



CAPACITY BUILDING ON THE EUROPEAN SOCIAL CHARTER

A PARTICULAR FOCUS ON ARTICLE E: NON-DISCRIMINATION

National Commission for the Promotion of Equality (NCPE)



This document has been produced with the financial assistance of the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of the Council of Europe.

Table of Contents

04	Acronyms List
05	Trainer Bio: Dr Karin Lukas
06	Introduction on the Capacity Building Sessions
13	Evaluation
14	Evaluation Graphs
18	Annexes
34	References

Acronyms List

Art.	Article/s
CC	Collective Complaints
CoE	Council of Europe
ECSR	European Committee of Social Rights
ESC	European Social Charter
ETUC	European Trade Union Confederation
IOE	International Organisation of Employers
MS	Member States
NEBs	National Equality Bodies
NHRIs	National Human Rights Institutions

Trainer's Bio:

Dr Karin Lukas

Dr Karin Lukas is an expert regarding the interactions between different human rights systems and institutions with a focus on the wider Europe, as well as in the translation of human rights standards into activities of business, trade, development cooperation and climate change. Her research focuses on human rights in the (digital) economy, sustainable supply chains and corporate accountability, as well as human rights in Europe with a focus on gender equality. Her latest monograph is the first comprehensive article by article commentary on the European Social Charter.

Dr Karin Lukas was a visiting professor and fellow at CEU (Central European University), Strasbourg University, University College London, and the University of Manchester as well as senior researcher at the University of Vienna and the Ludwig Boltzmann Institute of Fundamental and Human Rights. Since 2000, Dr Lukas has been a consultant for various national and international organisations, such as the UN Development Programme, MIGA (World Bank Group) the Austrian Ministry for Foreign Affairs and companies in various sectors. In 2011, she was appointed as a member to the European Committee of Social Rights of the Council of Europe and was President of the Committee until 2022.

Until February 2023, Dr Lukas was head of department and senior researcher at the Ludwig Boltzmann Institute of Fundamental and Human Rights, leading the programme lines “Business and Development Cooperation” and “Social Justice”. At the Institute, she was responsible for the teams, strategy, funding, and research contents of the programme lines and inter alia led the framework contract with the Austrian Development Agency (ADA) on human rights, governance and peacebuilding, undertaking numerous consultancies for ADA and its coordination bureaus in the partner countries.

Among Dr Lukas' recent public talks and lectures are “Freedom and Precariousness: European Social Citizenship and the Platform Economy” at Trento University in January 2023, the Keynote “Europe and Social Responsibility” at the BRL Business Forum 2022 in Hamburg, and “The Right to Social Security” at the NGO Forum Social Fundamental Rights of the Austrian Ombudsman Board. She was cluster leader in the FP-7 research project FRAME (EU grant) and principal investigator on a number of research projects, such as “Business and Human Rights: Extrajudicial Complaint Mechanisms”, “Corporate Liability regarding Trafficking in Human Beings for the purpose of Labour Exploitation and Access to Effective Remedy” all funded by FWF (Austrian Science Fund).

Dr Lukas holds an LL.M. in Gender and the Law (Washington College of Law, American University), an E.M.A. in Human Rights and Democratisation (University of Padova/EIUC) and a PhD in Law (University of Vienna, magna cum laude).¹

¹Central European University, Dr Karin Lukas (April 4, 2023), available at: <https://legal.ceu.edu/article/2023-04-04/karin-lukas>

Introduction to the Capacity Building Sessions

The National Commission for the Promotion of Equality (NCPE) was awarded funds by the Council of Europe, to carry out activities as per its submitted Project Proposal under the Call 'Supporting National Human Rights Institutions and National Equality Bodies to promote and protect social and economic rights as laid down in the European Social Charter'.

To reach the objective of enhancing the capacity of the NCPE's officers on the European Social Charter, with a particular focus on Article E, its implementation by equality bodies and the effective use of reporting mechanisms under the Treaty, the NCPE organised 2 half-day sessions for all its officers as well as the Commission members.

The sessions were held on the 4th and 5th September 2023, both delivered by the externally engaged expert Dr Karin Lukas.

This report has been compiled in order to gather the capacity building proceedings and discussions. It will serve as a reference document for the NCPE officers and, through its dissemination, professionals working in the field of equality.

Introducing the European Social Charter (ESC)

The European Social Charter (ESC), a treaty of the Council of Europe (CoE), was first adopted in 1961 and eventually revised and adopted in 1996, which process brought the introduction of new rights, such as Art. 26: Protection against harassment. The revised ESC² lists 31 Articles of fundamental, social and economic rights that cover a range of areas including but not limited to: employment, social protection, housing, health, education, movement of persons and non-discrimination.

Non-discrimination within the ESC

Article E of the ESC, the non-discrimination principle of this Treaty, is built very similarly to the European Convention of Human Rights. This Art. E states that: "*The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.*"

Non-discrimination within the ESC can be subdivided in 3 categories:

- As a broad obligation in Art. E
- As explicit non-discrimination provisions, e.g. Art. 20: The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
- As containing non-discrimination aspects, e.g. Art. 27: The right of workers with family responsibilities to equal opportunities and equal treatment.

²All Articles cited throughout this document are being referenced from: Council Of Europe. European Social Charter (Revised). Retrieved from <https://rm.coe.int/168007cf93>.

Acceptance of Provisions

Of the 46 CoE Member States (MS), 35 MS ratified the Revised ESC. Ratification of the ESC is somewhat complex when compared to ratification of other Treaties. The acceptance of the ESC in its entirety was met with hesitance and in this context, the CoE introduced an ‘a la carte’ method of acceptance for MS. In Malta’s case, of the 98 paragraphs, 72 have been accepted in total. Except for Art. 19: The right of migrant workers and their families to protection and assistance; all other 8 Articles considered as ‘hard-core’ have been accepted by Malta. It is to be noted that of the 42 MS, Malta, Hungary, Poland and Ukraine have not yet accepted this Article.

The European Committee of Social Rights (ECSR)

The ECSR is an independent body responsible for monitoring the conformity of the MS with the ESC. The Committee’s members are elected by the CoE’s highest decision-making body, the Committee of

Ministers, for a period of 6 years which may be renewed once. The ECSR meets every two months in Strasbourg to make a legal assessment on the submitted:

- State Reports
- Collective Complaints.

Reporting Procedure

The ECSR carries out its evaluation based on reports submitted by MS, unlike evaluation of other CoE Treaties that can also be based on country monitoring visits. Recently, the reporting procedure has been updated to ensure efficiency in the monitoring of MS.

Previously, this process involved the submission of annual state reports, wherein MS completed a questionnaire on the thematic group of Articles to be assessed in that particular calendar year. It is to be noted that MS are also requested information on non-ratified provisions. The old thematic grouping of Articles is provided in Table 1 below.

Group 1	Group 2	Group 3	Group 4
Employment, training and equal opportunities <ul style="list-style-type: none"> - Article 1 - Article 9-10 - Article 15 - Article 18 - Article 20 - Article 24-25 	Health, social security and social protection <ul style="list-style-type: none"> - Article 3 - Article 11-14 - Article 23 - Article 30 	Labour rights <ul style="list-style-type: none"> - Article 2 - Article 4-6 - Article 21-22 - Article 26 - Article 28-29 	Children, families, migrants <ul style="list-style-type: none"> - Article 7-8 - Article 16-17 - Article 19 - Article 27 - Article 31

Table 1: Old Thematic Grouping of Articles

Apart from evaluating state reports, the ECSR can also receive comments from social partners and NGOs.

The legal assessment is concluded when the ECSR adopts conclusions for each State Report. The follow-up is then carried out by the Governmental Committee, considered as the technical body, that prepares the work of the Committee of Ministers that is responsible for drawing up Resolutions or Recommendations. The latter are both legally binding and the Committee of Ministers decides on which would be best to address the issues arising from the ECSR's Conclusions.

With the introduction of the new reporting process, the ESC's evaluation is now subdivided into 2 Thematic Groups: one on labour rights in the wider sense and the other on rights of children, health, housing, social security, family, elderly persons, poverty, and social exclusion. Said Thematic Groups are provided in Table 2 below.

As per the previous process, there is the

First Group	Second Group
Total of 50 provisions:	Total of 48 provisions:
- Article 1-6 - Article 8-10 - Article 18-22 - Article 24-25 - Article 28 - Article 29 (adjusted as necessary for the 1961 Charter and 1988 Protocol).	- Article 7 - Article 11-17 - Article 23 - Article 26-27 - Article 30 - Article 31 (adjusted as necessary for the 1961 Charter and 1988 Protocol).

possibility for National Equality Bodies (NEBs) and other bodies such as NGOs, to put forward comments on the State Reports. The ECSR regards these comments highly as they serve as a tool to cross-check the information submitted in the state reports. Another novelty brought by the new process is that MS are required to report on issues of particular importance that are of relevance to several MS. It is called the ad-hoc reports procedure. For instance, in the year 2024 MS will submit ad-hoc reports on the cost-of-living crisis. The issues are decided upon by the Governmental Committee in consultation with the ECSR.

Collective Complaints (CC) Procedure

The CC procedure refers to a system through which complaints may be lodged to the ECSR outlining violations of the ESC impacting groups in MS. The ECSR can receive CC against the 16 MS that have ratified this Procedure. Malta is one of the countries which have not yet ratified the CC procedure.

Bodies entitled to lodge CC include:

1. The ETUC, and the IOE;
2. Non-governmental organisations (NGOs) with participative status with the CoE which are on a list drawn up for this purpose by the Committee of Ministers.
3. Employers' organisations and trade unions in the country in question

In the case of states which have also agreed to this:

4. NGOs

Table 2: New Thematic Grouping of Articles

Reporting Procedure-Malta

The CoE website provides regularly updated country profiles within which state reports, ECSR conclusions, and a table of accepted/non-accepted provisions are provided. The Table 3 below provides the latter for Malta.

The following are some of Malta's non-accepted provisions according to the Malta Country Profile in the CoE website sourced in October 2023³:

- Art. 18§1, 2 and 3: The right to engage in a gainful occupation in the territory of other Parties: *“With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:*
 - 1 to apply existing regulations in a spirit of liberality;
 - 2 to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
 - 3 to liberalise, individually or collectively, regulations governing the employment of foreign workers”
- All paragraphs falling under Art. 19: The right of migrant workers and their families to protection and assistance.
- All paragraphs falling under Art. 30: The right to protection against poverty and social exclusion.
- All paragraphs falling under Art. 31: The right to housing.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5.0	6.1	6.2	6.3
6.4	7.1	7.2	7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1
8.2	8.3	8.4	8.5	9.0	10.1	10.2	10.3	10.4	10.5	11.1	11.2
11.3	12.1	12.2	12.3	12.4	13.1	13.2	13.3	13.4	14.1	14.2	15.1
15.2	15.3	16.0	17.1	17.2	18.1	18.2	18.3	18.4	19.1	19.2	19.3
19.4	19.5	19.6	19.7	19.8	19.9	19.10	19.11	19.12	20.0	21.0	22.0
23.0	24.0	25.0	26.1	26.2	27.1	27.2	27.3	28.0	29.0	30.0	31.1
31.2	31.3								Shaded = Accepted provisions		

Reports on non-accepted provisions

The European Committee of Social Rights ("the Committee") examines the situation of non-accepted provisions of the Revised Charter every 5 years after the ratification. It adopted reports concerning Malta in 2010 and in 2015. In its reports, the Committee notes that Maltese authorities consider the acceptance of Article 12§2 of the Charter in the near future; it considered that the situation in law and in practice in Malta does not seem to present obstacles to the acceptance of Articles 2§7, 18§2, 19§1, 19§5, 19§9, 19§11, 21, 22, 27§1, 30 and 31§2 of the Charter.

Further information on the reports on non-accepted provisions is available on the relevant webpage.

Table 3: Table of Accepted Provisions

³<https://rm.coe.int/rap-rcha-mlt-16-2023/1680ab0071>

Group Work I: Discussion on CC cases

Further to capacity building on the ESC, the ECSR, reporting processes and the Treaty in the local context, the NCPE officers were divided into two groups. The exercise consisted of looking at two CC cases, one case per group, to discuss:

- The facts of the case
- The ECSR assessment
- Implications for Malta (if any)

Case 1 – University Women of Europe (UWE) v. Slovenia Complaint No. 137/2016 Ref 137/2016⁴

The UWE lodged a CC v. Slovenia alleging that the situation in Slovenia is in breach of a number of Articles of the ESC with regard to the pay gap between men and women and the under-representation of women in decision-making positions in private companies in Slovenia.

The ECSR found violations by Slovenia of the following Articles:

- Art. 4§3 and 20.c on the ground that access to effective remedies is not ensured and that pay transparency has not been ensured and job comparisons have not been enabled.
- Art. 20.c on the ground that there has been insufficient measurable progress in promoting equal opportunities between

women and men in respect of equal pay.

The group observed the below issues in the Maltese context:

- The importance for auditing of Collective Agreements
- The timeliness of the Pay Transparency Directive⁵ that addresses pay audits of salary structures within companies.
- Only 51% of employees are unionised in Malta and thus covered by Collective Agreements.⁶
- Several companies/organisations include a confidentiality clause in employment contracts which obliges employees to refrain from discussing pay.
- Absence of sectoral agreements at national level.⁷
- Need of job classification systems in the context of the Pay Transparency Directive, which will come into force by 2024⁸.
- Under-reporting of direct and indirect cases of discrimination in the context of unequal pay.⁹

Further studies on issues raised above may be needed in the context of Art. 4§3 and 20.c.

Case 2 – European Roma and Travellers Forum (ERTF) v. France Complaint No. 119/2015 Ref 119/2015¹⁰

The European Roma and Travellers Forum (ERTF) lodged a CC v. France to the ECSR on

⁴ Council Of Europe, No. 137/2016 University Women of Europe (UWE) v. Slovenia, Retrieved from: No. 137/2016 University Women of Europe (UWE) v. Slovenia - Social Rights (coe.int)

⁵ <https://data.consilium.europa.eu/doc/document/PE-81-2022-INIT/en/pdf>

⁶ [https://www.worker-participation.eu/national-industrial-relations/countries/malta#:~:text=By%20far%20the%20two%20largest,the%20CMTU%20\(see%20below\).](https://www.worker-participation.eu/national-industrial-relations/countries/malta#:~:text=By%20far%20the%20two%20largest,the%20CMTU%20(see%20below).)

⁷ Cap.452 of the Laws of Malta, Retrieved at: <https://legislation.mt/eli/cap/452/20210101/eng>

⁸ <https://data.consilium.europa.eu/doc/document/PE-81-2022-INIT/en/pdf>

⁹ <https://op.europa.eu/en/publication-detail/-/publication/834d34ab-2d87-11e8-b5fe-01aa75ed71a1>

¹⁰ Council Of Europe, No. 119/2015 European Roma and Travellers Forum (ERTF) v. France, available at: No. 119/2015 European Roma and Travellers Forum (ERTF) v. France - Social Rights (coe.int)

alleged violation of several ESC rights with regards to access to education and vocational training for the children and young adults of the Roma community in France, mostly resulting from frequent evictions of Roma communities.

The ECSR found violations by the French state of the following Charter articles:

- Art. 17§2; The right of children and young persons to social, legal and economic protection; *“to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools”*.
- Article E taken in conjunction with
 - Art. 10§3; The right to vocational training: “to provide or promote, as necessary:
 - a adequate and readily available training facilities for adult workers”*;
 - Art. 10§5: *“to encourage the full utilisation of the facilities provided by appropriate measures such as:
 - b granting financial assistance in appropriate cases.”**
 - All paragraphs falling under Art. 30: The right to protection against poverty and social exclusion,
 - All paragraphs falling under Art. 31: The right to housing.

Among its considerations, the Committee noted that rights should be effective, not just theoretical. Unjustifiable practices that *de facto* hindered the access of Roma

children to education had a discriminatory effect, among other Charter violations. It also underlined that positive obligations apply to all States Parties with regards to guaranteeing equal access to education for all children, and that the States’ have a duty to pay particular attention to vulnerable groups.

The group considered that treatment of Roma may be compared to treatment of migrants in Malta as there is no Roma population in Malta. The group noted that migrants in the local context are not a homogenous group and some of these migrant groups are more at risk of facing direct/indirect discrimination on the grounds of race/ethnic origin.

Issues discussed included:

- Some migrants may face administrative/bureaucratic lengthy processes required to enrol in schools, e.g., to obtain a Maltese ID card and to get a care order for unaccompanied minors, without which enrolment to free education may be delayed.¹¹
- Some migrants coming from outside EU MS with an absence of a permanent address and therefore an identity card, may not be eligible to various social benefits and housing schemes.¹²

The group noted that the Charter generally does not cover migrant groups living in Malta coming from countries that have not ratified the Charter.

¹¹ <https://asylumineurope.org/reports/country/malta/reception-conditions/employment-and-education/access-education/?fbclid=IwAR0I8Jy9VN2-m3LB0OwuRmlqxA5onf7tePFQn8wyNtkY03Dt4vU79HRPXOU>

¹² <https://humanrights.gov.mt/en/Documents/Documentation%20Publication.pdf>

Group Work II: Points of Intervention for NEBs

Dr Lukas presented points of intervention for NEBs, including the possibility to submit comments on state reports and ad hoc reports as well as lobbying for ratifications of non-ratified provisions and the CC procedure. Furthermore, examples of NEBs' work in this context were provided.

The NCPE officers were split into 3 groups and asked to discuss ways in which the ESC may be applied to their work. The groups were split based on the NCPE's core functions as per below:

1. Investigative function

The group consisting mainly of officers responsible for complaints and clients' support discussed how the ESC provisions may be considered during the process of investigating complaints by:

- Making reference to ECSR conclusions on state reports and the ESC's case law.
- Highlighting ratified ESC Articles in NCPE Opinions in order to strengthen cases of discrimination which are found to be in favour of the plaintiff.

2. Recommendations to policymakers

The group's discussions focused on the NEB's considering recommendations for the MT Government to ratify pending

provisions including the CC procedure with a view to advancing equality in the Maltese society. Since the last state report covering the period 2018-2021, there have been developments which may be in line with non-ratified ESC provisions that fall within the NCPE's remit.

3. Awareness-raising

The group discussed how awareness may be raised on the ESC and its provisions, with the general public in the NCPE's:

- Press statements
- Articles
- Social media posts
- Conferences including workshops
- Newsletters

The NCPE may consider translating its PR content related to the ESC provisions as well as providing an abridged version in Maltese and English of the ESC in order to reach a wider audience which may be used for the creation of leaflets to be distributed during the NCPE's events.

Concluding Remarks

The NCPE officers found this capacity-building on the ESC with a particular focus on Article E Non-Discrimination a positive experience. The NCPE is interested in participating in the state reporting process by giving its feedback at the appropriate time.

Evaluation

In order to evaluate the effectiveness of the capacity-building sessions, all NCPE officers attending the sessions were first asked to fill in an online pre-training evaluation form with a set of questions regarding their knowledge of the ESC and its application to their work at the NCPE. This approach was chosen to measure the increase of their knowledge on the European Social Charter and its functions, particularly with regards to Article E: Non-Discrimination. After the two half-day sessions were over, the NCPE

officers were asked to fill in a post-training evaluation form with similar questions taking into consideration the knowledge gained during the sessions. In order to better gauge the staff's increase in knowledge, most questions required respondents to answer on a Likert scale of 1 to 5 whereby 1 represented *very poor* knowledge and 5 represented *excellent knowledge* on the subjects asked. The evaluation's analysis below is being divided in two sections.

The first section discusses and analyses the knowledge of the participants regarding the ESC. The second section analyses their confidence in applying this knowledge to their role within the NCPE using the Likert scale as per above.

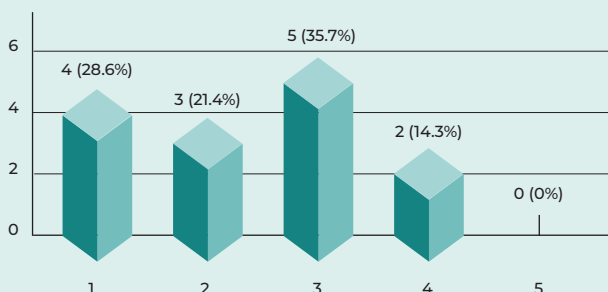
Knowledge of NCPE officers

Pre-evaluation questions

How would you rate your knowledge on the European Social Charter and its functions?

14 responses

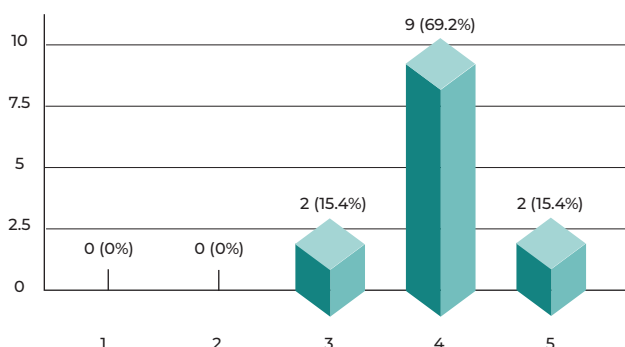
Figure 1: Results of Question 1



Post-evaluation questions

Following the capacity-building sessions how would you rate your knowledge on the European Social Charter and its functions?

13 responses



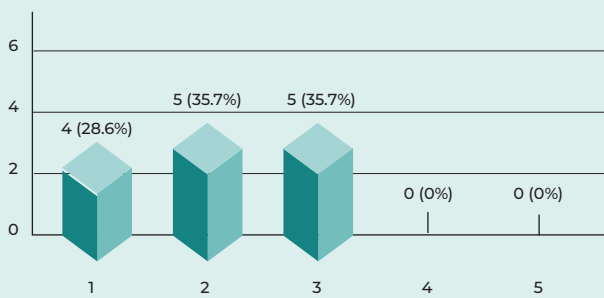
Evaluation Graphs

Pre-evaluation questions

How would you rate your knowledge on the European Social Charter and its relevance in the context of Malta?

14 responses

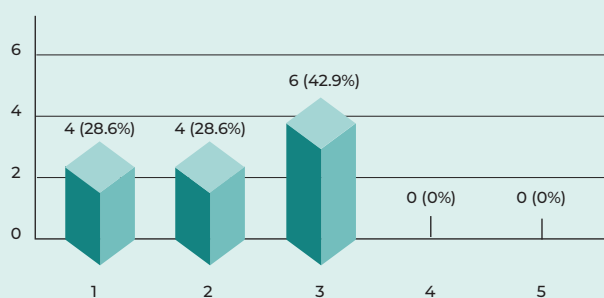
Figure 2: Results of Question 2



How would you rate your knowledge on what Article E (non discrimination) of the Charter stands for and its content?

14 responses

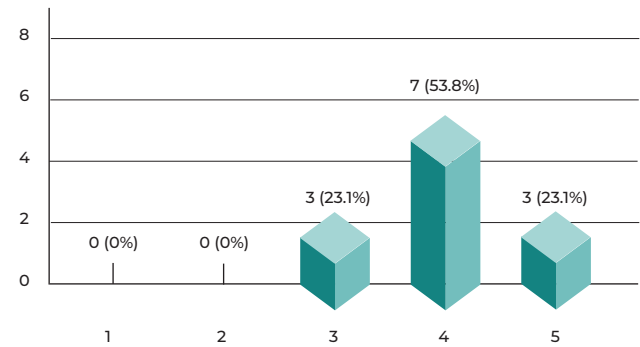
Figure 3: Results of Question 3



Post-evaluation questions

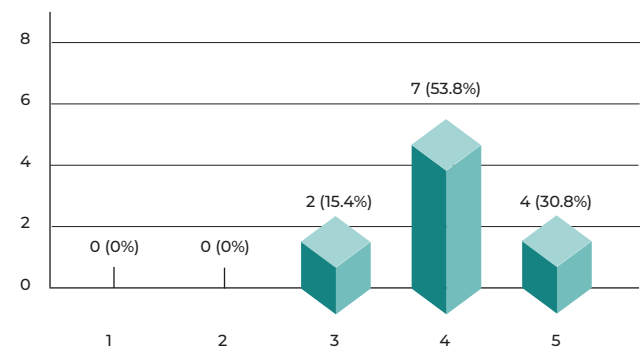
Following the capacity-building sessions, how would you rate your knowledge on the European Social Charter and its relevance in the context of Malta?

13 responses



Following the capacity-building sessions, how would you rate your knowledge on what Article E (non discrimination) of the Charter stands for and its content?

13 responses

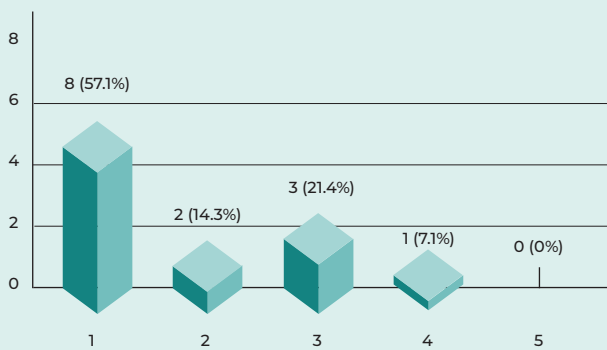


Pre-evaluation questions

How would you rate your knowledge on the Collective Complaints Procedure?

14 responses

Figure 4: Results of Question 4

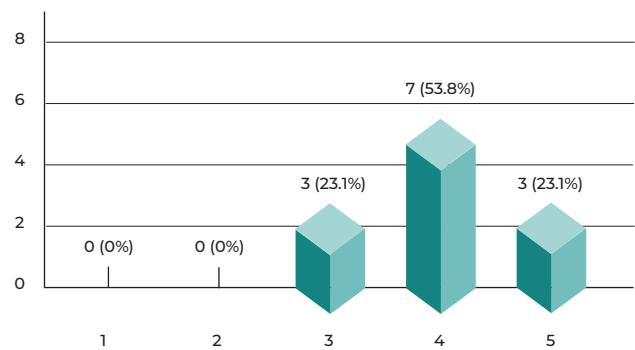


As can be seen in the above figures, there was a significant increase in the knowledge on the Charter, its functions, and its relevance to the Maltese context amongst the NCPE officers who attended both sessions. The questions rated also the participants' knowledge on Article E: Non-discrimination

Post-evaluation questions

Following the capacity-building sessions, how would you rate your knowledge on the Collective Complaints Procedure?

13 responses



and on the Collective Complaints Procedure. In both cases, there was an overall increase in how the officers responded on the Likert scale, proving the sessions were fruitful in increasing the knowledge amongst the NCPE officers in this regard.

Evaluation Graphs

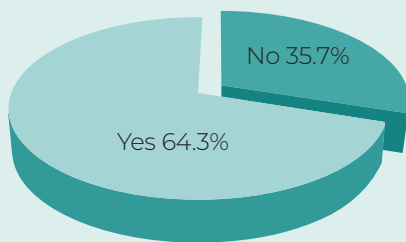
Application of knowledge to the NCPE's different areas of work

Pre-evaluation questions

Are you aware that the Charter may be used in the work of equality bodies?

14 responses

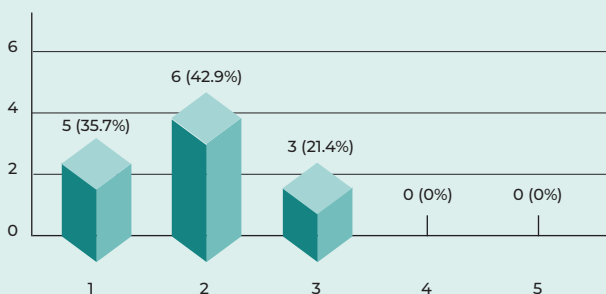
Figure 5: Results of Question 5



If yes, how confident are you in applying the Charter and its Articles to your work at the NCPE?

14 responses

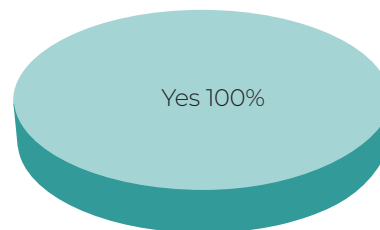
Figure 6: Results of Question 6



Post-evaluation questions

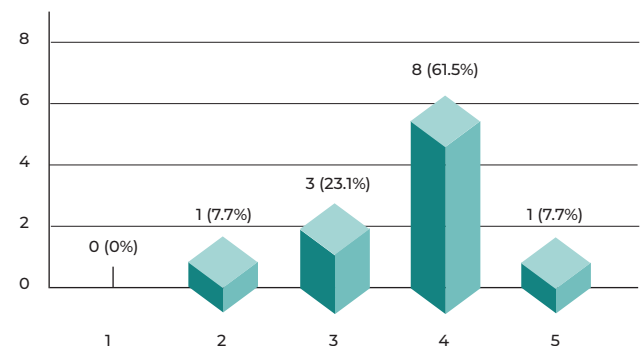
Following the capacity-building sessions, are you aware that the Charter may be used in the work of equality bodies?

13 responses



Following the capacity-building sessions, how confident are you in applying the Charter and its Articles to your work at the NCPE?

13 responses



The above set of questions addressed how the NCPE officers could apply the knowledge gained during the sessions in their work. One question asked the participants if they were aware that the Charter may be used in the work of equality bodies. The post-evaluation forms clearly show that after the sessions all

officers became aware of this function of the ESC.

After this capacity building exercise, the officers were better equipped in applying the acquired knowledge in their work.

Annexes





Annexes



Capacity Building on the European Social Charter, with a particular focus on Article E – Non Discrimination

The European Social Charter

Dr Karin Lukas

4th and 5th September 2023



The European Social Charter

Points of Intervention for the NCPE

The **European Social Charter** sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties.

The Charter was revised in 1996 and the **Revised European Social Charter**, which came into force in 1999, is gradually replacing the initial 1961 treaty.

The Rights guaranteed by the Charter

concern all individuals in their daily lives

31 articles covering areas such as:

- **Employment**
- **Social protection**
- **Housing**
- **Health**
- **Education**
- **Movement of persons**
- **Non-discrimination**

Employment

“Individual”

- an economic and social policy designed to ensure full employment;
- the right to earn one's living in an occupation freely entered upon (non-discrimination and prohibition of forced labour);
- access to work for persons with disabilities;
- prohibition of the employment of children under the age of 15 (and special working conditions between 15 and 18 years of age);
- fair working conditions as regards pay and working hours;
- protection in case of dismissal;
- protection from sexual and psychological harassment.

Non-discrimination

- Broad non-discrimination obligation in Art. E
- Non-discrimination in employment: Art. 1 § 2
- Equality and non-discrimination of persons with disabilities: Art. 15
- [Equality and non-discrimination of migrant workers: Art. 19]
- Gender equality and non-discrimination in employment: Art. 20
- Equality and non-discrimination of elderly persons: Art. 23
- Protection of specific groups: children, family, workers with family obligations

Acceptance of provisions

- Under Article A of the Revised Charter, a State Party must accept at least 6 out of 9 so-called “hardcore” provisions: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;
- In addition, it must accept enough additional provisions so that is bound in total by not less than 16 articles or 63 numbered paragraphs out of the 98 paragraphs in the Revised Charter.
- Malta has accepted 72 paragraphs, among them 8 hardcore provisions (not Art. 19).

EUROPEAN COMMITTEE OF SOCIAL RIGHTS



EUROPEAN COMMITTEE OF SOCIAL RIGHTS

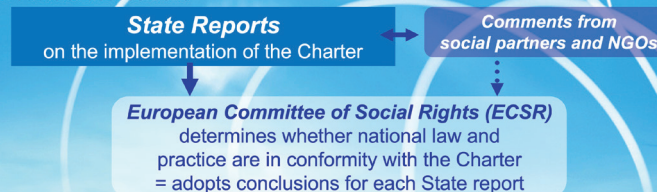
The ECSR monitors the implementation of the Charter.

Its fifteen independent, impartial members are elected by the Council of Europe **Committee of Ministers** for a period of six years, renewable once.

The ECSR makes a legal assessment of the conformity of national situations with the Charter in the States Parties (*Article 24 as amended by the Turin Protocol*).

Reporting Procedure

1. Judicial assessment



2. Follow-up



Annexes

Reporting Procedure old – ends this year!

Group 1	Group 2	Group 3	Group 4
Employment, training and equal opportunities	Health, social security and social protection	Labour rights	Children, families, migrants
- Article 1 - Article 9 - Article 10 - Article 15 - Article 18 - Article 20 - Article 24 - Article 25	- Article 3 - Article 11 - Article 12 - Article 13 - Article 14 - Article 23 - Article 30	- Article 2 - Article 4 - Article 5 - Article 6 - Article 21 - Article 22 - Article 26 - Article 28 - Article 29	- Article 7 - Article 8 - Article 16 - Article 17 - Article 19 - Article 27 - Article 31

The reports shall be presented on **31 October of each year**. The European Committee of Social Rights shall publish its conclusions before the end of the following year.

Reporting Procedure new

• First Group

• Total of 50 provisions: Article 1 - Article 2 - Article 3 - Article 4 - Article 5 - Article 6 - Article 8 - Article 9 - Article 10 - Article 18 - Article 19 - Article 20 - Article 21 - Article 22 - Article 24 - Article - 25 - Article 28 - Article 29 (adjusted as necessary for the 1961 Charter and 1988 Protocol).

• Second Group

• Total of 48 provisions: Article 7 - Article 11 - Article 12 - Article 13 - Article 14 - Article 15 - Article 16 - Article 17 - Article 23 - Article 26 - Article 27 - Article 30 - Article 31 (adjusted as necessary for the 1961 Charter and 1988 Protocol).

Reporting Procedure new

• **Ad Hoc Reports**

- On new or critical issues with a broad or transversal scope or a pan-European dimension
- Next year first Ad Hoc Reports on Cost of Living Crisis

Reporting Procedure

- International non-governmental organisations with participative status with the CoE and competence in human rights, as well as other organisations, institutions and entities may, as per the long-standing practice of the European Committee of Social Rights and Rule 21A of its Rules, submit comments on national reports.
- Comments must be submitted to the Secretariat of the European Social Charter before 30 April of the year during which the European Committee of Social Rights examines the national report concerned.

Collective Complaints Procedure

Complaints of violations of the Charter may be lodged with the European Committee of Social Rights.

Those entitled to lodge complaints:

In the case of all states that have accepted the procedure:

- 1. the ETUC, UNICE, and the IOE;
- 2. non-governmental organisations (NGOs) with participative status with the Council of Europe which are on a list drawn up for this purpose by the Governmental Committee;
- 3. employers' organisations and trade unions in the country in question.

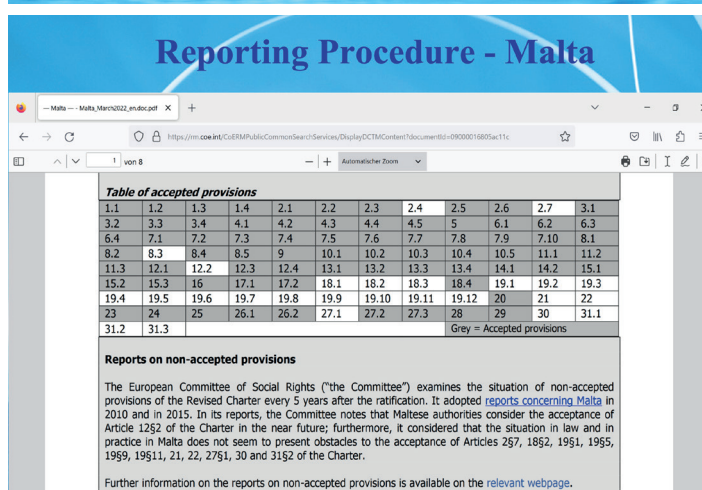
In the case of states which have also agreed to this:

- 4. national NGOs.

Impacts on national legal systems

- Progress in a number of labour and social rights areas mostly through **legislative action**
- In particular in the field of **non-discrimination** of specific groups such as persons with disabilities or third-party nationals progress could be made
- A number of practical barriers concerning **de facto discrimination** remain
- Growing awareness of **civil society** of ESC possibilities
- Balance between **monitoring and dialogue** with states parties

Annexes



Non-accepted provisions - Malta

Latest assessment in 2020 in written procedure

► **Malta is not bound by 26 numbered paragraphs of the Revised Charter:**

- Art.2 § 4, 2 § 7, Art.8 § 3, Art.12 § 2, Art.18 § 1–18 § 3, Art.19 § 1–12, Art.21, Art.22, Art.27 § 1(c), Art.30 and Art.31 § 1–3.

► **Maltese government indicated acceptance of the following:**

- Art.2 § 7, Art.12 § 2, Art.19 § 1–3,5,9, Art.21, Art.22 and Art.30.

► **Further updated information on the situation in law and in practice is needed:**

- Art.18 § 1 and 3, Art.19 § 7,8 and 12 and Art.31 § 1 and 3.

► **The situation does not seem to be in conformity with the Charter:**

- Art.2 § 4, Art.8 § 3 and Art.19 § 4, 6 and 10.

Reporting Procedure - Malta

Conclusions 2018 to 2022

► **Article 2 § 1 – Reasonable working time**

- The law does not guarantee the right to reasonable weekly working hours.

► **Article 2 § 2 – Public holidays with pay**

- Work performed on a public holiday is not adequately compensated for all workers.

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

- It has not been established that the minimum wage ensure a decent standard of living for all workers.

► **Article 4 § 3 and 20 - Gender equality, equal pay**

- No measurable progress in reducing the gender pay gap;
- It has not been established that the principle of equal pay is guaranteed in practice.

Reporting Procedure - Malta

Conclusions 2018 to 2022

► **Article 7 § 1 – Prohibition of employment under the age of 15**

- The prohibition does not apply to children employed in occasional or short-term work in a private household or work in a family undertaking;
- Children under the age of 15 are permitted to perform light work for an excessive duration and therefore the work cannot be qualified as light.

► **Article 27 § 2 – Right of workers with family responsibilities**

- No compensation or remuneration is provided for parental leave.

► **Article 26 § 1 – Sexual harassment**

- It has not been established that appropriate and effective redress (compensation and reinstatement) is guaranteed in cases of work-related sexual harassment.

Annexes



Relevant tools

Brochure Engagement of (I)NGOs with the ESC:
<https://rm.coe.int/prems-125919-ingos-engagement-ecsr-web-en/168098fcc1>

Digest of the Case Law of the European Committee of Social Rights:
<https://rm.coe.int/digest-ecsr-prems-106522-web-en/1680a95dbd>

Karin Lukas, Commentary on the Revised European Social Charter:
<https://www.elgaronline.com/monobook-oa/book/9781789903645/9781789903645.xml>

Capacity Building on the European Social Charter, with a particular focus on Article E – Non Discrimination

Dr Karin Lukas

4th and 5th September 2023



Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Interpretation of Article E

- Appendix to the Charter: 'a differential treatment based on an objective and reasonable justification shall not be deemed discriminatory'.
- No autonomous right, must be combined with other articles; exception: articles that include non-discrimination aspects (e.g. Art. 1 § 2, Art. 15, Art. 20)
- Includes direct and indirect discrimination

Non-discrimination

- Broad non-discrimination obligation in Art. E
- Non-discrimination in employment: Art. 1 § 2
- Equality and non-discrimination of persons with disabilities: Art. 15
- [Equality and non-discrimination of migrant workers: Art. 19]
- Gender equality and non-discrimination in employment: Art. 20
- Equality and non-discrimination of elderly persons: Art. 23
- Protection of specific groups: children, family, workers with family obligations

Non-discrimination in employment

Art. 1 § 2

- Prohibition of all forms of discrimination in employment; and
- Non-interference with the right to earn a living in an occupation freely entered into, in particular the prohibition of forced or compulsory labour.
- Recruitment and employment conditions in general (such as remuneration, training, promotion, transfer or dismissal).
- Part-time work: adequate legal safeguards against discrimination: rules to prevent non-declared work through adequate legislation on overtime and equal pay
- Prohibition of direct and indirect discrimination

Non-discrimination in employment based on gender

Art. 20

- Access to employment, protection against dismissal; vocational guidance and training; working conditions including remuneration; and career development, including promotion.
- Non-discrimination in law and practice:
 - Explicit prohibition in legislation;
 - Equality bodies; pay transparency; reduction of gender pay gap; positive measures and gender mainstreaming



Selected cases

- University Women Europe (UWE) v. Slovenia, CC 137/2016

<https://hudoc.esc.coe.int/fre/?i=cc-137-2016-dmerits-en>

- European Roma and Travellers Forum (ERTF) v. France, CC 119/2015

<https://hudoc.esc.coe.int/eng/?i=cc-119-2015-dmerits-en>

Capacity Building on the European Social Charter, with a particular focus on Article E – Non Discrimination

Dr Karin Lukas

4th and 5th September 2023



Points of Intervention for the NCPE

Broad non-discrimination mandate:

- Sex/gender and family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, gender identity, gender expression or sex characteristics, in employment, education and financial institutions.
- Equality on the grounds of gender as well as race/ethnic origin in the access to and supply of goods and services.
- Freedom of movement for workers in the EU.

Points of Intervention for the NCPE

- Comments on state reports and ad-hoc reports: Equality bodies provide very important information on the reality of situations => great relevance for the ECSR in its assessment of country situations
- Participation on the procedure on acceptance of more ESC provisions and the collective complaints procedure, lobby for further ratifications
- Awareness-raising of Charter rights
- Using Charter rights to implement the NCPE's mandate

Example Irish Human Rights and Equality Commission 2023 – press release

- Commission notes with concern that Ireland breach of its Labour Rights Obligations
- Summary of ECSR's findings
- Quote Chief Commissioner Gibney:

“The Council of Europe clearly states that in many areas Ireland is failing to protect all its workers equally and adequately. Workers' rights are crucial to ensuring that many other rights, such as health and housing, can be accessed.”

“In our current cost-of living and housing crisis, people working long hours at minimum or low wage, with precarious job security, often lacking the right to strike or unable to access the protection of a union are extraordinarily vulnerable to poverty, mental health problems or homelessness.”

Example Irish Human Rights and Equality Commission 2023 – press release

- Quote Chief Commissioner Gibney:

“We reiterate our concern that Ireland must act to properly protect economic, social and cultural rights in Irish domestic law, and to honour fully Ireland's international commitments.”

“We again recommend that the incorporation of these rights into our Constitution would provide a bulwark for the protection of the most vulnerable workers and their families.”

<https://www.ihrec.ie/council-of-europe-finds-ireland-in-breach-of-labour-rights-obligations/>

Points of Intervention for the NCPE

Group work

- Using the Charter rights to advance the NCPE's mandate:
 - investigative and promotional functions
 - recommendations to policy-makers
 - awareness raising and training

References

Council of Europe portal. (2015). social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-119-2015-european-roma-and-travellers-forum-ertf-v-france

Council of Europe portal. (2016). Retrieved from https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-137-2016-university-women-of-europe-uwe-v-slovenia

Europe, C. o. (2016, November). *European Social Charter*. Retrieved from <https://rm.coe.int/the-european-social-charter-treaty-text/1680799c4b>

Central European University (2023, April 4th). *Dr Karin Lukas*. Retrieved from <https://legal.ceu.edu/article/2023-04-04/karin-lukas>

Council Of Europe. *European Social Charter (Revised)*. Retrieved from <https://rm.coe.int/168007cf93>

[https://www.worker-participation.eu/national-industrial-relations/countries/malta#:~:text=By%20far%20the%20two%20largest,the%20CMTU%20\(see%20below\).](https://www.worker-participation.eu/national-industrial-relations/countries/malta#:~:text=By%20far%20the%20two%20largest,the%20CMTU%20(see%20below).)

Turning the Tables: Documentation, prepared by Shaun Grech (ADITUS), 2021. Retrieved from <https://humanrights.gov.mt/en/Documents/Documentation%20Publication.pdf>

Country Report: Access to Education, by AIDA. Retrieved from <https://asylumineurope.org/reports/country/malta/reception-conditions/employment-and-education/access-education/?fbclid=IwAR0I8Jy9VN2-m3LB00wuRmlqxAS5onf7tePFQn8wyNtkY03Dt4vU79HRPXOU>

