



– The Netherlands and the European Social Charter –

Ratifications

The Netherlands ratified the European Social Charter on 22/04/1980 and the Revised European Social Charter on 03/05/2006, accepting 97 of its 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 03/05/2006, but has not yet made a declaration enabling national NGOs to submit collective complaints.

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

The Charter in domestic law

Automatic incorporation into domestic law.

Reports *

Between 1982 and 2011, the Netherlands submitted 20 reports on the application of the Charter and 5 on the application of the Revised Charter.

The [3rd report](#) on the accepted provisions of the Revised Charter covered the articles of Thematic Group 3 "Labour rights" (Articles 2, 4, 5, 6, 21, 26, 28 and 29 of the Revised Charter). It was submitted on 15/02/2010. Conclusions in respect of these provisions were published in December 2010.

The [4th report](#), submitted on 25 January 2011, concerns the accepted provisions of the Revised Charter relating to Thematic Group 4 "Children, families and migrants" i.e.

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunity and treatment (Article 27),
- the right to housing (Article 31).

Conclusions in respect of these provisions will be published in January 2012.

The Netherlands has submitted its [5th report](#) on 3 November 2011 concerning accepted provisions of the Charter relating to Thematic Group 1 "Employment, training and equal opportunities".

* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised 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 the Netherlands with respect to the application of the Revised Charter

Examples of progress achieved in the implementation of social rights under the Social Charter ¹

Non-discrimination (sex)

- ▶ Adoption in 1994 of a general Act on equal treatment covering all forms of discrimination – Extension of the prohibition of discrimination between men and women to categories of persons eligible for pensions, to pension rules and the implementation of pensions schemes (Amendment of the Equal Opportunities Act (WGB), in 1998).
- ▶ Prohibition of dismissing an employee because he has brought legal or extra judicial proceedings to obtain equal remuneration (Act on “Reparation” of 1989).
- ▶ Entitlement of unmarried parents to exercise joint parental authority – Maintenance of joint parental authority even if the parents separate (Amendments to the Civil Code in 1995 and 1998).

Non-discrimination (nationality)

- ▶ Entitlement of migrant workers to be treated not less favorably than nationals as regards legal proceedings (Law of 8 March 1980).
- ▶ Adoption in 2000 of a new Student Finance Act guaranteeing to all nationals of non-EU States Party to the Charter and the revised Charter, the equality of treatment with respect to financial assistance.

Employment

- ▶ Repeal of Article 6 of the Exceptional Decree of 1945 on professional relations pursuant to which a worker had to obtain prior authorization in order to terminate his employment (Act on Flexibility and Security of 1999).
- ▶ Granting of the right to a one month period of notice of dismissal to all workers (including part-time workers and those working from home) regardless of their status (Act on Flexibility and Security, which entered into force in 1999).
- ▶ Abolition of the closed shop clause in the print workers collective agreement following collective bargaining negotiations.
- ▶ Reduction from 100 to 50 employees of the threshold from which a works council must be created in the workplace (Amendments to the WOR in 1998).
- ▶ Authorization of employees and workers, national insurance and subsidized institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

Health

- ▶ Extension of maternity leave from 12 to 16 weeks (Act of 22 February 1990).
- ▶ Entitlement of women working in private households and in the public health services for less than three days a week to maternity leave and maternity benefit during at least sixteen weeks (2000 Self-employed Persons Disablement Benefits Act - WAZ).

¹ The European Committee on Social Rights rules on the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure (Article 2 of the Rules of the Committee)

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

► *Article 18§3 – The right to engage in a gainful occupation in the territory of other Parties – Liberalising regulations*

The regulations governing access to the national labour market for foreign nationals are too restrictive.
(Conclusions 2008)

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

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

Legislation does not provide for the retention of supplementary benefits when persons move to a State Party not bound by Community regulations or by an agreement with the Netherlands.

(Conclusions 2008)

► *Article 13§4 - The right to social and medical assistance - - Specific emergency assistance for non-residents*

It has not been established that all unlawfully present persons in need receive emergency social assistance.

(Conclusions 2009)

Thematic Group 3 "Labour rights"

► *Article 2§4 – Right to just conditions of work - Elimination of risks in dangerous or unhealthy occupations*

There is no provision for reduced working hours, additional paid holidays or another form of compensation in dangerous and unhealthy occupations.

(Conclusions 2010)

► *Article 4§1 – Right to a fair remuneration - Adequate remuneration*

The minimum wage paid to workers aged 18-22 is manifestly unfair.

(Conclusions 2010)

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

- Legislation does not require any notice of termination of employment to be given during the probationary period.
- The reduction of the notice period to a minimum of one month under collective agreements is unreasonable in the case of employees with five or more years' length of service.

(Conclusions 2010)

Thematic Group 4 "Children, families, migrants"

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

- Children aged 15, still subject to compulsory education, are allowed to work for more than half of the long summer school holidays;
- It is possible for children aged 15, still subject to compulsory education, to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school.

(Conclusions XVII-2)

► *Article 7§5 – Right of children and young persons to protection – Fair pay*

Young workers' wages and apprentices' allowances are not fair.

(Conclusions XVII-2)

► *Article 7§6 – Right of children and young persons to protection – Inclusion of time spent on vocational training in the normal working time*

There is no evidence that the great majority of young workers and apprentices have a right to remuneration for time spent on vocational training with the consent of the employer.

(Conclusions XVII-2)

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

All forms of violence against children are not prohibited.

(Conclusions XVII-2)

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

Welfare support benefits are not counted towards the income level above which family reunion is approved.

(Conclusions XVIII-1)

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

A migrant worker's family members who have settled in the Netherlands as a result of family reunion are expelled when the migrant worker is expelled.

(Conclusions XVIII-1)

► *Article 19§10 – Right of migrant workers and their families to protection and assistance – Equal treatment for the self-employed²*

In its Conclusions under Article 19§§6 and 8, the Committee has concluded that the situation in the Netherlands is not in conformity with the Charter. Accordingly, the Committee concludes that the situation in the Netherlands is also not in conformity with Article 19§10 of the Charter.

(Conclusions XVIII-1)

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

Thematic Group 1 "Employment, training and equal opportunities"

(Report to be submitted before 31 October 2011)

► *Article 1§4 – Conclusions 2008*

► *Article 10§§4 and 5 – Conclusions 2008*

► *Article 15§§1, 2 and 3 – Conclusions 2008*

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

(Report to be submitted before 31 October 2012)

► *Article 3§ 4– Conclusions 2009*

► *Article 12§1 – Conclusions 2009*

► *Article 23 – Conclusions 2009*

² In the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 9 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs apply to self-employed workers.

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

- ▶ *Article 2§§1,2,3,6 and 7 – Conclusions 2010*
- ▶ *Article 4§2 – Conclusions 2010*
- ▶ *Article 6§4 – Conclusions 2010*
- ▶ *Article 26 – Conclusions 2010*
- ▶ *Article 29 – Conclusions 2010*

Thematic Group 4 “Children, families, migrants”

(Report submitted on 25 January 2011, Conclusions to be published in January 2012)

- ▶ *Article 7§§9 and 10 – Conclusions XVII-2*
- ▶ *Article 8§2 – Conclusions XVII-2*

Collective Complaints and State of Procedure in the Netherlands²

Collective complaints (proceedings completed)

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

Defence for Children International (DCI) v. the Netherlands (No. 47/2008)

- Violation of Article 31§2 (right housing – reduction of homelessness);
- Violation of Article 17§1c (right of children and young persons to social, legal and economic protection - assistance).

Decision on the merits of 20 October 2009.

¹ The caselaw 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 Caselaw database](#)