



European  
Social  
Charter

Charte  
sociale  
européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

24 October 2013

**BILATERAL MEETING between  
the BUREAU of the COMMITTEE and a SWISS DELEGATION  
(Bern, 9 September 2013)**

**Report**

1. The meeting took place in Bern (Parliament Building North, Kochergasse 10, ground floor, Room 1) on Monday 9 September 2013 from 10.45 am to 12.30 pm.

2. The Swiss delegation comprised:

Ambassador Valentin Zellweger, Director, Directorate of International Law, Federal Department of Foreign Affairs (FDFA);

Ambassador Jürg Lindenmann, Deputy Director, Directorate of International Law, FDFA;

Daniel Frank, Head of Human Rights Section, Directorate of International Law, FDFA;

Sophie Heegaard-Schroeter, Adviser, Human Rights Section, Directorate of International Law, FDFA;

Pascal Hubatka, Trainee, Human Rights Section, Directorate of International Law, FDFA;

Philippe Crevoisier, Acting Head, Council of Europe and OSCE Division, Directorate of Political Affairs, FDFA;

Ambassador Jean-Jacques Elmiger, Director of International Labour Affairs, State Secretariat for Economic Affairs, Federal Department of Economic Affairs, Education and Research (EAER);

Valentin Lagger, Head of the Federal Labour Inspectorate, State Secretariat for Economic Affairs, EAER;

Marie-Laure Favre, Project manager, International Education Projects Unit, State Secretariat for Education, Research and Innovation, EAER;

Prof. Frank Schürmann, Head of European Law and International Human Rights Unit and Agent of the Swiss Government to the European Court of Human Rights, Federal Office of Justice, FDJP;

Bassem Zein, Adviser, Civil Law and Civil Procedure Unit, Federal Office of Justice, FDJP;

Claudina Mascetta, Head of International Organisations Sector, Federal Social Insurance Office, Department of Home Affairs (DHA).

3. The European Committee of Social Rights Delegation comprised:

Luis Jimena Quesada, President of the Committee,  
Professor of Constitutional Law at the University of Valencia (Spain),  
Substitute Judge at the High Court of Justice of the region of Valencia,  
Administrative Chamber (Spain);

Monika Schlachter, Vice-President of the Committee,  
Professor of Civil Law, Labour and International Law,  
Director of Legal Studies, Institute for Labour Law and Industrial Relations in the  
European Community, University of Trier (Germany);

Petros Stangos, Vice-President of the Committee,  
Professor of European Law, Holder of the Jean Monnet Chair in European Human  
Rights Law, School of Law, Department of International Studies, Aristotle University,  
Thessaloniki (Greece);

Colm O'Cinneide, General Rapporteur of the Committee,  
Reader in Law, Faculty of Laws, University College, London (United Kingdom);

Régis Brillat, Executive Secretary of the Committee,  
Head of the Department of the European Social Charter, Directorate of Human  
Rights, Directorate General of Human Rights and Rule of Law, Council of Europe.

4. The discussion took place in the framework of an exchange of views, the previous meeting having taken place in Strasbourg on 22 May 2012 (see appended report).
5. At the opening of the meeting, Ambassador Zellweger underlined the importance which Switzerland attached to its international commitments, in particular in the field of human rights. He hoped that the continuation of the discussions would enable progress to be made with the drafting of the report which the Federal Council (government) was due to submit to the *Conseil des Etats* (lower house of parliament) at the beginning of 2014.
6. In the context of preparation of the report due to be submitted to parliament, government officials were considering practical means by which the agreement that had emerged at the previous meeting concerning the compatibility of Switzerland's dual system of initial vocational training with the Social Charter could be incorporated in a text in a form which ensured its long-term validity.
7. The President of the European Committee of Social Rights underlined the constructive nature of the discussions already held and said that the aim of the meeting was to make substantial progress concerning practical arrangements.
8. It was pointed out that the initial vocational training system in Switzerland had various specific features, in particular:

- Firstly, the dual initial vocational training, in companies and in vocational schools, was the most common form of initial vocational training. The training provided depended on the vocational qualifications as defined by the professional organisations for each job, on the state of the labour market, the possibilities for future employment, and on the young people's interest.
  - The youth unemployment rate in Switzerland was accordingly among the lowest in Europe.
  - Dual initial vocational training was an integral part of the education system and was therefore comparable to the other types of school or university training.
  - There were possibilities for moving between dual initial vocational training and university, which for example enabled those who had taken dual vocational training to continue and complete their training with university courses.
  - Dual initial vocational training in companies was conducted under the responsibility of instructors who had the specific task of transmitting know-how within the companies. The people supervising young people at enterprise level have to be trained trainers having completed a certificate recognised by the competent authorities (*cantons or Confédération*).
  - The training period finishes with an exam showing that candidates successfully acquired specific competencies; competent authorities (from the *cantons or the Confédération*) regulate the content of the qualification procedures and control their process.
  - The training in vocational schools involved the teaching of vocational know-how and general culture. It could be combined with the practical training in various ways.
  - The amount of the compensation paid to young people in dual initial vocational training would be inadequate in relation to the European Committee of Social Rights' interpretation of Article 7§5 of the European Social Charter.
9. The European Committee of Social Rights was aware that the dual system gave training precedence over work. Moreover, the States Parties to the Charter had a margin of appreciation regarding the practical arrangements for implementing the treaty, especially when their existing standards in terms of social rights were high.

10. The Committee had also frequently underlined the following:

"The Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a supplement to the European Convention on Human Rights.

In this perspective, while respecting the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:

- consolidate adhesion to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.” (Conclusions 2006, General introduction, p. 10.)

11. Lastly, the Committee recalls that as was often the case in the European Social Charter, the terms employed should be understood as forming “autonomous concepts”, in other words, they did not necessarily have the same meanings as under States Parties’ domestic law and practices.
12. In particular, the Committee notes that even though the term “apprenticeship” was sometimes used, the system actually fell into the category of initial vocational training and therefore concerned Article 10 of the Charter rather than Article 7§5.
13. In order to achieve a technical solution that clarified and made the position reached by the two delegations sustainable, it was suggested that a written report of the meeting be drawn up and agreed by the two parties and, in particular, adopted by the European Committee of Social Rights.
14. At the close of the meeting, the two delegations welcomed the positive atmosphere which continued to prevail in the relations between them and also the prospects which their joint dialogue opened up regarding the possibilities of a ratification of the revised European Social Charter by Switzerland.

## **APPENDIX**

### **Detailed report of the meeting between a Swiss delegation and the European Committee of Social Rights**

**Strasbourg, Tuesday 22 May 2012**

#### **Participants:**

##### ***European Committee of Social Rights***

- Mr Luis Jimena Quesada, President of the European Committee of Social Rights
- Mr Jean-Michel Belorgey, Rapporteur General of the European Committee of Social Rights
- Mr Christos Giakoumopoulos, Director of Human Rights
- Mr Régis Brillat, Head of the Department of the European Social Charter and the European Code of Social Security, Executive Secretary of the European Committee of Social Rights
- Mr Mikaël Poutiers, Administrative Officer, Department of the European Social Charter and the European Code of Social Security

##### ***Swiss delegation***

- Ambassador Jürg Lindenmann, Deputy Director, Directorate of International Law, Federal Department of Foreign Affairs
- Ambassador Charles-Edouard Held, Permanent Representative of Switzerland to the Council of Europe
- Ambassador Jean-Jacques Elmiger, Head of International Labour Affairs, State Secretariat for Economic Affairs, Federal Department of Economic Affairs
- Mr Benedict Johannes Gubler, Deputy Permanent Representative of Switzerland to the Council of Europe
- Mr George Waardenburg, Federal Office for Vocational Training and Technology, International Relations, Global and Bilateral Co-operation Sector, Federal Department of Economic Affairs
- Ms Sophie Heegaard-Schroeter, Directorate of International Law, Human Rights Section, Federal Department of Foreign Affairs

Upon its arrival at the Council of Europe, the Swiss delegation was welcomed by Mr Philippe Boillat, Director General of Human Rights and Rule of Law, for preliminary talks.

The meeting was held at Switzerland's request in connection with the discussions under way with a view to possible ratification of the revised Charter. The points raised followed on from the exchange of correspondence between the Swiss authorities and the Committee in October 2011.

#### **1) General presentation of the political and legal situation in Switzerland in relation to ratification of the Charter**

Mr Lindenmann said that parliament had asked the government for a report on the compatibility of the Swiss legal order with the Charter and on whether the country should sign and ratify the revised Charter at the earliest opportunity. In particular, the report had to indicate clearly the commitments which could be made and the

reservations which would have to be entered so that ratification could take place with the law as it stood at present.

Switzerland had a welfare system which worked well, the labour market was relatively free, the unemployment rate was very low compared to other European countries and there was a very strong tradition of partnership between management and labour which worked well in their areas of responsibility (to such an extent that they were actually sceptical about intervention by the state and/or an outside committee).

Mr Elmiger added that the main concern of some members of parliament was uncertainty about the interpretation of the Charter by the Committee and the fear of the establishment of a two-speed approach under which more would be expected from rich countries than from other European countries.

Mr Jimena Quesada said that the Committee had decided on the occasion of the 50th anniversary of the 1961 Charter to pay more attention to specific national circumstances. Mr Belorgey said that shifts in case-law were a feature of all judicial or semi-judicial bodies, but that the Committee's case-law was relatively stable. The Committee should be seen as an ally rather than a critic.

## **2) Under Articles 1, 5, 6 and 20: compensation in the event of wrongful dismissal / upper limit**

Mr Elmiger explained that the major difficulty was the issue of the upper limit on compensation (six months' wages by law, approximately three months in practice), with no possibility of the employee wrongfully dismissed being taken on again.

Mr Jimena Quesada said that the Committee's approach had evolved with the adoption of the statement of interpretation in December 2011: the Committee now considered situations on a case-by-case basis even if there was an upper limit on compensation so that this no longer automatically led to a conclusion of non-conformity; account was taken of the amount of the limit and of other means of compensation for wrongful dismissal.

Mr Elmiger said that, in exceptional cases where the statutory compensation provided inadequate redress for the non-pecuniary damage, the courts could award additional compensation. There were also collective agreements which covered the issue. The shift in the Committee's approach was clearly important for Switzerland.

Mr Jimena Quesada stressed that the Committee considered both the law and practices.

## **3) Under Article 7(1): minimum age for employment; special case of family businesses**

Mr Elmiger explained that the question mainly arose for family farms, in particular during holiday periods. There was no real regular employment before the age of 15; only light work was possible. If child labour was suspected, the labour inspectorate and the local school system (municipality/canton) could investigate the situation.

The discussion showed that the issue concerned light work rather than employment and therefore Article 7(3) of the Charter rather than Article 7(1). Mr Elmiger acknowledged that there could be a problem with the wording of the French, as opposed to the German version of the federal legislation, which was closer to “occupation” than employment. Mr Belorgey underlined that there was no difficulty with children doing a few hours of only light work. Mr Jimena Quesada referred to the statement of interpretation on Article 7(3) adopted by the Committee in December 2011 concerning the compulsory rest period during school holidays, which made the Committee’s position on the matter more flexible, in particular by taking account of all holiday periods rather than merely the summer holidays.

#### **4) Under Article 7(4) and (5): situation of apprentices: maximum working week and wages**

Mr Waardenburg distributed a brochure about vocational training in Switzerland. He explained that, after nine years of compulsory schooling, almost 70% of young people entered vocational training (three-quarters of young people in training leading to certification were in vocational training). The situation was very specific compared to other countries in the world, was recognised as a good system by the OECD and explained the very low youth unemployment rate. The distinctive feature of the system was the dual training, in companies and vocational schools, which was the most common type of vocational training. In theory, the young people worked 45 hours a week (work and training); in practice the figure was 42 hours (one or two days’ training a week in vocational school plus training outside the companies; the rest of the time was spent in training in companies). There were no employment contracts, but “apprenticeship” contracts signed by the companies and the young people. The focus was on training. Pay ranged from CHF 200 to CHF 1 000, but the median data showed gross annual wages of CHF 8 500 (€7 076) in the first year of training and CHF 15 200 (€12 654) in third year. Some young people received (cantonal) scholarships and family benefits continued to be paid. The wages were not governed by law; however, there were cantonal authorities which monitored the training and could comment on the wages (and had to approve the apprenticeship contracts). Professional and trade associations could also issue recommendations on the matter.

This presentation and the ensuing discussion showed that the “apprenticeship” referred to by the Swiss authorities seemed more like vocational training within the meaning of Article 10(1). Mr Belorgey said that the Committee could reclassify these apprenticeship contracts. The members of the Swiss delegation were advised to present the specific training system in Switzerland very precisely. As far as the length of the working week was concerned, Mr Jimena Quesada said that the Committee had never examined the length of weekly training.

#### **5) Follow-up to the exchange of views**

Mr Lindenmann said that the meeting had been most constructive and useful for the Swiss delegation in preparing its report to parliament with a view to possible ratification. If necessary, a fresh meeting could be held to clarify certain points still further. The draft report would be sent out for possible comments. Lastly, Mr Brillat would be invited to Bern again to present the Charter.