

## — Germany —

### Ratifications

Germany ratified the European Social Charter on 27/01/1965 and has accepted 67 of the Charter's 72 paragraphs.

It has signed the Revised European Social Charter on 29/06/2007 but has not yet ratified it.

It has neither signed nor ratified the protocol reforming the supervisory mechanism and the collective complaints protocol.

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
PA1	PA2	PA3	PA4					Grey = Accepted provisions			

### Reports

Between 1968 and 2006, Germany submitted 24 reports on the application of the Charter. The 24<sup>th</sup> report (on part of the non-core provisions) was due before the 31/03/2006 and Germany submitted it on 24/04/2006. The next report which will concern the accepted paragraphs of Articles 1, 9, 10, 15, 18 of the Charter should be submitted before 31/10/07.

### The Charter in domestic law

Statutory ad hoc incorporation by specific implementing legislation.

The situation of Germany with respect to the application of the Charter is the following as of 1<sup>st</sup> July 2007:

## **Examples of progress achieved following conclusions or decisions of the ECSR<sup>1</sup>**

### **Health**

- ▶ Extension of postnatal leave for employed women giving birth prematurely and thereby losing part of the compulsory six-week period of prenatal leave for an equivalent period, thus ensuring an effective total of twelve weeks' leave (Act of 20 December 1996 amending the Maternity Protection Act / By further amendment on 20 June 2002 to the Maternity Protection Act, maternity leave was subsequently increased to 14 weeks).

### **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).

### **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).

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<sup>1</sup> The European Committee of Social Rights (ECSR) makes a legal assessment of 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 ECSR).

### **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).

## **Cases of non-conformity**

### **Non-discrimination (Nationality)**

- ▶ *Article 12§4 – equal treatment in social security matters*

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

- ▶ *Article 13§1 and §3 – adequate assistance for every person in need; prevention, abolition or alleviation of need*

Nationals of other States party to the Charter and the revised Charter are not granted the same social assistance benefits as Germans.

- ▶ *Article 16 - rights of the family (family benefits)*

Equal treatment is not guaranteed regarding supplementary child-raising allowances to nationals of other States party to the Charter and the revised Charter.

- ▶ *Article 18§2 – right to simplification of formalities related to immigration*

Complex formalities remain in respect of the granting and renewal of work and residence permits for migrant workers.

- ▶ *Articles 19§4 and 19§10 – right to equal treatment in conditions of employment*

Nationals of certain States party are excluded from the scope of the Employment Protection Act on Military Service and consequently are not secured treatment not less favourable than that of nationals regarding, *inter alia*, employment conditions for those returning from military service.

- ▶ *Articles 19§6 and 19§10 – right to family reunion*

1. Children of migrant workers, aged between 18 and 21 years, being nationals of Contracting Parties to the Charter not covered by Community regulations, are not admitted in practice for the purposes of family reunion<sup>2</sup>.

2. Young foreigners with only one parent residing in Germany, have no right to family reunion except in special cases.

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<sup>2</sup> RecChs(94)3 adopted on 8 April 1994 by the Committee of Ministers (renewed on 4 March 1999 and 5 September 2001)

3. There is no right to family reunion for spouses of second-generation foreigners.

► *Article 19§8 and 19§10 – guarantees concerning deportation*

Migrant workers who are nationals of Contracting Parties may be expelled for reasons which go beyond those permitted by the Charter, i.e. in cases where there is no danger to national security nor to offence against public order or morality.

### **Non-discrimination (Sex)**

► *Article 4§3 – right to equal pay*

1. In the event of infringement of the principle of equal pay for equal work, German law only provides for the payment of lost wages. This is not sufficiently dissuasive to ensure the respect of the principle of non-discrimination.

2. Due to its ceiling, the compensation paid to the employee in case of retaliatory dismissal and where the contract has been terminated by a court at the request of the employee is neither sufficiently dissuasive nor compensatory.

### **Health**

► *Article 3§1 – right to health and safety at work (regulations)*

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

### **Social Protection**

► *Article 12§1 – right to social security (existence of a social security system)*

There is no reasonable initial period during which the unemployed may refuse a job not matching with his previous occupation and skills without losing his unemployment benefits.

► *Article 12§3 – right to social security (improvement and safeguard)*

The restrictions introduced in the social security system with respect to unemployment benefits are excessive (e.g. the period of entitlement to unemployment benefit was reduced, new grounds for the suspension of unemployment benefits have been adopted).

### **Children**

► *Article 7§3 – prohibition of employment under the age of 15*

The mandatory rest period for young persons over the age of 15 still subject to compulsory education does not cover half of the long summer school holiday period.

► *Article 7§5 – working conditions between the age of 15 and 18 (pay)*

The allowance paid to apprentices at the end of their apprenticeship falls below two thirds of an adult worker's wage.

### **Employment**

► *Article 2§1 – right to reasonable working time*

Certain reference periods for averaging working hours under flexible working arrangements are too long.

► *Article 6§4 - right to collective bargaining (strikes and lock-outs)*

1. Strikes not aimed at achieving a collective agreement are prohibited<sup>3</sup>.
2. 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.

**The ECSR has been unable to assess compliance with the following right:**

► *Article 4§1 – right to fair remuneration*

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<sup>3</sup> RecChS(98)2 adopted on 4 February 1998 by the Committee of Ministers.