

— Poland and the European Social Charter—

Ratifications

Poland ratified the 1961 European Social Charter on 25/06/1997 accepting 58 of the Charter's 72 paragraphs. On 27 January 2011, it denounced the provision of Article 8 paragraph 4.

It ratified the Amending Protocol to the Charter on 25/06/1997.

It has signed, but not yet ratified the Revised European Social Charter on 25/10/2005.

It has signed neither the Additional Protocol to the European Social Charter, nor the Additional Protocol 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 | | | Gray = Accepted provisions | | | | |

Reports*

Between 1999 and 2015, Poland submitted 14 reports on the application of the Charter.

The 13th report submitted on 18 September 2013, concerns the accepted provisions relating to Thematic Group 3 "Labour Rights" (Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29). Conclusions in respect of these provisions were published in January 2015.

The 14th report, which should have been submitted by Poland and which should cover the accepted provisions related 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 in respect of these provisions will be published in December 2015.

* [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. As from 2014 State Parties having accepted the complaints procedure have to provide a national report every two years only.

Situation of Poland with respect to the application of the Charter

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

Thematic Group 1 "Employment, training and equal opportunities"

▶ With Poland's accession to the European Union, there is no longer a nationality requirement for access to the professions of sworn translator or to paramedics.

▶ The 2004 legislation on employment promotion and labour market institutions makes everyone eligible for vocational guidance, irrespective of nationality. Nationals of other States party to the European Social Charter are therefore entitled to equal treatment.

▶ The Act of 8 December 2000 amending the 1990 Higher Education Act lays down procedures by which foreign nationals can follow a course offered by a Polish higher education establishment. Nationals of other States party to the Social Charter may undertake and continue studies at higher education establishments in Poland in accordance with international agreements and their provisions, including the European Social Charter.

▶ Since the amendment to the Road Traffic Act of 20 April 2004, it has no longer been necessary to have Polish nationality to be a driving test examiner.

▶ Under the Act adopted on 24 August 2007, foreign nationals wishing to practise medicine in Poland must still obtain authorisation from the Chamber of Physicians, but authorisation must now be granted if the person concerned meets certain conditions, none of which depend on the applicant's nationality.

▶ The 2010 Act on Equal Treatment introduced into the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons an expressly worded duty of reasonable accommodation for a person with disabilities who is employed, participates in the recruitment process or undergoes training, internship, etc. unless such measures would impose a disproportionate burden on the employer.

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

▶ The Act of 23 January 2003 is expected to remedy previous shortcomings concerning waiting time for some medical treatment, as well as mismanagement of waiting lists.

▶ The National Labour Inspection Act of 13 April 2007 came into force on 1 July 2007. The act amended articles 304§1 of the Labour Code to extend the health and safety at work requirements applicable to self-employed persons. Employers who assign work to self-employed persons that has to be performed in an undertaking or any other specified location must ensure that the working conditions are healthy and safe, in accordance with Article 207 § 2 of the Labour Code. This article requires employers to protect the life and health of persons working there by supplying machinery, equipment and products that reflect scientific and technical progress.

▶ In 2008 the unemployment benefit was increased.

Thematic Group 3 "Labour rights"

▶ A new Act on civil service was enacted in 2008 in replacement of the 1998 Act and the former ban on officials performing trade union functions has been lifted, with the exception of certain civil servants considered as senior and exercising public powers (Article 67§6), who are listed in the 2008 Act (Article 52). However, this list contains a number of civil servants for whom this restriction does not appear justified.

Thematic Group 4 "Children, families, migrants"

¹ "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)

- ▶ The Act of 1 July 2001 expressly guarantees the right to family reunion of the migrant workers' family members.
- ▶ Article 2 of the Act of 10 June 2010 *amending the act on the countering domestic violence and certain other acts* introduced a new article to the Polish Family and Guardianship Code (Article 96¹) which prohibits corporal punishment in childrearing (no sanctions are provided either in civil or penal law, unless the punishment may be qualified as violence):
"*Persons exercising parental authority, guardianship or care over a minor are forbidden to use corporal punishment*".
The new law entered into force on 1 August 2010.

Cases of non-conformity

Thematic Group 1 "Employment, training and equal opportunities"

- ▶ *Article 154 – Right to work - Vocational guidance, training and rehabilitation*
Access to continuing training for nationals of other States Parties is subject to an excessive length of residence requirement.
([Conclusions XX-1 \(2012\)](#))

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

- ▶ *Article 1151 - Right to protection of health - Removal of the causes of ill-health*
Equal access to health care is not ensured because of long waiting lists.
([Conclusions XX-2 \(2013\)](#))
- ▶ *Article 1251 – Right to social security - Existence of a social security system*
The level of the basic unemployment benefit is manifestly inadequate.
([Conclusions XX-2 \(2013\)](#))
- ▶ *Article 1253 - Right to social security - Development of the social security system*
The restrictive evolution of unemployment branch of social security.
([Conclusions XX-2 \(2013\)](#))
- ▶ *Article 1254 – Right to social security - Social security of persons moving between states*
Equal treatment with regard to access to family benefits and the right to maintenance of accruing rights are not guaranteed to nationals of all other States Parties.
([Conclusions XX-2 \(2013\)](#))
- ▶ *Article 1353 – Right to social and medical assistance - Prevention, abolition or alleviation of need*
Access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.
([Conclusions XX-2 \(2013\)](#))
- ▶ *Article 1451 – Right to benefit from social services - Promotion or provision of social welfare services*
Access to social services by nationals of other States Parties is subject to an excessive length of residence requirement.
([Conclusions XX-2 \(2013\)](#))

Thematic Group 3 "Labour rights"

- ▶ *Article 251 – Right to just conditions of work - Reasonable working time*
The working hours in certain occupations can exceed 16 hours per day, or be up to 24 hours per day..
(Conclusions XX-3 (2014))
- ▶ *Article 452 – Right to a fair remuneration - Increased remuneration for overtime work*
Workers in both the public and private sectors do not have a right to increased compensatory time off for overtime hours. (Conclusions XX-3 (2014))

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

The notice period which applies in the event of early termination of fixed-term contracts is not reasonable.
(Conclusions XX-3 (2014))

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

After maintenance payments and other authorised deductions, the wages of workers with the lowest wages do not ensure that they can provide for themselves and their dependants.
(Conclusions XX-3 (2014))

► *Article 5 – Right to organise*

Some categories of civil servants may not perform trade union functions and home workers do not enjoy the right to form trade unions.
(Conclusions XX-3 (2014))

Thematic Group 4 “Children, families, migrants”

► *Article 7§10 – Right of children and young persons to protection - Special protection against physical and moral dangers*

Simple possession and storage of child pornography is not a criminal offence if it involves a minor aged 15-18.
([Conclusions XIX-4 \(2011\)](#))

► *Article 8§4 – Right of employed women to protection -*

The regulation of night work is insufficiently protective for women.
([Conclusions XIX-4 \(2011\)](#))

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

There is no guarantee that family benefits will be paid to the nationals of certain States Parties to the 1961 Charter and the Charter.
([Conclusions XIX-4 \(2011\)](#))

► *Article 17 - Right of mothers and children to social and economic protection*

The maximum length of pre-trial detention of minors is excessive
([Conclusions XIX-4 \(2011\)](#))

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

The condition that foreign nationals with a temporary residence permit who wish to be reunited with their family must have been lawfully resident in Poland for two years is excessive.
([Conclusions XIX-4 \(2011\)](#))

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

The Committee concludes that the situation in Poland is not in conformity with Article 19§10 of the 1961 Charter on the same ground for which it is not in conformity with paragraph 6 of the same Article.
([Conclusions XIX-4 \(2011\)](#))

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

Thematic Group 1 “Employment, training and equal opportunities”

(Report to be submitted by 31 October 2015)

► Article 1§2 – Conclusions XX-1 (2012)

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

(Report to be submitted by 31 October 2016)

No deferrals

Thematic Group 3 “Labour rights”

▶ Article 4§3

(Report to be examined in 2013)

Thematic Group 4 "Children, families, migrants"

(Report to be submitted before 31 October 2014)

▶ Article 8§2 - Conclusions XIX-4 (2011)

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