejected in a ballot by a simple majority of votes cast;
- inclusion on the special list is valid for a period of four years, after which it lapses unless the organisation applies for renewal in the six-month period preceding the expiry date. The procedure described above applies to renewal applications.

Box 3

Admissibility conditions for complaints

In order to be declared admissible, a collective complaint must necessarily:

- be lodged in writing and clearly indicate the name and contact details of the complainant organisation;
- be signed by a person entitled to represent the complainant organisation and provide proof that the person submitting and signing the complaint is entitled to represent the organisation;
- if the complainant is a national trade union or a national employers' organisation, provide proof that these bodies are representative within the meaning of the collective complaints procedure; in this connection, the Committee has ruled that, for the purpose of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (see *Confédération française de l'Encadrement "CFE-CGC" v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, § 6).
- if the complainant is an international or national NGO, provide proof that the complainant organisation has particular competence in the field relating to the provision (or provisions) of the Charter covered by the complaint;
- be lodged against a State in which the Charter is in force and which has accepted the system of collective complaints; as of 1 March 2013, the States having accepted the Additional Protocol providing for a system of collective complaints were as follows: Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden;
- concern one or more provisions of the Charter, possibly in combination, accepted by the State concerned; in principle, the Charter provisions in respect of which complaints may be lodged are:

- a. Articles 1-19 of Part II of the 1961 European Social Charter, Articles 1-4 of Part II of the 1988 Additional Protocol to the 1961 European Social Charter;
 - b. Articles 1 to 31 of Part II and Article E of Part V of the Revised European Social Charter.
- indicate the extent to which the State has failed to implement the Charter. In particular, the complaint must indicate the point(s) in respect of which the State in question has allegedly failed to comply with the Charter or implemented it inadequately, along with evidence and the relevant arguments, with supporting documents. In this connection, the complaint could, for instance, allege that the State in question has failed to establish a legal framework for the implementation of the Charter or that the existing framework and/or its application do not comply with the Charter.

When lodged by international bodies, complaints must be drafted in one of the Council of Europe's official languages (English or French).

Complaints lodged by national organisations may be drafted in the official language, or one of the official languages, of the State concerned.

Complaints must be addressed to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe.

Postal address:

Department of the European Social Charter
and the European Code of Social Security
Directorate General Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex

E-mail address:

social.charter@coe.int

Examination of complaints by the European Committee of Social Rights

The European Committee of Social Rights deals with the complaints before it in the order in which they become ready for examination. It may, however, decide to give precedence to a particular complaint.

For each complaint, a member of the Committee is appointed by the President to act as Rapporteur. The Rapporteur has the task of drafting, for adoption by the Committee:

- a draft decision on admissibility of the complaint, followed, as the case may be, by
- a draft decision on the merits.

Complaints lodged before the European Committee of Social Rights are immediately published on the Council of Europe website.

Decision on admissibility

Before the European Committee of Social Rights decides on admissibility, the President may ask the respondent State for written information and observations, within a time limit that he or she decides, on the admissibility of the complaint.

If the President of the Committee considers it appropriate, to ensure that complaints are processed within a reasonable time, he or she may, on the Rapporteur's proposal, ask the respondent State to make written submissions on the merits of the case on the assumption that the complaint will be declared admissible, at the same time as its observations on the admissibility of the complaint.

The President may also ask the organisation that lodged the complaint to respond, on the same conditions, to the observations made by the respondent State. Case documents transmitted at this stage of the procedure are published on the Council of Europe website.

The European Committee of Social Rights has the possibility of declaring any complaint either admissible or inadmissible, without having invited the government concerned to submit observations, when it considers that the admissibility conditions are either manifestly fulfilled or manifestly unfulfilled.

The inclusion of an INGO on the list of entitled organisations does not absolve the European Committee of Social Rights, when examining admissibility, from checking whether the subject of the complaint actually does concern an area for which the relevant INGO has been recognised as having particular competence.

To ensure the efficient functioning of the collective complaints procedure and in view of the very large number of trade unions operating in some States, it was deemed necessary to stipulate that the complainant organisation must be “representative”. The European Committee of Social Rights judges whether the organisation meets this criterion when examining whether the complaint is admissible, in the light of information and observations submitted by the State and the organisation concerned. In the absence of any criteria on a national level, factors such as the number of members and the organisation’s actual role in national negotiations are taken into account.

The European Committee of Social Rights’ decision on the admissibility of the complaint is made public through its written notification to the parties as well as the States party to the Protocol; in addition, the decision is published on the Council of Europe website.

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 European Committee of Social Rights 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.

It has been agreed to give the European Committee of Social Rights a sufficient margin of appreciation in this area.

Decision on the merits

If a complaint has been declared admissible, the European Committee of Social Rights, if it has not already done so, 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.

Only States which have accepted the collective complaints procedure may submit comments on any complaints declared admissible against another State.

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.

Upon a proposal by the Rapporteur, the President of the European Committee of Social Rights may 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.

Written submissions, responses and observations, as well as any other case document transmitted at this stage of the procedure, are also published on the Council of Europe website. When he considers this appropriate and after consultation with the Rapporteur, the President of the European Committee of Social Rights decides that the written procedure is closed. After this decision, the parties may only submit further documents with good reason.

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 European Committee of Social Rights decides whether or not to act upon a request made by one of the parties. The hearing is public unless the President decides otherwise.

In addition to the parties, the States and organisations which have indicated that they wish to intervene in support of the complaint or for its rejection are invited to submit observations or take part in the hearing.

Following deliberation, the European Committee of Social Rights adopts a decision on the merits of the complaint. It decides whether or not the Charter has been violated.

The European Committee of Social Rights' decision on the merits of the complaint gives reasons and is signed by the President, the Rapporteur and the Executive Secretary. Any dissenting opinions are appended to the Committee's decision.

The European Committee of Social Rights transmits a report containing its decision to the parties and the Committee of Ministers of the Council of Europe.

A new stage: immediate measures

Since 2011, the Rules of the European Committee of Social Rights have provided that, following the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of serious damage and to ensuring effective respect for the rights recognised in the Charter.

In the case of a request for immediate measures made by a complainant organisation, the request must specify why it is being made, the possible consequences if it is not granted and the measures requested. A copy of the request is transmitted forthwith to the respondent State. The President of the European Committee of Social Rights sets a date for the respondent State to make written submissions on the request for immediate measures.

The Committee's decision on immediate measures gives reasons and is signed by the President, the Rapporteur and the Executive Secretary. It is notified to the parties. The European Committee of Social Rights may request information from the parties on the implementation of the indicated measures.

Box 4

Follow-up of the European Committee of Social Rights' decisions by the Committee of Ministers of the Council of Europe

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.

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. When the decision on the merits becomes public, it is published on the Council of Europe website.

The Committee of Ministers cannot reverse the legal assessment made by the European Committee of Social Rights.

The Committee of Ministers' role is very important because, in the chain formed by the complaints procedure, it can contribute to making the European Committee of Social Rights' decisions operational, and thereby giving concrete effect to the rights guaranteed under the Charter.

In line with the practice adopted in the framework of monitoring the implementation of the European Convention on Human Rights, the respondent State must provide information on the measures it has taken to give effect to the European Committee of Social Rights' decision, taking account of the *recommendation* or *resolution* adopted by the Committee of Ministers.

In cases where it is found that the Charter has been violated, the respondent State must present in every subsequent report on the

provision(s) concerned in the complaint the measures taken to bring the situation into conformity.

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

More information

For more information about the fundamental rights guaranteed by the Charter and the system for supervising its implementation, go to:

www.coe.int/socialcharter

The website includes all the conclusions adopted and decisions taken by the European Committee of Social Rights in the course of its supervision of the implementation of the Charter, as well as country factsheets. It also includes a database and a compendium of the Committee's case-law.

Box 5

Department of the European Social Charter and the European Code of Social Security
Directorate General Human Rights and Rule of Law

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F – 67075 Strasbourg Cedex
social.charter@coe.int

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