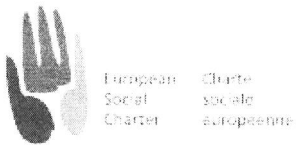

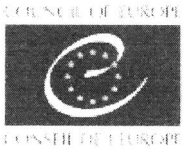

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

December 2017

THIRD REPORT ON THE NON-ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

FINLAND

Meeting
Helsinki, 15 June 2017

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I. SUMMARY

With respect to the procedure provided by Article 22 of the 1961 Charter – examination of non-accepted provisions - the Committee of Ministers decided in December 2002 that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned" (Decision of the Committee of Ministers of 11 December 2002).

Following this decision, it was agreed that the European Committee of Social Rights would examine - in a meeting or by written procedure - the level of conformity of the country's situation, in law and in practice, with non-accepted provisions. This review would be done for the first time five years after the ratification of the Revised European Social Charter, and every five years thereafter, to assess the situation on an ongoing basis and to encourage States to accept new provisions. Indeed, experience has shown that States tend to overlook that the selective acceptance of the provisions of the Charter should be only a temporary phenomenon.

As Finland ratified the Revised Charter on 21 June 2002, accepting 88 of the 98 paragraphs, the procedure on the non-accepted provisions was applied for the first time in the context of a meeting between the European Committee of Social Rights and representatives of various Finnish ministries held in Helsinki on 15-16 November 2007.

With a view to carrying out the procedure for the second time in 2012, the Finnish authorities submitted written information on the non-accepted provisions on 29 June 2012.

Having examined the written information, the Committee confirmed its opinion adopted in 2007 that from the point of view of the situation in law and in practice there were no obstacles to the immediate acceptance of Articles 4§1 and 19§10, and the Committee was of the view that also Article 8§3 could be accepted immediately. Moreover, having regard to developments in the Committee's case law and/or developments in Finnish law since the ratification, the Committee considered – subject to certain clarifications – that there were no significant or insurmountable obstacles to acceptance of Articles 7§6, 7§9 and 8§1.

With a view to carrying out the procedure for the third time in 2017, the Finnish authorities were invited to organise a second meeting on the non-accepted provisions which was held in Helsinki on 15 June 2017.

Following this meeting, the European Committee of Social Rights concluded that Articles 8§1 and 19§10 could be accepted immediately and there were no significant obstacles in law and in practice to acceptance of Articles 4§1, 7§6, 7§9 and 8§3. As regards Articles 3§2, 4§4, 8§5 and, to a lesser extent, Article 3§3 the Committee confirmed its previous opinion that legislative changes seemed required to bring the situation into conformity with the Charter.

The Committee welcomed the Government's statement that it was actively working on the acceptance of Article 19§10 of the Charter. The Committee wished to encourage the Finnish authorities to work towards accepting additional provisions where it concluded that there were no significant obstacles in law and in practice to do so and to complete this work with a positive result as soon as possible thus consolidating the paramount role of the Charter in guaranteeing and promoting social rights.

The next examination of the provision not accepted by Finland will take place in 2022.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

The meeting was opened and chaired by Krista Oinonen, Agent of the Government of Finland before the ECSR, Director in the Ministry for Foreign Affairs who welcomed the opportunity for a constructive dialogue with members of the European Committee of Social Rights.

The Finnish authorities presented the situation in law and in practice relating to the non-accepted provisions. Interventions were made by Katja Kuupelomäki, Legal Officer in the Ministry for Foreign Affairs, Elli Nieminen and Erno Mähönen, Senior Specialists in the Ministry of Economic Affairs and Employment, Riitta-Maija Jouttimäki, Kristiina Mukala, Marja-Terttu Mäkiranta, Ministerial Counsellors, and Toivo Niskanen, Senior Officer in the Ministry of Social Affairs and Health.

Social partners were represented by Jari Hellsten, LL.D., Legal Adviser in the Central Organisation of Finnish Trade Unions (SAK) and Mika Kärkkäinen, Senior Adviser in the Confederation of Finish Industries (EK). They took part in the discussion on Article 4 of the Charter.

The Committee delegation consisted of Giuseppe Palmisano, President, Marit B. Frogner, member and Matti Mikkola, former President of the Committee. The Secretariat was represented by Danuta Wiśniewska-Cazals and Sheila Hirschinger. The delegation presented some aspects of the case-law with regard to the non-accepted provisions and the possible acceptance of these provisions by Finland. Sheila Hirschinger presented the European Code of Social Security.

Full information on the case-law is available in the Digest of the Case-Law of the European Committee of Social Rights.

Article 3: The right to safe and healthy working conditions
Paragraph 2 - Safety and health regulations

Situation in Finland

The authorities pointed out that the safety and health legislation in Finland had not changed since the situation was discussed in 2012. They provided information on Finnish policies and objectives to improve the situation concerning the work environment and well-being at work by 2020, such as a 10% decrease in the number of occupational diseases, 25% decrease in the frequency of workplace accidents, 20% decrease in physical stress and a 20% decrease in mental stress caused by work.

The objectives set out under Section 1 of the Occupational Safety and Health Act (738/2002) aim to improve the working environment and working conditions, in order to ensure and maintain the working capacity of employees. The Act aims to prevent occupational accidents/diseases and eliminate from the working environment other hazards to the physical and mental health of employees. Under Section 65, compliance with the Act is monitored by occupational safety and health authorities.

The Occupational Health Care Act (1383/2001) was also presented with an explanation of its purpose, as set out in Section 1. The Act provides for the duty of an employer to arrange occupational health care and to deal with its content and organisation. It promotes, through

cooperation between the employer, employee and occupational health care provider, the following aspects: prevention of work-related illnesses and accidents; health and safety of work/working environment; health and working capacity of employees; and functioning of the workplace community. Under Section 5, the employer shall make sufficient use of occupational health care professionals and any experts that these professionals deem essential, in accordance with good occupational health care practice. Occupational health care professionals and experts shall be professionally independent of the employer, the employees and their representatives, and they shall possess the qualifications referred to in section 3 of the Act, as well as relevant knowledge and skills. The employer of an occupational health care professional or expert has a duty to ensure that this person attends continuing education and maintains professional skills. Under Section 12, the employer has a duty to arrange occupational health care in accordance with good practice, such as assessment of work conditions and health risks.

In the view of the Government, Finland implemented the provisions of Article 3§2 with respect to legislation on health and safety at work except concerning self-employed workers. Due to this lack of conformity, the authorities considered that it would not be possible to accept Article 3§2.

Opinion of the Committee

The Committee underlined that there had been developments in the case law since 2012. The Committee's statement of interpretation in 2013, in relation to the application of the right to safe and healthy working conditions as set out in Article 3, reflected changes and developments in this field. The statement of interpretation took into account new trends, such as increased competition, free movement of persons, new technology, organisational constraints, self-employment, outsourcing and employment within small and medium-sized enterprises. In its assessment under Article 3, the Committee also takes into consideration a number of other factors, including new forms of employment, which may impact the workers' health and safety. The Committee seeks to assess work-related stress and the measures taken to protect workers in this respect, as well as the regulations in place.

The Committee pointed out, that in assessing the risks that must be covered by the legal framework under Article 3§2, its assessment refers to international technical occupational health and safety standards, such as the ILO Conventions and EU Directives on health and safety at work. With regard to the requirements of the legislation under Article 3§2, it is important to ensure that the existing legislation is geared to new circumstances and changes in the work environment as well as related risks. With regard to personal scope of laws and regulations, the Committee underlined that all workers, all workplaces and all sectors of activity must be covered by occupational safety and health regulations, including both employed and self-employed persons, as well as temporary workers. Moreover, the Committee gives a special focus to more vulnerable groups in high-risk sectors. It also looks into information and training provided in occupational safety and health matters upon recruitment.

The Committee considered that there were a number of obstacles to acceptance of Article 3§2, in particular with regard to the legislation concerning self-employed workers.

Article 3: The right to safe and healthy working conditions
Paragraph 3 - Enforcement of safety and health regulations security system

Situation in Finland

The Finnish authorities provided information on the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006). As set out under Section 1, this Act provides for a procedure to be followed by occupational safety and health authorities in monitoring compliance with provisions on occupational safety and health and for cooperation in this area between employers and employees at workplaces.

Section 7 of the Occupational Safety and Health Act (738/2002) applies to employers exercising the main authority, other employers and self-employed workers operating in shared workplaces (as provided for in sections 49-51 and 54). Section 49 concerns the duty of those operating at a shared workplace to exercise care; Section 50 provides for information and cooperation at a shared workplace; Section 51 relates to the obligations of the employer exercising the main authority at a shared workplace and Section 54 concerns the elimination of mutual hazards in workplaces.

The authorities pointed out, as mentioned under Article 3§2 above, that the safety and health legislation in Finland had not changed since the situation was discussed in 2012, and maintained the view that it would not be possible to accept Article 3§3 as the legislation with regard to self-employed workers was not in conformity.

Opinion of the Committee

The Committee referred to its statement of interpretation on Article 3 specifying that this article, being designed to guarantee the right to safe and healthy working conditions not only for employed persons but also for the self-employed, ought to apply to all sectors of the economy if only on account of the technical advances and increasing mechanisation manifest in every branch of activity. The Committee recalled that it has recognised that, given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements. However, the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done.

The Committee pointed out that although there is no automatic link between 3§2 and 3§3, a situation where the self-employed are excluded from the supervisory power of the Labour Inspection seems problematic. It therefore encouraged the Government to review the wording of the regulations to ensure that all the economic activities and sectors were covered, with a view to regularising the legislation and supervisory mechanism for the self-employed in order to bring the situation into conformity with the Charter.

Article 4: The right to a fair remuneration
Paragraph 1 - Decent remuneration

Situation in Finland

With regard to Article 4§1, the Finnish authorities mentioned that the legislation had not changed since the first meeting on non-accepted provisions which took place in 2007. As stated

in the last written report, the minimum remuneration for an employment relationship and other minimum conditions of employment in Finland are determined primarily either by generally applicable or normally applicable collective agreements. If no such collective agreements exist, the remuneration is determined by the employment contract concluded between the employer and the employee. If neither a generally applicable collective agreement nor a collective agreement binding under the Collective Agreements Act (436/1946) exists and the employer and the employee have not agreed on the remuneration to be paid for the work by the employment contract, the Employment Contract Act (55/2001) stipulates that the employee must be paid a reasonable normal remuneration for the work performed, considering the nature of the work.

In the public sector, the minimum conditions are determined by the collective agreements that bind employers. In the practice of monitoring the implementation of the Charter, remuneration for a decent standard of living means remuneration of at least 60% of the national average net salary.

The Committee has stated in the report of 2012 that the article 4§1 does not require, or encourage, States to adopt a minimum wage. However, the Government is of the opinion that without a national minimum wage, Finland would certainly not be in conformity with the Charter, as in the collective agreement-based system the Government has little influence on the wage base and wage bargaining processes in general, especially since The Confederation of Finnish Industries no longer negotiates centralised tripartite agreements. The Government does not participate in tripartite discussions either. As the Government has no control / information on the minimum wage, Article 4§1 still cannot be accepted by Finland.

While the proportion of low-wage earners in Finland is among the lowest in the EU, as the statistics show, some employees earn less than 60% of the average wage. In addition, Finnish statistics do not compile pay statistics on net pay but gross pay.

In conclusion, since the Government exercises very little actual influence over the wage base in collective agreements and since the practice of applying Article 4§1 of the Charter differs essentially from the determination of the minimum conditions of remuneration in Finland, acceptance of Article 4§1 is, from the point of view of the Government, still not possible.

Position of the social partners

The Confederation of Finish Industries (EK) expressed the opinion that the situation in Finland is satisfactory and there is no need to accept Article 4§1 of the Charter. As regards the minimum wage, the situation is similar to that in other Nordic countries. Workers in Finland are satisfied with the current system and binding collective agreements can be considered successful. All employers have to follow binding collective agreements and the number of cases where no collective agreement is in force is low. In general, workers in such a situation can negotiate their wages. In addition, the reform of the Act on Working Time is under way. If Article 4§1 is not accepted, legislators will have more flexibility in their work.

The Central Organisation of Finnish Trade Unions (SAK) indicated that in 2002 it was in favour of accepting Article 4§1 and that the Government was opposed for the same reason as now. Currently this position has changed and the system of universally binding collective agreements is being challenged. The SAK doesn't urge the Government to accept Article 4§1. This issue should be discussed after the Finnish parliamentary election in 2019 as it is a political choice of the Government. The SAK agrees that it is not necessary to accept Article 4§1 of the Charter.

Opinion of the Committee

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. The Committee recalls the fundamental importance it attaches to the right to fair remuneration; an inadequate wage creates poverty and a wage that is well below average in a society is incompatible with social justice. Article 4§1 on decent remuneration is a fundamental principle of civilisation.

The concept of "decent standard of living" goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities

This provision, as well as Article 4§4 on the reasonable notice period, are types of flexible standards, qualified by terms such as: fair, decent and reasonable. In interpreting this type of text, the Committee also considers other indicators.

The Committee's case law under Article 4§1 is based on the assumption that, in order to be in conformity with the Charter, the lowest wage should not fall too far behind the national average wage in a given country. To be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage which also covers, where applicable, special bonuses and other extras. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. It concerns all type of work and all types of wages, as well as all categories of employees, migrant workers included. Where net figures are difficult to establish, it is for the State Party concerned to conduct the needed enquiries or to provide estimates.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a statutory national minimum wage exists, its net value is used as a basis for comparison with the net average wage. Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.

Furthermore, to be considered fair within the meaning of Article 4§1, a wage must always be above the poverty threshold in a given country i.e. above what guarantees the inclusion of everyone in the mainstream society.

As regards the situation in Finland, the Committee refers to its report adopted in 2012 where it explained its reasoning leading to the conclusion that the fact that wages in Finland are determined by generally applicable or normally applicable collective agreements does not pose any legal problem with regard to the Charter. It also considered that the absence of regular statistics did not cause a problem of acceptance of the provision by the State.

The Committee therefore maintains its view that there are no significant obstacles, legal or practical, to acceptance by Finland of Article 4§1.

Article 4: The right to a fair remuneration
Paragraph 4 - Reasonable notice of termination of employment

The authorities of Finland pointed out that the legislation had not changed with regard to Article 4§4 since the last examination.

According to Chapter 7, Section 8 of the Employment Contracts Act, if the employer dies or is declared bankrupt, the period of notice for terminating the employment contract is 14 days regardless of the length of the employment relationship.

Under Article 4§4 of the Charter, Parties recognise the right of all workers to a reasonable period of notice for termination of employment. In the practice of monitoring the implementation of the Charter, the length of a reasonable period of notice for termination of employment has not been determined precisely.

In its 2012 report on the non-accepted provisions, the Committee stated that the main criterion for assessing the reasonableness of the notice period was the length of service.

In conclusion, the Finnish legislation differs from the interpretation adopted in the monitoring practice of the European Committee of Social Rights. The notice of 14 days applies to all workers, regardless of length of service. For this reason, the Government is of the opinion that Article 4§4 cannot be accepted.

Opinion of the Committee

The main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages.

The concept of “reasonable” notice has not been defined by the Committee in an abstract way. The Committee also did not rule on the function of the notice period or on compensation. It assesses the situation on a case by case basis. The Committee considers that the multitude of individual assessments taken together provide a significant degree of guidance to the States Parties as to the scope of the obligation under Article 4§4.

As the Government pointed out, the major criterion for the assessment of reasonableness was the length of service.

The right to reasonable notice of termination of employment applies to all categories of workers independently of their status, including those in non–standard such as fixed-term, temporary, part-time, intermittent, seasonal or complementary employment. It applies to civil servants and contractual staff in the civil service, to manual workers and in all sectors of activity. It also applies during the probationary period and upon early termination of fixed-term contracts. Domestic law must be broad enough to ensure that no workers are left unprotected.

The situation in Finland where a notice of 14 days applies to all workers, independently of length of service, if the employer dies or is declared bankrupt, seems therefore to require legislative changes in order to bring the situation into conformity with the Charter.

Article 7: The right of children and young persons to protection
Paragraph 6 - Inclusion of time spent in vocational training in the normal working time

The Finnish authorities recalled that, under Article7§6, the time spent by young persons in vocational training during the normal working hours with the consent of the employer must be treated as forming part of the working day. The authorities explained that time spent in training in Finland was treated as part of the working days only in cases referred to in the Working Hours Act (605/1996). According to Section 4 of the Act, the time spent on work and the time an employee is required to be present at a place of work at the employer's disposal are considered as working hours. Time spent in training is considered as being part of working hours mainly when attending it is compulsory or when agreed to with the employer. The authorities pointed out that according to the Finnish legislation, there is not an obligation that the time spent by young persons in vocational training be treated as part of the working day.

The Working Hours Act was the main legislation that applied with regard to Article 7§6, and it takes into account the Young Persons Act.

Information was provided on a tripartite working group which was looking into the Working Hours Act, with a view to renewing it.

The authorities pointed out that the legislation had not been amended since the report on non-accepted provisions in 2012. The Government maintained the view that it would not be possible to accept Article 7§6, as the legislation was not in conformity.

Opinion of the European Committee of Social Rights

The Committee provided information with regard to case-law and clarified the requirement under Article 7§6 that time spent by young persons in vocational training during the normal working hours shall be treated as part of the working day. It implies that such time is remunerated as normal working time and does not mean that the number of hours worked should be effectively increased.

The Committee considered that the situation in Finland could be in line with Article 7§6 as the time spent on training in Finland is part of the working day and remunerated when it is compulsory and agreed to by the employer. The Committee underlined that it saw no major obstacles to acceptance of the paragraph. The Committee considered that the redrafting of the Working Hours Act would be an opportunity for the Government to take account more specifically of the requirements of Article 7§6 and that it would be appropriate to wait for adoption of the new text.

Article 7: The right of children and young persons to protection
Paragraph 9 - Regular medical examination

The Finnish authorities provided an overview of the Occupational Safety and Health Act (738/2002) which is related to work carried out under the terms of an employment *contract* as well in an *employment relationship* in the public sector, or in a comparable service relationship subject to public law. Information was also provided on the Occupational Health Care Act (1383/2001) which applies to work in which the employer has a duty to comply with the legislation. Entrepreneurs and other self-employed persons shall comply with the provisions of Act 1383/2001 as applicable.

With regard to the legislation concerning organisation of Occupational Health Care (OHC), under the Health Care Act (1326/2010 §18), the municipality has responsibility for organisation of OHC for employers in their area. Under the Occupational Health Care Act (1383/2001 §4), the employer has responsibility for organisation of OHC for his/her employees. An overview of the organisation of OHC showed the relationship between national and international (EU and ILO) obligations.

Data presented showed the evolution of the number of persons included in OHC services over different periods and the average cost per employee.

With regard to medical check-ups, the Occupational Health Care Act (1383/2001) Section 12(2) provides for:

investigation, assessment and monitoring of work-related health risks and problems, employees' health, working capacity and functional capacity, including any special risk of illness caused by the work and the working environment, and any medical examinations as a result of the aforementioned points, having regard to the individual characteristics of the employee.

Article 7, paragraph 9, Section 13 of the Act (1383/2001) regulates medical examinations of employees and applies to employees under 18 years of age. It stipulates that:

an employee may not without good cause refuse to attend a medical examination referred to in this Act if at the start or at a later stage of the employment the examination is necessary for investigating the employee's health in performing work or being in a working environment that presents a special risk of illness; or investigating the employee's working capacity or functional capacity for the purposes of the health requirements associated with the job.

The medical examination is performed by mutual agreement with the employee as provided in Section 6 of the Act on the Status and Rights of Patients (785/1992). A certificate is written on the basis of the medical examination referred to in Section 13, subsection 1, subsection 2 of the Occupational Health Care Act. The certificate must include an overall evaluation of the employee's health qualifications for carrying out the tasks he or she is responsible for or the tasks planned to be assigned to him or her. In addition to the aforementioned provisions, the Government Decree on medical examinations in work that presents a special risk of illness (1485/2001) is applicable to employees under 18 years of age. Thus, the current legislation requires the medical control of employees under 18 years of age in occupations prescribed by national laws or regulations.

The authorities pointed out that there had not been any legislative amendments concerning young employees and their medical check-ups since the report in 2012. The legislation did not require regular medical examinations of such employees, for reasons related to their young age. The Government was of the view, therefore, that Finland was still not in a position to accept Article 7§9.

Opinion of the Committee

The Committee referred to the requirement under Article 7§9 to provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by domestic laws or regulations. The check-ups must be adapted to the specific situation of young workers and the particular risk to which they are exposed and they could be carried out by the occupational health services, if they had specific training to do so. The Committee underlined

that the obligations entail a full medical examination on recruitment and regular check-ups thereafter. It pointed out that due to the young age of the workers, the check-ups must be on a regular basis although a fixed period of time for intervals was not required. The Committee looks at situations on a case by case basis and it drew attention to the case-law, in this respect, where an interval of two years has been considered by the Committee as too long (Conclusion 2011, Estonia).

The Committee considered that the situation was mainly in conformity with Article 7§9, except with regard to intervals, due to the length of time between check-ups. The Committee pointed out that the Government Decree on Medical Examinations applies to young workers and that it is to a large extent in conformity with the requirements of the Charter. Apart from the issue of intervals, the Committee considered that there were no major obstacles to Finland's acceptance of Article 7§9.

Article 8: The right of employed women to protection of maternity
Paragraph 1- Maternity leave

Situation in Finland

The situation in Finland presented at the meeting was supplemented by written information provided by the Government after the meeting.

According to Chapter 4, Section 1 of the Employment Contracts Act, employees shall be entitled to take leave from work during maternity, special maternity, paternity and parental benefit periods as referred to in the Health Insurance Act. According to the Section 2 of the same Chapter, during the period of maternity allowance, the employee is entitled, with the consent of the employer, to perform work that poses no risk to her or to the unborn or newly born child. However, such work is not permitted during a period of two weeks before the expected time of birth and two weeks after delivery. Both the employer and the employee have the right to interrupt work performed during the maternity allowance at any time.

This provision is consistent with the EU-directive concerning pregnant workers (Directive 92/85/EEC).

The Government pointed out that even though amendments have been made in the Health Insurance Act, the provisions of the Employment Contracts Act are still in force.

The Government stressed that there are long periods of maternity and parental leave in Finland and that mothers who normally work have at least 14 weeks of rest as required by the Charter. In addition, Finland has implemented the European Union directive protecting pregnant women and new mothers, that also provides for 14 weeks maternity leave, of which 2 weeks before and 2 weeks after birth.

However, although it is not common, an employee may, with the employer's consent, return to work two weeks after childbirth if the work does not pose a risk to her or the newborn.

Discrimination based on pregnancy and family leave is prohibited by the Act on Equality between Women and Men (609/1986). However, Finnish legislation can be considered flexible enough to prevent an employee from returning to work two weeks after the birth if the employee and the employer so wish. The Government therefore considers that Finnish legislation is not fully in conformity with the Charter, so that it would not be possible to accept Article 8§1.

Furthermore, as there are plans to reform EU legislation on parental leave, it is too early to accept Article 8§1.

Opinion of the Committee

Under Article 8§1 of the Charter, the right to maternity leave of at least 14 weeks must be guaranteed by law. This right is designed both to grant employed women protection in the case of maternity and to reflect a more general interest in public health. Consequently it must be guaranteed for all categories of employees and the leave must be maternity leave and not sick leave.

Domestic law may permit women to opt for a shorter period of maternity leave. However, in all cases there must be a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned.

Maternity leave must be accompanied by the continued payment of the individual's remuneration or by the payment of social security benefits or benefits from public funds.

The modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations. Regardless of the modality of payment, the level shall be adequate.

Minimum rate of compensation shall not fall below the poverty threshold defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.

In case of continued payment of wages or earnings-related benefits, these shall be equal to the previous salary or close to its value, and not be less than 70% of the previous wage.

For high salaries, a significant reduction in pay during maternity leave is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit.

Moreover, even if the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment, these conditions must be reasonable. The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.

In the light of these requirements, and bearing in mind the margin of appreciation enjoyed by States, the Committee considered that Finland complied with Article 8§1 of the Charter. It accordingly recommended the acceptance of this Article.

Article 8: The right of employed women to protection of maternity
Paragraph 3 - Time off for nursing mothers

Situation in Finland

The Government pointed out that, as regards Article 8§3 of the Charter, the situation has not changed since the 2012 report. Finnish legislation does not contain provisions on nursing leave. The periods of maternity and parental leave are so long that no need has been found for a separate nursing leave.

Under the Employment Contracts Act, employees are entitled to take leave during periods of maternity, special maternity, paternity and parental benefits. Maternity leave lasts 105 working days, in accordance with the Health Insurance Act. After the end of the maternity allowance period, parents can take parental leave of 158 full-time or part-time working days. In accordance with the Employment Contracts Act, the employer and the employee may agree to part-time work and its conditions during the parental allowance period provided for by the Health Insurance Act. Employees are entitled to two periods of full-time parental leave to care for a child less than 3 years of age.

Given that the legislation does not comply with the requirement of Article 8§3, the Government considers that this provision cannot yet be accepted.

Opinion of the Committee

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.

Time off for nursing that in principle is granted during working hours should be treated as normal working time and remunerated as such. However provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.

Time off for nursing must be granted at least until the child reaches the age of nine months.

The practical ways of implementing this Article are appreciated on a case-by-case basis: legislation providing for two daily breaks for a period of one year for breastfeeding, two half–hour breaks where the employer provides a nursery or room for breastfeeding, one–hour daily breaks and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter.

In the light of the above, even in the absence of a specific provision on the time off for nursing mothers, the situation could be in conformity with Article 8§3. The Committee therefore recommended the acceptance of this Article.

Article 8: The right of employed women to protection of maternity
Paragraph 5 - Prohibition of dangerous, unhealthy or arduous work

Situation in Finland

The Government pointed out that some provisions in the Employment Contracts Act related to Article 8§5. Under this Act, employees have the right to take a leave during the special periods of maternity referred to in the Health Insurance Act.

The Government then quoted the Finnish Occupational and Health Act (738/2002) which in its Section 11 states that if the assessment of risks at work shows that the work may cause a particular risk of injury or illness, such work shall be done only by an employee who is competent and personally suitable for it or by another employee under the direct supervision of such an employee. Access to the danger area by other persons shall be prevented by appropriate measures. If work or working conditions may cause a particular risk to a pregnant employee or the unborn child and the hazard cannot be eliminated, the employer shall aim to transfer the employee to suitable work tasks for the time of pregnancy. Section 48 of this Act specifies that pregnant women and breast-feeding mothers shall, when necessary, have an opportunity to go to rest in a break room or other suitable place.

The Government was of the opinion that Article 8§5 of the Charter cannot be accepted because it is not compatible with the principle of equality. In fact, the prohibition in the past of the employment of women in underground mines was repealed because it conflicted with the national gender equality policy. In addition, this Article conflicts with the requirements of the legislation on gender equality and current understanding and developments as regards gender equality. Considering the unconditional wording of Article 8§5, the requirements set out therein restrict women's equal opportunities in employment and may therefore lead to discrimination against women in their working life.

Opinion of the Committee

This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines. This applies to extraction work proper, but not to women who:

- occupy managerial posts and do not perform manual work;
- work in health and welfare services;
- spend brief training periods in underground sections of mines.

This prohibition must be provided for in law.

Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. Domestic law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.

Domestic law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay, if this is not possible such women should be entitled to paid leave. Such women should retain the right to return to their previous employment.

The Committee took note that Finland had repealed previously existing legislation which prohibited the employment of pregnant women in underground sections of mines in order to comply with the national gender equality policy and the corresponding legislation. It confirmed its opinion that legislative changes were required to bring the situation into conformity with the Charter on this point.

Article 19: The right of migrant workers and their families to protection and assistance
Paragraph 10 - Equal treatment for the self-employed

Situation in Finland

The Government reported that the rights covered by Article 19§10 of the Charter are primarily the responsibility of the Ministry of the Interior and the Department of Employment and Entrepreneurship of the Ministry of Economic Affairs and Employment. She recalled that Article 19§10 requires that the protection and assistance provided for in Article 19 must be extended to self-employed migrant workers insofar as such measures apply.

The relevant national legislation has not changed since the last assessment by the Committee.

Section 79 of the Aliens Act (301/2004) regulates employment in certain professions without a residence permit for an employed person.

According to Chapter 1, Section 1 of the Act on the Right to Carry On a Trade, a natural person domiciled in the European Economic Area (EEA) may, without the need for a special permit, carry on a trade that is legal and in accordance with good practice. By contrast, natural persons domiciled outside the European Economic Area need a permit to carry on a trade.

The Charter has also been ratified by States not party to the Agreement on the EEA. Since the Article 19§10 applies to all nationals of the Parties to the Charter, the Government considered that the legislation does not adequately safeguard the rights guaranteed to self-employed persons under this provision.

The Government explained that the Finnish system for issuing residence permits for self-employed workers from countries outside the EU/EEA or Switzerland comprises two phases: first, there are considerations related to the profitability of the business in question, secondly, the applicant must fulfil the general conditions of residence in Finland. The relevant criteria are set out in the Aliens Act. There is a corresponding procedure and a set of conditions for workers from third countries. At the same time, workers and self-employed persons holding the nationality of an EU/EEA member State or Switzerland benefit from the more generous provisions on free movement and do not need to apply for a residence permit as such. This dual system is largely recognised and there are no plans to alter its grounds. For these reasons the Government was of the view that Article 19§10 could not be accepted.

However, in its 2012 report of the previous assessment, the Committee emphasized that "Article 19§10 is concerned neither with the granting of residence and/or work permits nor with the granting of permits for the exercise of a trade as self-employed. The Charter's protection of self-employed migrant workers extends to the rights provided for in paragraphs 1 to 9, 11 and 12 and the Finnish system whereby natural persons domiciled outside the EEA need a permit for carrying on a trade does therefore not raise a problem of conformity under Article 19§10."

There may have been a misunderstanding that the Finnish legislation is not in conformity with Article 19§10. Consequently, the Ministry of the Interior and the Ministry of Economic Affairs and Employment are now of the opinion that there were no obstacles to the acceptance of Article 19§10 of the Charter.

Opinion of the Committee

The Committee stressed that Article 19§10 on equal treatment of self-employed migrants is based on a rule prohibiting all type of discrimination, either direct or indirect.

The Committee welcomed the Government's statement that there were no obstacles to the acceptance of Article 19§10 of the Charter. It noted that the Government was actively working on the acceptance of this provision.

III EXCHANGE OF VIEWS ON THE EUROPEAN CODE OF SOCIAL SECURITY

The Secretariat of the European Social Charter presented the monitoring mechanism with respect to the European Code of Social Security (the "Code") which had been so far ratified by 21 member States, including 19 States party to the European Union.

Under Article 12§2 of the European Social Charter, with a view to ensuring the effective exercise of the right to social security, "the Parties undertake to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security". The Code, which entered into force on 17 March 1968, is a minimum standards instrument, drawn up on the basis of the International Labour Organisation (ILO) Convention N° 102. It set out the minimum level of protection required in traditional social security branches: Medical care, Sickness benefit, Unemployment benefit, Old-age benefit, Employment injury benefit, Family benefit, Maternity benefit, Invalidity benefit and Survivors' benefit.

At the time of ratification, the State Party has to sign up to six contingencies, bearing in mind that "medical care" counts for two and "old age" counts for three contingencies.

Supervision of compliance with the Code is carried out on the basis of annual national reports which are assessed by the relevant ILO Committee of Experts. The reports are to be submitted in English or French on the basis of a standard form and a detailed report is to be submitted once every 5 years. The Governmental Committee of the European Social Charter and the European Code of Social Security (GC) adopts draft Resolutions on application of the Code, drawn up on the basis of the ILO Conclusions, which are subsequently adopted by the Committee of Ministers of the Council of Europe. As Finland was already bound by ILO Conventions No. 121 (Employment Injury Benefits, 1964), No. 128 (Invalidity, Old-Age and Survivors' Benefits, 1967), No. 130 (Medical Care and Sickness Benefits, 1969) and No. 168 (Employment Promotion and Protection against Unemployment, 1988) and by Article 12§2 of the European Social Charter, the Government was invited to consider signature and ratification of the Code.

The authorities of Finland took note of the information provided and welcomed the opportunity to look again at the question of signature/ratification of the Code. They expressed some concern regarding the compatibility of the Finnish social security system with the requirements of the treaty. In particular, the Code is based on a family model (spouse, two children…) that does not

fit with the Finnish approach to the social security system. This is the main reason why the Code had not been ratified. Moreover, the reporting system is difficult because it requires research on statistics and Finland, where national legislation changes quickly, has no resources to deal with it.

The Committee observed that Finland has ratified Article 12 of the Charter and, as such, is already drafting the reports that may be submitted within the procedure under the Code. The social security system in Finland, as in other Nordic countries, is of a high standard. Furthermore, Finland has ratified a number of ILO conventions in the field of social security. The only obstacle to ratification of the Code is of a conceptual nature.

APPENDIX I - Programme

MEETING ON THE NON ACCEPTED PROVISIONS OF THE EUROPEAN SOCIAL CHARTER

organised by

Council of Europe

and

Ministry for Foreign Affairs of Finland

Helsinki, 15 June 2017

Venue: Ministry for Foreign Affairs, Building G, Meeting Room Ehrensvärd
(Street address: Merikasarminkatu 5 F)

Working language: English

The meeting is organised within the framework of the procedure provided for by Article 22 of the 1961 Charter on "non-accepted provisions". It will consist of an exchange of views and information on the provisions not accepted by Finland with a view to evaluating the prospects for acceptance of additional provisions. In addition, information will be provided on the European Code of Social Security, which has not yet been either signed or ratified by Finland.

Background

Finland ratified the European Social Charter (revised) on 21 June 2002, accepting 88 of its 98 paragraphs. It has accepted the Collective Complaints procedure on 17 July 1998. Finland has made a declaration enabling national NGOs to submit collective complaints.

The first meeting on the non-accepted provisions by Finland took place in Helsinki on 15-16 November 2007. With a view to carrying out the procedure for the second time in 2012 the Finnish authorities were invited to provide written information on the non-accepted provisions. On the basis of the information presented by the Government, the Committee was of the view that there were no significant obstacles in law and in practice to the immediate acceptance by Finland of the following provisions of the Charter:

- Article 4§1 - *Decent remuneration*
- Article 8§3 – *Time off for nursing mothers*
- Article 19§10 - *Equal treatment for the self-employed*

Moreover, having regard to developments in the Committee's conclusions and decisions and/or developments in Finnish law since the ratification, the Committee considered – subject to certain clarifications – that there were no significant or insurmountable obstacles to acceptance of the following provisions:

- Article 7§6 – *Inclusion of time spent on vocational training in the normal working time*
- Article 7§9 – *Regular medical examination*
- Article 8§1 – *Maternity leave*

With respect to the following provisions it appeared to the Committee that the situation in Finland was not fully in compliance with the Charter: 3§2, 3§3, 4§4 and 8§5

- Article 3§2 – *Safety and health regulations*
- Article 3§3 – *Enforcement of safety and health regulations security system*
- Article 4§4 – *Reasonable notice of termination of employment*
- Article 8§5 – *Prohibition of dangerous, unhealthy or arduous work*

No additional provision has been accepted by Finland since the ratification of the Charter.

Programme

Moderator: Krista Oinonen, Agent of the Government of Finland before the European Committee of Social Rights, Director, Ministry for Foreign Affairs

9.30 Opening of the meeting

- *Krista Oinonen, Agent of the Government of Finland before the European Committee of Social Rights, Director, Ministry for Foreign Affairs*
- *Giuseppe Palmisano, President of the European Committee of Social Rights*

9.45 Article 3 The right to safe and healthy working conditions §2 (Safety and health regulations) and §3 (Enforcement of safety and health regulations security system)

Situation in law and in practice in Finland, reasons for non-acceptance

- *Toivo Niskanen, Senior Officer, Ministry of Social Affairs and Health*

Comments in the light of the Committee's conclusions and decisions

- *Marit B. Frogner, member of the European Committee of Social Rights*

Discussion

10.30 Article 4 The right to the fair remuneration §1 (Decent remuneration) and §4 (Reasonable notice of termination of employment)

Situation in law and in practice in Finland, reasons for non-acceptance

- *Elli Nieminen, Senior Specialist, Ministry of Economic Affairs and Employment*
- *Erno Mähönen, Senior Officer, Ministry of Economic Affairs and Employment*
- *Jari HELLSTEN, LL.D., Legal Adviser, Representative of the Central Organisation of Finnish Trade Unions (SAK)*
- *Mika Kärkkäinen, Senior Adviser, Representative of the Confederation of Finish Industries (EK)*

Comments in the light of the Committee's conclusions and decisions

- *Matti Mikkola, Former President of the European Committee of Social Rights*

Discussion

11.15 Coffee break

11.45 **Article 7 The right of children and young persons to protection §6 (Inclusion of time spent on vocational training in the normal working time) and §9 (Regular medical examination)**

Situation in law and in practice in Finland, reasons for non-acceptance

- *Kristiina Mukala, Ministerial Counsellor, Health and Medical Affairs, Ministry of Social Affairs and Health*

Comments in the light of the Committee's conclusions and decisions

- *Giuseppe Palmisano, President of the European Committee of Social Rights*

Discussion

12.30 ***Lunch break***

14.00 **Article 8 The right of employed women to protection of maternity §1 (Maternity leave), §3 (Time off for nursing mothers) and §5 (Prohibition of dangerous, unhealthy or arduous work)**

Situation in law and in practice in Finland, reasons for non-acceptance

- *Elli Nieminen, Senior Specialist, and Marja Terttu-Mäkiranta, Ministerial Counsellor, Ministry of Economic Affairs and Employment (Art. 8§1)*
- *Elli Nieminen, Senior Specialist, Ministry of Economic Affairs and Employment (Art. 8§3)*
- *Toivo NISKANEN, Senior Officer, Ministry of Social Affairs and Health (Art.8§5)*

Comments in the light of the Committee's conclusions and decisions

- *Marit B. Frogner, member of the European Committee of Social Rights*

Discussion

14.45 **Article 19 The right of migrant workers and their families to protection and assistance §10 (Equal treatment for the self-employed)**

Situation in law and in practice in Finland, reasons for non-acceptance

- *Elli Nieminen, Senior Specialist, Ministry of Economic Affairs and Employment*

Comments in the light of the Committee's conclusions and decisions

- *Matti Mikkola, former President of the European Committee of Social Rights*

Discussion

15.15 The European Code of Social Security

- *Sheila Hirschinger, Department of the European Social Charter, Council of Europe*

Discussion

15.45 Conclusions of the meeting

- *Giuseppe Palmisano, President of the European Committee of Social Rights*
- *Krista Oinonen, Agent of the Government of Finland before the European Committee of Social Rights, Director, Ministry for Foreign Affairs*

Representatives of the Finnish authorities

Ms Krista OINONEN, Agent of the Government of Finland before the European Committee of Social Rights, Director, Ministry for Foreign Affairs

Ms Katja KUUPPELOMÄKI, Legal Officer, Ministry for Foreign Affairs

Ms Elli NIEMINEN, Senior Specialist, Ministry of Economic Affairs and Employment

Ms Riitta-Maija JOUTTIMÄKI, Ministerial Counsellor, Legal Affairs, Ministry of Social Affairs and Health

Ms Maija ILES, Senior Officer for Legal Affairs, Ministry of Social Affairs and Health

Ms Kristiina MUKALA, Ministerial Counsellor, Health and Medical Affairs, Ministry of Social Affairs and Health (only Article 7)

Ms Marja-Terttu MÄKIRANTA, Ministerial Counsellor, Legal Affairs, Ministry of Social Affairs and Health (only Articles 8 and 19)

Mr Toivo NISKANEN, Senior Officer, Ministry of Social Affairs and Health (only Articles 3 and 8)

Mr Erno MÄHÖNEN, Senior Specialist, Ministry of Economic Affairs and Employment (only Article 4)

Representative of the Central Organisation of Finnish Trade Unions (SAK)

Mr Jari HELLSTEN, LL.D., Legal Adviser (only Article 4)

Representative of the Confederation of Finish Industries (EK)

Mr Mika KÄRKKÄINEN, Senior Adviser (only Article 4)

APPENDIX II - situation of Finland with respect to the European social charter

— Finland and the European Social Charter —

Signatures, ratifications and accepted provisions

Finland ratified the Revised European Social Charter on 21/06/2002, accepting 88 of the 98 paragraphs of the Revised Charter.

It ratified the Additional Protocol providing for a system of Collective Complaints on 17/07/1998. Finland has made a declaration enabling national NGOs to submit collective complaints.

Finland ratified the European Social Charter and the Additional Protocol to the Charter on 29/04/1991. It ratified the Amending Protocol to the Charter on 18/08/1994.

Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

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 Finland in 2008 and in 2012.

Further information on the reports on non-accepted provisions is available on the relevant webpage.

Update: November 2017

Monitoring the implementation of the European Social Charter [1]

I. Collective complaints procedure [2]

Collective complaints (under examination)

Central Union for Child Welfare (CUCW) v. Finland (Complaint 139/2016)
The Committee declared the complaint admissible on 10 May 2017.

University Women of Europe (UWE) v. Finland (Complaint No.129/2016)
The Committee declared the complaint admissible on 4 July 2017.

Collective complaints (proceedings completed)

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

Finnish Society of Social Rights v. Finland (Complaint No. 107/2014)

- No violation of Article 24 (the right to protection in cases of termination of employment).

Decision on admissibility and the merits of 6 September 2016.
Follow up:
- Resolution CM/ResChS(2017)1 on 1 February 2017 of the Committee of Ministers.

Federation of Finnish Enterprises v. Finland (Complaint No. 35/2006)

- No violation of Article 5 (right to organise).

Decision on the merits of 16 October 2007.
Follow up:
- Resolution CM/ResChS (2008) 2 on 16 January 2008 of the Committee of Ministers.

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

Tehy ry and STTK v. Finland (Complaint No. 10/2000)

- Violation of Article 2§4 (elimination of risks for workers in dangerous or unhealthy occupations).

Decision on the merits of 17 October 2001.
Follow up:
- Resolution ResChS(2002)2 on 21 February 2002 of the Committee of Ministers.

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[1] 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.

[2] Detailed information on the Collective Complaints Procedure is available on the relevant webpage.

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

Association of Care Giving Relatives and Friends v. Finland (Complaint No. 71/2011)

- Violation of Article 23 (Right of elderly persons to social protection).

Decision on the merits of 4 December 2012.
Follow up:
- Resolution CM/ResChS(2013)13 on 11 June 2013 of the Committee of Ministers.
- Assessment of the follow-up on 4 December 2015 of the European Committee of Sociam Rights

Association of Care Giving Relatives and Friends v. Finland (Complaint No. 70/2011)

- Violation of Article 23 (Right of elderly persons to social protection).

Decision on the merits of 4 December 2012.
Follow up:
- Resolution CM/ResChS(2013)12 on 11 June 2013 of the Committee of Ministers.
- Assessment of the follow-up on 4 December 2015 of the European Committee of Sociam Rights

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

Finnish Society of Social Rights v. Finland (Complaint No. 108/2014)

- No violation of Article 12§3 (the right to social security – development of the social security system);
- Violation of Article 13§1 (the right to social and medical assistance – adequate assistance for every person in need).

Decision on admissibility and merits on 8 December 2016.
Follow up:
- Resolution CM/ResChS(2017)8 on 14 June 2017 of the Committee of Ministers.

Finnish Society of Social Rights v. Finland (Complaint No. 106/2014)

- Violation of Article 24 (the right to protection in cases of termination of employment)

Decision on admissibility and the merits of the 8 September 2016.
Follow up:
- Resolution CM/ResChS (2017)7 on 14 June 2017 of the Committee of Ministers.

Finnish Society of Social Rights v. Finland (Complaint No. 88/2012)

- Violation of Articles 12§1 (the right to social security);
- Violation of Article 13§1 (the right to social and medical assistance);
- No violation of Article 12§3 (the right to social security).

Decision on the merits of 9 September 2014.
Follow up:
- Resolution Res/CM ChS (2015)8 on 17 June 2015 of the Committee of Ministers.

II. Reporting system [3]

Reports submitted by Finland

Between 1993 and 2016, Finland has submitted 10 reports on the application of the 1961 Charter and 12 reports on the Revised Charter.

The 12th report, submitted by Finland on 28/10/2016, concerns the follow-up given to the decisions of the Committee relating to the collective complaints, as well as the information required by the Committee in the framework of Conclusions 2013 relating to Thematic group 2 "Health, social security and social protection" (Articles 3, 11, 12, 13, 14, 23 and 30 on the Revised Charter), in the event of non-conformity for lack of information.

Conclusions in respect of these matters will be published in January 2018.

On 31/10/2017, Finland should submit a simplified report (13th report) on the follow up to decisions on the merits of the complaints.

The 14th report, which should be submitted by 31/10/2018, should concern the accepted provisions relating to Thematic Group 4 "Employment, training and equal opportunities", namely:

- the right to work (Article 1),
- the right to vocational guidance (Article 9),
- the right to vocational training (Article 10),
- the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15),
- the right to engage in a gainful occupation in the territory of other States Parties (Article 18),
- the right of men and women to equal opportunities (Article 20),
- the right to protection in cases of termination of employment (Article 24),
- the right to workers to the protection of claims in the event of insolvency of the employer (Article 25).

In addition, the report concerns the information required by the Committee in the framework of Conclusions 2014 relating to thematic group 3 "Labour rights" (Articles 2, 4, 5, 6, 26, 28 and 29 of the Revised Charter), in the event of non-conformity for lack of information.

Conclusions with respect to these provisions will be published in January 2020.

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[3] 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 [4]

Thematic group 1 "Employment, training and equal opportunities" - Conclusions 2016

► *Article 10§5- Right to vocational training - Full use of facilities available*
Non-EEA nationals must have resided for two years in order to have access to student financial aid.

► *Article 24- Right to protection in case of dismissal*
- with the exception of civil servants, the legislation does not provide the possibility of reinstatement in case of unlawful dismissal;
- the upper limit on compensation for unlawful dismissal may not be adequate to cover the loss suffered, in certain circumstances.

► *Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*
Legislation makes no provision for the reinstatement of worker representatives unlawfully dismissed.

Thematic group 2: "Health, social security and social protection" - Conclusions 2013

► *Article 12§1 Right to social security - Existence of a social security system*
The minimum level of sickness benefit is manifestly inadequate and the minimum level of old-age benefit is inadequate.

► *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;
- equal treatment with regard to access to family allowances 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;
- the right to maintenance of accruing rights is not guaranteed to nationals of all other States Parties.

► *Article 13§1 – Adequate assistance for every person in need*
The granting of social assistance benefits to foreign nationals from certain States Parties to the Charter, legally residing in Finland, is subject to an excessive length of residence condition.

► *Article 23 - Right of the elderly to social protection*
- It has not been established that there is an adequate legal framework prohibiting discrimination on grounds of age;
- The legislation allows practices leading to a part of the elderly population being denied access to informal care allowances or other alternative support;
- Insufficient regulation of fees for service housing and service housing with 24-hour assistance, combined with the fact that the demand for these services exceeds supply, does not meet the requirements of Article 23 of the Charter insofar as these:

[4] Further information on the situations of non-conformity is available on the HUDOC database.

- Create legal uncertainties to elderly persons in need of care due diverse and complex fee policies. While municipalities may adjust the fees, there are no effective safeguards to assure that effective access to services is guaranteed to every elderly person in need of services necessitated by their condition.
- Constitute an obstacle to the right to the provision of information about services and facilities available for elderly persons and their opportunities to make use of them as guaranteed by Article 23 of the Charter.

Thematic group 3: "Labour rights" - Conclusions 2014

► *Article 2§1 – Right to just conditions of work - Reasonable working time*
The legislation on working time allows the daily rest period to be reduced to 7 hours for some categories of workers.

► *Article 2§5 – Right to just conditions of work - Weekly rest period*
Workers may work for more than twelve consecutive days without a rest period and might, in certain cases, give up their right to compensatory time off in exchange for an indemnisation.

► *Article 4§2 – Right to a fair remuneration - Increased remuneration for overtime work*
The legislation does not guarantee the right to an increased time off in lieu of remuneration for overtime.

► *Article 4§3 – Right to a fair remuneration - Non-discrimination between women and men with respect to remuneration*
The law does not provide for reinstatement in cases where an employee is dismissed in retaliation for bringing an equal pay claim.

► *Article 4§5 – Right to a fair remuneration - Limits to wage deductions*
The attachable amount of wages leaves workers who are paid the lowest wages and their dependants insufficient means for subsistence.

► *Article 26§2 – Right to dignity in the workplace - Moral harassment*
Employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator.

► *Article 28 – Right of workers' representatives to protection in the undertaking and facilities to be accorded to them*
It has not been established that workers' representatives are granted adequate protection.

Thematic group 4: "Children, families and migrants" - Conclusions 2011

► *Article 8§2 – Right of employed women to protection - Illegality of dismissal during maternity leave*
No provision is made in law for the reinstatement of women unlawfully dismissed during pregnancy or maternity leave.

► *Article 27§3 – Right of workers with family responsibilities to equal opportunity and treatment - Illegality of dismissal on the ground of family responsibilities*

Legislation makes no provision for the reinstatement of workers unlawfully dismissed on grounds of their family responsibilities.

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

Thematic group 1: "Employment, training and equal opportunities"

- ► Article 1§3 - Conclusions 2016
- ► Article 1§4 - Conclusions 2016
- ► Article 10§3 - Conclusions 2016

Thematic group 2: "Health, social security and social protection"

- ► Article 13§4 - Conclusions 2013

Thematic group 3: "Labour rights"

- ► Article 2§4 - Conclusions 2014
- ► Article 6§4 - Conclusions 2014
- ► Article 22 - Conclusions 2014

Thematic group 4: "Children, families and migrants"

- ► Article 17§1 - Conclusions 2011
- ► Article 19§4 - Conclusions 2011
- ► Article 19§8 - Conclusions 2011
- ► Article 31§3 - Conclusions 2011

III. Examples of progress achieved in the implementation of rights under the Charter

(update in progress)

Non-discrimination

► Signature in spring 2000 of a new collective agreement in the hotel and catering sectors, under which it is no longer necessary for shop stewards to be Finnish citizens.

►New legislation on Non-Discrimination strengthened the protection against discrimination (Act No. 21/2004).

► The limits on compensation payable in the event of sex discrimination were removed by amendments to the Act on Equality between Men and Women (amendments introduced by Act No. 232/2005).

Employment

► Extension to private employment agencies of the principles applicable to public employment services (Act No. 1005/1993 as amended by Act No. 418/1999).

► The working time permitted for children of 14 years of age or younger and subjected to compulsory education has been set at half of the duration of the school day. Employment of children of over 15 years of age for emergency work is possible only if no adult is available to carry out the work. If the rest period of a young worker has been reduced on account of emergency work, a comparable rest period must be given to him as soon as possible within a period of no more than three weeks (Act No. 998/1993 as amended by Act No. 754/1998).

Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

►The Non-Military Service Act 1466/2007 which entered into force in 2008 shortened alternative service from 395 days to 362 days. The Committee finds that the situation is now in conformity with the Charter in this respect.

The right to safe and healthy working conditions

► Under Section 39 of the Occupational Safety and Health Act the employees' exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees' safety, health or reproductive health. In 2010, a Decree on Protecting Workers from Optical Radiation and detailed rules and procedures on radiation and nuclear safety by the Radiation and Nuclear Safety Authority were adopted (STUK).

Supervision

► According to the Act on Co-operation Ombudsman (216/2010) which entered into force on 1 July 2010, the Co-operation Ombudsman supervises compliance with the Act on Cooperation within Undertakings and other Acts relating to the personnel representation systems. This Ombudsman operates independently under the Ministry of Employment and Economy with a term of office of five years.

Movement of persons

► Repeal in 1998 of the provision of the 1986 Passports Act (No. 642/1986, for the legislation currently in force, see Act No. 671/2006) which enabled the refusal of a passport to "persons who prove unable to look after themselves".

Equal opportunities for workers with family responsibilities

►Extension as from 1 August 2006 onwards of the right to partial child-care leave for parents of children with disabilities or long-term illnesses until the time when the child in need of special care and treatment reaches the age of 18 years (Acts Nos. 55/2001 and 423/1978 as amended by Acts. Nos. 533/2006 and 534/2006).

Housing

►The adoption of the Government's Programme to Reduce Long-term Homelessness in 2008 with the central objective of halving long-term homelessness between the years 2008 and 2010. The Programme not only attained the objective, but exceeded it. The "Housing First" –principle has been recommended as an example on how to tackle homelessness.

APPENDIX III - Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter

(Adopted by the Committee of Ministers on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering the European Social Charter, opened for signature in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996 ("the Charter");

Reaffirming that all human rights are universal, indivisible and interdependent and interrelated;

Stressing its attachment to human dignity and the protection of all human rights;

Emphasising that human rights must be enjoyed without discrimination;

Reiterating its determination to build cohesive societies by ensuring fair access to social rights, fighting exclusion and protecting vulnerable groups;

Underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups;

On the occasion of the 50th anniversary of the Charter,

1. Solemnly reaffirms the paramount role of the Charter in guaranteeing and promoting social rights on our continent;

2. Welcomes the great number of ratifications since the Second Summit of Heads of States and Governments where it was decided to promote and make full use of the Charter, and calls on all those member states that have not yet ratified the Revised European Social Charter to consider doing so;

3. Recognises the contribution of the collective complaints mechanism in furthering the implementation of social rights, and calls on those members states not having done so to consider accepting the system of collective complaints;

4. Expresses its resolve to secure the effectiveness of the Social Charter through an appropriate and efficient reporting system and, where applicable, the collective complaints procedure;

5. Welcomes the numerous examples of measures taken by States Parties to implement and respect the Charter, and calls on Governments to take account, in an appropriate manner, of all the various observations made in the conclusions of the European Committee of Social Rights and in the reports of the Governmental Committee;

6. Affirms its determination to support States Parties in bringing their domestic situation into conformity with the Charter and to ensure the expertise and independence of the European Committee of Social Rights;

7. Invites member states and the relevant bodies of the Council of Europe to increase their effort to raise awareness of the Charter at national level amongst legal practitioners, academics and social partners as well as to inform the public at large of their rights.