

Netherlands

Ratifications

The Netherlands ratified the Revised European Social Charter and the Collective Complaints Protocol for the Kingdom in Europe on 03/05/2006. It has accepted 97 of the Revised Charter's 98 paragraphs. The Netherlands has not yet made a declaration enabling national NGOs to submit collective complaints.

The Netherlands had ratified the European Social Charter on 22/04/1980 and had accepted all of the Charter's 72 paragraphs.¹ It had further ratified Protocol No. 1 adding new rights and the Protocol reforming the supervisory mechanism.

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				

Reports

Before the adoption by the Committee of Ministers of the new system of submission of reports by themes,² between 1982 and 2006, the Netherlands submitted:

- 19 reports on the application of the European Social Charter with regard to the Kingdom in Europe;
- 7 reports on the application of the European Social Charter with regard to the Netherlands Antilles;
- 2 reports on the application of the European Social Charter with regard to Aruba.

Since the new system, a report on the accepted provisions related to the themes:

- "*Employment, training and equal opportunities*" (Articles 1, 9, 10, 15, 18, 20, 24, 25) was submitted by the Netherlands on 18/01/08 for the Netherlands (Kingdom of Europe) and on 25/06/08 with respect to the Netherlands Antilles. No report was submitted with respect to Aruba.
- "*Health, social security and social assistance*" (Articles 3, 11, 12, 13, 14, 23, 30) was due on 31/10/08.

Collective complaints (pending)

- *Defence for Children International (DCI) v. The Netherlands* (No. 47/2008) Allegation: violation of Articles 11 (health), 13 (social and medical assistance), 16 (family protection), 17 (children and young persons' protection), 30 (poverty and social exclusion), 31 (housing), taken alone or in conjunction with E (non-discrimination).

The Charter in domestic law

Automatic incorporation into domestic law.

¹ As regards the Netherlands Antilles and Aruba, the Kingdom of the Netherlands are bound by Articles 1, 5, 6 and 16 of the Charter and by Article 1 of the Protocol adding new rights.

² Decision adopted by the Ministers' Deputies at their 963rd meeting on 3 May 2006.

Examples of progress achieved following conclusions or decisions of the ECSR³

The Netherlands (Kingdom in Europe)

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).

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.

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).

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 entering into force in 1999).
- Abolition of 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

³ The European Committee of Social Rights (ECSR) makes a legal assessment of 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 ECSR).

subsidized institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

The Netherlands Antilles and Aruba

Employment

- Prohibition of dismissal during pregnancy or maternity leave, or because of an employee's marriage or membership of a trade union (Amendments to the Civil Code in 2000).

Cases of non-conformity

The Netherlands (Kingdom in Europe)

Non-discrimination (Nationality)

- *Article 18§3 – liberalization of regulations governing the employment of foreign workers*
The regulations governing access to the national labour market for foreign nationals are too restrictive.⁴
- *Articles 19§6 and 19§10 – right to family reunion*
Welfare support benefits are not counted towards the income level above which family reunion is approved. In this respect the possibility of exercising family reunion for a migrant worker who is receiving social assistance benefits is unduly restrictive.
- *Article 19§8 and 19§10 – guarantees concerning deportation*
A migrant worker's family members who have settled on Dutch territory as a result of family reunion are expelled when the migrant worker is expelled.

Children

- *Article 7§3 – prohibition of employment of children subject to compulsory education*
 1. Children aged 15, still subject to compulsory education, are allowed to work for more than half of the long summer school holidays.
 2. 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.
- *Article 7§5 – working conditions between the age of 15 and 18 (remuneration)*
Even though an apprentice is entitled to more than two thirds of an adult worker's minimum wage during the last year of his apprenticeship, the allowances are not fair in view of the fact that an 18-years old adult worker's minimum wage is unreasonably low.
- *Article 17 – right of children to social and economic protection*
Not all forms of violence against children are prohibited.

⁴ Conclusions 2008, Article 18§3.

Employment

- *Article 4§1 – right to a fair remuneration*
The statutory minimum wage of workers aged between 18 and 21 years is too low to be considered fair in the meaning of this provision.
- *Article 4§3 – right to equal pay*
Benefits or rights linked to a pension scheme are excluded from the notion of pay and therefore from the application of the principle of equal treatment.
- *Article 4§4 – right to a reasonable period of notice for termination of employment*
 1. The legislation does not require any period of notice during probationary periods.
 2. One month's notice is insufficient for workers with a service of five years or more.
- *Article 6§4 – right to collective bargaining (strike and lock-outs)*
The Dutch judges' power to determine whether recourse to a strike is premature constitutes an impingement on the very substance of the right to strike as this allows the judge to exercise the trade unions' key prerogatives of deciding whether and when a strike is necessary.

Social Protection

- *Article 12§3 – right to social security (improvement and safeguard)*
Self-employed persons are no longer covered by the sickness, maternity and invalidity branches of the social security.
- *Article 12§4 – equal treatment in social security matters*
The 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.

Netherlands Antilles

Non-discrimination (Sex)

- *Article 1§2 – Non-discrimination in employment*
The legislation prohibiting discrimination in employment is inadequate.⁵
- *Article 1 of the Additional Protocol – equal opportunities and treatment in employment and occupation*
 1. The legal framework prohibiting discrimination in employment is inadequate.
 2. Lack of measures to promote the employment of women.⁶

Employment

- *Article 1§1 – policy of full employment*
The employment policy efforts are inadequate in the light of the prevailing employment situation.⁷

Social Protection

- *Article 16 – social, legal and economic protection of the family*

⁵ Conclusions 2008, Article 1§2.

⁶ Conclusions 2008, Article 1 of the Additional Protocol.

⁷ Conclusions 2008, Article 1§1.

Family benefits are not paid to a significant number of families.

Aruba

Non-discrimination

Nationality

- *Article 16 – social, legal and economic protection of the family*
Eligibility for certain family benefits is subject to a nationality condition.

Sex

- *Article 1 of the Additional Protocol – equal opportunities and treatment in employment and occupation*
 1. The legal safeguards against discrimination in employment are inadequate.
 2. The legislation excludes women from night work.
 3. No particular steps are taken to promote women's access to employment.⁸
- *Article 1§2 – Non-discrimination in employment*
Legislation prohibiting discrimination in employment is inadequate.⁹

The ECSR could not assess compliance with the following provisions:

The Netherlands (Kingdom in Europe)

- *Article 7§6 – working conditions between the age of 15 and 18 (time spent on vocational training)*
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.
- *Article 12§1 – existence of a social security system*
The information provided by the Government does not allow the Committee to assess whether the right to sickness and invalidity benefits is effectively secured as a social security right for all workers.

Netherlands Antilles

- *Article 1§3 – free placement services*
It has not been established that the right to free placement services is guaranteed.¹⁰
- *Article 1§4 – vocational guidance, training and rehabilitation*
It has not been established that vocational guidance, continuing vocational training of workers and vocational rehabilitation for persons with disabilities are guaranteed.¹¹

⁸ Conclusions XVIII-1, Article 1 of the Additional Protocol.

⁹ Conclusions XVIII-1, Article 1§2.

¹⁰ Conclusions 2008, Article 1§3.

¹¹ Conclusions 2008, Article 1§4.