

**THE COLLECTIVE COMPLAINTS PROCEDURE OF THE EUROPEAN SOCIAL
CHARTER AND ITS ADDED VALUE FOR WOMEN'S NGOs.**

By Panayota Petroglou

Attorney at Law

I. Introduction

The European Social Charter (referred to below as “the Charter”) was opened for signature on 18 October 1961 and entered into force on 26 February 1965. It guarantees the human rights and fundamental freedoms in the social and economic sphere, and is considered to be the counterpart of the European Convention of Human Rights.

The Charter is the only international legal instrument at European level which guarantees a comparatively wide broad and comprehensive set of social and economic rights². This is why the Charter of Fundamental Rights of the European Union, in its preamble, reaffirms the rights that result, in particular, from the Social Charters adopted by the Council of Europe; moreover, in the explications for 15 of its articles, it explicitly acknowledges the European Social Charter and the Revised European Social Charter as its sources of inspiration³.

The list of rights guaranteed by the Charter was thoroughly amended and extended by the revised European Social Charter -referred to below as “the revised Charter” (RevESC) -, which was opened for signature on 3 May 1996 and entered into force on 1 July 1999. The revised Charter is a separate instrument: it is binding on States that have ratified the 1961 Charter, only if it is separately ratified, and it may be ratified also by States who are not Parties to the 1961 Charter.

² *Evju, St.*, The European Social Charter in R. Blanpain (ed.), The Council of Europe and The Social Challenges of the XXIst Century, 19-32, Kluwer Law International, 2001.

³ The following rights of the Charter of Fundamental Rights of the European Union were inspired by -inter alia- provisions of the European Social Charter and the Revised European Social Charter: Article 14 CFREU (Right to education) from Art. 10 ESC; Art. 15(1) and (3) CFREU (freedom to choose an occupation and right to engage in work) from Art. 1(2) and Art. 19(4) ESC respectively; Art. 23 CFREU (equality between men and women) from Art.20 RevESC; Art. 25 CFREU (the rights of the elderly) from Art.23 RevESC; Art.26 CFREU (integration of persons with disabilities) from Art.15 ESC and Art. 23 RevESC; Art. 27 CFREU (workers' right to information and consultation within the undertaking) from Art 21 RevESC; Art 28 CFREU (Right of collective bargaining and action) from Art.6 ESC; Art. 29 CFREU (right of access to placement services) from Art. Art.1(3) ESC; Art. 30 CFREU (Protection in the event of unjustified dismissal) from Art.24 RevESC; Art. 31 (1) and (2) (fair and just working conditions) from Art. 3 ESC - Art.26 RevESC and Art.2 ESC respectively; Art.32 CFREU (prohibition of child labour and protection of young people at work) from Art. 7 ESC; Art. 33(1) and (2) CFREU (family and professional life) from Art.16 ESC and Art. 27 RevESC respectively; Art.34(1), (2) and (3) CFREU (social security and social assistance) from Art. 12 ESC, Art. 13(4) ESC and Art. (30), (31) RevESC respectively; Art.35 CFREU (health care) from Art.11 ESC.

The Revised Charter brings together in a single instrument the rights guaranteed by the European Social Charter of 1961, with certain amendments, the rights guaranteed by the Additional Protocol of 1988⁴, and a number of new rights⁵.

The Charter was revised in order to take account of the extent to which social rights had been developed in other international instruments and in the legislation of individual State Parties and social problems not covered by other instruments in force⁶.

Unlike the ratification of the European Convention of Human Rights, the ratification of the Charter is not a precondition for membership of the Council of Europe. Consequently, as of June 2002, of the 43 States members of the Council of Europe only 17 had ratified the Charter⁷, and only 14 had ratified the Revised Charter⁸.

Moreover, the Charter offers an *à la carte* ratification system, i.e. States may ratify the Charter without accepting the totality of its provisions, but they are obliged to accept a certain number of what are known as “hard- core” articles. More specifically, States ratifying the Charter must accept at least 5 out of 7⁹ hard-core articles, while States ratifying the revised Charter 6 out of 9¹⁰ such articles, which include the right to equal opportunities and equal treatment in matters of employment and occupation without

⁴ The Additional Protocol to the European Social Charter of 5.5.1988 added to the 1961 Charter the following rights: ***the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex***, the right to information and consultation, the right to take part in the determination and improvement of the working conditions and working environment and the right of elderly persons to social protection.

⁵ The Revised Charter added the following new rights to the rights guaranteed by the 1961 Charter: the right to protection in cases of termination of employment, the right of workers to the protection of their claims in the event of the insolvency of their employer, the right to dignity at work, ***the right of workers with family responsibilities to equal opportunities and equal treatment***, the right of workers' representatives to protection in the undertaking of their duties and facilities to be accorded to them, the right to information and consultation in collective redundancy procedures, the right to protection against poverty and social exclusion, and the right to housing.

⁶ See Conclusions 2002 of the European Committee of Social Rights on the Revised European Social Charter.

⁷ As of 21 June 2002, 17 States: Austria, Belgium, Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Spain, Turkey, United Kingdom.

⁸ As of 21 June 2002, 14 States: Bulgaria, Cyprus, Estonia, Finland, France, Ireland, Italy, Lithuania, Moldova, Norway, Portugal, Romania, Slovenia, Sweden.

⁹ Articles 1 (the right to work), 5 (the right to organise), 6 (the right to bargain collectively), 12 (the right to social security), 13 (the right to social and medical assistance), 16 (the right of the family to social, legal and economic protection) and 19 (the right of migrant workers and their families to protection and assistance).

¹⁰ In the Revised charter two more “hard- core” articles were added to the above: Article 7 (the right of children and young persons to protection) and Article 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex).

discrimination on the grounds of sex. In both cases, a certain overall number of articles or numbered paragraphs must also be accepted¹¹.

For systematical reasons, the rights guaranteed by the Charter and the Revised Charter can be grouped into 6 major fields: **housing**¹², **health**¹³ **education**¹⁴, **employment**¹⁵ (including the right to equal pay, equal treatment and equal opportunities for women and men, and for workers with family responsibilities), **social protection**¹⁶, **and movement of persons**¹⁷. **All these rights apply regardless of race, sex, age, colour, language, religion, opinions, national origin, social background, state of health, or association with a national minority.**

However, unlike the personal scope of the European Convention of Human Rights, which covers “everyone within a State’s jurisdiction”¹⁸, the personal scope of the Charter in principal “includes foreigners only in so far as they are **nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned**”¹⁹.

¹¹ At least 10 articles or 45 numbered paragraphs, out of a total 72 of the Charter; at least 16 articles or 63 numbered paragraphs, out of total of 98 of the revised Charter.

¹² **Housing:** construction of housing in accordance with families’ needs; reduction in the number of homeless persons; universally assured access to decent, affordable housing; equal access to public housing for foreigners.

¹³ **Health:** accessible, effective health care facilities for the entire population; policy for preventing illness with, in particular, the guarantee of a healthy environment; elimination of occupational hazards so as to ensure that health and safety at work are provided for by law and guaranteed in practice.

¹⁴ **Education:** a ban on work by children under the age of 15; free primary and secondary education; free vocational guidance services; initial and further vocational training; access to university and other forms of higher education solely on the basis of personal merit.

¹⁵ **Employment:** A social and economic policy designed to ensure full employment; the right to earn one’s living in an occupation freely entered upon; fair working conditions as regards pay and working hours; the right to equal treatment and equal opportunities in employment for women and men and for workers with family responsibilities; action to combat sexual and psychological harassment; prohibition of forced labour; freedom to form trade unions and employers’ organisations to defend economic and social interests; individual freedom to decide whether or not to join them; promotion of joint consultation, collective bargaining, conciliation and voluntary arbitration, the right to strike.

¹⁶ The right to social security, social welfare and social services; the right to be protected against poverty and social exclusion; special measures catering for families and the elderly.

¹⁷ Simplification of immigration formalities for European workers; the right to family reunion; the right of non-resident foreigners to emergency assistance up until repatriation; procedural safeguards in the event of expulsion.

¹⁸ Article 1 of the European Convention of Human Rights.

¹⁹ Paragraph 1 of the Appendix to the revised European Social Charter. According to the Conclusions 2002 of the European Committee of Social Rights, the Parties to the revised Charter are required to apply the provisions to their nationals and to the nationals of all other Parties as well as to the nationals of the Contracting Parties to the European Social Charter of 1961. This personal scope extends in principle to persons lawfully resident on the territory of the state concerned, but certain provisions expressly provide rights for persons residing abroad [Article 12(4): export of social security benefits, Article 19(6)Q right to family reunion] or for persons lawfully present on the territory of a Party [Article 13(4)].

This approach has been criticised²⁰ as very restrictive, because rights as fundamental as, e.g. the right to protection of health (art.11) or the right to social and medical assistance (art.13), should not be guaranteed only to persons who are lawfully resident in the State concerned.

II. Gender equality rights in the European Social Charter

The gender equality rights in the 1961 Charter²¹, which included equal pay, maternity protection, and the non discrimination principle, were strengthened by the Additional Protocol to the European Charter of 1988, which added the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, and then by the Revised Social Charter, which introduced the right to dignity at work and the right of workers with family responsibilities to equal opportunities and equal treatment. Moreover, the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex now enjoys a hard--core status within the Revised Charter.

Article 4(3) ESC²² proclaims the ***right of men and women workers to equal pay for work of equal value***. In this context, the European Committee of Social Rights (referred to below as "the Committee") has found that: a) legislation must provide the right to equal pay not only for the same work but also for work of equal value; b) any clause in collective agreements and individual employment contracts contrary to this principle is null and void; c) the protection of this right must be ensured by sufficient adequate corrective measures; d) workers should enjoy effective protection from victimisation when bringing their equal pay claims, and in particular, protection from dismissal²³. Ceilings imposed on the compensation for unlawful dismissal do not have a sufficiently deterrent effect and, consequently, are considered incompatible with this right²⁴.

Article 20 RevESC provides for the ***right to equal opportunities and equal treatment in matters of employment and occupation*** without discrimination on the

²⁰ See *Olivier de Schutter*, *The European Social Charter and the Challenges of the 21st Century*, Athens 2000, Papazissi Ed., p. 195.

²¹ See *L. Samuel*, *Fundamental Social Rights - Case Law of the European Social Charter*, Strasbourg 1997/Athens 2001, Editions Papazissi, which has been the source of the case law mentioned herein that relates to the 1961 Charter provisions.

²² Article 4(3) ESC: "*With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake: ... 3. to recognise the right of men and women workers to equal pay for work of equal value*".

²³ Conclusions VIII, p. 66.

²⁴ Conclusions XII-1, p.96, 97.

grounds of sex, and the taking of appropriate measures to ensure or promote the application of this right in the following fields:

- a. access to employment, protection against dismissal, and occupational reintegration;
- b. vocational guidance, training, retraining, and rehabilitation;
- c. terms of employment and working conditions, including remuneration;
- d. career development, including promotion.

According to the Committee's recently published conclusions for 2002 on the Revised Social Charter, the Swedish social security legislation introduces **indirect discrimination against female workers** in breach of Article 20 RevESC²⁵, since part-time workers, who work fewer hours than a minimum - corresponding roughly to working half-time - are not covered by unemployment insurance.

Article 8 RevESC provides for the right of employed women to **protection of maternity**. More specifically, it provides for:

- i) the right to at least 14 weeks **maternity leave**, during which time women are entitled to pay, adequate social security benefits or benefits from public funds for employed women²⁶. The Committee has ruled that an 80% of the average earnings of pregnant women can be considered as "adequate" social security benefits in this case.
- ii) the **prohibition of dismissal** from the time a woman employee notifies her employer that she is **pregnant** until the end of her **maternity leave**²⁷. The Committee

²⁵ In its previous conclusions on Sweden's application of Article 1 of the Additional Protocol, the Committee noted that, under the Employment Insurance Act (Act of 29 May 1997), "*the length of working hours influences the compensation for unemployment. In order to qualify for unemployment benefits a worker has to meet a certain employment qualification. For this purpose, only days with at least three hours' work can be credited. Furthermore, membership of an employment insurance fund is required, which is only possible if the average working week is at least seventeen hours. A person who does not meet these requirements may receive cash labour market assistance if he or she has worked at least seventy-five hours per month*" (Conclusions XIII-5, p.274). The Committee notes that most part-time workers in Sweden are female: women accounted for 77,3 % of all part-time workers in 2000, meaning that 36,3% of female workers worked part-time as opposed to 10,9% of male workers.

²⁶ Art. 8(1) RevESC: "*With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake: 1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks*". The 1961 Charter provided for a maternity leave of at least 12 weeks.

²⁷ Art.8(2) RevESC: "...2. *to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period*". According to the Appendix to the RevESC, this provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases: a) if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship; b) if the undertaking concerned ceases to operate; c) if the period prescribed in the employment contract has expired.

has ruled that reinstatement should be the norm in the case of unlawful dismissals of this type, and that compensation should only be considered under extraordinary circumstances²⁸.

iii) sufficient ***time off for mothers who are nursing*** their infants²⁹. The Committee has ruled that time taken off for this purpose should be considered part of the mother's working time and be compensated accordingly³⁰.

iv) ***regulation of the employment in night work of pregnant women***, women who have recently given birth and women nursing their infants³¹.

v) the ***prohibition of employment of pregnant women***, women who have recently given birth or who are nursing their infants ***in underground mining and all other work which is unsuitable*** due to its dangerous, unhealthy or arduous nature; appropriate measures to protect the employment rights of these women³².

Article 27 RevESC guarantees the ***right of workers with family responsibilities to equal opportunities and equal treatment***, in particular:

1. by providing for the adoption of appropriate measures:
 - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b. to take account of their needs in terms of conditions of employment and social security;
 - c. to develop or promote services, public or private, in particular child day care services and other childcare arrangements;
2. by making it possible for either parent to obtain parental leave to take care of a child for a period of time subsequent to maternity leave, the duration and conditions of which should be determined by national legislation or collective agreements or practice;
3. by ensuring that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

A comparison of this article with the Article 33 of the Charter of Fundamental Rights of the European Union, reveals how disappointingly restrictive is the

²⁸ Conclusions XII-2 p.140, XIII-2, p. 307-309, XIII-3 p. 314.

²⁹ Art. 8(3) RevESC: "...3. *to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose*".

³⁰ Conclusions I p.51, XIII-3, p.49.

³¹ Article 8(4)(a) of the 1961 Charter provided for the regulation of the employment of women workers in general on night work in industrial employment.

³² Article 8(4)(b) of the Charter provided for the prohibition of employment of women workers in general in these activities.

wording of the latter. In effect, Article 33 only guarantees the right to protection from dismissal for a reason connected with maternity, the right to paid maternity leave and the right to parental leave following the birth or adoption of a child. Thus, to this extent, the Charter of Fundamental Rights of the European Union falls short of both the *acquis communautaire* and the European social *acquis*³³.

The Committee has also interpreted other articles of the Charter in the light of the gender equality principle. In particular:

The Committee has found that in the case of Greece, **restrictive quotas applied to the admission of women to police training** (15 and 20% for Police School and Officer School respectively) constitute **direct discrimination based on sex in violation of Art. 1(2) ESC** (the right of the worker to earn his living in an occupation freely entered upon)³⁴. The Committee stated that, although prescribed by law, the restriction is not “*necessary in a democratic society*” for the protection of any of the interests listed in Article 31³⁵, and that the fact that the Greek police force is armed, cannot, in itself, justify a restriction to the number of women accepted for police training³⁶.

Concerned about the **impact of the development of part-time work**, in the framework of **Article 1(2)**, the Committee has also asked the States to include information on the legal safeguards pertaining to part-time work in their next reports; more specifically,

³³ On the regression of the Charter on this issue in comparison to the *acquis communautaire*, see *Sophia Spiliotopoulos*, “Does Article 33(2) of the Charter of Fundamental Rights of the European Union (family and professional life) correspond to the *acquis communautaire*?”, AFJF & EWLA European Congress, 20-21.9.2002, Paris, France. See also the Fourth and Fifth Contribution of EWLA on the Future of the Union, www.ewla.org and the Fourth and Fifth Position of the Association of Women of Southern Europe (AFEM) on the Future of the Union.

³⁴ In its 2002 conclusions on the Revised Charter, the European Committee of Social Rights has modified its approach in order to take into account the new Article 20 of the Revised Charter (right of women and men to equal treatment and opportunities), which covers areas already dealt with under other provisions: i) for States which have accepted both Article 1§2 and Article 20, under the latter the Committee examines the general framework for guaranteeing equality between women and men (equal rights, specific protection measures, situation of women in employment and training schemes, measures to promote equal opportunities). As a result it does not deal specifically with discrimination based on sex under Article 1§2; ii) since the right to equality under Article 20 covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3. States which have accepted Article 4§3 only will continue to submit a report on the application of this Article.

³⁵ Art.31 ESC: “*The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals. 2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed*”.

³⁶ Conclusions XV-1, Greece.

whether there is a minimum working week, whether there are rules to prevent non-declared work through overtime, and whether rules exist requiring equal pay, in all its aspects, for part-time and full-time workers³⁷.

Finally but equally crucially, in the context of Article 16 ESC (the right of the family to social, legal and economic protection) and in view of the **importance of reconciling family and professional life, the Committee highlighted the need for a sufficient number of childcare facilities**, in particular *crèches*, kindergartens, after-school care services and holiday programmes for children³⁸.

III. Supervision procedure based on State reports

The oldest and most common procedure for supervising the application in practice of the rights guaranteed by the Charter is the examination of periodic reports submitted by the States. Actually, States parties to the Charter are required to submit periodic reports on the hard-core provisions every two years, and on the non-hard-core provisions every four years within a precise timetable set by the Committee of Ministers³⁹. States are also required to submit reports on non-accepted provisions for review by the supervisory bodies⁴⁰.

The European Committee of Social Rights (formerly known as the Committee of Independent Experts) is made up of 12 independent experts elected by the Committee of Ministers and assisted by an observer from the International Labour Organisation. It examines the reports submitted by states and issues a ruling on whether states have complied with their commitments. Its rulings are called “conclusions”.

If a state fails to act on a ruling of non-compliance by the European Committee of Social Rights, the Council of Europe’s Committee of Ministers may issue a recommendation to the state concerned, asking it to amend its legislation or alter its practice in order to bring it into line with the Charter. The work of the Committee of Ministers is prepared by a Governmental Committee made up of representatives of the governments of the State parties to the Charter and assisted by representatives from European employer organisations and trade unions.

³⁷ In its 2002 Conclusions on Article 1(2) of the Charter, the Committee stated that: i) most of the requirements for compliance with Article 1(2) as regards the prohibition of discrimination on the ground of sex apply to any ground of discrimination; ii) it will henceforth systematically examine the length of civilian service, the loss of unemployment benefits for refusal to take up employment and the consequences of part-time work.

³⁸ Conclusions XIII-2, p.147.

³⁹ Article 21 of the Charter.

⁴⁰ Article 22 of the Charter.

IV. The collective complaints procedure.

The Additional Protocol Providing for a System of Collective Complaints (referred to below as “the Protocol”), which was opened for signature on 9 November 1995 and entered into force in July 1998, sets out a new supervision procedure, the collective complaints procedure, whereby allegations of breaches of the Charter or the revised Charter may be submitted to the European Committee of Social Rights. According to the Explanatory Report to the Protocol, the collective complaints procedure aims to strengthen the effectiveness of the system of State reports by enhancing the participation of both management and labour, as well as of non- governmental organisations, and their interest for the Charter.

As of June 2002, only 11 of the 31 States that have ratified the Charter and the Revised Charter have accepted the collective complaints procedure: 7 EU Member States (Finland, France, Greece, Ireland, Italy, Portugal and Sweden) and 4 non EU States (Bulgaria, Cyprus, Norway and Slovenia). Of the former, only Finland has recognised the right of national NGOs to lodge collective complaints against it.

In the first place, it should be noted that, unlike the procedure before the European Court of Human Rights, the collective complaints procedure is **not conditional upon the exhaustion of domestic remedies. A complaint may be admissible even if the same or a similar case has already been submitted to any national or international institution**⁴¹.

Moreover, **the fact that the subject matter of a complaint has been examined under the “normal” supervisory procedure for considering government reports does not, in itself, make the complaint inadmissible**⁴². In fact, the European Committee on Social Rights has ruled that *“neither the fact that the committee has already examined this situation in the framework of the reporting system nor the fact that it will examine it again during subsequent supervision cycles in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party”*. It further stated: *“The legal principles res judicata and non bis in idem ... do not apply to the relation between the two supervisory procedures”*⁴³.

⁴¹ Paragraph 31 of the Explanatory Report to the Protocol.

⁴³ Decision on the admissibility of the collective complaint 1/1998, the International Commission of Jurists against Portugal.

⁴³ Decision on the admissibility of the collective complaint 1/1998, the International Commission of Jurists against Portugal.

Given their “collective” nature, only complaints relating to the non-conformity of the legislation or practice of a State to the provisions of the Charter are admissible; individual complaints are not allowed⁴⁴. Nevertheless, collective complaints need not be limited to statistical data and general information, but can also be effectively based on, and proved by, reference to specific examples of individuals or organisations that have suffered violations of the rights in question⁴⁵. The European Committee of Social Rights also takes such examples into account when examining State reports.

IV.1.Locus standi

The following organisations are entitled to submit collective complaints alleging unsatisfactory application of the Charter:

- in the case of all states that have accepted the procedure⁴⁶:

- **International organisations of employers and trade unions** referred to in Article 27 (2) of the Charter, which participate in the work of the Governmental Committee: **the European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederations of Europe (UNICE), and the International Organisation of Employers (IOE).**
- **Other international (non-governmental) organisations having consultative status with the Council of Europe and included in a list** drawn up for this purpose by the Governmental Committee⁴⁷ **only in respect of those matters regarding which they have been recognised as having particular competence⁴⁸.**
- **Representative national employers’ organisations and trade unions** within the jurisdiction of the Contracting Party against which they have lodged a complaint. According to the Explanatory report to the Protocol, when criteria of representativity are

⁴⁴ Paragraph 31 of the Explanatory Report to the Protocol.

⁴⁵ See *Harris, D.*, *The European Social Charter and the Challenges of the 21st century*, Council of Europe, Papazissi Ed., Athens 2000.

⁴⁶ Article 1 of the Protocol.

⁴⁷ As from 1 July 2002, 55 such organisations were registered on the list drawn up by the Governmental Committee following the decision of the Committee of Ministers on June 1995 for a duration of 4 years, among them 2 women’s NGOs: the Association of Women of Southern Europe (AFEM) and the European Centre of the International Council of Women (ECICW). To be included in this list, international NGOs have to submit detailed and precise information and documentation proving specifically that the organisation has access to valid sources of information and is in a position to realise the due verifications, to collect legal expertise etc., so as to produce complaint files that fulfill the basic prerequisites of reliability. Inclusion in the list is reviewed every four years; the organisations concerned have to apply for renewal of their inclusion six months before the expiry date.

⁴⁸ Articles 1 and 3 of the 1995 Additional Protocol to the Charter.

not set at national level, factors such as the number of members and the extent of participation in the bargaining procedures should be taken into account.

- *in the case of states which have also agreed to this*⁴⁹:

- **Representative national non-governmental organisations** within the jurisdiction of a State Party, **which have particular competence in the matters governed by the Charter, and only in respect of those matters**⁵⁰.

International and national NGOs were granted the *locus standi* to submit collective complaints, given that many of the Charter's provisions do not fall (or at least not exclusively) within the field of employment, i.e. within the competence of management and labour. Nevertheless, although the international employer organisations and trade union are invited to submit observations when a complaint is lodged by a national or international NGO (or a national organisation of employers or trade union)⁵¹, the corollary does not hold: i.e. national or international NGOs are not invited to submit observations, when a complaint is lodged by an international employer or trade union organisation.

To date, only 4 of a total of 13 collective complaints, have been lodged by NGOs (the International Commission of Jurists⁵², the International Federation of Human Rights Leagues⁵³, the Quaker Council for European Affairs⁵⁴ and Autisme-Europe⁵⁵): the first relates to child labour, the second and the third to forced labour, and the fourth to insufficient educational provision for autistic persons. The first three complaints were sustained, while the fourth has not yet been examined by the Committee.

IV.2. Criteria of admissibility

In order to be found admissible, a complaint must:

- **be lodged in writing by an organisation having the *locus standi* to do so;**

⁴⁹ According to Article 2 of the Protocol, any Contracting State may also -, when it expresses its consent to be bound by this Protocol, in accordance with the provisions of Article 13, or at any moment thereafter -, declare that it recognises the right of the above mentioned national NGOs within its jurisdiction to lodge complaints against it. Such declarations may be made for a specific period. To date only Finland has recognised its national NGOs' right to do this.

⁵⁰ Articles 2 and 3 of the 1995 Additional Protocol to the Charter.

⁵¹ Article 7(2) of the Protocol.

⁵² Complaint No 1/1998: International Commission of Jurists against Portugal.

⁵³ Complaint No 7/2000: International Federation of Human Rights Leagues against Greece.

⁵⁴ Complaint No 8/2000: Quaker Council for European Affairs against Greece.

⁵⁵ Complaint No 13/2002: Autisme-Europe against France.

- **relate to a provision of the Charter and/or the revised Charter that was accepted by the State in question** upon its ratification⁵⁶ and **indicate its grounds**, i.e. the point(s) in respect of which the State concerned has allegedly failed to comply with the Charter, along with the relevant arguments and supporting documents⁵⁷;
- **be signed by an authorised representative** of the complainant organisation⁵⁸.

Complaints lodged by the ETUC, the UNICE, and the IOE, or by international non-governmental organisations must be written in one of the official languages of the Council of Europe (English or French), whereas complaints lodged by national non-governmental organisations may be written in a non-official language.

IV.3. Procedural norms

The complaint⁵⁹ is examined by the Committee, which first decides on its admissibility according to the criteria of admissibility and its own procedural rules⁶⁰.

⁵⁶ Article 4 of the 1995 Additional Protocol to the Charter.

⁵⁷ Ibid.

⁵⁸ According to Rule 20 of the Rules of Procedure of the European Committee of Social Rights, the complaint file must contain proof that the person submitting and signing the complaint is entitled to represent the organisation lodging the complaint. Such an issue was raised in the Complaint 6/1999 against France, lodged by the "*Syndicat national des Professions du tourisme*", a french interprofessional trade union, which is organised into four sections, each one comprising certain touristic professions and represented by the Vice-President appointed for the professions concerned. In this case, the Committee considered admissible the complaint signed by its Vice-President appointed for the professions of interpreter guides and lecturers, who, in accordance with its statutes, was empowered to represent it for the said professions (this capacity of him being confirmed in a certificate issued by the trade union's president) and dismissed the French Government's objection to admissibility.

⁵⁹ Complaints shall be addressed to the Secretary to the Committee, who acknowledges receipt of it, notifies it to the Contacting Party concerned, and immediately transmits it to the Committee of Independent Experts (Art. 5 of the 1995 Protocol and Rule 19 of the ECSR Rules of Procedure). Complaints are registered with the Secretariat of the Committee in chronological order. The Committee deals with complaints in the order in which they become ready for examination. It may, however, decide to give precedence to a particular complaint (Art.6 of the 1995 Protocol and Rule 23 of the Rules of Procedure). For each complaint a member of the Committee is appointed by the President to act as Rapporteur. The Rapporteur follows the proceedings and informs the Committee at each of its sessions of the progress of the proceedings and of the procedural decisions taken by the President since the previous session. The Rapporteur elaborates a draft decision on admissibility of the complaint for adoption by the Committee, followed by, as the case may be, a draft report for the Committee of Ministers (Rule 24 of the ECSR Rules of Procedure). Before the Committee decides on admissibility, the President of the Committee may ask the State concerned for written information and observations, to be presented within a fixed time limit, on the admissibility of the complaint. The President may also ask the organisation that lodged the complaint to respond, on the same conditions, to the observations made by the State concerned. (Art.6 of the 1995 Protocol and Rules 25 and 26 of the ECSR Rules of Procedure).

⁶⁰ The Rapporteur within the shortest possible time limit elaborates a draft decision on admissibility, containing: a statement of the relevant facts, an indication of the issues arising under the Charter in the complaint and a proposal on the admissibility of the complaint. The Committee's decision on admissibility of the complaint is accompanied by its reasons, signed by the President, the Rapporteur, and the Secretary to the Committee and made public. The States party to the Charter

Considerations relating to the merits of the complaint (e.g. arguments that the complaint is manifestly ill-founded⁶¹ or that the State not only intends to amend the legislative provisions in force, but has already initiated the relevant procedures⁶²) are not examined at this stage.

If the complaint is declared admissible, a written procedure is followed⁶³, with an exchange of documents between the parties. The Committee may decide to hold a public hearing⁶⁴.

The Committee then decides on the merits of the complaint. Its decision is contained in a report, which is forwarded to the Committee of Ministers and is made public within four months from that date⁶⁵.

Finally, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the state in question take specific measures to bring the situation into line with the Charter⁶⁶.

or the revised Charter are notified about it. If the complaint is declared admissible, copies of the complaint and the observations of the parties are transmitted, upon request, to States party to the Protocol and to the international organisations of employers and trade unions, which can also consult the appendices to the complaint at the Secretariat (Art. 7 of the 1995 Protocol and Rule 27 of the ECSR Rules of Procedure).

⁶¹ Decision on the admissibility of Complaint 4/1999 by the European Federation of Employees in Public Services (EUROFEDOP) against Italy.

⁶² Decision on the admissibility of Complaint 7/2000 by the International Federation of Human Rights Leagues against Greece.

⁶³ The Committee asks the State concerned to make its observations on the merits of the complaint within a time limit. The President then invites the organisation that lodged the complaint to respond to these observations, on the same conditions, and to submit all relevant written explanations or information to the Committee. The States party to the Protocol, as well as the States that ratified the revised Social Charter, and that have made a declaration under Article D paragraph 2 of the Charter, are invited to make comments within the same time limit. The international organisations of employers and trade unions are invited to make observations on complaints lodged by national organisations of employers and trade unions and by non-governmental organisations. These observations are communicated to the organisation that lodged the complaint and to the State concerned. Any information received by the Committee is transmitted to the State concerned and to the complainant organisation (Art. 7 of the 1995 Protocol and Rule 28 of the ECSR Rules of Procedure).

⁶⁴ A hearing with the representatives of the parties may be held at the request of one of the parties or on the Committee's initiative. The Committee decides whether or not to act upon a request made by one of the parties. The State concerned, and the complainant organisation, as well as the States and organisations that have submitted written observations during the proceedings are invited to the hearing. The hearing is public unless the President decides otherwise (Art.7 of the 1995 Protocol and Rule 29 of the ECSR Rules of Procedure).

⁶⁵ The Committee draws up a report in which it describes the steps it has taken to examine the complaint and present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint. The Committee's decision on the merits of the complaint contained in the above report is accompanied by its reasons and is signed by the President, the Rapporteur and the Secretary to the Committee. Any dissenting opinions are appended to the Committee's decision at the request of their authors. The report containing the decision in question is communicated to the Committee of Ministers and to the Parliamentary Assembly. It is also communicated to the organisation that lodged the

The State Party concerned is required to provide information in its next report on the measures it has taken to bring the Committee of Ministers' recommendations into effect.,⁶⁷

V. The Added Value of the Collective Complaints Procedure for Women's NGOs.

As the sole international legal instrument on social and economic rights at a European level, the Charter is manifestly an invaluable tool for women's NGOs in their struggle for gender equality, in particular in non EU countries.

Nevertheless, the extensive community gender equality law (Articles 2⁶⁸, 3⁶⁹, 141⁷⁰ EC Treaty, Directives 75/117⁷¹, 76/207⁷² as amended by 2002/73/EC⁷³, 79/7⁷⁴, 86/378⁷⁵

complaint and to the Contracting Parties to the Charter, which are not at liberty to publish it (Art.8 of the 1995 Protocol and Rule 30 of the ECSR Rules of Procedure).

⁶⁶ On the basis of the Committee's report, the Committee of Ministers adopts a resolution by a majority of those voting. If the Committee finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers adopts, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, only Contracting Parties to the Charter are entitled to vote. At the request of the State Party concerned, the Committee of Ministers may decide, where the report of the Committee raises new issues, by a two-thirds majority of the State Parties to the Charter, to consult the Governmental Committee (Art. 9 of the 1995 Protocol). The Committee's decision on the merits of the complaint is made public at the moment of the adoption of the above resolution by the Committee of Ministers or, at the latest, four months after the report was communicated to the Committee of Ministers. When the Committee's decision has become public, all documents registered with the Secretariat are accessible to the public unless the Committee decides otherwise following a proposal by the Rapporteur (Art.8 of the 1995 Protocol and Rule 30 of the ECSR Rules of Procedure).

⁶⁷ Article 10 of the 1995 Additional Protocol to the Charter.

⁶⁸ Art.2 EC Treaty: "*The Community shall have as its task [...] to promote [...] equality between men and women [...]*".

⁶⁹ Art.3(2) EC Treaty: "*In all the activities referred to in this Article, the Community shall aim to eliminate inequalities and to promote equality between men and women*".

⁷⁰ Art. 141 (1) EC Treaty provides the principle of equal for work of equal value. Art. 141(4) stipulates that, with a view to ensuring full equality in practice, Member States may maintain or adopt measures providing for specific advantages, in order to make it easier for the under-represented sex to pursue a vocational activity, or to prevent or compensate for disadvantages in professional careers. According to Declaration 28 to the Amsterdam Treaty, Member States should, in the first instance, aim at improving the situation of women in working life.

⁷¹ Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, OJ L 45/19.2.75.

⁷² Council Directive 76/207/EEC of 9.2.1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ L 39/14.2.76.

⁷³ Directive 2002/73/EC of the European Parliament and of the Council of 23.9.2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, O.J. L 269, 05/10/2002 p. 15-20.

⁷⁴ Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6/10.1.79.

as amended by 96/97⁷⁶, 86/613⁷⁷, 92/85⁷⁸, 96/34⁷⁹, 97/80⁸⁰) applying in E.U. Member States, does not reduce the importance of the Charter's provisions on gender equality - and, consequently, of its collective complaints procedure - to women's NGOs.

In fact, even in the fields of employment and social security, where the greater part of community legislation applies, experience and research⁸¹ have shown that levels of gender equality litigation and complaints are very low in relation to existing discrimination and inequalities, which affect mostly women. This is because, in many cases, isolated victims of gender discrimination, and more precisely women, are reluctant to claim their rights, initiate judicial or administrative proceedings, or even make a complaint to a competent person or body, due to lack of information and support, difficulties to prove their case and for fear of unemployment, deterioration of working conditions and victimisation.

Of course, it is true that when the recently amended⁸² Article 6(3) of the Equal Treatment Directive, comes into force, women's NGOs (as well as trade unions) will have the locus standi to bring cases before the court or other administrative bodies in the name of those wronged. However, the length of judicial proceedings is likely to remain a serious disincentive to litigation. In fact, a recent comparative survey⁸³ demonstrated that it could take an average of 18 months to 2 years to obtain a first instance judgment in Austria,

⁷⁵ Council Directive 86/378/EEC of 24.7.1986 on the implementation of the principle of equal treatment in occupational security schemes, OJ L225/12.8.86.

⁷⁶ Council Directive 96/97/EC of 20.12.1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ L46/17.2.97.

⁷⁷ Council Directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, OJ L 359/19.12.86.

⁷⁸ Council Directive 92/85/EEC of 19.10.1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

⁷⁹ Council Directive 96/34/EC of 3.6.1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L145/19.6.96.

⁸⁰ Council Directive 97/80/EC of 15.12.1997 on the burden of proof in cases of discrimination based on sex, L 14/20.1.98.

⁸¹ See *Koukoulis-Spiiotopoulos, S.*, From formal to substantive gender equality, The Proposed Amendment of Directive 76/207 – Comments and Suggestions, Marangopoulos Foundation for Human Rights, Sakkoulas-Bruylant, 2001.

⁸² Directive 2002/73/EC Art. 6(3): *“Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainants, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive”.*

⁸³ See *Good Practice Guide on the Effective Exercise of Gender Equality Rights*, in the framework of the transnational project “Equality Rights: from Legislation to Everyday Life” (Fourth Community Action Programme on Equal Opportunities for Women and Men) promoted by the Research Centre for Gender Equality (KETHI).

France, Germany, Greece and Italy. Furthermore, the difficulties inherent in the collection of evidence, the complexity of the legal principles involved, the interaction between national law and Community law, the scope for appeals and references to the European Court of Justice, and the resultant high cost of such actions are likely to prolong further gender discrimination proceedings⁸⁴.

In this context, the Charter's collective complaints procedure offers to women's NGOs a channel for immediate action in issues of a collective nature with quick - and until now successful -- results. To date, the average time to elapse between the filing of a complaint and the adoption of a resolution by the Committee of Ministers is 18-20 months.

Another positive feature of the collective complaints procedure is that collective complaints are admissibly lodged, even if they relate to issues in which individual or collective cases are pending before other national or international institutions, or have already been lost before the national courts⁸⁵.

Moreover, the Charter's antidiscrimination principle covers all forms of discrimination, including, but not limited to, race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. The Charter is, thus, wider in scope is wider than Article 13 of the EC Treaty, which only covers discrimination on the grounds of sex, age, disability, racial or ethnic origin, religion or belief, and sexual orientation. This is very crucial, given that women often fall victims of multiple discrimination.

Furthermore, the non-discrimination principle guaranteed by the Charter goes far beyond employment, to housing, health, education, social protection and the movement of persons. Thus, until the Article 13 Directive on gender equality in fields other than employment is adopted –as it has already been announced- and comes into force, the collective complaints procedure can be utilised as a tool for eradicating discrimination in these fields as well.

Last but not least, given the apparent recognition of Civil Society as an important actor in European evolution, the Charter's collective complaints procedure makes it possible for women's NGOs to play a leading role in safeguarding and promoting women's rights in an international context.

⁸⁴ See *Blom, J., Fitzpatrick, B., Gregory, J., Knecht, R., O'Hare*, "The Utilisation of Sex Equality Litigation Procedures in the Member States of the European Community. A comparative study", 1996.

⁸⁵ In contrast, within the individual complaints procedure of the Optional Protocol to the CEDAW a complaint is only admissible when all available domestic remedies have been exhausted and the complaint is not being, nor has been, examined by the Committee, and is not being, nor has been, examined under another procedure of international investigation or settlement.