



– The Netherlands and the European Social Charter –

Dates of Ratifications and provisions accepted

1961 European Social Charter: ratified on 22/04/1980, 71 paragraphs (initially 69) accepted out of 72

1988 Additional Protocol: ratified on 5/08/1992, 3 paragraphs accepted out of 4

1991 Amending Protocol: ratified on 1/06/1993

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

1995 Additional Protocol providing for a system of collective complaints: ratified on 03/05/2006

Declaration enabling national NGOs to submit collective complaints: not made yet.

1996 Revised European Social Charter: ratified on 03/05/2006, 97 paragraphs accepted out of 98 (only applying to the Kingdom in Europe).

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	

The Charter in domestic law: Automatic incorporation into domestic law.

Reports *:

Between 1982 and 2015, the Netherlands submitted 20 reports on the application of the 1961 Social Charter and 8 on the application of the Revised Social Charter.

The 7th report, submitted on 14 November 2013, concerns the accepted provisions of the Revised Social Charter relating to Thematic Group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29). The Conclusions in respect of these provisions were published in January 2015.

The 8th report, submitted on 20 November 2014, concerns the accepted provisions of the Revised Social Charter 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 concerns the information required by the European Committee of Social Rights in the framework of Conclusions 2013 (Articles 3, 11, 12, 13, 14, 23 and 30, relating to Thematic group "Health, social security and social protection"), in the event of non-conformity for lack of information.

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

* Following a decision taken by the Committee of Ministers in 2006, the provisions of both the 1961 Charter and the Revised 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.

Situation of the Netherlands with respect to the application of the Revised Social Charter

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

Non-discrimination (sex)

- ▶ Adoption in 1994 of a general Act on equal treatment covering all forms of discrimination – Extension of the prohibition of discrimination between men and women to categories of persons eligible for pensions, to pension rules and the implementation of pensions schemes (Amendment of the Equal Opportunities Act (WGB), in 1998).
- ▶ Prohibition on dismissal of an employee because he has brought legal or extra judicial proceedings to obtain equal remuneration (Act on "Reparation" of 1989).
- ▶ Entitlement of unmarried parents to exercise joint parental authority – Maintenance of joint parental authority even if the parents separate (Amendments to the Civil Code in 1995 and 1998).

Non-discrimination (nationality)

- ▶ Entitlement of migrant workers to be treated not less favorably than nationals as regards legal proceedings (Law of 8 March 1980).
- ▶ Adoption in 2000 of a new Student Finance Act guaranteeing to all nationals of non-EU States Party to the Charter and the revised Charter the equality of treatment with respect to financial assistance.

Employment

- ▶ Repeal of Article 6 of the Exceptional Decree of 1945 on professional relations pursuant to which a worker had to obtain prior authorization in order to terminate his employment (Act on Flexibility and Security of 1999).
- ▶ Granting of the right to a one month period of notice of dismissal to all workers (including part-time workers and those working from home) regardless of their status (Act on Flexibility and Security, which entered into force in 1999).
- ▶ Abolition of the closed shop clause in the print workers collective agreement following collective bargaining negotiations.
- ▶ Reduction from 100 to 50 employees of the threshold from which a works council must be created in the workplace (Amendments to the WOR in 1998).
- ▶ Authorisation of employees and workers, national insurance and subsidised institutions to freely conclude collective agreements regarding their conditions of employment (Repeal in 1995 of the WAGGS).

Health

- ▶ Extension of maternity leave from 12 to 16 weeks (Act of 22 February 1990).
- ▶ Entitlement of women working in private households and in the public health services for less than three days a week to maternity leave and maternity benefit during at least sixteen weeks (2000 Self-employed Persons Disablement Benefits Act - WAZ).

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 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 persons with disabilities are guaranteed an effective equal access to employment.

[Conclusions 2012](#)

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

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

[Conclusions 2012](#)

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

► *Article 3§4 - Right to safe and healthy working conditions - Occupational health services*

It has not been established that there is a strategy to progressively institute access to occupational health services for all workers in all sectors of the economy.

[Conclusions 2013](#)

► *Article 12§1 - The right to social security – Existence of a social security system*

It has not been established that there is a reasonable initial period during which an unemployed person may refuse unsuitable job offer without losing his/her unemployment benefit.

[Conclusions 2013](#)

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

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

[Conclusions 2013](#)

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

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

[Conclusions 2013](#)

Thematic Group 3 "Labour rights"

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

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

[Conclusions 2014](#)

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

Work performed on a public holiday in the hotel and catering industry is not adequately compensated.

[Conclusions 2014](#)

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

The employees' right to take at least two weeks of uninterrupted holiday during the year in respect of which the holidays were due is not sufficiently guaranteed.

[Conclusions 2014](#)

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

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

[Conclusions 2014](#)

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

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

[Conclusions 2014](#)

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

- It has not been established that the statutory minimum wage ensures a decent standard of living;
- The reduced rates of the statutory minimum wages applicable to young workers are manifestly unfair.

[Conclusions 2014](#)

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

Workers may be asked to work extended hours without any of these counting as overtime and therefore not remunerated at an increased rate.

[Conclusions 2014](#)

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

- Notice periods are not reasonable.
- No notice of termination is required during the probationary period.

[Conclusions 2014](#)

► *Article 26§2 – Right to dignity in the workplace – Moral harassment*

It has not been established that employees are effectively protected, in law or in practice, against moral (psychological) harassment.

[Conclusions 2014](#)

Thematic Group 4 “Children, families, migrants”

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

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

[Conclusions 2011](#)

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

Young workers’ wages and apprentices’ allowances are not fair.

[Conclusions 2011](#)

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

There is no evidence that the great majority of young workers and apprentices have a right to remuneration for time spent on vocational training with the consent of the employer.

[Conclusions 2011](#)

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

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

[Conclusions 2011](#)

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

- Prison sentences for minors may be up to 30 years;
- Young offenders may be held in adult detention facilities;
- Unlawfully present children are not provided with shelter for as long as they are in the jurisdiction of the Netherlands.

[Conclusions 2011](#)

► *Articles 19§§6 and 10 – Right of migrant workers and their families to protection and assistance – Family reunion; - Equal treatment for the self-employed²*

- The exclusion of the 'welfare support benefits' from the calculation of the income level is likely to hinder family reunion rather than facilitate it;
- The imposition of a language and integration test is likely to hinder family reunion rather than facilitate it.

[Conclusions 2011](#)

► *Articles 19§§8 and 10 – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation; - Equal treatment for the self-employed³*

A migrant worker's family members who have settled in the Netherlands as a result of family reunion are expelled when the migrant worker is expelled.

[Conclusions 2011](#)

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

There is no legal requirement to provide shelter to children unlawfully present in the Netherlands for as long as they are in its jurisdiction.

This ground of non-conformity is the one which led to the finding of violation in DCI v. the Netherlands, Complaint No. 47/2008.

[Conclusions 2011](#) and [Complaint No. 47/2008](#)

² In the case of equal treatment between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, a finding of non-conformity under paragraphs 1 to 9 of Article 19 leads to a finding of non-conformity under paragraph 10 since the same grounds for non-conformity as described under the aforementioned paragraphs apply to self-employed workers.

³ See footnote 2, above.

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

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ *Article 18§3 – Conclusions 2012*

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

- ▶ *Article 3§3 – Conclusions 2013*
- ▶ *Article 12§1 – Conclusions 2009*
- ▶ *Article 23 – Conclusions 2009*

Thematic Group 3 "Labour rights"

- ▶ *Article 4§5 – Conclusions 2014*

Thematic Group 4 "Children, families, migrants"

- ▶ *Article 8§§4 and 5 – Conclusions 2011*
- ▶ *Article 17§2 – Conclusions 2011*
- ▶ *Article 19§4 – Conclusions 2011*
- ▶ *Article 27§3 – Conclusions 2011*
- ▶ *Article 31§§1 and 3 – Conclusions 2011*

The Netherlands: Collective Complaints and State of Procedure²

Collective complaints under examination: None

Collective complaints (proceedings completed)

Complaints inadmissible or where the Committee has found no violation

None

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

None

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

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

Complaint registered on 17/01/2013; decision on immediate measures 25/10/2013.

Decision on the merits 1/07/2014:

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

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

Complaint registered on 4/07/2012; decision on immediate measures 25/10/2013.

Decision on the merits 2/07/2014:

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

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

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

Decision on the merits of 20/10/2009:

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

Resolution CM/ResChS(2010)6 of 7/07/2010

¹ The case-law of the Committee relative to collective complaints may be consulted on the European Social Charter website on the [Collective Complaints webpage](#). Searches on complaints may also be carried out in the [European Committee of Social Rights Case-law database](#).