

Situation of Belgium with respect to the application of the Revised Charter

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

Children

- ▶ Repeal, for minors at risk, of section 53 of the Young Persons Protection Act of 8 April 1965, which authorised juvenile judges to order that minors be held provisionally in remand prisons (for up to fifteen days) (Decree of 4 March 1991)
- ▶ Establishment of a system to combat and criminalise child pornography (Act of 13 April 1995, as amended by the Act of 28 November 2000; Article 383bis of the Criminal Code)
- ▶ Introduction of the right for children to be heard in adoption proceedings, in principle from the age of 12 onwards (Article 931 of the Judicial Code, as amended in 2003)
- ▶ Adoption of the collective labour agreement No. 80 bis, which brings the period during which the worker is entitled to take the nursing break, from seven to nine months (Article 6 of the collective agreement)

Non-discrimination

- ▶ Strengthening of safeguards against discrimination by the Act of 25 February 2003 (extension of the concept, possibility of reinstatement and proportionate compensation for victims, etc.) and by the Act of 10 May 2007

Non-discrimination (family benefits)

- ▶ Suppression of the five years residence requirement for granting "guaranteed family benefits" to non-EU and non-EEA nationals (Framework Act 24 December 2002)

Employment

- ▶ Setting of an upper limit on weekly working hours as part of the "Extensive flexibility working time scheme" (Act of 4 December 1998)
- ▶ Extension of periods of notice for workers (collective agreement of 20 December 1999)
- ▶ Introduction of a rule under which dockworkers at Antwerp must only be recruited on the basis of their technical knowledge, not their trade union membership (Royal Decree of 19 December 2000)
- ▶ Introduction of the right to paid breastfeeding breaks (collective labour agreement No. 80/ 2001)
- ▶ Abolition of compulsory work for prisoners (Act of 12 January 2005)
- ▶ Introduction of financial measures to encourage people over 50 to return to work (such as employment and back-to-work bonuses)
- ▶ Prohibition of discrimination based on trade union membership, so any workers who rely on this ground will be able to claim compensation proportional to the real damage (sections 107 and 108 of the Act of 30 December 2009, amending the Anti-Discrimination Act of 10 May 2007)

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ *Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

The restrictions on foreigners, non-nationals of EEA member states or Swiss nationals occupying posts in the federal civil service go beyond those permitted by the Charter.
(Conclusions 2012)

- ▶ *Article 1§4 - Right to work- Vocational guidance, training and rehabilitation*

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

It has not been established that people with disabilities are guaranteed an effective right to mainstream training.

(Conclusions 2012)

► *Article 10§3 - Right to vocational training - Vocational training and retraining of adult workers*

It has not been established that nationals of other States Parties legally resident or regularly working in Belgium are guaranteed equal treatment as regards access to continuing training in the German-speaking community.

(Conclusions 2012)

► *Article 10§4 - Right to vocational training - Long term unemployed persons*

It has not been established that the equality of treatment as regards access to training for long-term unemployed persons is guaranteed to nationals of other States Parties in German-speaking community.

(Conclusions 2012)

► *Article 10§5 – Right to vocational training – Full use of facilities available*

Nationals of other States Parties legally resident or regularly working in Belgium are not granted equal treatment regarding financial assistance for training.

(Conclusions 2012)

► *Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Vocational training for persons with disabilities*

It has not been established that people with disabilities are guaranteed an effective right to mainstream education and training

(Conclusions 2012)

► *Article 15§2 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Employment of persons with disabilities*

It has not been established that people with disabilities are guaranteed an effective right to mainstream education and training

(Conclusions 2012)

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

The foreign worker's residence permit may be revoked if he/she loses his/her job and he/she may be obliged to leave the country as soon as possible.

(Conclusions 2012)

► *Article 25 – Right of workers to protection of their claims in the event of the insolvency of their employer*

The average time to satisfy workers' claims in case of insolvency of their employer is excessive.

(Conclusions 2012)

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

► *Article 12§4 – Right to social security – Social security of persons moving between States*

1. Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

2. The retention of accrued benefits is not guaranteed for nationals of all other States Parties.

(Conclusions 2013)

► *Article 13§1 – Right to social and medical assistance - Adequate assistance for anyone in need*

Guaranteed income for the elderly (GRAPA) is not granted to foreigners without resources unless they are covered by EU law or are nationals of States which have concluded reciprocity agreements with Belgium.

(Conclusions 2013)

► *Article 14§1 – Right to benefit from social services – Promotion or provision of social services*

1. Social services are not organised in such a way that they are adapted to needs;

2. Effective and equal access to social services is not ensured to all persons.

(Conclusions 2013)

► *Article 14§2 – Right to benefit from social services – Public participation in the establishment and maintenance of social services*

It has not been established that: (i) the conditions under which non-public providers take part in the provision of welfare services are adequate; (ii) supervisory machinery exists throughout the country to ascertain the quality of the services provided by non-public bodies; (iii) users are consulted regarding the development of the policies relating to all social welfare services.

(Conclusions 2013)

Thematic Group 3 “Labour rights”

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

Workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

(Conclusions 2014)

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

Weekly rest day may be postponed over a period exceeding twelve successive working days.

(Conclusions 2014)

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

1. It has not been established that the average minimum wages suffice to ensure a decent standard of living;
2. The average minimum wages of young workers do not suffice to ensure a decent standard of living.

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

The compensatory time-off for overtime hours in the public sector is not sufficient.

(Conclusions 2014)

► *Article 6§4 – Right to bargain collectively - Collective action*

The restrictions on the right to strike do not comply with the conditions established by Article G of the Charter given that they are neither prescribed by law nor proportionate to the aims set out in Article G of the Charter.

(CES and Others v. Belgium (No. 59/2009))

(Conclusions 2014)

Thematic Group 4 “Children, families, migrants”

► *Article 7§5 – Right to special working conditions between the ages of 15 and 18 – Fair pay*

The allowances paid to apprentices are inadequate.

(Conclusions 2011)

► *Article 7§6 – Right to special working conditions between the ages of 15 and 18 - Inclusion of time spent on vocational training in the normal working time*

It has not been established that, in practice, training attended by young workers at their request and with their employer's consent is regarded as working time and remunerated as such.

(Conclusions 2011)

► *Article 7§8 – Right to special working conditions between the ages of 15 and 18 - Prohibition of night work*

It has not been established that the legal prohibition on night work applies to the great majority of persons under the age of 18.

(Conclusions 2011)

► *Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training*

1. Corporal punishment is not prohibited in the home and in childcare institutions in all communities of Belgium.

2. Minors can be detained in adult prisons.

(OMCT v. Belgium (No. 21/2003))

(Conclusions 2011)

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

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2015)

- ▶ *Article 15§3 – Conclusions 2012*

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

(Report to be submitted before 31 October 2016)

- ▶ *Article 3§3 – Conclusions 2013*
- ▶ *Article 11§3 – Conclusions 2013*

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

- ▶ *Article 4§4 – Conclusions 2014*
- ▶ *Article 4§5 – Conclusions 2014*

Thematic Group 4 “Children, families, migrants”

(Report to be submitted before 31 October 2014)

- ▶ *Article 7§7 – Conclusions 2011*
- ▶ *Article 7§10 – Conclusions 2011*
- ▶ *Article 19§1 – Conclusions 2011*
- ▶ *Article 19§3 – Conclusions 2011*
- ▶ *Article 19§4 – Conclusions 2011*
- ▶ *Article 19§6 – Conclusions 2011*
- ▶ *Article 19§10 – Conclusions 2011*

Collective Complaints and State of Procedure in Belgium²

Collective complaints (under examination)

Mental Disability Advocacy Center (MDAC) v. Belgium (No. 109/2014)

Association for the Protection of All Children (APPROACH) Ltd v. Belgium (No. 98/2013)

Collective complaints (proceedings completed)

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

Centrale générale des services publics (CGSP) v. Belgium (No. 25/2004)

Decision on the merits of 27 May 2005

- Non-violation of Article 6§§1 and 2 (right to collective bargaining)

Resolution ResChS(2005)13 of 7 July 2005

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

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

Defence for Children International (DCI) v. Belgium (No. 69/2011)

Decision on the merits of 23 October 2012

- Violation of Articles 17 (right to children and young persons to social, legal and economic protection), 7§10 (right of children and young persons to protection) and 11§§ 1 and 3 (right to protection of health)

Resolution CM/ResChS(2013)11 of 11 June 2013

International Federation of Human Rights Leagues (FIDH) v. Belgium (No. 62/2010)

Decision on the merits of 21 March 2012

Violation of Article E read in conjunction with Article 16 (right to the family to social, legal and economic protection)

Résolution CM/ResChS(2013)8 of 30 April 2013

International Federation of Human Rights Leagues (FIDH) v. Belgium (No. 75/2011)

Decision on the merits of 18 March 2013

- Violation of Articles 14§1 (right to benefit from social welfare services), 16 (right of the family to social, legal and economic protection), 30 (right to protection against poverty and social exclusion) and E in conjunction with Article 14§1 and 16, decision on the merits of 18 March 2013

Resolution CM/ResChS(2014)7 of 2 July 2014

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

World Organisation against Torture (OMCT) v. Belgium (No. 21/2003)

Decision on the merits of 7 December 2004

- Violation of Article 17 (right of children to social, economic and legal protection)

Resolution ResChS(2005)10 of 8 June 2005

European Trade Union Confederation (ETUC) / Centrale Générale des Syndicats Libéraux de Belgique (CGSLB) / Confédération des Syndicats chrétiens de Belgique (CSC) / Fédération Générale du Travail de Belgique (FGTB) v. Belgium (No. 59/2009)

Decision on the merits of 13 September 2011

² The caselaw of the Committee relative to collective complaints may be consulted on the European Social Charter website on the [Collective Complaint webpage](#). Searches on complaints may also be carried out in the [European Committee of Social Rights Caselaw database](#).

- Violation of Article 6§4 (right to bargain collectively)
Resolution CM/ResChS(2012)3 of 4 April 2012