

— Germany and the European Social Charter —

Ratifications

Germany ratified the European Social Charter on 27/01/1965 and accepted 67 of its 72 paragraphs. It has signed the Revised European Social Charter on 29/06/2007 but has not yet ratified it.

It has signed but not ratified the Additional Protocol of 1988.

It has neither signed nor ratified the Amending Protocol of 1991 and the Additional Protocol of 1995 providing for a system of collective complaints.

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
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
9	10.1	10.2	10.3	10.4	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	16	17	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
AP1	AP2	AP3	AP4	AP = Additional Protocol				Grey = Accepted provisions			

The Charter in domestic law

Statutory *ad hoc* incorporation by specific implementing legislation.

Reports *

Between 1968 and 2015, Germany submitted 32 reports on the application of the Charter.

The [31st report](#), which was submitted on 23/12/2013, covers the accepted provisions relating to Thematic Group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29).

Conclusions with respect to these situations were published in January 2015.

The [32nd report](#), which was submitted on 16/01/2015, concerns the accepted provisions relating to Thematic Group 4 "Children, Family, Migrants", namely:

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

In addition, the report provides the information required by the European Committee of Social Rights in the framework of Conclusions 2013 relating to Thematic Group 4 "Health, Social Security and Social Protection" (Articles 3, 11, 12, 13, 14, 23 and 30), in the event of non-conformity for lack of information.

Conclusions with respect to these situations will be published in January 2016.

* [Following a decision taken by the Committee of Ministers in 2006](#), the provisions of the Charter have been divided into four thematic groups. States Parties submit 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. As from 2014 State Parties having accepted the complaints procedure have to submit a national report every two years only.

Situation of Germany with respect to the application of the Charter

Examples of progress achieved in the implementation of social rights under the Social Charter¹

Health

- ▶ Pregnant women benefit from regular medical check-ups thus monitoring the development of the child and the health of the mother and identifying of mother and child at an early stage. Pregnant women are entitled to advice and health education.
- ▶ A national strategy to promote child health adopted on 27 May 2008 pursues a holistic approach for the promotion of child health. As an example, the strategy promotes participation in early detection check-ups. A specific programme was introduced to protect children against neglect and abuse.

Children

- ▶ Abolition of the remaining differences in treatment of children born inside and outside wedlock (Act on Equal Status under Succession Law, April 1998 and Act to Reform Parent and Child Law, July 1998).
- ▶ Strengthening of protection of children from ill-treatment (amendments in 1998 to the law on child abuse and further increases in the penalties for child abuse and for the dissemination of child pornography).

Employment

- ▶ Repeal of the provision allowing a merchant seaman to be imprisoned in the event of wilful refusal to return to his post on board (Merchant Shipping Act of 29 October 1974).
- ▶ Judgment of the Federal Labour Court of 24 March 2009 (Case N° 9 AZR 983/07) deciding that employees did not lose their right to leave if they suffered from a condition rendering them incapable of work up to the expiry of the leave deadline.

Non-discrimination

- ▶ New equal treatment legislation (*Allgemeines Gleichbehandlungsgesetz* – AGG) came into force on 18 August 2006.
- ▶ A federal anti-discrimination office (ADS) was established on 1 October 2006.

Non-discrimination (Nationality)

- ▶ Amendment of the Works Councils Act stipulating that works councils must take steps to combat racism and xenophobia in the workplace and employers must prepare reports on the integration of foreign employees (Amendment to the Works Council Act as of 28 July 2001).

Non-discrimination (Sex)

- ▶ Amendments to the Civil Code and to the Labour Court Act in respect of rules on liability of employers in cases of gender discrimination (Act of 19 December 1998 and Act of 31 August 1998).

Non-discrimination (Disability)

- ▶ Consolidation and extension of the scope of the regulations regarding employment and rehabilitation of disabled persons as well as introduction of active measures to reduce their unemployment rate (Reform of Book IX of the Social Code as of 1 July 2001).

Freedom to organise

- ▶ Judgment of the Federal Constitutional Court of 1995 and judgment of the Federal Labour Court of 2006 guaranteeing the right of external union representatives to enter any undertaking for the purpose of seeking new members.

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

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ *Article 152 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)*

Access for non-EU/EEA nationals to professions as doctors and pharmacists is restricted.

[\(Conclusions XX-1 \(2012\)\)](#)

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

- ▶ *Article 351 – Right to safe and healthy working conditions – Safety and health regulations*

Certain categories of self-employed workers are not sufficiently covered by the occupational health and safety regulations.

[\(Conclusions XX-2 \(2013\)\)](#)

- ▶ *Article 1254 – Right to social security – Social security of persons moving between states*

Accumulation of insurance or employment periods completed by nationals of States Parties not covered by EU regulations or by bilateral agreements is not guaranteed.

[\(Conclusions XX-2 \(2013\)\)](#)

Thematic Group 3 "Labour rights"

- ▶ *Article 451 – Right to a fair remuneration - Decent remuneration*

The lowest wage paid does not secure a decent standard of living.

[\(Conclusions XX-3 \(2014\)\)](#)

- ▶ *Article 453 – Right to a fair remuneration – Non-discrimination between women and men workers with respect to remuneration*

There is a ceiling on compensation in reprisal litigation.

[\(Conclusions XX-3 \(2014\)\)](#)

- ▶ *Article 654 – Right to bargain collectively – Collective action*

The requirements to be met by a group of workers in order to form a trade union satisfying the conditions for calling a strike constitute an excessive restriction to the right to strike.

[\(Conclusions XX-3 \(2014\)\)](#)

Thematic Group 4 "Children, families, migrants"

- ▶ *Article 755 – Right of children and young persons to protection – Fair pay*

The allowance paid to apprentices is inadequate.

[\(Conclusions XIX-4 \(2011\)\)](#)

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

Equal treatment is not guaranteed to nationals of other States Parties to the 1961 Charter and the Charter in respect of the granting of supplementary child-raising allowances in Bavaria.

[\(Conclusions XIX-4 \(2011\)\)](#)

- ▶ *Articles 1956 and 19510 – Right of migrant workers and their families to protection and assistance – Family reunion; - Equal treatment for the self-employed*

1. The requirement for foreign nationals wishing to be joined by their spouses to have a permanent residence permit - which is granted provided that the foreigner concerned has held a temporary residence permit for five years - or to have had a temporary residence permit for at least two years, is excessive;

2. Requiring applicants for family reunion to produce documentary evidence of their knowledge of German is likely to hinder family reunion rather than facilitate it;

3. Excluding social welfare benefits from the calculation of migrant worker's income is likely to hinder family reunion rather than facilitate it.

[\(Conclusions XIX-4 \(2011\)\)](#)

▶ *Articles 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation; - Equal treatment for the self-employed*

Migrant workers and their families (except for EU citizens) may be expelled for having recourse to social welfare or for being homeless or for substance abuse.

[\(Conclusions XIX-4 \(2011\)\)](#)

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

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted before 31 October 2015)

▶ Article 18§1 – Conclusions XX-1 (2012)

▶ Article 18§3 – Conclusions XX-1 (2012)

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

(Report to be submitted before 31 October 2016)

▶ Article 12§1 – Conclusions XX-2 (2013)

▶ Article 13§1 – Conclusions XX-2 (2013)

▶ Article 13§3 – Conclusions XX-2 (2013)

Thematic Group 3 “Labour rights”

(Report to be submitted before 31 October 2013)

▶ Article 2§1 – Conclusions XX-3 (2014)

▶ Article 2§2 – Conclusions XX-3 (2014)

▶ Article 2§4 – Conclusions XX-3 (2014)

▶ Article 2§5 – Conclusions XX-3 (2014)

Thematic Group 4 “Children, families, migrants”

(Report submitted on 21/12/2010, Conclusions to be published in December 2011)

▶ Article 7§3 – Conclusions XIX-4 (2011)

▶ Article 19§2 – Conclusions XIX-4 (2011)

▶ Article 19§3 – Conclusions XIX-4 (2011)

▶ Article 19§4 – Conclusions XIX-4 (2011)