

## – The Netherlands and the European Social Charter –

### Signatures, ratifications and accepted provisions

The Netherlands ratified the 1961 European Social Charter on 22/04/1980, accepting 71 (initially 69) of its 72 paragraphs and the Revised European Social Charter on 03/05/2006, accepting 97 of its 98 paragraphs (only applying to the Kingdom in Europe).

It ratified the 1988 Additional Protocol on 5/08/1992, accepting 3 of its 4 paragraphs and the 1991 Amending Protocol on 1/06/1993.

11 paragraphs (namely, Articles 1, 5, 6, 16 of the 1961 Charter and Article 1 of the 1988 Additional Protocol) remain applicable to Aruba, Curaçao, Sint Maarten and the Caribbean Part (special municipalities of Bonaire, Sint Eustatius and Saba).

The Netherlands accepted the 1995 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.

### The Charter in domestic law

Automatic incorporation into domestic law.

### 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				

### Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted [reports concerning the Netherlands](#) in 2011 and 2016.

Further information on the reports on non-accepted provisions is available on the [relevant webpage](#).

## Monitoring the implementation of the European Social Charter <sup>1</sup>

### I. Collective complaints procedure <sup>2</sup>

#### Collective complaints (under examination)

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#### Collective complaints (proceedings completed)

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

###### a. Inadmissibility

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###### b. No violation

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

*Conference of European Churches (CEC) v. the Netherlands (Complaint No. 90/2013)*

- Violation of Article 13§4 (right to social and medical assistance – specific emergency assistance for non-residents)
- Violation of Article 31§2 (right to housing – reduction of homelessness)

[Decision on the merits on 1 July 2014.](#)

Follow up:

- [Resolution Res/CM ChS \(2015\)5 on 15 April 2015](#) of the Committee of Ministers.
- [Assessment of the European Committee of Social Rights on the follow up \(20 May 2016\).](#)
- [2<sup>nd</sup> assessment of the follow-up of the European Committee of Social Rights \(13 September 2017\).](#)
- [3<sup>rd</sup> assessment of the follow-up of the European Committee of Social Rights \(31 January 2020\).](#)

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

- Violation of Article 31§2 (right housing – reduction of homelessness) because NLD does not provide adequate (temporary) shelter to children unlawfully present in their territory;
- Violation of Article 17§1c (right of children and young persons to social, legal and economic protection - assistance) because NLD does not provide the requisite protection and special aid to children temporarily or definitively deprived of their family's support.

[Decision on the merits on 20 October 2009.](#)

Follow up:

- [Resolution CM/ResChS\(2010\)6 on 7 July 2010](#) of the Committee of Ministers.
- [Assessment of the European Committee of Social Rights on the follow up \(20 May 2016\).](#)

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

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<sup>1</sup> The Committee monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's rules: « 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 ».

Further information on the [procedures](#) may be found on the [HUDOC database](#) and in the [Digest of the case law of the Committee](#).

<sup>2</sup> Detailed information on the Collective Complaints Procedure is available on the [relevant webpage](#).

#### **4. Complaints where the Committee has found a violation and where progress has been made but which has not yet been remedied**

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#### **5. Complaints where the Committee has found a violation which has not yet been remedied**

*University Women of Europe (UWE) v. the Netherlands (Complaint No. 134/2016)*

- Violation of Article 4§3 (Right to a fair remuneration - non-discrimination between women and men with respect to remuneration)
- Violation of Article 20 (Right to equal opportunities and treatment in employment and occupation without sex discrimination)

[Decision on the merits of 6 December 2019.](#)

Follow up:

Recommendation [CM/RecChS\(2021\)11](#) (Adopted by the Committee of Ministers on 17 March 2021 at the 1399th meeting of the Ministers' Deputies)

*European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands (Complaint No. 86/2012)*

- Violation of Article 31§2 (right to housing – reduction of homelessness)
- Violation of Article 13§1 and 13§4 (right to social and medical assistance)
- Violation of Article 19§4c (right of migrant workers and their families to protection and assistance)
- Violation of Article 30 (right to protection against poverty and social exclusion)

[Decision on the merits on 2 July 2014.](#)

Follow up:

- [Resolution Res/CM ChS \(2015\)4 on 15 April 2015](#) of the Committee of Ministers.

- [Assessment of the European Committee of Social Rights on the follow up \(20 May 2016\).](#)

- [2<sup>nd</sup> assessment of the follow-up of the European Committee of Social Rights \(13 September 2017\).](#)

- [3<sup>rd</sup> assessment of the follow-up of the European Committee of Social Rights \(31 January 2020\).](#)

## II. Reporting system<sup>3</sup>

### Reports submitted by the Netherlands

Between 1982 and 2021, the Netherlands has submitted 20 reports on the application of the 1961 Charter and 14 reports on the Revised Charter.

The [13<sup>th</sup> report](#), submitted on 20/12/2019, covers the accepted provisions of the Social Charter relating to thematic group 1 "Employment, training and equal opportunities" (Articles 1, 9, 10, 15, 18, 20, 24 and 25).

Conclusions with respect to these provisions were published in March 2021.

The [14<sup>th</sup> report](#), which was submitted on 26/01/2021, covers the accepted provisions of the Social Charter relating to thematic group 2 "Health, social security and social protection", namely:

- the right to safe and healthy working conditions (Article 3),
- the right to protection of health (Article 11),
- the right to social security (Article 12),
- the right to social and medical assistance (Article 13),
- the right to benefit from social welfare services (Article 14),
- the right of elderly persons to social protection (Article 23),
- the right to protection against poverty and social exclusion (Article 30).

Conclusions with respect to these provisions will be published in January 2022.

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<sup>3</sup> 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.

Following a [decision taken by the Committee of Ministers in April 2014](#), States having accepted the collective complaints procedure are required, in alternation with the abovementioned report, to provide a simplified report on the measures taken to implement the decisions of the Committee adopted in collective complaints concerning their country. The alternation of reports is rotated periodically to ensure coverage of the four thematic groups.

Detailed information on the Reporting System is available on the [relevant webpage](#). The reports submitted by States Parties may be consulted in the [relevant section](#).

## Situations of non-conformity <sup>4</sup>

### Thematic Group 1 "Employment, training and equal opportunities" - Conclusions 2020

► *Article 18§3 - Right to engage in a gainful occupation in the territory of other States Parties - Liberalising regulations*

Early termination of the employment relationship of a foreign national for professional misconduct results in the automatic withdrawal of that person's residence permit with no possibility of seeking new employment.

► *Article 20 - Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

- Pay transparency is not guaranteed;
- Sufficient measurable progress in respect of the obligation to promote the right to equal pay has not been achieved.

► *Article 24 - Right to protection in case of dismissal*

The termination of employment on the sole ground that the person has reached the pensionable age, which is permitted by law, is not reasonably justified.

### Thematic Group 2 "Health, social security and social protection" - Conclusions 2013

According to the applicable rules, Conclusions 2017 only refer to the information submitted by the Dutch Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2013.

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

- The retention of accrued social security benefits (with the exception of old-age benefits) is not guaranteed to nationals of all other States Parties;
- The retention of accrued supplementary benefits is not guaranteed to nationals of all other States Parties.

► *Article 23 - Right of the elderly to social protection*

There is no adequate legal framework to combat age discrimination outside employment.

### Thematic Group 3 "Labour rights" - Conclusions 2018

► *Article 2§1 – Right to just conditions of work – Reasonable working time*

Certain categories of workers are excluded from the statutory protection against unreasonable working hours.

► *Article 2§2 – Right to just conditions of work – Public holidays with pay*

Work performed on a public holiday is not adequately compensated.

► *Article 2§3 – Right to just conditions of work – Annual holidays with pay*

Not all employees have the right to take at least two weeks of uninterrupted holiday during the year.

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

Workers performing dangerous or unhealthy work are not entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

► *Article 2§5 – Right to just conditions of work – Weekly rest period*

In certain sectors, there are insufficient safeguards to prevent that workers may work for more than twelve consecutive days before being granted a rest period.

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<sup>4</sup> Further information on the situations of non-conformity is available on the [HUDOC database](#).

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

The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

► *Article 4§2 – Right to a fair remuneration – Increased remuneration for overtime work*

Workers may be asked to work extended hours without being remunerated at an increased rate.

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

- No notice period is required for probationary periods;
- Six weeks' notice period provided for in case of termination of employment due to bankruptcy, is not reasonable for employees with more than five years of service.

► *Article 4§5 – Right to a fair remuneration – Limits to deduction from wages*

- The attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means of subsistence;
- Deductions in cases when the wage is higher than the statutory minimum wage and no collective agreement applies are left to the discretion of the employer.

**Thematic Group 4 "Children, families, migrants" - Conclusions 2015**

According to the applicable rules, Conclusions 2019 only refer to the information submitted by the Dutch Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).

For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions 2015.

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

- Children aged 15, who are still subject to compulsory education, are not guaranteed the benefit of an uninterrupted rest period of at least two weeks during summer holidays;
- It is possible for children aged 15, who are still subject to compulsory education, to deliver newspapers before school from 6 a.m. for up to 2 hours per day, 5 days per week.

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

- Young workers' wages are not fair;
- Apprentices' allowances are not adequate

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

The time spent in vocational training is not included in the normal working time and remunerated as such for the majority of workers.

► *Article 7§9 - Right of children and young persons to protection - Regular medical examination*

- There is no general mandatory medical examination for workers under 18 years of age;
- It has not been established that regular medical examination of young workers is guaranteed in practice (Conclusions 2017 and 2015).

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

- In respect of the special Caribbean municipalities, the protection against domestic violence against women is not adequate;
- In respect of the special Caribbean municipalities, there is no child benefit scheme.

► *Article 17§1 – Right of children and young persons to social, legal and economic protection - Assistance, education and training*

Minors may be given an adult criminal law sentence and thus placed in adult detention facilities.

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

The right to appeal before an independent judicial body relating to the distribution of accommodation to migrant workers and their families is not effective in practice.

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

- The minimum age of 21 for spouses to be eligible for reunification is an undue restriction on family reunion;
- Family members of a migrant worker who have settled in the Netherlands as a result of family reunion may be expelled automatically when the migrant worker loses his or her right of residence.

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

The grounds of non-conformity under Articles 19§4, 19§6 and 19§11 apply also to self-employed migrants.

► *Article 19§§11 – Right of migrant workers and their families to protection and assistance – Teaching language of host state*

The charges for language courses are likely to hinder the integration of migrant workers and their families

► *Article 31§1 - Right to housing – Adequate housing*

There is an insufficient number of halting sites for non-sedentary populations and the living conditions on such sites is poor.

► *Article 31§2 - Right to housing - Reduction of homelessness*

- The minimum notice period before eviction of two weeks is too short;
- The law does not prohibit eviction from emergency accommodation/shelters without the provision of alternative accommodation.

**The Committee has been unable to assess compliance with the following provisions and has requested the Dutch Government more information in the next report thereon:**

**Thematic Group 1 "Employment, training and equal opportunities"**

- ▶ Article 1§2 - Conclusions 2020
- ▶ Article 1§4 - Conclusions 2020
- ▶ Article 10§1 - Conclusions 2020
- ▶ Article 15§1 - Conclusions 2020
- ▶ Article 15§2 - Conclusions 2020

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

- ▶ Article 3§3 - Conclusions 2013
- ▶ Article 12§1 - Conclusions 2013
- ▶ Article 23 - Conclusions 2013

According to the applicable rules, Conclusions 2017 only refer to the information submitted by the Dutch Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints' procedure (see above).

**Thematic Group 3 "Labour rights"**

- ▶ Article 4§3 - Conclusions 2018
- ▶ Article 26§1 - Conclusions 2018
- ▶ Article 26§2 - Conclusions 2018

**Thematic Group 4 "Children, families, migrants"**

- ▶ Article 19§3 - Conclusions 2015

According to the applicable rules, Conclusions 2019 only refer to the information submitted by the Dutch Government on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints' procedure (see above).



### **III. Examples of progress achieved in the implementation of rights under the Charter (non-exhaustive list)**

#### **Thematic Group 1 "Employment, training and equal opportunities"**

- ▶ 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).
- ▶ 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).
- ▶ 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.

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

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#### **Thematic Group 3 "Labour rights"**

▶ The Works Council Act was amended during the reference period and modified the provisions governing the right to information. The funding of the system for training works council members has been changed. The Act now provides that training must be of a proper standard and that training costs should be directly borne by the undertaking. Further the duty to provide information has been expanded. An undertaking that forms part of an international group of undertakings must in future provide all contact information so that workers' representatives in the Netherlands can contact the parent company abroad in good time about decisions that affect the Dutch undertaking. The rules for holding works council elections have been changed. The requirement that a list of independent candidates can be submitted only if accompanied by a given number of signatures has been scrapped. The dispute settlement rules have been changed. The statutory obligation to present workers' participation disputes for mediation to a joint sectorial committee (consisting of representatives of central employers' and employees' organisations) before taking legal action before the courts has been dropped. However, a joint sectorial committee can still be consulted on a voluntary basis. The Social and Economic Council is now explicitly responsible for promoting worker participation. The Committee for the Promotion of Worker Participation (CBM) has been established by the SER for this purpose. The key function of the CBM is broadly to promote worker participation and the standard of such participation in undertakings. It is also responsible for disseminating information in this regard.

▶ The Netherlands revoked the restrictions with respect to the right to strike regarding civil servants. This means civil servants now have a right to strike (Kingdom Act of 3 December 2014, published in the Bulletin of Acts and Decrees on 15 January 2015, No. 11).

#### **Thematic Group 4 "Children, families, migrants"**

- ▶ 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).
- ▶ 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).
- ▶ Entitlement of migrant workers to be treated not less favourably than nationals as regards legal proceedings (Law of 8 March 1980).