Italy and the European Social Charter

Dates of Ratifications and provisions accepted
1961 European Social Charter: ratified on 22/10/1965
Declaration enabling national NGOs to submit collective complaints: not made yet
1996 Revised European Social Charter: ratified on 05/07/1999, 97 paragraphs accepted out of 98.

Accepted Provisions

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Grey = Accepted provisions

The Charter in domestic law
Statutory ad hoc incorporation into domestic law based on Act No. 30/1999 (Legge recante ratifica ed esecuzione della Carta Sociale europea, riveduta, con annesso, fatta a Strasburgo il 3 maggio 1996).

Reports *
Between 1967 and 2015, Italy submitted 20 reports on the application of the Charter and 13 on the application of the Revised Charter.

The 13th report, submitted on 24 December 2013, concerns the accepted provisions of the Revised Charter 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 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)

The Conclusions in respect to these provisions were published in January 2015.

The 14th report, which should have been submitted by 31 October 2014, should concern the follow-up given to the decisions of the European Committee of Social Rights relating to the collective complaints lodged against Italy, as well as the information required by the Committee in the framework of Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to the Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

The Conclusions on these matters will be published in January 2016.

* 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.
Situation of Italy with respect to the application of the Revised Social Charter

Examples of progress achieved in the implementation of social rights under the European Social Charter

Non-discrimination (employment)

Non-discrimination (sex)
► Introduction of the principle of equal treatment between men and women in the Constitution, Article 51 (Act No. 1/2003).
► Gender mainstreaming in the labour market (implementing Decree No. 276/2003 concerning Act No. 30/2003 - Biagi Law).
► Strengthening of measures to combat discrimination on the ground of sex (Legislative Decree No. 5 of 25 January 2010, transposing Directive 2006/54/EC and amending the Code of Equal Opportunities): in particular, the amendments introduced have reinforced the prohibition of discrimination, both direct and indirect, on any aspect or condition relating to pay for the same work or work to which equal value is attributed. Similarly, collective agreements are now expected to include specific measures to prevent discrimination on the ground of sex, particularly with regard to pay. Introduction, for all enterprises employing more than 100 employees, of the obligation to report every two years on the situation of gender in each profession regarding recruitment, training and promotion.
► Introduction of measures against sexual harassment (Legislative Decree No. 198/2006, as amended by Legislative Decree No. 5/2010, establishing a "Code of Equal Opportunities between Women and Men")

Non-discrimination (disability)
► Legal protection of persons with disabilities against discrimination (including in the field of education and training (Act No. 67/2006).

Employment
► Regulation of working time in public and private sectors, as well as night work (Legislative Decree No. 66/2003)
► Prohibition to dismiss domestic employees during the compulsory period of maternity leave (national collective agreement on domestic employment of 16 July 1996).
► Extension to seafarers of certain rights concerning working hours and annual leave (Legislative Decree No. 108/2005)
► Recognition of the right to postpone annual leave in the event of illness (Constitutional Court, judgment No. 616/1987, plenary Court of Cassation, judgment No. 1947/1998)
► Setting-up into domestic law of a general framework for informing and consulting employees (Legislative Decree No. 25 of 6 February 2007, transposing Directive 2002/14/EC)

Health
► Prohibition of night work by women between midnight and 6 am from confirmation of pregnancy until the child’s first birthday. Female wage earners with a child under 3 years of age cannot be required to perform night work, nor may wage earners of either sex with a disabled dependant (Legislative Decree of 08/04/2003).
► Protection from hazardous forms of work of women who are pregnant, have recently given birth or are breastfeeding (Legislative Decrees No. 645/1996 and No. 25/1999).
► Mandatory medical examination of young workers prior to their employment and periodical examinations during the employment - minors may only be employed in hazardous work for the purpose of vocational training, under the supervision of a competent instructor and only for the time necessary (Legislative Decree No. 345/1999).

1 « 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 » (Article 2 of the Rules of the Committee).
Adoption of a National Waiting-List Plan (2010-2012) aimed at reducing waiting lists and guaranteeing suitable access for citizens to health services.

Social protection

- Granting of 5 months “maternity cheques” to female domestic employees not qualifying for maternity benefits (Act No. 448/1998).

Children

- Education and Training Reform Act (No. 53/2003).
- Status of Children Act (No. 149/2001).
- Compulsory education until the age of 15 (Act No. 30/2000, Section 1.3).

Roma

On 16 November 2011, the Council of State ruled that the “Roma/nomad emergency” legislation in place since 2006/2008 was unlawful. In particular, it held that the identification and census of the inhabitants of numerous Roma camps based on such legislation, including through fingerprinting or the compilation and storage of photometric and other personal information in databases, was disproportionate in a democratic society.

Cases of non-conformity

Thematic Group 1 “Employment, training and equal opportunities”

- Article 1§1 – Right to work – Policy of full employment
  It has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.
  (Conclusions 2012)

- Article 1§2 – Right to work – Free placement services (non-discrimination, prohibition of forced labour, other aspects)
  - access for non-EU nationals of States Parties to public service employment is excessively restricted;
  - the Navigation Code provides for criminal penalties against seafarers and civil aviation personnel who desert their post or refuse to obey orders, even in cases where there is no threat to the safety of the vessel or aircraft.
  (Conclusions 2012)

- Article 18§1 – Right to engage in a gainful occupation in the territory of other Parties – Applying existing regulations in a spirit of liberality
  It has not been established that the existing regulations are applied in a spirit of liberality.
  (Conclusions 2012)

- Article 24 – Right to protection in cases of termination of employment
  Employees undergoing the probationary period of 6 months are not adequately protected against dismissal.
  (Conclusions 2012)

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

- Article 3§1 - Right to safe and healthy working conditions - Health and safety and the working environment
  There is no appropriate occupational safety and health policy;
  There is no adequate system to organise occupational risk prevention.
  (Conclusions 2013)
Article 12 §1 - Right to social security - Existence of a social security system
It has not been established that the minimum level of sickness benefit is adequate;
The minimum level of pension benefit is inadequate.
(Conclusions 2013)

Article 12 §3 - Right to social security - Development of the social security system
It has not been established that measures were taken to raise the system of social security to a higher level.
(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;
It has not been established that the retention of accrued benefits is guaranteed to nationals of all other States Parties.
(Conclusions 2013)

Article 13 §1 - Right to social and medical assistance - Adequate assistance for every person in need
Social assistance is not provided for everybody in need;
The level of assistance is inadequate;
It has not been established that medical assistance is provided for everybody in need.
(Conclusions 2013)

Article 23 - Right of elderly persons to social protection
It has not been established that there is an adequate legal framework to combat age discrimination outside employment.
(Conclusions 2013)

Article 30 - Right to protection against poverty and social exclusion
It has not been established that there is an overall and coordinated approach to combating poverty and social exclusion;
There is discriminatory treatment of migrant Roma and Sinti with regard to citizen’s participation.
(Conclusions 2013)

Thematic Group 3 “Labour rights”

Article 2 §1 – Right to just conditions of work - Reasonable daily and weekly working hours
The weekly working hours of workers on sea-going vessels may be up to 72 hours.
(Conclusions 2014)

Article 2 §4 – Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations
There is no adequate prevention policy regarding the risks in inherently dangerous or unhealthy occupations and it has not been established that the right to just conditions of work with regard to the risks present in inherently dangerous or unhealthy occupations is guaranteed
(Conclusions 2014)

Article 4 §4 – Right to a fair remuneration – Reasonable notice of termination of employment
Notice periods are not reasonable:
- in the food-processing and mechanical industries;
- in the textile industry for employees in the 7th and 8th categories with more than 15 years of service and those in the 2nd, 3rd and 4th categories with more than three years of service.
(Conclusions 2014)

Article 4 §5 – Right to a fair remuneration – Limitation of deduction from wages
After all authorised deductions, the wages of workers with the lowest pay do not enable them to provide for themselves or their dependants.
(Conclusions 2014)
► Article 6§4 – Right to bargain collectively – Collective action

- It has not been established that the Government’s power to issue injunctions or orders restricting strikes in essential public services falls within the limits of Article 6 of the Charter;
- The requirement to notify employers of the duration of strikes affecting essential public services prior to strike action is excessive.

(Conclusions 2014)

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

It has not been established that:
- the rules on information and consultation of workers cover all categories of employees;
- there are appropriate remedies for employees themselves or their representatives.

(Conclusions 2014)

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

It has not been established that:
- workers and/or their representatives have an effective right to take part in the decision-making process in undertakings with regard to working conditions, work organisation and the working environment;
- legal remedies are available to workers in the event of infringements of their right to take part in the determination and improvement of working conditions and the working environment.

(Conclusions 2014)

Thematic Group 4 “Children, families, migrants”

► Article 7§1 – Right of children and young persons to protection – Prohibition of employment under the age of 15

It has not been established that the legislation prohibiting employment under the age of 15 is effectively applied.

(Conclusions 2011)

► Article 7§2 – Right of children and young persons to protection - Prohibition of employment under the age of 18 for dangerous or unhealthy activities

It has not been established that the labour inspectorate undertakes inspection visits in training places where some tasks carried out by persons under the age of 18 could be considered dangerous or unhealthy even if they have not been declared as such.

(Conclusions 2011)

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

The effective enjoyment of the right to education is not guaranteed as there is no indication that the legislation on the prohibition of employment under the age of 15 is effectively applied.

(Conclusions 2011)

► Article 7§4 – Right of children and young persons to protection – Length of working time

It has not been established whether the working hours of young persons between the ages of 15 and 16 are reasonable.

(Conclusions 2011)

► Article 8§3 – Right of employed women to protection of maternity - Time off for nursing mothers

Domestic workers and home workers are not entitled to paid breaks for the purposes of breastfeeding their infants.

(Conclusions 2011)

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

- Unequal treatment of foreigners in matters of family benefit;
- Undue interference in the family life of Roma and Sinti families.

The second ground of non-conformity is also the one which led to the finding of violation in COHRE v. Italy, Complaint No. 58/2009

(Conclusions 2011)
► Article 17§2 – Right of children and young persons to social, legal and economic protection – Free primary and secondary education – regular attendance at school
It has not been established that measures taken to improve access for Roma children to education are sufficient. (Conclusions 2011)

► Article 19§1 - Right of migrant workers and their families to protection and assistance - Assistance and information on migration
Racist misleading propaganda against migrant Roma and Sinti indirectly allowed or directly emanating from public authorities. This ground of non-conformity is the one which led to the finding of violation in COHRE v. Italy, Complaint No. 58/2009. (Conclusions 2011)

► Article 19§4 - Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation

- It has not been established that migrant workers enjoy treatment which is not less favourable than that of nationals with respect to:
  - enjoyment of the benefits of collective bargaining;
  - access to housing.
- The forced evictions of Roma migrant workers were carried out without due respect of the necessary procedural safeguards guaranteeing that in respect of housing for such workers treatment is not less favourable than that of nationals.

The second ground of non-conformity corresponds with the one which led to the finding of violation in COHRE v. Italy, Complaint No. 58/2009. (Conclusions 2011)

► Article 19§6 - Right of migrant workers and their families to protection and assistance – Family reunion
The requirement relating to the income is likely to hinder family reunion rather than facilitate it. (Conclusions 2011)

► Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation
During the reference period "security measures" representing a discriminatory legal framework target Roma and Sinti, making it very difficult for them to obtain identification documents in order to legalise their residence status and, therefore, permit even the expulsion of Italian and other EU citizens. (Conclusions 2011)

► Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed
The same grounds for non-conformity apply as for paragraphs 1, 4, 6 8 and 12 of the same Article. (Conclusions 2011)

► Article 19§12 - Right of migrant workers and their families to protection and assistance - Teaching mother tongue of migrant
It has not been established that Italy promotes and facilitates the teaching of the migrant worker’s mother tongue to the children of migrant workers. (Conclusions 2011)

► Article 31§1 – Right to housing - Adequate housing
Measures taken by public authorities to improve the substandard housing conditions of most Roma in Italy are inadequate.
This ground of non-conformity is the one which led to the finding of violation in ERRC v. Italy. The Committee holds that during the reference period the follow-up to this finding was unsatisfactory. This ground of non-conformity is also the one which led to the finding of violation in COHRE v. Italy, Complaint No. 58/2009. (Conclusions 2011)
Article 31§2 – Right to housing - Reduction of homelessness

- The initiatives undertaken to reduce the number of homeless persons are insufficient;
- Evictions of Roma and Sinti continue to be carried out without respecting the necessary procedural safeguards to guarantee full respect of every individual’s human dignity and without alternative accommodation being made available;
- Intervention in Roma and Sinti settlements by the police, has not been respectful of the dignity of their inhabitants and those responsible for destroying the personal belongings of the inhabitants of the settlements have not always been investigated nor have they, if identified, been condemned for their acts.

The second ground of non-conformity is the one which led to the finding of violation in ERRC v. Italy. The Committee holds that during the reference period the follow-up to this finding was unsatisfactory. The second and third grounds are those which led to the findings of violation in COHRE v. Italy, Complaint No. 58/2009. (Conclusions 2011)

Article 31§3 – Right to housing - right to affordable housing

- In some regions and municipalities nationals of other Parties to the Charter and to the 1961 Charter lawfully residing or regularly working in Italy are not entitled to equal treatment regarding eligibility for social housing and access to housing benefit;
- It has not been demonstrated that resources have been invested with the effect of improving in practice access of Roma and Sinti to social housing without discrimination.

The second ground of non-conformity is the one which led to the finding of violation in ERRC v. Italy. The Committee holds that during the reference period the follow-up to this finding was unsatisfactory. The second ground of non-conformity also corresponds with the one which led to the finding of violation in COHRE v. Italy, Complaint No. 58/2009. (Conclusions 2011)

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

Thematic Group 1 “Employment, training and equal opportunities”

- Article 15§2– Conclusions 2012
- Article 18§2– Conclusions 2012

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

- Article 3§3 – Conclusions 2013
- Article 3§4 – Conclusions 2013
- Article 11§1 – Conclusions 2013
- Article 13§2 – Conclusions 2013

Thematic Group 3 “Labour rights”

- Article 2§2 – Conclusions 2014
- Article 4§1 – Conclusions 2014
- Article 4§3 – Conclusions 2014
- Article 6§3 – Conclusions 2014

Thematic Group 4 “Children, families, migrants”

- Article 7§5 – Conclusions 2011
- Article 17§1 - Conclusions 2011
- Article 27§1 - Conclusions 2011
Italy: Collective Complaints and state of procedure

Collective complaints under examination

Unione Italiana del Lavoro U.I.L. Scuola – Sicilia (No. 113/2014)

Associazione sindacale "La Voce dei Giusti" (No. 105/2014)

Associazione Nazionale Giudici di Pace (No. 102/2013)

Association for the Protection of all Children Ltd - APPROACH Ltd (94/2013)

Confederazione Generale Italiana del Lavoro (CGIL) (No. 91/2013)

Collective complaints (proceedings completed)

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

World Organisation against Torture (OMCT) v. Italy (No. 19/2003)
Non-violation of Article 17 (right of children to social, economic and legal protection).
Decision on the merits of 26 January 2005.

European Federation of Employees in Public Services (EUROFEDOP) v. Italy (No. 4/1999)
Non-violation of Article 5 (right to organise) and 6 (right to collective bargaining).
Decision on the merits of 12 December 2000.

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

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

International Planned Parenthood Federation – European Network (IPPF EN) v. Italy (No. 87/2012)
Violation of Article 11 (the right to health)
Violation of Article E taken in conjunction with Article 11 (the right to health)
Decision on the merits of 10 September 2013.

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2 The case-law of the Committee relative to collective complaints may be consulted on the European Social Charter website on the Collective Complaint webpage. Searches on complaints may also be carried out in the European Committee of Social Rights Case-law database.
4. **Complaints where the Committee has found a violation which has not yet been remedied**

*Centre on Housing Rights and Evictions (COHRE) v. Italy (No. 58/2009)*
- Violation of Article E taken in conjunction with Article 16 (right of the family to social, legal and economic protection);
- Violation of Article E taken in conjunction with Article 19§1 (right of migrant workers and their families to protection and assistance – assistance and information on migration);
- Violation of Article E taken in conjunction with Article 19§4.c (right of migrant workers and their families to protection and assistance – equality regarding accommodation);
- Violation of Article E taken in conjunction with Article 30 (right to be protected against poverty and social exclusion);
- Violation of Article E taken in conjunction with Article 31§1 (right to housing – adequate housing);
- Violation of Article E taken in conjunction with Article 31§2 (right to housing – reduction of homelessness);
- Violation of Article E taken in conjunction with Article 31§3 (right to housing – affordable housing).

Decision on the merits of 25 June 2010.

*European Roma Rights Centre (ERRC) v. Italy (No. 27/2004)*
- Violation of Article E taken in conjunction with Article 31§1 (right to housing – adequate housing);
- Violation of Article E taken in conjunction with Article 31§2 (right to housing – reduction of homelessness);
- Violation of Article E taken in conjunction with Article 31§§1 and 3 (right to housing – adequate housing and affordable housing).

Decision on the merits of 7 December 2005.