



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

16 April 2018

Case Document No. 4

European Youth Forum v. Belgium
Complaint No. 150/2017

**OBSERVATIONS OF THE
EUROPEAN TRADE UNION CONFEDERATION**

Registered at the Secretariat on 28 February 2018

Collective Complaint
European Youth Forum (YFJ) v. Belgium
Complaint No. 150/2017

Observations
by the
European Trade Union Confederation (ETUC)
(27/02/2018)

Overview

INTRODUCTION.....	3
I. ETUC VIEWS/COMMITMENTS ON APPRENTICE-, TRAINEE- AND INTERNSHIPS AND VOLUNTARY WORK	5
A. ETUC STATEMENTS, RESOLUTIONS AND POSITIONS	6
B. EUROPEAN SOCIAL DIALOGUE.....	10
II. GENERAL FRAMEWORK	12
A. INTERNATIONAL LAW AND MATERIAL ON TRAINEES AND/OR INTERNS	13
1. <i>United Nations</i>	13
2. <i>UNESCO</i>	18
3. <i>International Labour Organisation</i>	19
4. <i>Council of Europe</i>	26
5. <i>European Union (EU)</i>	42
B. INTERNATIONAL LAW AND MATERIAL ON VOLUNTARY WORK/VOLUNTEERING	54
1. <i>EU Institutions</i>	56
2. <i>Council of Europe</i>	59
III. SPECIFIC NATIONAL SITUATION	60
A. LEGISLATION.....	60
1. <i>The Volunteer Rights Act of 2005</i>	61
2. <i>The Flemish Youth Council (“Vlaamse Jeugdraad”)</i>	64
B. BELGIUM (BRUSSELS) AS HOST OF INTERNATIONAL/EUROPEAN INSTITUTIONS AND ORGANISATIONS	65
IV. REACTIONS TO THE BELGIAN GOVERNMENTS OBSERVATIONS.....	66
V. FINAL (LEGAL) CONSIDERATIONS AND CONCLUSION	69
A. (LEGAL) CONSIDERATIONS.....	69
B. CONCLUSIONS.....	72
TABLE OF CONTENTS.....	73

***“Internships can either be fair or free, not both!
Nothing in life is free. So why should our work be?”
ETUC #OurPayRise***

- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2), the European Trade Union Confederation (ETUC) would like to submit the following observations. The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC)¹ but also the Collective Complaints Procedure Protocol (CCPP). However, the ETUC would invite the Government to take the appropriate steps to accept all provisions of the RESC.

Introduction

- 2 The main content of the complaint is described in the Decision on admissibility of 5 December 2017 and contains mainly that the Volunteer Rights Act of 3 July 2005, permitting the practice of unpaid internships, and the lack of enforcement of a number of provisions in the national legislation aiming to restrict internships, violate Articles 4 and 7 of the of the Charter.²
- 3 The complaint thus relates to a very specific and restricted situation and context. However, and despite this, ETUC considers it necessary and appropriate to look at the much wider context of employability and learning possibilities of young persons and the different policy schemes therefore established and promoted throughout Europe, such as apprenticeships, traineeships, internships and more recently voluntary work/volunteering. The main reasons for doing so are amongst others:
 - For many years and in particular since the economic crisis, all these schemes are heavily promoted to enhance the employability, skills and competences of young persons. This is also explaining why, and despite their distinct features, in many international and European instruments (and related case law), policy documents and (academic) reports, in particular apprenticeships, traineeships and/or internships were and are often bracketed together.
 - The enhanced attention has also led to the introduction (or a reshaping) of a multitude of these schemes both within the same country as well as within the same kind of scheme (e.g. several apprentice-, trainee- or internships formulas being applicable at the same time with only some nuances in for instance target groups, etc.). However, this growth of systems led to a very confusing picture

¹ Unless stated otherwise, Articles without further indication relate to the 1996 RESC.

² [ECSR Decision on the admissibility](#) Collective Complaint 150/2017 European Youth Forum (YFJ) v. Belgium, 5 December 2017

not the least in relation to the rights and obligations of all actors involved in the different schemes.

- Nevertheless, when looking at comparative different analyses conducted by international and European actors to identify the key success factors and appropriate framework for each scheme, it showed that, although apprentice-, trainee- or internships are (or at least are intended to be) distinct, the main challenges, problems and solutions were and are often identical.
 - Lack of/need for a clear (separate) legal framework providing a legal status, clear (and shared) definitions, identification of the respective rights and obligations of concerned actors, etc.
 - Need for formal contracts
 - A lot of attention is given to how best reach the objectives of employability/learning, but hardly any attention to the protection of fundamental social rights, such as fair working conditions and in particular decent/fair wages/remuneration/compensations.
 - Hardly any attention to ensuring effective monitoring and enforcement mechanisms (including collection of data and thus knowledge of the actual numbers of persons involved, role of inspection services, reclassification of legal status, etc.)
 - Eventual problems get only aggravated if these trainings or internships are done outside formal education frameworks.
 - The latter even more applies to voluntary work/volunteering which has only been more recently promoted as a good pathway to enhance employability/learning. Main recommendations to ensure the promotion of this kind of “work” is to reduce/eliminate as much as possible “legal and administrative obstacles/burdens for both the volunteers and voluntary organisations” and “to avoid as much as possible any connection with paid employment and the social rights related to it”.

4 Although apprenticeships, traineeships, internships and volunteering are not necessarily (always) conducted under an employment contract or an employment relation, in the strict sense, between an employer and an apprentice, trainee, intern or volunteer, ETUC considers that the principles set out in international and European (non-)legislative norms and initiatives on the (social rights) of these (mainly young) persons could provide useful guidance in considering this particular complaint.³ In particular, since a commonly shared view at international, European but also Belgian level seems to be that un(der)paid internships are unacceptable, the risk for using them as cheap labour is real and better protection and enforcement of their rights needs to be ensured.

5 These ETUC observations are structured as follows. In Part I, a short overview is provided of the positions and commitments of ETUC regarding the different schemes as expressed in unilateral ETUC statements and resolutions (Part I.A) as well as – together with the European employers’ organisations BusinessEurope, UEAPME and

³ A similar approach was used in by the European Ombudsman in its Decision in case 454/2014/PMC concerning the European External Action Service’s practice of offering unpaid traineeships in EU Delegations. See below paragraphs 116-117.

CEEP- in the framework of the European cross-industry social dialogue (Part I.B). In Part II, firstly, an overview is provided of the international and European instruments (UN, ILO, Council of Europe and EU) and relevant related case law in relation to rights of apprenticeships, trainees and/or interns (Part II A). Secondly, in Part II.B, a similar approach is taken particularly regarding the international and European instruments and policy documents in relation to voluntary work/volunteering. Part III provides additional information on the law and practice in Belgium on unpaid internships, irrespective whether conducted in the framework of voluntary work/volunteering or not. In Part IV, ETUC provides some reactions (including those received from its Belgian affiliates CSC, FGTB and CSGLB) on the information provided by the Belgian federal and regional authorities in the framework of the admissibility phase of the procedure.⁴ Finally, Part V provides some final ETUC considerations and conclusions on the complaint at stake.

- 6 As mentioned before, and as the different schemes are often “bracketed together” in the different international and European instruments and policy documents, it will be tried to clearly indicate in each section/paragraph whether the information pertains to apprenticeships, trainees, interns or volunteers and this by highlighting the respective terms **in bold**. Furthermore, and despite the wider approach taken by ETUC in these observations by looking at the different schemes, it is tried to focus/limit the provided information as much as possible on issues like non-discrimination based on age, protection of social rights of the persons involved in trainee, intern and voluntary work schemes (in particular to ensure fair/decent wage/remuneration/compensation) and the enforcement of their rights. Finally, and unless otherwise indicated, it is also tried to provide the information in each respective section in a chronological order from older to most recent developments as this might allow identifying certain policy shifts over time.

I. ETUC views/commitments on apprentice-, trainee- and internships and voluntary work

- 7 From the very outset, the ETUC would like to highlight that it is strongly committed to guaranteeing decent wages/remuneration for all workers, without any discrimination including based on age. Fighting against lower (sub)minimum wages for younger workers (irrespective of their legal status and the contract form they provide the work under) as well as practices of unpaid internships form thereby priorities both in ETUC unilateral positions (see A. below) as well as those developed together with the European employers’ organisations BusinessEurope, UEAPME and CEEP in the framework of the European social dialogue (see B. below). It is to be noted that in both cases the information is provided in a non-exhaustive way.

⁴ [See Case-document no. 2, Observations by the Government on admissibility](#) (French only).

A. ETUC statements, resolutions and positions⁵

8 Next to some resolution and positions which particularly and solely relate to apprenticeships⁶, the following ETUC documents dealing more particularly with trainee-, internships and voluntary work could be highlighted:

9 In its so-called “**Paris Manifesto**”, adopted in the framework of the 13th ETUC Congress and which defines the current political mandate and priorities of ETUC, the following is stated:

The ETUC’s priorities that serves the people:

A. A strong economy that serves the people

(...)

• *We demand better wages to boost internal demand and recovery. Workers in Europe need a pay rise in order to reduce inequalities and fight poverty (...)*

*21. Intergenerational solidarity and a substantial reduction in youth unemployment is required to build a sustainable future for Europe. Young people across the EU must have the guaranteed right to a quality job or adequate training opportunities within four months of unemployment or completion of education and training (“Youth Guarantee”), to secure a smooth transition to the labour market. Workplaces should be ‘age-friendly’ and should foster lifelong learning. **Unpaid internships, age discrimination and other unfair practices must cease.** (...)*

C. A core of ambitious social standards

(...) **37. Fighting all forms of discrimination**, whether based on gender, ethnic origin, nationality, belief, conviction, sexual orientation, gender identity, disability, **age**, trade union membership or any other grounds, **is an ETUC priority.** (...)⁷

10 Based on this Manifesto, more recent ETUC Resolutions, Positions and Statements further highlight the importance ETUC attaches to ensure decent wages without any discrimination (including based on age) and protection of young persons involved in the respective schemes. Reference could thereby be made to amongst others:

ETUC Position paper “Towards a European strategy for quality employment”
(2015)⁸

⁵ For this particular section, the information provided is as much as possible limited to the current (and still ongoing) internal political mandate as established at the last ETUC Congress in 2015 as the rights and protection of young workers, irrespective of the legal status they are performing work in, got then a particular and enhanced attention by ETUC and its affiliates. The next ETUC Congress is scheduled to take place on 7-9 May 2018 in Vienna (Austria).

⁶ E.g. [ETUC Resolution on Improving quality of Apprenticeships and Work-based learning](#), adopted at the ETUC Executive Committee on 11-12 March 2014. It was also accompanied by the publication of report by [ETUC and Unionlearn on “Towards a European quality framework for apprenticeships and work-based learning. Best practices and trade union contributions”](#). [ETUC/Unionlearn \(2016\), A European Quality Framework for Apprenticeships. A European Trade Union Proposal](#), Brussels: ETUC/Unionlearn. It was also accompanied by another publication of the same authors on “Towards a European quality framework for apprenticeships and work-based learning. Best practices and trade union contributions”. [ETUC, Businesseurope, UEAPME and CEEP \(2016\), Joint Statement on “Towards a Shared Vision of Apprenticeships”](#), Brussels, 30 May 2016.

⁷ [ETUC Paris Manifesto](#) (adopted in the framework of the 13th ETUC Congress on 29/9-2/10/2015, Paris).

⁸ [ETUC Position “Towards a European strategy for quality of employment”](#), adopted by the ETUC Executive Committee of 10-11 March 2015. This position was reiterated in a more

- 11 In this position paper, the ETUC noted that European Employment Strategy is failing to deliver because “*too many of those in work face a precarious employment situation, plagued by job insecurity, low wages and exclusion from basic social protection: precarious contracts such as zero hours contracts, false self-employment, **unpaid internships** and undeclared work are growing negative features of the labour market.*”

ETUC Youth Employment Policy Paper “Quality jobs for youth: our way forward!” (2015)⁹

- 12 This document provides views and recommendations of the European youth workforce represented by the ETUC (Youth Committee) on a series of topics earmarking the reality of work for young workers, such as working conditions in general but also issues like intern/traineeships
- 13 As for **internships** this policy paper highlights the following:

(...) Traineeships are, therefore, now fully part of the school-to-work transition system. However, in spite of being a potential stepping stone into the labour market, internships do not always rhyme with good quality and working conditions. For these reasons, the ETUC Youth Committee believes that internships should never lead to job replacement, i.e. permanent or temporary jobs should not be filled by interns. In fact, this would inject further precariousness in the labour market and weaken further the entry position of young people.

The internships we want:

- 1. Guarantee good quality working conditions, agreed duration, decent compensation, within a legal and binding agreement at national and European level, including the possibility of a Directive*
- 2. Set clear learning objectives and recognition of skills and knowledge acquired*
- 3. Ensure guidance at the work place*
- 4. Inform interns of their labour and social rights including the right to be represented by trade union reps*
- 5. Involve all relevant stakeholders in order to monitor, support and improve the outcomes of the internship*

*(...) Because of their lack of work experience and the short and atypical contract form of internships, interns are more likely to be less informed about their social and labour rights. Therefore, **it is crucial that they are informed**, at the beginning of their internship experience, **about their social and labour rights** as well as any health and safety risks **linked to their position**. Relevant social protection should be granted accordingly. Internships can be done as a part of (higher) education with the aim of providing practical experience to students who are about to enter the labour market. Although these internships are considered as a part of the education path, **they should guarantee some minimum but crucial labour standards in order to avoid any abuse** and to allow the young person to make the most of the internship experience. The ETUC Youth Committee recalls the importance of regulating the internship experience with a written and legally binding contract between the educational institution, the intern and the hosting organisation. (...)*

*Finally, **internships should never be done for free and without any reimbursements, in-kind benefits and/or remuneration**. Similar criteria should be applied to internships*

recent [ETUC Resolution on “Defining Quality Work: An ETUC action plan for more and better jobs”](#), adopted at the ETUC Executive Committee on 13-14 December 2017, and in which ETUC provides the elements of a definition of quality work, one being good wages.

⁹ [ETUC Youth Employment Policy Paper “Quality jobs for youth: our way forward!”](#), adopted 26 June 2015.

that are taking place outside or after formal education. In particular, the remuneration of the internship should not go below the poverty line set at the 60% of the median income or below the national minimum wage. This criterion is highly important in a moment when young people are increasingly at risk of poverty even when they still live with their parents as the whole household situation has deteriorated in several countries. Social partners can play a crucial role to this regard, namely in the framework of collective agreements. (...)

ETUC Resolution “Towards a real and effective Youth Guarantee in Europe” (2016)¹⁰

- 14 In this Resolution, the ETUC amongst others demands the following:

*Therefore, the ETUC calls the European Commission and the national governments to:
(...)*

c) Include clear requirement for an appropriate social protection in the youth guarantee schemes, in order to combat the risk of poverty and precariousness.

*d) Guarantee high quality standards of job offers, **trainings, traineeships and apprenticeships**, particularly in sectors where job creation will be important in the future.*

- 15 In its related campaign, the ETUC (Youth Committee) conducted its own analysis of the implementation of the Youth Guarantee). (see below)

ETUC (Youth Committee) Follow up report “3 years of Youth Guarantee: What next?” (2016)¹¹

- 16 Based on its own evaluation of the implementation of the Youth Guarantee in several countries, the ETUC (Youth Committee) recommends amongst others that:

*“(...) It is not acceptable that the YG (as has happened in some countries) only delivers **internships** or low-quality short-term jobs. The focus must be put again on quality jobs.
(...)*

Guarantee high quality standards of all outcomes, notably of internships, and provide a definition of quality with benchmarks. In the European Pillar of Social Rights and in the Semester process the outcomes of the Youth Guarantee should be assessed and addressed also from the qualitative point of view”

ETUC Position on “A European Pillar of Social Rights – Working for a Better Deal for all Workers” (2016)¹²

- 17 In this position on the European Pillar of Social Rights (see also paragraphs 85-86), the ETUC stressed under its “*Priority 2 – A pay rise for fairness at work and economic justice*” that the objective of a general pay rise and progressive upwards convergences of wages that Europe needs can be achieved amongst others through “**prohibiting**

¹⁰ [ETUC Resolution “Towards a real and effective Youth Guarantee in Europe”](#), adopted at the ETUC Executive Committee of June 2016.

¹¹ [ETUC \(Youth Committee\) Follow up report “3 years of Youth Guarantee: What next?”](#) , November 2016; it is accompanied by an [Annex covering several country reports](#) (incl. on Belgium).

¹² [ETUC Position on “A European Pillar of Social Rights – Working for a Better Deal for all Workers”](#) , adopted at an extra-ordinary Executive Committee meeting on 6 September 2016.

unfair discriminatory minimum wage rates, for example for young people on the basis of age”.

- 18 Furthermore, the ETUC also stressed in this Position that one of the underpinning principles of the Pillar should be to:

“enforce the rights elaborated in the EU Charter of Fundamental Rights (CFREU), the European Social Charter (ESC) and the European Convention of Human Rights (ECHR). Promoting ‘Decent Work’ in Europe means ensuring that the EU and its Member States fully respect and promote (ILO) international labour standards including pursuing their ratification by Member States.”

ETUC Pay rise campaign (2017) ¹³

- 19 In February 2017, ETUC launched its “Europe needs a Pay Rise” campaign. In the framework of this campaign, a particular focus is also put on wages/remuneration of young persons (irrespective of their status as workers, apprenticeships, trainees and/or interns).

One particular demand in this sense is that **“Internships can either be fair or free, not both!”**¹⁴

ETUC Resolution “For a common strategy on low and minimum wages” (2017)¹⁵

- 20 In addition, and as also raised by YFJ in its collective complaint, a **proper enforcement of rules**, in particular in the area of wages/remuneration, forms for ETUC a crucial element. In that sense this Resolution states:

(...) The rules on SMW [Statutory Minimum Wage](...) All derogations for specific group of workers, including young workers, should be outlawed.

Rules on SMW have to be better enforced

Enforcement of rules remains a crucial issue in many Member States. SMW can also be considered a strong supplement to collective bargaining for effective protection of low wage earners and an effective way to set minimum wage floors. For sake of social justice, no derogations are admissible on the application of minimum wages, as some member state try to do for young workers and other group of workers. Trade unions cannot totally replace the role that labour inspectorates perform to ensure the rule of law in each country. A proper enforcement of employee protection rules needs enhanced inspectorates and effective police and administrative system to ensure control, surveillance and sanctioning of unlawful behaviours of employers. However, social partners should be enabled to play a role. (...)

“The ETUC Roadmap for the Future of Europe” (2017) ¹⁶

- 21 In the Chapter on “Pay rises and upward wage convergence, through stronger collective bargaining, social dialogue and workers’ participation”, the ETUC elaborates further on how to best deliver its Pay Rise Campaign:

Delivering the ETUC Pay Rise Campaign, through:

¹³ For all info on this campaign see <https://payrise.eu/>

¹⁴ See <https://www.etuc.org/internships-can-either-be-fair-or-free-not-both-ourpayrise>

¹⁵ [ETUC Resolution “For a common strategy on low and minimum wages”](#) , adopted at Executive Committee 15-16 March 2017, Malta.

¹⁶ [The ETUC Roadmap for the Future of Europe](#), adopted at the Executive Committee of 13 and 14 June 2017.

Widespread and coordinated collective bargaining rounds for pay rise at all levels, with wages in line with inflation and productivity developments.

(...)

ii. action for increasing minimum wages and strengthening minimum wage systems, where they exist. (...)

*viii. Closing gender pay gaps, **fighting unjustified discriminatory minimum wages for young workers, and addressing any other wage discrimination.***

ETUC Position on the European Social Corps (2017)¹⁷

- 22 In relation to a European Commission initiative to provide young people with the opportunity to volunteer or work in projects in their own country or abroad that benefit communities and people around Europe¹⁸, ETUC firstly expressed its concern definition of “**volunteering**” put forward (i.e. a full-time unpaid voluntary service carried out continuously, 5 days a week for 7 hours a day) is very close to the description of a work placement and that there should be no “occupational strand” included in this initiative. If nevertheless, voluntary placements are to be provided in the form of **traineeships and apprenticeships**, the ETUC would like the quality standards of the Quality Framework for Apprenticeships to be observed and remuneration to be fully aligned with national legislation on wages and/or applicable collective agreements. And the implementation of the European Solidarity Corps should be monitored, with the participation of the trade union movement.

B. European social dialogue

- 23 Within the European interprofessional social dialogue, under the articles 154-155 TFEU, the ETUC has, together with the European employers’ organisations BusinessEurope, UEAPME and CEEP, concluded several important instruments, including framework agreements, dealing with apprentice- and traineeships, thereby stressing always **the need for ensuring the quality of these forms of training**.
- 24 Some examples are the following:

European framework agreement on inclusive labour markets (2010)¹⁹

- 25 Firstly, there is the European framework agreement on inclusive labour markets, signed on 25 March 2010, and in which the European social partners identify both actions for social partners as well as EU and national authorities to achieve inclusive labour markets.
- 26 In the important area of training, the European social partners see a particular role of social partners (at all levels) for the following measures:

- *Promote more and **better apprenticeship and traineeships contracts.** (Clause 5)*

¹⁷ [ETUC position on the European Solidarity Corps](#), adopted at the Executive Committee of 13-14 June 2017.

¹⁸ For more information see http://europa.eu/youth/solidarity_en

¹⁹ The Framework agreement as well as the different implementation reports can be found at: <https://resourcecentre.etuc.org/Agreements-57.html>

- 27 As for the latter point, throughout the negotiations with the employers, ETUC made it clear that the reference to **traineeships** should be closely linked to the notion of quality and, therefore, should constitute a real opportunity to integrate into the labour market, and **should not be a ‘godsend’ for companies that enables them to benefit from cheap labour and/or encourages precarious employment.**²⁰
- 28 In the section addressed to public authorities and other actors, the following actions/policies in the area of education and training are amongst others recommended:

- *Improve the availability and **quality of adequate training** offers for individuals and employers, in particular taking into account the needs of SMEs and of people with the least qualifications. (Annex 1, point 3)*

European Framework of actions on Youth Employment (2013)²¹

- 29 The Framework of actions on Youth Employment, was concluded in June 2013 and addresses amongst others the challenge of strengthening the quality and relevance of education and training at all levels to address skills mismatches. The Framework of actions identifies four priority areas: learning, transitions, employment and entrepreneurship. For each priority, the European social partners identify both for the short and long term social partners’ actions as well as recommendations for action by European institutions and/or Member States.
- 30 Under “Priority 1: Learning”, the European social partners look in particular at apprentice- and **traineeships**.

Young people need to be equipped with basic competences, transversal competences, as well as technical and specific competences for their own personal development and employability.

Well-designed education and training curricula, with social partner involvement, responsive to labour market and young people’s needs can contribute to reducing the skills mismatch.

Work-based learning, including apprenticeships and traineeships, can also contribute to smoother transition into the labour market for the young and reduce the risks of long transitions. (...)

Traineeships

European social partners take note of the Commission’s intention to propose a Council Recommendation on the European quality framework on traineeships and support Member States’ actions aiming to improve the quality of traineeships. (...)

I. Social Partners’ Actions

a. Short term

- *Take part in the monitoring and evaluation of vocational education and training (VET) to ensure smooth transitions from education to further training and/or work within quality regulatory frameworks at national level.*
- *Participate in the governance of apprenticeship systems.*

²⁰ [ETUC \(2012\) The Autonomous Framework Agreement on Inclusive Labour Markets – An ETUC interpretation guide](#), Brussels, ETUC, p. 19.

²¹ The Framework of actions as well as the different implementation reports can be found at: <https://resourcecentre.etuc.org/Frameworks-of-actions-56.html>.

- Identify and address barriers to the development of apprenticeship systems in each country.
- Contribute to designing and participating in setting up the EU alliance for apprenticeships.
- Envisage taking further joint actions towards the Council and the European Parliament based on the upcoming Commission's proposal for a Council Recommendation on a European quality framework on traineeships.
- Ensure that apprenticeship agreements between young people and enterprises clearly define the terms of the apprenticeship and learning objectives of the work-based part of the education.(...)

II. Recommendations

a. Short term

- The European Commission should add the “share of work-based learning” as one of the variables in its proposed employability benchmark.
- The European Commission should adequately involve European social partners in the management of the next generation of education and training programmes. (...)
- The European Commission and Member States should support and coordinate European and national campaigns for changing the perception of vocational education and training in European societies, and promote quality work-based learning. (...)
- Member States should devise, in consultation with the relevant social partners, framework conditions for apprenticeship and traineeship that are attractive for enterprises and young people, in line with the diversity of industrial relations systems and taking into account their learning objectives.(...)

Joint In-depth Employment Analysis (2015)²²

- 31 In their “In-depth Employment Analysis”, adopted in July 2015, the European social partners agreed that people’s expectations and the needs of labour markets must be reflected in education and training schemes so that people find jobs in line with their skills, expectations and competences. They therefor recommended amongst others:

*A higher level of participation in, and **improved quality** and attractiveness of, work-based learning, including apprenticeships and **traineeships**, in connection with initiatives such as the European Alliance for Apprenticeship, the **Quality Framework on traineeship** and the Youth Guarantee;*

II. General framework

- 32 In this Part II, firstly, an overview is provided of the international and European instruments (UN, ILO, Council of Europe and EU) and relevant related case law in relation to rights of trainees and/or interns (Part II.A). In Part II.B, a similar approach is taken particularly regarding the international and European instruments and policy documents in relation to volunteers/voluntary work/volunteering.

²² [ETUC, Businesseurope, UEAPME and CEEP \(2015\), In-depth Employment Analysis, Brussels, July 2015, p. 27-29..](#)

A. International law and material on trainees and/or interns

- 33 The importance and legal significance of international standards and their interpretation and application²³ is widely recognised. Accordingly, and whereas the collective complaint refers mainly to the Charter and relevant ECSR case law, the ETUC would like to add pertinent references to international and European law and material because all these international and European organisations attribute albeit in different degrees an importance to the rights of young workers in general and trainees and/or interns in particular in their standard-setting, the respective case law or via other means like policy documents, research, projects, studies etc.
- 34 Unless stated otherwise the respondent State (Belgium) has ratified all the following instruments referred to below.²⁴

1. United Nations

- 35 The United Nations (UN) provide for a wide-ranging set of standards in this area.

a) *Universal Declaration of Human Rights*

- 36 The main provisions of the Universal Declaration of Human Rights (UDHR) relating to equality, fair working conditions (including remuneration) and education may be quoted as follows:

Article 2

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth **or other status**. (...)*

Article 7

*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to **equal protection against any discrimination** in violation of this Declaration and against any incitement to such discrimination.*

Article 23

- (1) *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (...);*
- (3) *Everyone who works has the right to **just and favourable remuneration** ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (...).*

Article 26.

- (1) *Everyone has the right to education. (...) Technical and professional education shall be made generally available (...).*

²³ As to legal impact of the 'Interpretation in harmony with other rules of international law' see the ETUC Observations in No. 85/2012 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - Case Document no. 4, Observations by the European Trade Union Confederation (ETUC), paras. 32 and 33.

²⁴ As legally non-binding instruments, this list does obviously not include the UDHR nor Recommendations nor any 'Further pertinent material'.

37 Furthermore, reference could be made to a report of 2009 on “Internships in the United Nations System” by the UN Joint Inspection Unit which revealed that out of 16 examined UN organisations, only 5 provided some kind of stipend to interns, only one paid under certain conditions for the travel of the intern from place of residence or education to the duty station for the internship and only in 12 out of 16 an insurance had to be provided by the student him/herself. This led the Inspection Unit to recommend that at least *“Executive heads of United Nations system organizations should consider providing a daily meal ticket, a transportation pass, and/or contributing towards insurance costs for interns lacking financial sponsoring or to interns not from the local area. (Recommendation 8)”*²⁵ As the situation had -despite this recommendation- apparently not (yet) improved, a group of interns send in August 2015 a letter to then UN Secretary- General, Mr. Ban Ki-moon, claiming, in particular based on Article 23 of the UDHR (see above, again for the necessary financial and non-financial support so that UN internships would be accessible to all.²⁶

b) International Covenant on Civil and Political Rights

38 The main provisions of the International Covenant on Civil and Political Rights (ICCPR)²⁷ relating to equality might be quoted as follows:

Article 2

*1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**. [...]*

Article 26

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**. [...]*

c) International Covenant on Economic, Social and Cultural Rights

39 As complementary to the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁸ provides in particular for the protection against discrimination and for social rights. Its competent organ to interpret this instrument, the Committee on Economic, Social and Cultural Rights (CESCR), has developed a case law in this respect.

40 This Covenant provides amongst others for:

²⁵ [Joint Inspection Unit, “Internships in the United Nations System”](#), Geneva 2009, JIU/NOTE/2009/2..

²⁶ [Letter of “Quality and Fairly Remunerated Internships Initiative \(New York\) and Pay Your Interns initiative](#) (Geneva)” of 14 August 2015. (

²⁷ [International Covenant on Civil and Political Rights](#), Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976.

²⁸ [International Covenant on Economic, Social and Cultural Rights](#), adopted by resolution 2200A (XXI) of 16.12.1966; entry into force 03.01.1976.

Article 2

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised **without discrimination of any kind** as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or **other status**.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) **Remuneration** which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 10

The States Parties to the present Covenant recognize that:

(...) 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. **Children and young persons should be protected from economic and social exploitation.** Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

- 41 The CESCR has in several so-called “General Comments” developed the following general interpretation on the respective articles.

General Comments

CECSR General Comment No 20 on “Non-discrimination in economic, social and cultural rights”²⁹

B. Other status

27. *The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed in order to capture*

²⁹ [CECSR General Comment N° 20 \(on Article 2\)](#), adopted at its Forty-second session Geneva, 4-22 May 2009.

other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognized grounds in article 2, paragraph 2. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. (...)

C. Age

29. Age is a prohibited ground of discrimination in several contexts. (...) ³⁰

CECSR General Comment No. 18 on “The Right to Work” (Article 6 of the International Covenant on Economic, Social and Cultural Rights)³¹

I Introduction and Basic Premises

2. The ICESCR proclaims the right to work in a general sense in its article 6 and explicitly develops the individual dimension of the right to work through the recognition in article 7 of the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. (...) Article 6 defines the right to work in a general and non-exhaustive manner. (...)

II. Normative Content of the right to work

7. Work as specified in article 6 of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and **remuneration**. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.

A. Special topics of broad application

a) Young persons and the right to work

14. Access to a first job constitutes an opportunity for economic self-reliance and in many cases a means to escape poverty. Young persons, particularly young women, generally have great difficulties in finding initial employment. National policies relating to adequate education and **vocational training** should be adopted and implemented to promote and support access to employment opportunities for young persons, in particular young women.

III. States parties' obligations

B. Specific legal obligations

25. Obligations to protect the right to work include, inter alia, the duties of States parties to adopt legislation or to take other measures ensuring **equal access to work and training** and to ensure that privatization measures do not undermine workers' rights. Specific measures to increase the flexibility of labour markets must not render work less stable or reduce the social protection of the worker. (...)

CECSR General Comment No. 23 on “the right to just and favourable conditions of work”³²

A. Article 7 (a): **remuneration** which provides all workers, as a minimum, with:

1. Remuneration

7. The term “remuneration” goes beyond the more restricted notion of “wage” or “salary” to include additional direct or indirect allowances in cash or in kind paid by the

³⁰ See, further, CESCR general comment No. 6.

³¹ [CECSR General Comment No. 18 on “The Right to Work”](#); adopted at Thirty fifth session, Geneva, 7-25 November 2005.

³² (article 7 ICSECR) [CECSR General Comment No. 23 on “the right to just and favourable conditions of work”](#), adopted in April 2016; footnotes referred to in the text have been left out.

employer to the employee that should be of a fair and reasonable amount, such as grants, contributions to health insurance, housing and food allowances, and on-site affordable childcare facilities.

8. It is clear that the reference to “a minimum” in article 7 (a) is designed to ensure that the article should in no case limit efforts to improve remuneration to a level above those standards. This minimum applies to “all workers”, reflecting the term “everyone” in the chapeau.

9. The minimum criteria for remuneration are: fair wages, equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (art. 7 (a) (i)); and a decent living for workers and their families (art. 7 (a) (ii)).

2. Fair wages

10. All workers have the right to a fair wage. The notion of a fair wage is not static, since it depends on a range of non-exhaustive objective criteria, reflecting not only the output of the work but also the responsibilities of the worker, the level of skill and education required to perform the work, the impact of the work on the health and safety of the worker, specific hardships related to the work and the impact on the worker’s personal and family life.(...) workers have precarious contracts, supplements to the wage, as well as other measures to guard against arbitrariness, may be necessary in the interest of fairness to mitigate the lack of job security. (...)

4. Remuneration that provides all workers with a decent living for themselves and their families

18. Closely linked to the notions of fairness and equality, “remuneration” must also provide a “decent living” for workers and their families. While fair wages and equal remuneration are determined by reference to the work performed by an individual worker, as well as in comparison with other workers, remuneration that provides a decent living must be determined by reference to outside factors such as the cost of living and other prevailing economic and social conditions. Thus, remuneration must be sufficient to enable the worker and his or her family to enjoy other rights in the Covenant, such as social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs.

19. A minimum wage is “the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract”. It provides a means of ensuring remuneration for a decent living for workers and their families.

20. States parties should prioritize the adoption of a periodically reviewed minimum wage, indexed at least to the cost of living, and maintain a mechanism to do this. Workers, employers and their representative organizations should participate directly in the operation of such a mechanism.

21. Minimum wages can be effective only if they are adequate to the goals set forth in article 7. The minimum wage should be recognized in legislation, fixed with reference to the requirements of a decent living, and applied consistently. The elements to take into account in fixing the minimum wage are flexible, although they must be technically sound, including the general level of wages in the country, the cost of living, social security contributions and benefits, and relative living standards. The minimum wage might represent a percentage of the average wage, so long as this percentage is sufficient to ensure a decent living for workers and their families.

22. In setting the minimum wage, reference to wages paid for work of equal value in sectors subject to collective wage agreements is relevant, as is the general level of salaries in the country or locality in question. The requirements of economic and social development and achievement of a high level of employment also need to be considered, but the Committee underlines that such factors should not be used to justify a minimum wage that does not ensure a decent living for workers and their families. While recognizing that minimum wages are often frozen during times of economic and financial crisis, the Committee further underlines that, in order for States parties to comply with article 7 of the Covenant, such a measure has to be taken as a last resort and must be of a temporary nature, bearing in mind the needs of workers in vulnerable

situations, with a return to the standard procedures of periodic review and increase in the minimum wage as swiftly as possible.

23. The minimum wage should apply systematically, protecting as much as possible the fullest range of workers, including workers in vulnerable situations. The minimum wage might apply generally or differ across sectors, regions, zones and professional categories, so long as the wages apply without direct or indirect discrimination and ensure a decent living. (...)

24. The failure of employers to respect the minimum wage should be subject to penal or other sanctions. **Appropriate measures, including effective labour inspections, are necessary to ensure the application of minimum wage provisions in practice.** (...)

B. Article 7 (b): safe and healthy working conditions

(...)

26. The national policy should cover all branches of economic activity, including the formal and informal sectors, and all categories of workers, including non-standard workers, apprentices and **interns.** (...)

E. Special topics of broad application

47. The right to just and favourable conditions of work relates to specific workers:

(b) Young workers and older workers: All workers should be protected against age discrimination. Young workers should not suffer wage discrimination, for example, being forced to accept low wages that do not reflect their skills. **An excessive use of unpaid internships and training programmes,** as well as of short-term and fixed-term contracts that negatively affect job security, career prospects and social security benefits, **is not in line with the right to just and favourable conditions of work.** (...)

(j) Unpaid workers: (...) Unpaid workers, such as workers in the home or in family enterprises, **volunteer workers and unpaid interns,** have remained beyond the coverage of ILO conventions and national legislation. They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security.

2. UNESCO

a) **Convention on Technical and Vocational Education 1989**³³

42 Although not ratified by Belgium, it is worthwhile in the framework of this complaint to also remind some of the provisions of this TVET Convention adopted in the framework of the UNESCO and which provides amongst others the following:

Article 2

(...) 3. The Contracting States shall guarantee that non individual who has attained the educational level for admission into technical and vocational education shall be discriminated against on grounds of race, colour, sex, language, religion, national or social origin, political or other opinions, economic status, birth, **or on any other grounds.** The Contracting States shall work towards the right to equal access to technical and vocational education and towards equality of opportunity to study throughout the educational process.

³³ [Convention on Technical and Vocational Education 1989](#), adopted in Paris, 10 November 1989.

b) Recommendation concerning technical and vocational education and training (TVET) (2015)³⁴

- 43 In this accompanying Recommendation to the 1989 Convention of 13 November 2015, the following is stated:

As for the policies and governance to be implemented at national level this should ensure amongst others:

Equity and access

(...)

26. Measures should be taken against all forms of discrimination, including gender-based discrimination.(...)

In relation to quality and relevance, the following should be ensured:

Learning processes

(...)

29. TVET should be holistic and develop transversal and entrepreneurial skills, skills for health and work safety, cultural development, responsible citizenship and sustainable development, **as well as knowledge of labour rights.**

30. Work-based learning in its various forms, including in-service training, attachments, apprenticeships and **internships**, should be promoted. The quality of work-based learning should be enhanced and when relevant be complemented by institution-based or other forms of learning. (...)

Quality and quality assurance

(...)

46. Member States should establish, according to their constitutional provisions, an **appropriate legal framework** for the regulation, registration and monitoring of private TVET providers **with the protection of learners as a core guiding principle.**

3. International Labour Organisation

- 44 The ILO labour standards are essential to protect the rights of young workers and regardless of their age, all workers have the same rights under international labour standards. Next to the eight fundamental Conventions (and related Recommendations) which apply to all workers without any distinction, several so-called governance and technical Conventions (and Recommendations) also contain youth-specific provisions and this for a wide spectrum of topics such as minimum age of admission to employment, wages, working time, occupational health and safety, labour inspection and (non-)discrimination and thereby address (also in the related case law) the specific situation of apprenticeships, trainees and/or interns. Below are some relevant but non-exhaustive references.³⁵

a) Convention No. 111³⁶

- 45 Convention concerning Discrimination in Respect of Employment and Occupation provides amongst others the following:

³⁴ [Recommendation concerning technical and vocational education and training \(TVET\) \(2015\)](#), adopted 13 November 2015.

³⁵ For a comprehensive overview see [ILO Guide to International Labour Standards and Rights at Work concerning Young People](#).

³⁶ [Discrimination \(Employment and Occupation\) Convention](#), 1958 (No. 111), Convention concerning Discrimination in Respect of Employment and Occupation. Adoption: 25.06.1958, entry into force: 15.06.1960 - Status: Up-to-date instrument (Fundamental Convention).

Article 1

1. For the purpose of this Convention the term discrimination includes

(a) **any distinction**, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; [...]

3. For the purpose of this Convention the terms employment and occupation include access to **vocational training**, access to employment and to particular occupations, and **terms and conditions of employment**. [...]

- 46 In its General Survey 2012,³⁷ the CEACR described the requirements which derive from Convention No. 111 as follows:

Chapter 3 - Equality of opportunity and treatment in employment and occupation (Convention No. 111)

Introduction

731. [...] *As a first step, it is essential to acknowledge that **no society is free from discrimination** and that **continuous action is required** to address it.*

732. [...] *The implementation of the national equality policy presupposes the adoption of a range of specific and concrete measures, including in **most cases the need for a clear and comprehensive legislative framework**, and ensuring that the right to equality and non-discrimination **is effective in practice**. Proactive measures are required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination. [...]*

Thematic issues

Defining discrimination

743. *Clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur. [...] **Any discrimination – in law or in practice, direct or indirect – falls within the scope of the Convention.***

Direct and indirect discrimination

744. *Direct discrimination occurs when less favourable treatment is explicitly or implicitly based on one or more prohibited grounds. [...]*

745. ***Indirect discrimination** refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job. In referring to the “effect” of a distinction, exclusion or preference, it is clear that intention to discriminate is not an element of the definition in the Convention, which covers all discrimination irrespective of the intention of the author of a discriminatory act. The Convention also covers situations in which inequality is observed in the absence of a clearly identifiable author, as in some cases of indirect discrimination or occupational segregation based on sex. Challenges related to structural discrimination therefore need to be addressed under the Convention. [...]*

³⁷ ILO, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 101st Session, 2012, Report III (Part 1B), Geneva 2012.

Aspects of employment and occupation covered by the Convention

749. The principle of equality of opportunity and treatment should apply to all aspects of employment and occupation. Under Article 1(3) of the Convention “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. The Committee draws attention to its previous surveys of 1988 and 1996 which address in detail the various areas covered by the Convention. In the present Survey, the Committee will therefore focus on some key issues in this area and on recent developments.

Education, vocational guidance and training

750. Access to education and to a wide range of vocational training courses is of paramount importance for achieving equality in the labour market. It is a key factor in determining the actual possibilities of gaining access to a wide range of paid occupations and employment, especially those with opportunities for advancement and promotion. Not only do apprenticeships and technical education need to be addressed, but also general education, “**on the job training**” and the actual process of training. Providing vocational guidance and **taking active measures to promote access to education and training, free from considerations based on stereotypes or prejudices, is essential** in broadening the range of occupations from which men and women are able to choose. (...)

Grounds of discrimination: An evolving area

[...]

Age

813. Addressing discrimination based on age has become an important part of public policy in a number of countries. (...)

815. To address de facto inequalities that may exist for older or **younger workers**, some countries have provided for special measures, including affirmative action in their Constitution or labour legislation, in accordance with Article 5(2) of the Convention. (...) Countries are also paying increased attention to including young persons in employment promotion programmes, specific **training** and vocational training programmes.

b) Minimum Age Convention No. 138³⁸

- 47 This Convention concerning Minimum Age for Admission to Employment provides amongst others the following:

Article 6

*This Convention does not apply to **work done by children and young persons in schools for general, vocational or technical education or in other training institutions**, (...) where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--*

(a) a course of education or training for which a school or training institution is primarily responsible;

(b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or

(c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

³⁸ [Minimum Age Convention](#), 1973 (No. 138) Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976); Adoption: Geneva, 58th ILC session (26 Jun 1973).

c) Minimum Age Recommendation, 1973 (No. 146)³⁹

48 This Recommendation, related to Convention No. 138, provides the following:

IV. Conditions of Employment

12.

(1) Measures should be taken to ensure that the conditions in which children and young persons under the age of 18 years are employed or work reach and are maintained at a satisfactory standard. **These conditions should be supervised closely.**

(2) Measures should likewise be taken to **safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training within undertakings, training institutions** and schools for vocational or technical education and to formulate standards for their protection and development.

13.

(1) In connection with the application of the preceding Paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to--

(a) the provision of **fair remuneration** and its protection, bearing in mind the principle of equal pay for equal work; (...)

(e) coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be;(...)

49 In its General Survey 2012,⁴⁰ the CEACR described the requirements which derive from Convention No. 138 in relation apprenticeships/trainees as follows:

Part IV. Elimination of child labour. Chapter 1 Minimum Age Convention, 1973 (No. 138)

Work done by children and young persons in general, vocational or technical education or in an apprenticeship programme

382. Article 6 of Convention No. 138 allows member States to exclude from the application of the Convention work done in school for general, vocational or technical education or in training institutions or work done by children at least 14 years of age as apprentices in undertakings. **However, the exemption can only apply** if such work is an integral part of: (i) a course of education or training for which a school or training institution is primarily responsible; (ii) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or (iii) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training. In all cases, the work must be carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned. Furthermore, Paragraph 12(2) of Recommendation No. 146 indicates that measures should be taken to safeguard and supervise the conditions in which children and young persons undergo vocational orientation and training and to formulate standards for their protection and development. (...)

Problems of application of the legislation relating to work done as part of education and training

386. **In some countries**, although **national legislation** regulates work in educational and training institutions and apprenticeships, **it is not always enforced in practice.** (...)

³⁹ [Minimum Age Recommendation, 1973](#) (No. 146), Recommendation concerning Minimum Age for Admission to Employment; Adoption: Geneva, 58th ILC session (26 Jun 1973).

⁴⁰ See note 55.

387. The Committee is of the view that work in educational institutions and apprenticeships must be regulated by law, and that the law must be applied effectively in practice. Moreover, the minimum age for admission to apprenticeship must be applied in all circumstances and sectors, including in the informal economy.

d) Recommendations relating to Apprenticeships⁴¹

50 The ILO defined apprenticeship in its first Apprenticeship Recommendation (R60, 1939) as follows : “(...) *the expression apprenticeship means any system by which an employer undertakes by contract to employ a young person and to train him [or her] or have him [or her] trained systematically for a trade for a period the duration of which has been fixed in advance and in the course of which the apprentice is bound to work in the employer's service.*” (Para.1) There was no reference/mentioning of the terms trainee/internships however.

51 In 1962, when the ILO reformulated its definition of apprenticeships in the Vocational Training Recommendation (R117, 1962), there references to trainees namely:

*7. (1) Training in publicly operated training institutions should be given without charge to the **trainee**. (...)*

*(4) Persons training in undertakings should be **adequately remunerated**, in accordance with criteria established by law or regulation, by collective agreement or by the rules of the undertaking concerned. (...)*

52 Recommendation No. 117 was at its place replaced/superseded by the Human Resources Development Recommendation of 175 (R150)⁴² which in its turn was replaced/superseded by the most recent ILO Recommendation (R195).⁴³ The latter makes no explicit reference to apprenticeship, trainees or interns, but focuses on lifelong learning and the upgrading of the skills of those already in the labour force. Nor thus it makes references to remuneration aspects. Young people are mentioned only as a one of a number of groups with nationally identified special needs.

e) Minimum Wage Fixing Convention, 1970 (No. 131)⁴⁴

53 This Convention requires Member States to establish and maintain minimum wage-fixing machinery in consultation with the social partners. Convention No. 131 and its accompanying Recommendation (the Minimum Wage Fixing Recommendation, 1970 (No. 135)) seek to ensure that the amount of the minimum wage covers the needs of

⁴¹ [Apprenticeship Recommendation, 1939 \(No. 60\)](#), Recommendation concerning Apprenticeship adopted Geneva, 25th ILC session (28 Jun 1939). Replaced / Superseded by the [Vocational Training Recommendation, 1962 \(No. 117\)](#).

⁴² [Human Resources Development Recommendation, 1975 \(No. 150\)](#); Recommendation concerning Vocational Guidance and Vocational Training in the Development of Human Resources, adopted Geneva, 60th ILC session (23 Jun 1975).

This Recommendation mentioned in Chapter IV Vocational Training, article 23 that 23.

(1) Workers being trained within an undertaking should--

(a) receive adequate allowances or remuneration;

(b) be covered by the social security measures applicable to the regular workforce of the undertaking concerned. (...)

⁴³ [Human Resources Development Recommendation, 2004 \(No. 195\)](#), Recommendation concerning Human Resources Development: Education, Training and Lifelong Learning, adoption: Geneva, 92nd ILC session (17 Jun 2004).:

⁴⁴ [Minimum Wage Fixing Convention, 1970 \(No. 131\)](#), Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (Entry into force: 29 Apr 1972); Adoption: Geneva, 54th ILC session (22 Jun 1970).

workers and their families, taking into account the general level of wages in the country, including cost of living and social security benefits.

- 54 According to the General Survey 2014, much attention has been paid to the **question of whether young people enrolled in apprenticeship or internship programmes are entitled to a minimum wage**. It was noted that problems have been raised in several countries in relation to unpaid internship programmes and other similar arrangements, when they are used to evade the payment of applicable minimum wages and to curtail employment opportunities.⁴⁵ **As for unpaid internships and paying lower wages apprenticeships and trainees, the CEACR noted the following:**

*187. The Committee is fully cognizant, however, that problems have been raised in several countries relating to **unpaid internship** programmes and other similar arrangements, when they are used to evade the payment of applicable minimum wages and to curtail employment opportunities. (...)*

*188. Recalling the overarching principle of equal pay for work of equal value, the Committee considers that persons covered by apprenticeship or **traineeship contracts** should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid. In this regard, the Committee recalls the resolution entitled “The youth employment crisis: A call to action”, adopted by the International Labour Conference at its 2012 session, to which it has already referred. In this resolution, the Conference emphasized that “Education, training and lifelong learning foster a virtuous cycle of improved employability, higher productivity, income growth and development.” The implementation of quality programmes to enhance skills, particularly for young people, is therefore to be welcomed. However, as the Conference also highlighted, “**such mechanisms can run the risk, in some cases, of being used as a way of obtaining cheap labour or replacing existing workers**”. In that context, **the Conference particularly encouraged governments to “[regulate and monitor] apprenticeship, internship and other work-experience schemes, including through certification, to ensure they allow for a real learning experience and do not replace regular workers”**.”*

f) Labour Inspection Convention No. 81⁴⁶

- 55 An effective labour inspection system is not only in general necessary to ensure that laws and regulations are respected, but it also plays a particular role in relation to the protection of young workers and the enforcement of their due rights. For instance, in particular situations where there is a risk that they are bound by contractual arrangements that have the effect of depriving them of the protection to which they are entitled (such as social protection and benefits, adequate wages, working time, etc.). The Convention provides amongst others for the following:

Article 3

1. The functions of the system of labour inspection shall be:

*(a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, **wages**, safety, health and welfare, the **employment of children and young***

⁴⁵ [ILO \(2014\) General Survey of the reports on the Minimum Wage Fixing Convention, 1970 \(No. 131\)](#), and the Minimum Wage Fixing Recommendation, 1970 (No. 135), in particular §§180-187.

⁴⁶ [Convention concerning Labour Inspection in Industry and Commerce, adopted Geneva, 30th ILC session](#) (11 Jul 1947); ratified by Belgium on 5 April 1957.

persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors; (...)

g) Other relevant material

- 56 Next to some policy documents which particularly and solely relate to (the need of a legal framework and rights for) apprenticeships⁴⁷, some other relevant ILO policy documents and studies refer more explicitly to interns/trainees. The following are thereby worth highlighting:

ILO report of the Director General on Decent Work (1999)

- 57 In this report the then ILO Director General, Mr. Somaravia, recalled in the framework of the ILO Decent Work agenda that:

Promoting rights at work

All those who work have rights at work. The ILO Constitution calls for the improvement of the "conditions of labour", whether organized or not, and wherever work might occur, whether in the formal or the informal economy, whether at home, in the community or in the voluntary sector.⁴⁸

ILC Resolution on "The youth employment crisis: A call for action" (2012)⁴⁹

- 58 In 2012, the International Labour Conference (ILC) reviewed the magnitude and characteristics of the youth employment crisis, exacerbated in many countries by the global economic and financial crisis. This led the ILC to adopt this Resolution which also entails several recommendations for governments in relation to apprenticeships, **trainee-and internships.**

Employability – Education, training and skills, and the school-to-work transition

24. (...)

- *The slow and insecure transition from school to work generates further difficulties for integration in the labour market as a result of lack of experience. In this context, **internships, apprenticeships and other work-experience schemes have increased as ways to obtain decent work. However, such mechanisms can run the risk, in some cases, of being used as a way of obtaining cheap labour or replacing existing workers** (...)*

The way forward

26. Governments should give serious consideration, as appropriate, to:

(...)

(e) **Regulating and monitoring apprenticeship, internship and other work-experience schemes, including through certification, to ensure they allow for a real learning experience and not replace regular workers.** (...)

27. **Social partners should** give serious consideration, as appropriate, to:

(...)

(b) **Engaging in collective bargaining on terms and conditions of work of interns and apprentices.** (...)

⁴⁷ E.g. [ILO and World Bank "Towards a model apprenticeship framework: A comparative analysis of national apprenticeship systems \(2012\); ILO Toolkit for Quality Apprenticeships – Volume I Guide for Policy Makers \(October 2017\).](#)

⁴⁸ [ILO, Decent Work, Report by the Director General](#), 87th Session, Geneva 1999.

⁴⁹ ILC Resolution and Conclusions of the 101st Session of the International Labour Conference, Geneva, 2012. Available in the annex to the ILO Guide to international labour standards and rights at work concerning young people, see footnote 53.

(d) Raising awareness about labour rights of young workers, **interns** and apprentices.
(...)

Labour market policies

(...)

29. There are important linkages between labour market policies, active and passive, and minimum wage policies, in countries with minimum wages, and it is important that each be taken into account and be mutually supportive in encouraging work opportunities for young people. (...)

ILO Contribution to the G20 Task Force on Employment (2012)

- 59 In May 2012, the G20 Labour and Employment Ministers concluded in Guadalajara, Mexico that countries should in their actions to promote youth employment amongst others: “...Promote, and where necessary, strengthen **quality apprenticeships** systems that ensure high level of instruction and **adequate remuneration and avoid taking advantage of lower salaries**” and “promote **internships, on-the-job training, apprenticeships and professional training**”.⁵⁰
- 60 The G20 Leaders’ Summit in Los Cabos, Mexico, in June 2012 endorsed these orientations. The B20 Task Force Recommendations at this summit called for “scaling up the number, **quality and image of internships and apprenticeships** for young people ...”.

4. Council of Europe

- 61 The Council of Europe (CoE) is characterised by two main human rights instruments, the European Convention on Human Rights (ECHR, see below 4.a) and the European Social Charter (ESC, see below 4.b) which is at the very core of this complaint. However, there are also other relevant documents (see below 4.c).

a) European Convention on Human Rights (and Protocol No. 12)

- 62 In its fundamental Article 14, the ECHR⁵¹ prohibits discrimination⁵² in the following terms:

Article 14 - Prohibition of discrimination

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

- 63 However, this protection requires that the right referred to falls in the ambit of one of the rights enshrined in the Convention or its Protocols.

⁵⁰ [G20 Labour and Employment Ministers’ Conclusions](#), Guadalajara, Mexico, 17-18 May 2012.

⁵¹ [European Convention on Human Rights](#), 4 November 1950.

⁵² See as joint publication by the ECtHR and the Fundamental Rights Agency of the EU (FRA) the ‘[Handbook](#) on European non-discrimination law’ developing the related ECHR/EU case-law and covering the context and background to discrimination categories and defences, the scope of the law and the grounds protected ([update](#), July 2010 – December 2011).

- 64 This lack of protection against discrimination in general has been closed by the adoption of Protocol No. 12,⁵³ but it still lacks ratification to a large degree.⁵⁴

Article 1 - General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

- 65 So far, no cases or ECtHR's rulings on remuneration for young workers, apprenticeships, trainees, interns, etc. are known.

b) European Social Charter (ESC)⁵⁵

- 66 The European Youth Forum has built its collective complaint primarily on articles 4§1 and 7§5 which state the following

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. **recognise the right of workers to remuneration such as will give them and their families a decent standard of living (...)**

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake (...)

5. **to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances**

- 67 However, and for further (interpretation) guidance in these observations, the ETUC would also like to refer to the following provisions of the Charter (and case law) which could also be relevant in relation to this complaint:

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake: (...)

- 2 *to protect effectively the **right of the worker to earn his living** in an occupation freely entered upon; (...)*

- 4 *to provide or promote appropriate **vocational guidance, training** and rehabilitation.*

⁵³ [Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms](#), ETS No.177, 04/11/2000.

⁵⁴ Up to date 18 Council of Europe Member States have ratified and 20 further Member States have signed Protocol No. 12. Out of the 15 Council of Europe Member States having ratified the Collective Complaints Procedure Protocol six have either ratified (i.e. Croatia, Cyprus, Finland, Netherlands, Portugal and Slovenia) or signed this Protocol (i.e. Belgium, Czech Republic, Greece, Ireland, Italy and Norway) whereas three Member States (i.e. Bulgaria, France and Sweden) have refrained from opting for one of the two alternatives.

⁵⁵ [European Social Charter \(Revised\)](#), 03.05.1996, European Treaty Series - No. 163.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake: (...)

*2 to provide or promote a **system of apprenticeship and other systematic arrangements for training** young boys and girls in their various employments; (...)*

5 to encourage the full utilisation of the facilities provided by appropriate measures such as: (...)

*d **ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.***

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**.*

Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake: (...)

2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

Compilation of case law (Digest 2008 and HUDOC-ESC database)

- 68 The 'Digest of the Case Law of the European Committee of Social Rights' (Digest 2008) as well as the HUDOC-ESC Database compile the main rights and principles deriving from the ECSR's case law based on Statements of Interpretation, Conclusions and/or Decisions.⁵⁶
- 69 Concerning the different articles mentioned above, the following relevant interpretations, conclusions and decisions could be found:

Article 1§2

Digest 2008

Article 1§2 covers three different issues:

- 1) the prohibition of all forms of discrimination in employment,*
- 2) the prohibition of forced or compulsory labour,*
- 3) the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.*

1. Prohibition of all forms of discrimination in employment

Under Article 1§2, legislation should prohibit any discrimination in employment inter alia on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.

Legislation should prohibit both direct and indirect discrimination.

Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued.

⁵⁶ The Digest and HUDOC-ESC database are available at <https://www.coe.int/en/web/turin-european-social-charter/case-law>

Whether a difference in treatment pursues a legitimate aim and is proportionate is assessed taking into account Article G of the Charter.

*Indirect discrimination arises when a measure or practice identical for everyone, without a legitimate aim disproportionately affects persons having a particular religion or belief, a particular disability, a **particular age**, a particular sexual orientation, particular political opinion, particular ethnic origin etc.*

Discrimination may also result from the failing to take positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

*The discriminatory acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with **employment conditions** in general (in particular, **remuneration, training**, promotion, transfer and dismissal or other detrimental action).*

Article 1§4

Digest 2008

Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued.

Whether a difference in treatment pursues a legitimate aim and is proportionate is assessed taking into account Article G of the Charter.

*Indirect discrimination arises when a measure or practice identical for everyone, without a legitimate aim disproportionately affects persons having a particular religion or belief, a particular disability, a **particular age**, a particular sexual orientation, particular political opinion, particular ethnic origin etc. Discrimination may also result from the failing to take positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.*

*The discriminatory acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, **remuneration, training**, promotion, transfer and dismissal or other detrimental action).*

Article 4§1

Digest 2008

Article 4§1 guarantees the right to a remuneration such as to ensure a decent standard of living.

To be considered fair within the meaning of Article 4§1, wages must in any event be above the poverty line in a given country i.e. 50% of the national average wage. In addition, a wage must not fall too far short of the national average wage. The threshold adopted by the Committee is 60%.

The concept of remuneration, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities.

The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry.

When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid.

A net wage which falls below the 60% threshold is not automatically considered unfair within the meaning of the Charter. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

However, a net wage which is less than half the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1.

Further interpretative statements

The Committee considered this right as being the essential corollary of the first three fundamental rights of the Social Charter. Indeed, the right to work, the right to just conditions would stand in danger of losing much of their meaning without an effective guarantee of the right to fair remuneration, which constitutes one of the basic economic objectives of human activity.

In the Committee's opinion, Contracting Parties who have accepted this article should take the necessary measures to guarantee, in all sectors of the economy, fair remuneration in the full social and economic sense of the term – i.e. remuneration which takes account of the basic economic, social and cultural needs of workers and their families, the special efforts expended by workers during overtime and the right to equal pay for equal work for both men and women workers. (...) (Conclusions I)

As interpreted by the Committee, this provision [article 4§1] which obliges Contracting States to take appropriate measures to ensure a decent standard of living for workers and their families, requires those states to make a continuous effort to achieve the objectives set by this provision of the Charter. This being so, account must be taken of the fact that the socio-economic status of the worker and his family changes and that his basic needs, which at first are centred on the provision of purely material basic necessities such as food and housing, subsequently move towards concerns of a more advanced and complex nature, such as educational facilities and cultural and social benefits.

One particular point in this first paragraph relates, moreover, to a question of great importance: methods of fixing wages when these are not provided for by collective agreements or legislation. While all workers are free to decide whether or not to join a union, the Committee noted that the first governmental reports quoted high percentages of non-union workers. For this reason, the Committee wondered whether these workers were not in fact placed at a disadvantage where the fixing of wage rates was concerned. It took the view, however, that existing wage procedures did have their effect on the determination of wage levels for non-union workers. The Committee was unable to express a precise opinion on the basis of the reports submitted and hoped that the second two-yearly reports would provide clarification on this point. (Conclusions II)

Recent Conclusions on Belgium

Conclusions 2014

The Committee takes note of the information contained in the report submitted by Belgium.

It deferred its previous conclusion (Conclusions 2010) pending the receipt of information concerning social transfers and benefits aimed at providing a decent standard of living and permitting participation in cultural, educational and social activities.

The report does not provide this information. It reiterates that the interprofessional or branch collective agreements provide for minimum wages which, under section 51 of the Collective Agreements and Joint Committees Act of 5 December 1968, cannot be less than those determined by Interprofessional Collective Agreement No. 43 of 2 May 1988 amending and co-ordinating Collective Labour Agreements No. 21 of 15 May 1975 and No. 23 of 25 July 1975 concerning the guaranteed monthly average minimum income (in version No. 43 undecies of 10 October 2008). This Interprofessional Collective Agreement laid down the following gross monthly average minimum wages on 1 December 2012: €1 501.82 for a worker having reached the age of 21; €1 541.67 for a worker aged 21 and a half with six months of service; and €1 559.38 for a worker aged 22 with 12 months of service. Version No. 43 undecies stipulates the following gross amounts on 1 August 2008: €1 387.49; €1 424.31; €1 440.67. The report points out that these average monthly wages may fluctuate temporarily or include bonuses, provided they are complied with on an annual basis.

The Committee notes that Collective Labour Agreement No. 50 of 29 October 1991 on the guaranteed monthly average minimum income for workers under the age of 21 provides for the payment of reduced wages in relation to the monthly average minimum wage applicable to workers having reached the age of 21: 82% (a gross amount of €1 231.49) for workers aged 18; 88% (a gross amount of €1 321.47) for workers aged 19; and 94% (a gross amount of €1 411.57) for workers aged 20.

According to Statistics Belgium data for 2012, the gross monthly average wage (public sector excluded) was €3 258, a national average which was, however, lower for some levels of qualification: €2 556 (unskilled workers or those having attended primary school) and €2 618 (workers having attended lower secondary school); some occupational categories: €2 430 (unskilled workers and employees) and € 2 408 (service personnel and shop workers); and some branches of activity: €2 385 (accommodation and catering) and € 2 920 (building industry).

According to EUROSTAT data for 2012, the average annual wage of single workers without children (table "earn_nt_net") (100% of an average worker) was €45 886.00 gross and €26 287.51 net; the annual minimum wage (table "earn_mw_cur-1") was €17 669.04 (monthly base amount €1 472.42) gross.

The Committee notes from the previous report that housing allowances can be awarded and that certain collective agreements provide for support or training measures for workers at risk in the labour market.

The Committee points out that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). It observes that in the instant case the minimum average wages laid down in Collective Agreement No.43 are lower than 60% of the net average wage, and the report provides no information showing that these wages are sufficient to ensure a decent standard of living in accordance with Article 4§1 of the Charter. It therefore considers that the situation in Belgium is not in conformity with Article 4§1 of the Charter in this respect.

The Committee also reiterates that the payment of a lower minimum wage to younger workers is not in breach of Article 4§1 of the Charter if it both furthers a legitimate aim and is proportionate to achieve that aim (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §60). It notes that in the present case the average minimum wages laid down in Collective Agreement No. 50 are lower than 50% of the average wage. It therefore considers that the average minimum wages paid to young workers under the age of 21 do not constitute a decent remuneration within the meaning of Article 4§1 of the Charter.

It repeats its request to obtain the gross amounts of minimum wages and the average wage and the amounts net of social contributions and of tax deductions. It also reiterates its request for information on the benefits and social transfers aimed at ensuring a decent standard of living and making it possible to participate in cultural, educational and social activities. It requests this information to be provided for a person living alone without a dependent child.

The Committee also asks that the next report include information on the gross and net wages paid to tenured civil servants and contractual staff in the civil service holding posts at levels C and D. It notes that some atypical jobs are not covered by Interprofessional Collective Agreement No. 43: student jobs; employment experience jobs; socio-professional integration jobs; "beroepsinlevingsovereenkomst"; and work/study jobs defined by the French Community Decree of 5 March 2009 approving the framework co-operation agreement on work/study programmes, concluded in Brussels on 24 October 2008 between the French Community, the Walloon Region and the French Community Commission. It also notes that persons working in a family business are excluded (Article 2, paragraph 1) from the scope of Collective Labour Agreement No. 50 and asks that the next report indicate the minimum wages paid in such situations. It requests that all the information be updated in line with Interprofessional Collective Agreements Nos. 43 duodecies and 43 terdecies of 28 March 2013 amending Interprofessional Collective Agreement No. 43 and with Collective Labour Agreement No. 50 bis of 28 March 2013 amending Collective Labour Agreement No. 50.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 4§1 of the Charter on the grounds that:

- *it has not been established that the average minimum wages suffice to ensure a decent standard of living;*
- *the average minimum wages of young workers do not suffice to ensure a decent standard of living.*

Article 7§5⁵⁷

Digest 2008

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

The "Fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).)

In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

Young workers

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

⁵⁷ Article 7 in its entirety, so including §5, forms part of the so-called hard-core articles of the Charter.

Apprentices

*Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers.⁵⁸ **The ECSR also stressed that making a distinction between the period of work, for which wages are paid, and the period of training, during which apprenticeships and trainees do not receive wages, is not in conformity with Article 7§5.***

Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.

Interpretative statements

*For the purposes of examining the compatibility of measures taken at national level with the requirements of Article 7, paragraph 5, the Committee adopted the following guidelines: **Where young workers are concerned, there is not really any basic reason for not paying the same wage for the same output.** However, it is not unthinkable that certain reductions may be justified, allowing for the fact that the needs of young workers are less than those of adults. Nevertheless, such reductions must not be too substantial and ought to be for a limited time. As to apprentices, the value of the training given ought obviously to be taken into account, but it appeared to the Committee that after two or three years' vocational training an apprentice was fitted to render services such that one could hardly go considering him as an apprentice (Conclusions II)*

*In examining the parts of the biennial reports concerning this paragraph, submitted by the Contracting Parties within the framework of the 4th cycle of supervision, the Committee pointed out that in order to be in a position to estimate in how far this provision was being applied, **it required statistics on the salary rates of young workers and apprentices in all sectors of the economy.** Although aware of the difficulties of compiling such data, the Committee could not but deplore that the biennial reports of the majority of states concerned merely contained partial information which often referred only to certain branches of industry and did not always cover apprentices. (Conclusions IV)*

(...) Moreover the committee wished to make it clear that the fact that the time spent by young persons on their vocational training "during the normal working hours" shall be treated as forming part of the working day, implies in particular

- *that such time be remunerated (by either the employer or by public funds as the case may be); and*
- *that it does not give rise to any form of recuperation which would result in the total number of working hours of the persons concerned being extended accordingly. (Conclusions V, Article 7§6)*

Recent Conclusions on Belgium (Article 7§5)

Conclusions 2011

The Committee takes note of the information contained in the report submitted by Belgium.

Young Workers

In its previous conclusion (Conclusions XVII-2), it found that the situation was in conformity with Article 7§5 of the 1961 Charter as far as young workers were concerned. Noting, however, that the report does not provide up-to-date data on the remuneration of young workers, the Committee asks for a complete description of the situation to be provided in the next report.

⁵⁸ Conclusions XVII-2, Belgium.

Apprentices

Under Article 7§5, the allowance paid to apprentices must be at least a third of an adult's starting or minimum wage at the beginning of their apprenticeship and reach two-thirds by the end (Conclusions 2006, Portugal). According to the report, the net minimum wage of a worker aged 21 or more living alone is €1 141.19 after deduction of advance tax payments. The minimum allowance paid to apprentices must therefore be €380.39 at the beginning of their apprenticeship and €760.79 at the end.

The Committee notes that vocational training is the responsibility of Belgium's federated entities. The amounts of the monthly allowances to be paid to apprentices under the various relevant pieces of legislation are minimum amounts which may be exceeded by employers. Added to these are family allowances, which are awarded subject to certain conditions, among them the apprentice's income, up to the age of 25. In 2010, basic family allowance for the first child was €85.07. The Committee notes that family allowances are paid to parents if the apprentice is still living with them or to the apprentice if he or she has a separate home. Lastly, the Committee notes that, in discussions before the Governmental Committee⁵⁹, the Belgian delegate said that apprentices are also awarded a holiday allowance amounting to 15.34% of the allowances paid in the previous year. Since the report does not mention this holiday allowance, the Committee asks whether it is still paid and under what conditions.

According to the report, in the French Community and the Brussels-Capital region, the minimum monthly apprenticeship allowance in 2009 was €229.09 for the first year of apprenticeship, €305.46 for the second year and €397.09 for the third. This meant that the total minimum amount paid to apprentices (apprenticeship allowance plus family allowance plus – if it still applies – holiday allowance) was €314.16 for the first year and €482.16 (or €529.02 if the holiday allowance was still paid) for the third year. These amounts all fall below the Charter's minimum requirement.

In the German-speaking community, the minimum monthly apprenticeship allowance in 2009 was €206.65 for the first year of apprenticeship and increased steadily to reach €468.20 in the fourth year. This meant that the total minimum amount paid to apprentices was €291.12 in the first year and €553.27 (or €625.09 if the holiday allowance was still paid) in the fourth year. These amounts all fall below the Charter's minimum requirement. It is asserted in the report that an increase in the minimum allowances would make it impossible to find employers who were willing to take on young people as apprentices. In support of this argument the report cites the example of the printing sector where the allowances were 50 to 90% of an adult wage but, for want of company directors willing to train young people at this price, the printing department at the German-speaking community's apprentice training center had to shut down.

In the Flemish community, the minimum monthly apprenticeship allowance in 2009 was €291.49 for apprentices under the age of 18 and €388.66 for apprentices aged 18 or over in the first year, €388.66 for apprentices under the age of 18 and €437.24 for those aged 18 or over in the second year and €480.47 for all ages in the third year. This meant that the total minimum amount paid to apprentices was €376.56 for apprentices under the age of 18 and €473.73 for those 18 or over in the first year and €565.54 (or €632.61 if the holiday allowance was still paid) in the third year. These amounts all fall below the Charter's minimum requirements except for that paid to apprentices aged 18 or over in their first year.

Conclusion

The Committee concludes that the situation in Belgium is not in conformity with Article 7§5 of the Charter on the ground that the allowances paid to apprentices are inadequate.

⁵⁹ See the report concerning Conclusions XVII-2 by the Governmental Committee of the European Social Charter, T-SG (2005) 24, p. 23.

Article 10§2

Digest 2008

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training.

They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

Interpretative statements

(...)

The Committee also felt it must define the meaning of the expression "system of apprenticeship" as used in Paragraph 2 of Article 10. It felt that the apprenticeship facilities referred to in the Charter should not be purely empirical or aim solely at manual training but should be conceived in broad terms and comprise full, co-ordinated and systematic training.

The Committee further agreed that the provisions of Paragraph 2 of Article 10 of the Charter should not be understood as preventing a State which had accepted it from making arrangements aimed at gradually replacing apprenticeship by more institutionalised vocational training. (Conclusions I)

When examining the biennial reports submitted as part of the fourth cycle of supervision, the Committee felt that the importance of vocational training should be emphasized at a time of economic recession and underlined that priority should be given to young persons, who are particularly hit by unemployment. (Conclusions IV, article 10)

*The Committee has previously held that such access also covers the granting of allowances to **trainees** and that the importance of financial assistance is "so great that the very existence of the right to vocational training may depend on it" (Conclusions VIII, p. 136).*

*(...) Consequently, paragraphs 1, 2 and 3 should not be taken to confer on states an obligation to provide financial assistance **for all trainees**. In the light of these considerations the Committee decided to treat all questions of financial assistance exclusively under Article 10 para. 4. (Conclusions XIV-2)*

Article 10§5

Digest 2008

While paragraphs 1 to 4 of Article 10 mainly deal with the right of access to vocational training and continuing vocational training, paragraph 5 focuses on complementary

measures which are nonetheless fundamental to make access effective in practice. The list is non-exhaustive.

(...)

b granting **financial assistance** in appropriate cases; Access to vocational training also covers the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it. All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy, are dealt with under paragraph 4. States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need and shall be adequate. It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.) Equal treatment with respect to financial assistance must be guaranteed to nonnationals on the basis of the conditions mentioned under paragraph 1. (...)

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous training. The term "during employment" means that the worker shall be currently under a working relationship with the employer requiring the training.

d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the **efficiency of apprenticeship and other training arrangements** for young workers, and the adequate protection of young workers generally. States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process.

Recent Conclusions on Belgium (article 10§5)

Conclusions 2016

(...)

Efficiency of training

The Committee asks what measures are taken to evaluate vocational training programmes for young workers, including the apprenticeships. In particular, it wishes to be informed of the participation of employers' and workers' organisations in the supervision process. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter. (...)

Article 14§2

Digest 2008

Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (nongovernmental organisations and other associations), private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, **Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order**

to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article E

Digest 2008

Background to Article E

Article E draws its inspiration from Article 14 of the European Convention on Human Rights. (692) It takes up the principle of non-discrimination which was set forth in the Preamble of the Social Charter of 1961 and incorporates it into the main body of the revised Charter. Purpose of Article E Article E prohibits all forms of discrimination. It confirms the right to non-discrimination which is established implicitly or explicitly by a large number of Charter provisions.

The insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the fundamental rights contained therein. Its function is to help secure the equal effective enjoyment of all the rights concerned regardless of the specific characteristics of certain persons or groups of persons.

It does not constitute an autonomous right which could in itself provide independent grounds for a complaint.

Prohibited grounds for discrimination

The prohibited grounds for discrimination are a combination of those listed in Article 14 of the European Convention on Human Rights and those in the Preamble to the 1961 Charter. The expression “or other status” means that this is not an exhaustive list. Moreover, the Committee has expressly stated that disability is a prohibited ground for discrimination although it is not listed as such in the article.

Scope of Article E

The principle of equality underlying article E implies not only that all people in the same situation must be treated equally but also that people in different situations must be treated differently. The Parties fail to respect the Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are different. In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.

Volunteers/voluntary work in the ECSR case law

- 70 In the framework of this complaint, it might also be worthwhile to refer to the case law of the ECSR in relation to volunteers and voluntary work. Indeed following a random check of the HUDOC-ESC database,⁶⁰ it shows that the ECSR has shown a particular concern on work/services performed by volunteers and/or voluntary organisations and this in particular in the framework of article 7§5 (fair pay for young workers; and which is an article referred to by YFJ in the complaint) as well as article 14§2 (Right to benefit from social welfare services – public participation in the establishment and maintenance of social services).

⁶⁰ Available at <https://www.coe.int/en/web/turin-european-social-charter/case-law> and by using the keyword “volunteer”.

- 71 In the framework of article 7§5, the ECSR has at least on one occasion inquired to what extent work as volunteer (and in particular the waiving of remuneration) would/could not lead to abuse. In relation to Croatia, the ECSR stated the following in Conclusions XXVII-1 (2006):

The Committee takes note of the information in the Croatian report.

*The report provides no information on the pay levels of young workers. However, it does refer to so-called **volunteer work**, where young workers can waive their remuneration in exchange for occupational experience with an employer, for example prior to a vocational examination (section 37 of the Labour Act). Draft legislation that would regulate volunteer work is currently under discussion. The Committee asks for information on this legislation in the next report. **It also asks what is the notion of volunteer work used in the Labour Act, and which are the guarantees to ensure that the waiving of remuneration does not lead to abuses.** (...)⁶¹*

- 72 In the following Conclusions XIX-4, the ECSR noted:

The Committee takes note of the information contained in the report submitted by Croatia.

Young workers

*(...) The report makes reference to the **new Act on Volunteer work** (Official Gazette 58/07) which sets out the rights and obligations of both volunteers and the organisers of such activities. The notion of volunteer work is the voluntary investment of time, effort, knowledge and skills, in services or activities for the welfare of others or the common good, without claiming remuneration or others forms of material gain. Volunteers who are minors may participate exclusively in activities which are appropriate to their age, and do not represent a risk to their physical, mental and moral development. (...)*

Despite the fact that the Croatian report does not provide information on the previous question of the ECSR on what the guarantees are to ensure that the waiving of remuneration does not lead to abuses, the ECSR did thus not come back on or repeat this particular question. In any case, by this question the ECSR demonstrate its awareness that voluntary work could be liable to abuses.

- 73 In the framework of Article 14§2, the ECSR mainly looked at the use of volunteers within voluntary organisations or private providers in the functioning and provision of social services (within or outside the framework of volunteer work acts. At several occasions, the ECSR has looked at this particular issue and expressed in particular concerns in relation to the quality and effectiveness of the social services, in particular when provided via private providers, and how this is in particular monitored and what kind of supervisory quality control mechanisms are in place.⁶² For the ECSR it is thus clear that State Parties must ensure that public and private services are properly coordinated and that in order to control the quality of services and to ensure the rights of users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory systems are required.⁶³

⁶¹ Conclusions XXVII-1, Croatia

⁶² See for instance Conclusions 2017, Estonia, Lithuania and Portugal; , Conclusions XXI-2 Denmark and Conclusions XX-2 Germany and Luxembourg. In the latter case, Luxembourg, was considered not in conformity on the ground that it had not been established that monitoring arrangements for guaranteeing the quality of the social services supplied by providers do exist.

⁶³ Conclusions 2005, Bulgaria, article 14§2.

c) Further pertinent material

74 Also the Council of Europe Committee of Ministers (CM) and Parliamentary Assembly (PACE) adopted some relevant positions/recommendations, some of which are listed below.

Committee of Ministers

75 As for the Committee of Ministers the following texts could be referred to:

Committee of Ministers Recommendation CM/Rec(2015)3 of 21 January 2015 on access of young people from disadvantaged neighbourhoods to social rights⁶⁴

76 This Recommendation suggests in its Annex amongst others the following measures on access to social rights for young people from disadvantaged neighbourhoods:

ii. Employment and occupation

(...) The following measures are effective in facilitating the transition of young people from disadvantaged neighbourhoods to sustainable and secure employment:

*- adapting apprenticeship, **training** and vocational programmes so that they are inclusive, linked to employment opportunities and have clearly defined paths of progression;(...*

*- ensuring (in particular through legislation) that **internships are a secure and legal form of employment** and a viable entry point into the labour market for young people starting out. Involving employers in the process can ensure better results; (...)*

Committee of Ministers Recommendation CM/Rec (2016)7 of 28 September 2016 on “Young people’s access to rights”⁶⁵

77 The Recommendation states in its annex:

3. Measures

In order to promote and facilitate young people’s access to rights, the governments of member States should undertake the following initiatives.

3.2. With regard to autonomy and social inclusion of young people:

(...)

*– facilitate smooth transitions from education to the labour market, **ensuring that internships** and apprenticeships, acknowledged as important steps in the transition process, **are quality experiences** that have a clear educational value **and are decently remunerated and regulated**; (...)*

*– **facilitate young people’s access to social rights by strengthening the implementation of the European Social Charter’s provisions**;*

(...)

3.6. With regard to access to information and protection:

*– provide effective mechanisms for informing and advising young people of their rights and **the possibilities for seeking redress if these rights are violated or withheld**. Such mechanisms must be accessible to all groups of young people, especially those who are at risk of being discriminated against or socially excluded and who have fewer opportunities. In addition, legal advice and representation should be provided to all young people who cannot afford it;*

⁶⁴ [Committee of Ministers Recommendation CM/Rec\(2015\)3 of 21 January 2015 on access of young people from disadvantaged neighbourhoods to social rights.](#)

⁶⁵ [Committee of Ministers Recommendation CM/Rec \(2016\)7 of 28 September 2016 on “Young people’s access to rights”.](#)

- establish, if it does not yet exist, an appropriate and independent human rights institution (in line with the Paris Principles), such as an ombudsperson, to ensure that young people's access to rights is respected and protected;
- **ratify the Revised European Social Charter and the Additional Protocol providing for a system of collective complaints** (ETS No. 158);

78 The explanatory memorandum to the Recommendation is quite clear on the reasons behind. As for the particular aspect of **internships** it amongst others highlights the following:

12. (...) Currently, within the Council of Europe there are several legal tools available with regard to access to youth rights but they are scattered among many different themes. There are also **significant gaps arising from more recent developments (for example the increased use of internships)** as an important step in the transition process from education to work), which the recommendation aims to address. (...)

b. Autonomy and social inclusion of young people

40. Young people are finding the transition from dependency to autonomy increasingly precarious. The transition from education to employment is getting more and more difficult for young people to navigate. The rising costs of participating in higher education or further training, low pay and discrimination against young people in the labour market mean that many young people start off their autonomous lives with huge debts. Access to credit, housing and income support in many member States is often more difficult for young people. Member States will want to explore the use of income support schemes, housing facilities and financing systems for young people. There are noteworthy examples of what some European governments are doing in this regard, in partnership with youth organisations, under their plans to implement the European Commission's Youth Guarantee.

41. With the **growth in the use of unpaid internships and low-paid apprenticeships** as first steps to accessing the labour market, young people who for one reason or another do not have available to them financial support from their families face particular challenges. **Internships** provide an important step in the transition process for some, **but they should be properly compensated to protect equal opportunities and to support young people's right to autonomy and to a decent standard of living. Internships can be exploitative, with too many young people moving between several badly paid or unpaid internships. There is mounting evidence that internships outside formal education are frequently replacing quality employment for young people. Ensuring young people have full access to rights in this area requires improved protection from bad practice such as the perpetuation of internships, as well as the application of quality standards and a system of certification to support the recognition of knowledge and skills acquired through internships and apprenticeships.**

42. **Young people face considerable discrimination in the labour market and are at risk of exploitation and denial of workers' collective rights by virtue of their age and what is judged to be a lack of experience. Low pay and zero hour contracts are now an all too common feature of labour markets across Europe with young people particularly affected.** Denial of welfare credit or housing support because of age exacerbates the problems some young people are facing as they try to earn enough to support a decent standard of living.

Parliamentary Assembly

79 The two following PACE texts could be referred to:

PACE Resolution 1855 (2012) of 16 June 2012 on “The young generation sacrificed: social, economic and political implications of the financial crisis”⁶⁶

80 To avoid Europe is/was producing a “lost generation” the PACE amongst others recommended the following:

6. Moreover, the Assembly urges the Council of Europe member States:
- 6.1. regarding youth policies, to: (...)
- 6.1.2. **ensure that young people have full access to all their human (including social) rights;**
- 6.1.3. **ensure adequate remuneration and working conditions for young workers;**
- 6.2. regarding youth employability and skills, as well as the transition from studies to work and between jobs, to: (...)
- 6.2.11. **endorse and promote the implementation of the European Quality Charter on Internships and Apprenticeships in the national context;**
- 6.3. regarding social protection, to: (...)
- 6.3.2. *ensure that young people with special needs, notably those with disabilities, can access training and employment adapted to their capacities, be adequately remunerated and become fully integrated in society;(…)*
- 6.3.5. *enhance public social security coverage and encourage a greater use of private pension schemes for young workers in temporary, low-paid or otherwise precarious employment;*
- 6.3.6. *ensure that first-time jobseekers have access to social benefits;*
- 6.3.7. **promote the establishment of a basic statute for young trainees in all member States, defining a set of minimum guarantees for working traineeships based on a written contract, social security contributions and, at least, the national minimum wage for traineeships of more than three months;**

81 In the accompanying Report (and explanatory memorandum), the following argumentations can be found for these recommendations:⁶⁷

4. *Building a better future together: how could the main stakeholders do more?*

4.3. *Need for coherent action to improve access to socio-economic rights*
52. *In its reply to Parliamentary Assembly [Recommendation 1978 \(2011\)](#) “Towards a European framework convention on youth rights”, the Committee of Ministers considered that the **current Council of Europe structures, policies, programmes and legal tools provided sufficient coverage of youth rights and that the priority should be given to the more effective implementation of existing instruments**, such as through the systematic encouragement of policies to enhance access of young people to their rights.*

53. *The rapporteur recalls that, in addition to the fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5), the revised European Social Charter (ETS No. 163) contains a series of provisions relating to youth and youth rights, notably Articles 7 and 17 (right of children and young persons to social, legal and economic protection), 11 (right to protection of health) and 16 (right of the family to social, legal and economic protection). Moreover, various articles cover the rights of young people to education and training (Articles 7, 9, 10 and 17), **employment (Articles 1-4, 7, etc.)** and housing (Articles 16 and 31). As the crisis-induced austerity measures are escalating inequalities in society and threatening the ability of young people to exercise their rights, it is essential that member States fully adhere to the Charter and uphold their commitments towards the young generation.*

⁶⁶ [PACE Resolution 1855 \(2012\) of 16 June 2012 on “The young generation sacrificed: social, economic and political implications of the financial crisis”](#).

⁶⁷ [PACE Report of 8 June 2012 on “the young generation sacrificed: social, economic and political implications of the financial crisis](#), DOC 12951.

*PACE Recommendation 1978 (2011) of 24 June 2011 on “Towards a European framework convention on youth rights”*⁶⁸

6. Many of the rights to which young people are entitled are covered by existing legislation, but a stronger legal basis allowing for systematic implementation and monitoring is needed to protect them. It is necessary to find direct, rapid and effective solutions. Young people all over Europe are expecting policy makers to produce concrete visible results, a change of reality that will make all the difference.

7. (...) Therefore, the Assembly adopts the principles in the appendix to the present recommendation and calls on member states to:

7.1. take measures to facilitate young people’s access to fundamental rights as enshrined in the European Convention on Human Rights (ETS No. 5) and the revised European Social Charter (ETS No. 163), in particular opposing multiple discrimination against young people

Appendix – Ten principles for a European framework convention on youth rights

3. Employment

*Employment is the primary means of ensuring young people’s autonomy. Across Europe, the highest unemployment rates are among young people. Member states should take concrete measures to facilitate the entry of young people into employment (active employment policies and tax and financial incentives to encourage companies to recruit young people into agreed training programmes with on-the-job certification), thereby facilitating the transition between education establishments and the labour market and **preventing the excessive use of unpaid work experience or low paid employment.** Policies should aim to encourage businesses to assist young people’s transition from insecure contracts to stable jobs. National systems and bilateral agreements should ensure that gaps in social security protection systems and problems with labour market integration are identified and closed. (...)*

5. European Union (EU)

82 Both in EU primary and secondary law the protection of children and young persons have received an important attention.

a) EU primary law

83 Protection of children and young persons at work has been anchored in the social policy chapter of the EU Treaties on the bases of both the 1961 Charter and the 1989 Community Charter of Fundamental Social Rights of Workers. This is reflected in the Treaty on the Functioning of the European Union⁶⁹:

TITLE X
SOCIAL POLICY

Article 151

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

⁶⁸ [PACE Recommendation 1978 \(2011\) of 24 June 2011 on “Towards a European framework convention on youth rights”](#)

⁶⁹ [Consolidated version of the Treaty on the Functioning of the European Union](#), OJ C 326, 26.10.2012, p. 47–390

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy. (...)

- 84 Also, the **Charter of Fundamental Rights of the European Union (CFREU)**⁷⁰ provides several articles safeguarding in particular equality/non-discrimination, protection of children and young persons at work and fair working conditions. The 1961 and 1996 Council of Europe European Social Charters (and in particular article 7 and the related ECSR case law), have been the main source of inspiration for several articles of the CFREU, in particular Article 32 CFREU on the prohibition of child labour and protection of young people at work.

CHAPTER III - EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, **age** or sexual orientation shall be prohibited.*

2. *Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*

Article 24

The rights of the child

1. *Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*

2. *In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. (...)*

CHAPTER IV - SOLIDARITY

Article 31

Fair and just working conditions

1. *Every worker has the right to working conditions which respect his or her health, safety and dignity.*

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

⁷⁰ [Charter of Fundamental Rights of the European Union](#), OJ C 364, 18.12.2000.

b) European Pillar of Social Rights

85 Although not (yet fully) part of EU primary law, attention should be given here as well to the recently proclaimed **European Pillar of Social Rights**⁷¹. The Pillar of Social Rights is about delivering new and more effective rights for citizens. It builds upon 20 key principles, structured around three categories:

- Equal opportunities and access to the labour market
- **Fair working conditions**
- Social protection and inclusion

86 The Pillar provides amongst others for the following:

Chapter I: Equal opportunities and access to the labour market

1. Education, training and life-long learning

Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market. (...)

3. Equal opportunities

*Regardless of gender, racial or ethnic origin, religion or belief, disability, **age** or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.*

4. Active support to employment

Everyone has the right to timely and tailor-made assistance to improve employment or self-employment prospects. This includes the right to receive support for job search, training and re-qualification. Everyone has the right to transfer social protection and training entitlements during professional transitions.

Young people have the right to continued education, apprenticeship, **traineeship** or a job offer of good standing **within 4 months of becoming unemployed or leaving education.**

People unemployed have the right to personalised, continuous and consistent support. The long-term unemployed have the right to an in-depth individual assessment at the latest at 18 months of unemployment.

Chapter II: Fair working conditions

6. Wages

Workers have the right to fair wages that provide for a decent standard of living. Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.

All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.

⁷¹ For more information on the European Pillar of Social Rights, see https://ec.europa.eu/commission/priorities/deeper-and-fairer-economic-and-monetary-union/european-pillar-social-rights_en

c) Secondary law

- 87 Also in secondary law, several -in particular Directives- provide protection in the area of non-discrimination, young persons at work, precarious work, etc.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁷²

- 88 The purpose of this Directive is to lay down a general framework for combating direct and indirect discrimination on the grounds of religion or belief, disability, **age** or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. (Article 1)

The Directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to: (...)

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
*(c) employment and working conditions, including dismissals **and pay**; (...)* (Article 3)

However, Article 6 allows for a justification of differences of treatment on grounds of age and Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection; (...) (Article 6)

- 89 As for **enforcement of the rights** in the Directive, Article 9 on “Defence of rights” provides that:

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. 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 complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work⁷³

- 90 The overall purpose of the Directive is stipulated in article 1 “Purpose” which stipulates amongst others that “They [Member States] shall ensure that young people are

⁷² [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#), OJ L 303, 02.12.2000, p. 16-22.

⁷³ [Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work](#), OJ 1994 L 216, p. 12.

protected against economic exploitation and against any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.”

- 91 The Directive also defines that “light work” under certain conditions and in certain circumstances is allowed but it should not be to be harmful to their attendance at school, their participation in vocational guidance or training programmes approved by the competent authority or their capacity to benefit from the instruction received;” (Article 3(d)(ii) on Definitions).
- 92 Under Article 4 “Prohibition of work by children” and taking into account the objectives set out in Article 1, Member States may make legislative or regulatory provision for the prohibition of work by children not to apply to children of at least 14 years of age working under a combined work/training scheme or an in-plant work-experience scheme, provided that such work is done in accordance with the conditions laid down by the competent authority;” (Article 4(2)(c)).
- 93 Furthermore, the preamble highlights that “whereas time spent on training by young persons working under a theoretical and/or practical combined work/training scheme or an in-plant work-experience should be counted as working time.”

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP⁷⁴

- 94 One of the two main purposes of this Directive is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and this in particular in relation to employment conditions of which remuneration is of course a key component.
- 95 The Directive applies to all fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State. However, Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

- (a) initial vocational training relationships and apprenticeship schemes;
(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme. (Article 2§2)

Other Council Directives referring/applying to trainees/apprenticeships/volunteers

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work⁷⁵

- 96 Article 3(a) of that Directive provides:

‘For the purposes of this Directive, the following terms shall have the following meanings:

⁷⁴ [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP](#), OJ L 175, 10.7.1999, p. 43–48.

⁷⁵ [Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work](#), OJ 1989 L 183, p. 1.

- (a) worker: any person employed by an employer, including **trainees** and apprentices but excluding domestic servants.'

Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities⁷⁶

97 Article 3 of Directive 2002/15 provides:

'For the purposes of this Directive: (...)

- (d) *"mobile worker" shall mean any worker forming part of the travelling staff, including **trainees** and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;*

Article 6

Rest periods

*For the purposes of this Directive, apprentices and **trainees** shall be covered by the same provisions on rest time as other mobile workers in pursuance of Regulation (EEC) No 3820/85 or, failing that, of the AETR Agreement.*

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service⁷⁷

[Recitals]

(9) *The new Community rules are based on definitions of student, **trainee**, educational establishment and **volunteer** already in use in Community law, in particular in the various Community programmes to promote the mobility of the relevant persons (Socrates, European Voluntary Service etc.).*

Article 2

Definitions

For the purposes of this Directive: (...)

(d) **'unremunerated trainee'** means a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with its national legislation; (...)

(f) **'voluntary service scheme'** means a programme of activities of practical solidarity, based on a State or a Community scheme, pursuing objectives of general interest; (...)

Article 10

Specific conditions for unremunerated trainees

Subject to Article 3, a third-country national who applies to be admitted as an unremunerated trainee shall, in addition to the general conditions stipulated in Article 6:

(a) *have signed a training agreement, approved if need be by the relevant authority in the Member State concerned in accordance with its national legislation or administrative practice, for an unremunerated placement with a public- or private-sector enterprise or vocational training establishment recognised by the Member State in accordance with its national legislation or administrative practice;*

(b) *provide the evidence requested by a Member State that during his/her stay he/she will have sufficient resources to cover his/her subsistence, training and return travel costs. The Member States shall make public the minimum monthly resources*

⁷⁶ [Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities](#), OJ 2002 L 80, p. 35.

⁷⁷ [Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service](#), OJ L 375, 23.12.2004, p. 12–18.

required for the purpose of this provision, without prejudice to individual examination of each case;

(c) receive, if the Member State so requires, basic language training so as to acquire the knowledge needed for the purposes of the placement.

Article 11

Specific conditions for volunteers

Subject to Article 3, a third-country national who applies to be admitted to a voluntary service scheme shall, in addition to the general conditions stipulated in Article 6:

(a) not be below the minimum age nor above the maximum age set by the Member State concerned;

(b) produce an agreement with the organisation responsible in the Member State concerned for the voluntary service scheme in which he/she is participating, giving a description of tasks, the conditions in which he/she is supervised in the performance of those tasks, his/her working hours, the resources available to cover his travel, subsistence, accommodation costs and pocket money throughout his/her stay and, if appropriate, the training he will receive to help him/her perform his/her service;

(c) provide evidence that the organisation responsible for the voluntary service scheme in which he/she is participating has subscribed a third-party insurance policy and accepts full responsibility for him/her throughout his/her stay, in particular as regards his/her subsistence, healthcare and return travel costs;

(d) and, if the host Member State specifically requires it, receive a basic introduction to the language, history and political and social structures of that Member State.

d) Case law of the Court of Justice of the European Union (CJEU)

98 A random search through the case law of the CJEU⁷⁸, shows that the CJEU has not (yet) expressed itself in a substantive way on the particular situation (including rights and obligations) of trainees, interns and/or volunteers.

99 However, one important judgement that keeps up reappearing in those searches is however the “Balkaya”-judgement.⁷⁹ One of the questions referred was:

“Is applicable EU law, in particular Article 1(1)(a) of Directive 98/59, to be interpreted as making it mandatory also to regard as workers, in the calculation provided for by that provision of the number of workers employed, persons who, while not receiving remuneration from the employer, perform real work within the undertaking, with financial support from, and the recognition of, the public authority responsible for the promotion of employment, in order to acquire or improve skills or to complete vocational training (“trainees”), or are Member States permitted to lay down national legislative provisions or practices in that regard?”

100 For its final judgement, the CJEU argued based on its (longstanding) case law in relation to the concept of worker in EU law and stated in particular that

50 In that regard, it must be recalled, in the first place, that it is clear from the Court’s well-established case-law that the concept of ‘worker’ in EU law extends to a person who serves a traineeship or periods of apprenticeship in an occupation that may be regarded as practical preparation related to the actual pursuit of the occupation in question, provided that the periods are served under the conditions of genuine and effective activity as an employed person, for and under the direction of an employer. The Court has stated that that conclusion cannot be invalidated by the fact that the productivity of the person concerned is low, that he does not carry out full duties

⁷⁸ Via the CJEU website (https://curia.europa.eu/jcms/jcms/j_6/en/) and more in particular by searching on key words like “trainees(hips), interns(hips), volunteer”.

⁷⁹ [Case C-229/14, Ender Balkaya v. Kiesel Abbruch-und Recycling Technik GmbH](#), judgement of 9 July 2015.

and that, accordingly, he works only a small number of hours per week and thus receives limited remuneration (see, to that effect, *inter alia*, judgments in *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraphs 19 to 21; *Bernini*, C-3/90, EU:C:1992:89, paragraphs 15 and 16; *Kurz*, C-188/00, EU:C:2002:694, paragraphs 33 and 34, and *Kranemann*, C-109/04, EU:C:2005:187, paragraph 13).

51 In the second place, it is also clear from the Court's case-law that neither the legal context of the employment relationship under national law, in the framework of which the vocational training or internship is carried out, nor the origin of the funds from which the person concerned is remunerated and, in particular, in the present case, the funding of that remuneration through public grants, can have any consequence in regard to whether or not the person is to be regarded as a worker (see, to that effect, *inter alia*, judgments in *Bettray*, 344/87, EU:C:1989:226, paragraphs 15 and 16; *Birden*, C-1/97, EU:C:1998:568, paragraph 28, and *Kurz*, C-188/00, EU:C:2002:694, point 34).

101 The CJEU thus considered that

*“Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it is necessary to regard as a worker for the purposes of that provision a person, such as the one in question in the main proceedings, who, while not receiving remuneration from his employer, performs real work within the undertaking in the context of a traineeship — with financial support from, and the recognition of, the public authority responsible for the promotion of employment — in order to acquire or improve skills or complete vocational training.”*⁸⁰

e) Other relevant EU texts

102 Again, next to some EU policy documents solely dealing with apprenticeships⁸¹, there are also several other EU policy/non-legislative texts dealing/referring to trainee/internships. Below a few are listed in a non-exhaustive way.

Council

Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships

103 Various studies and surveys, including the d Eurobarometer survey on traineeships (2013)⁸² and a European Commission study on a comprehensive overview on traineeship arrangements in Member States of 2012⁸³ confirmed increasingly concerns voiced by stakeholders about the quality of traineeships and the fact that traineeships were misusing young people as cheap or free labour, in particular when no educational or training institution is directly responsible/involved.

104 As a European response to these concerns, the Commission proposed a [Council Recommendation on a Quality Framework for Traineeships \(QFT\)](#) in December 2013,

⁸⁰ On this and more generally on the concept of worker in EU law, see Risak, M. and Dullinger, T. “The concept of ‘worker’ in the EU law. Status quo and potential for changes”, Study on behalf of the Vienna Chamber of Labour in the framework of a joint project by AK, OGB, ETUC and ETUI; forthcoming by May 2017 as ETUI (e.a.) publication.

⁸¹ E.g. [Council Declaration on the European Alliance for Apprenticeships of 15 October 2013; European Commission proposal for European Framework for Quality and Effective Apprenticeships \(2017\)](#).

⁸² [European Commission \(2013\), The Experiences of traineeships in the EU, Eurobarometer Flash 378](#), November 2013.

⁸³ [European Commission \(2012\) Study on a comprehensive overview on traineeship arrangements in Member States. Final Synthesis Report](#).

after a two-stage social partner [consultation](#)⁸⁴ that did not result in a social partner agreement. The [Council adopted in March 2014 its final Recommendation](#), based on the Commission's proposal.⁸⁵

- 105 At the launch of the Recommendation, then European Commissioner for Employment, Social Affairs and Inclusion, László Andor, was clear “

“Traineeships are essential to ensure smooth school to work transitions. However, they are of value to young people only if they offer quality learning content and safe working conditions. Trainees should not be used as a free or cheap source of labour; they should not replace permanent workers.”⁸⁶

- 106 To note however, is that ETUC in an initial reaction considered that

*“For the European Trade Union Confederation (ETUC), the **proposal for a “Council Recommendation” would not provide a solution to the precarious situation of certain trainees in the EU. Alas, the compromise reached last Friday, 28 February in COREPER (the Committee of Permanent Representatives in charge of preparing the work of the Council) weakens the Commission’s proposal further. (...) COREPER confirmed a non-binding recommendation referring to non-binding principles(...).”***⁸⁷

- 107 The QFT proposes **guidelines for traineeships outside formal education** to provide a **high-quality learning content** and **fair working conditions** so that traineeships support education-to-work transitions and increase the employability of trainees.

- 108 As for working conditions applicable to trainees, the QFT provides the following:

6. *Ensure that the rights and working conditions of trainees under applicable EU and national law, including limits to maximum weekly working time, minimum daily and weekly rest periods and, where applicable, minimum holiday entitlements, are respected;*
7. *Encourage traineeship providers to clarify whether they provide coverage in terms of health and accident insurance as well as sick leave;*
8. *Require that the traineeship agreement clarifies whether an allowance or compensation is applicable, and if applicable, its amount;*

- 109 A Commission Staff Working Document of October 2016 looks at the implementation of the QFT almost three years after adoption of the Recommendation and found that although, a lot of progress was made, in several countries (including Belgium) several challenges remained in aligning the national framework with the QFT.⁸⁸

⁸⁴ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a Quality Framework on Traineeships Second-stage consultation of the social partners at European level under Article 154 TFEU](#), COM(2012) 0728 final.

⁸⁵ [Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships](#), OJ C 88, 27.3.2014, p. 1–4.

⁸⁶ [European Commission Press Release of 10 March 2014](#).

⁸⁷ [ETUC Press release, “Quality Framework for Traineeships: deceiving compromise reached at COREPER”](#), 3 March 2014.

⁸⁸ [Commission Staff Working Document, Applying the Quality Framework for Traineeships Accompanying the document Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions The Youth Guarantee and the Youth Employment Initiative three years on](#), SWD(2016) 324 final, Strasbourg, 4.10.2016.

European Parliament

*European Parliament Resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status*⁸⁹

110 In this important Resolution, the European Parliament notes and recommends amongst others the following in relation to internships.

C. whereas employers seem to be using traineeships and internships more frequently to replace regular employment, thereby exploiting the obstacles to entering the labour market faced by young people; whereas such forms of exploitation of young people need to be addressed and effectively eradicated by Member States, (...)

L. whereas decent work shifts young people from social dependence to self-sufficiency, helps them escape poverty and enables them to make an active contribution to society, both economically and socially; whereas legislation in some Member States introduces age discrimination through restrictions to young people's rights that are solely based on age, (...) all of which, although intended to get young people into work, are unacceptable and can be counterproductive preventing young people from starting an economically independent life, especially in times of crisis with high youth unemployment; (...)

1. Urges the Commission and the Member States to take a rights-based approach to youth and employment. The qualitative aspect of decent work for young people must not be compromised, and the core labour standards and other standards related to the quality of work, such as working time, the minimum wage, social security, and occupational health and safety, must be central considerations in the efforts that are made; (...)

*Creation of more and better jobs and labour market inclusion
(...)*

*11. Calls on the Member States to establish inclusive and targeted labour-market policies that secure the respectful inclusion and meaningful occupation of young people, e.g. through the setting-up of inspirational networks, **trainee arrangements that include financial aid enabling the trainee to relocate and live close to the place where the traineeship is held**, international career centres and youth centres for individual guidance covering particularly matters such as collective organisation and **knowledge of legal aspects relating to their traineeship**;(...)*

Education and transition from education to employment

*(...) 21. **Calls for better and secured internships**; calls on the Commission and the Council, following the commitment given in Communication COM(2007)0498 'to propose an initiative for a European quality charter on internships', to set up a European Quality Charter on Internships setting out minimum standards for internships to ensure their educational value and avoid exploitation, taking into account that internships form part of education and must not replace actual jobs. These minimum standards should include an outline of the job description or qualifications to be acquired, a time limit on internships, a minimum allowance based on standard-of-living costs in the place where the internship is performed that comply with national traditions, insurance in the area of their work, social security benefits in line with local standards and a clear connection to the educational programme in question;*

*22. **Calls on the Commission to provide statistics on internships** in each Member State which include:*

- number of internships*
- length of internships*
- social benefits for interns*
- allowances paid to interns*

⁸⁹ [European Parliament Resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status.](#)

– age groups of interns
and to produce a comparative study on the different internship schemes existing in the EU Member States;

23. Calls for each Member State to monitor compliance;

24. Calls on the Member States to establish a European system for the certification and recognition of knowledge and skills acquired through apprenticeships and traineeships, which will help to increase young workforce mobility;

25. Calls for young people to be protected from those employers – in the public and private sector – who, through work experience, apprenticeship and traineeship schemes, are able to cover their essential and basic needs at little or no cost, exploiting the willingness of young people to learn without any future prospect of becoming fully established as part of their workforce; (...)

29. Urges the Member States to provide young people in traineeship, work experience or apprenticeship schemes with full workplace and social security entitlements, subsidising where appropriate a part of their contributions;

30. Calls on the Commission and the Member States to incorporate apprenticeship, traineeship and work experience schemes into the social security systems; (...)

Adapting to the needs of the individual and the labour market

43. Appeals to the Member States to include all four flexicurity components in the national designs for youth employment strategies, namely:

(...)

f. **effective monitoring mechanisms to guarantee labour rights;**

47. Calls on the Commission and the Member States to do more to ensure that the Employment Equality Directive, which outlaws discrimination on the grounds of age in employment, has been transposed correctly and is being implemented effectively; believes that much more must be done to ensure that both employees and employers are aware of their rights and obligations under this legislation;

Disadvantages and discrimination

53. Calls on the Commission and the Member States to ensure that national legislation affecting youth, and in particularly national legislation based on the Employment Equality Directive (2000/78/EC), is not used to discriminate against young employees' access to social benefits; believes that much more must be done to ensure that both employees and employers are aware of their rights and obligations under this legislation;(...)

European Parliament Youth Intergroup “Manifesto for Fair internships” (2017)⁹⁰

111 In 2017, the European Parliament Youth Intergroup found in 2017 more than 130 members of European Parliament willing to sign their “Manifesto for Fair internships”. The Manifesto calls in particular on:

- **all EU institutions to take the necessary steps to provide quality and well remunerated internships to ALL its interns and to stop offering unpaid internships altogether and avoid having a parallel system of less regulated internships aside from their regular internship program.**

- **the European Ombudsman to continue investigating the situation of unpaid interns in EU institutions (see below paragraphs 117-118)**

⁹⁰ [European Parliament Youth Intergroup “Manifesto for Fair internships” \(2017\)](#)

European Commission

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” (2007)⁹¹

112 This Communication provides amongst others the following:

3. YOUTH AND EMPLOYMENT: A CHALLENGE FOR EUROPE

3.2. Improving young people's transitions: flexicurity

*(...) Establishing early links between education and the labour market is essential to familiarise young people with the world of work. Internships, when linked to the training or study curriculum, are an important instrument in this respect, **However, internships with little or no pay and limited educational added-value should be avoided.** Member States should ensure that internships are properly defined.*

5. ACTIVE YOUNG CITIZENS

5.2. Voluntary activities

*Voluntary activities provide a valuable non-formal learning experience, which enables young people to acquire skills and facilitate their transition from education to employment. Through volunteering, young people develop values such as mutual understanding, dialogue and solidarity. **However, it must be pointed out that voluntary activities are not a substitute for paid employment.** (...)*

Obstacles such as visa difficulties and lack of insurance should be eliminated, and the linkage to entitlements to social security provisions, including unemployment benefits, needs to be improved. Cross-sectoral cooperation between different authorities and appropriate legal frameworks are necessary (...)

Digital Traineeships Opportunity

113 End 2017, the Commission launched “The Digital Opportunity traineeship” initiative which will provide cross-border traineeships for up to 6,000 students and recent graduates between 2018 and 2020. It is mainly intended to strengthen ICT specific skills, in fields like cybersecurity, big data, etc. The first traineeships will start in June 2018 and the interns will receive an allowance of around 500 EUR per month, for an average of five months.⁹²

International Interns Day

114 On 10 November 2017, the third edition of the International Interns Day was held, and which is an initiative organized by 20 NGOs, including the complainant EYF, and universities from 8 countries. Each year the initiative is however also endorsed by high-level personalities in particular from the European Commission (e.g. current and former European Commissioners for Employment and Social Affairs) and members of the European Parliament.

⁹¹ [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” COM\(2007\) 498 final, Brussels 5.9.2007.](#)

⁹² For more information on this initiative see: <https://ec.europa.eu/digital-single-market/en/digital-opportunity-traineeships-boosting-digital-skills-job>.

115 Their overall message on internships are clear: they should be of quality, paid and the exploitation of interns as cheap labour needs to end!⁹³

European Ombudsman

116 Following a complaint of a young trainee, the European Ombudsman recommended in February 2017 that the European External Action Service (EEAS) should pay all of its trainees an appropriate allowance to allow greater access for young people of all backgrounds and not just to those who can afford it.⁹⁴ At that time the EEAS had almost 800 trainees in all its delegations around the world whose full-time services are not remunerated.

117 In essence, the European Ombudsman considered **unpaid traineeships** as “**discriminatory**” towards those coming from a less privileged social background (para. 5), “**may perpetuate social exclusion**” (para. 7) and “**constitutes maladministration**” (para. 10).

B. International law and material on voluntary work/volunteering

118 As this complaint looks at the particular situation of unpaid internships under the “Volunteer Rights Act”, this section provides some references to international and European material on “volunteer work” or “volunteering” and in particular the (very) close (and sensitive) link to normal “paid work”.

119 In the framework of the European Year of Volunteering in 2011, the **European Commission** (DG Education and Culture) commissioned a **report on “Volunteering in the European Union”** the results of which were published in 2010.⁹⁵ The report reveals some interesting challenges, problems and solutions in relation “volunteer work” in general and the particular thin borderline with “paid work” (or how to avoid it). The report thus indirectly demonstrates that given the problems and challenges this borderline this could thus easily be crossed and lead to abuse (which is often not witnessed due to lack of monitoring).

120 The report **reveals** amongst others the following:

- At least in the decade before the economic crisis, there was a clear upward trend of voluntary work throughout the EU;
- There is no uniform way of regulating volunteering and in a majority of Member States and a large number of countries do not have a legal framework where volunteering is regulated by or implicit within other existing general laws;
- Depending on the country, the economic value of volunteering ranged from 0.1% to almost 5% of GDP; for Belgium it was estimated to be between 1 and 2%;
- Volunteer work can provide important employment training and a pathway into the labour force/market; it also makes a vital contribution to vocational education and training

⁹³ For more information on activities, endorsement and organisers see: <http://www.internsday.org/>.

⁹⁴ All documents related to the complaint and recommendation can be found at <https://www.ombudsman.europa.eu/en/press/release/faces/en/76116/html.bookmark>

⁹⁵ [GHK \(2010\) Volunteering in the European Union](#), 10 February 2010.

- As for the profile of volunteers by employment status there are three main categories (volunteering by employed individuals, students/pupils, unemployed or non-working population) whereby students/pupils form the second largest group
- Although it differs widely across EU, evidence shows that the type of Ministry with main responsibility for volunteering are Ministries for labour and/or social affairs (e.g. Belgium – Federal Service for Social Security)
- There is a growing professionalization of voluntary organisations leading to an increase of the share of paid staff in those organisations but thus also a need to find a balance between paid staff and volunteers which would meet both professional standards and the requirements of volunteers.

The **key challenges** lie however mainly in:

- The **lack of a clear legal framework or clear rules** (e.g. lack of clear definitions and use of different notions of volunteer work, volunteer services⁹⁶, volunteering; legal status of volunteer⁹⁷; protection of (social) rights, thresholds to avoid loss of eventual pensions, subsidies, social/unemployment benefits; reimbursement of expenses); and if a legal status is defined, the clarification of the distinction between a volunteer and a paid member of staff proves to be relatively complex in many Member States, in particular for the definition of arrangements for welfare benefits, tax benefits, health and safety insurance/protection. The report also indicates that in countries where there exist no specific legal status volunteers are subject to the same rules as people in paid employment and are general employment laws in most cases extended to volunteers
- Whether expenses are reimbursed is in many countries left to the discretion of the hosting organization and this is often made subject to restriction/limits.
- In most countries no legal obligation to provide insurance for volunteers (against risks of accident, illness or third-party liability; this is left to the discretion of the organisations)
- The lack/problem of implementation and monitoring (also due to lack of clear legal frameworks/rules)⁹⁸ and lack of information (in particular lack of accurate and detailed data on volunteering)
- Lack of recognition (and thus the lack of “validation of non-formal and informal learning (VNFIL))
- Existing perceptions and prejudices (in particular in new Member States)

121 Both in the run up to this European Year of Volunteering and in particular the years following it, an impressive load of Council of Europe⁹⁹ but in particular EU policies and initiatives were launched not only to overcome the different problems/challenges identified above, but primarily to promote the issue of volunteering and this via policies directed to youth, employment, social cohesion, etc.¹⁰⁰ In fact one could state that both

⁹⁶ And only some definitions also make a clear definition of volunteering from employment.

⁹⁷ And if a legal status is defined, the clarification of the distinction between a volunteer and a paid member of staff proves to be relatively complex in many Member States, in particular for the definition of arrangements for welfare benefits, tax benefits, health and s

⁹⁸ For example, there is in most countries no obligation for the organisations to notify the details of volunteers to public and/or tax authorities.

⁹⁹ See for example [PACE Resolution 1778/\(2010\) on Promoting volunteering in Europe](#) of 12 November 2010 and calling amongst others for introducing a volunteer status to facilitate access to voluntary work and setting up a social protection system for long-term volunteers.

¹⁰⁰ To name only a few policy initiatives in which a key role for volunteering, in particular by young people, was foreseen: the European Voluntary Service, Youth in Action, European Quality Charter on Mobility, Europass, European Qualification Framework, European Voluntary Humanitarian Aid Corps, [European Parliament Resolution of 12 June 2012 on recognizing and promoting cross-border voluntary activities in the EU](#) (2011/2293(INI)), OJ C 332E , 15.11.2013, p. 14–22; [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, on EU Policies and](#)

directly and indirectly volunteering and voluntary sector activities have become part of the EU acquis.¹⁰¹ A lot of attention was thereby devoted to the economic and societal value of volunteering, its contribution to employability and (non-formal/informal) (life-long) learning, etc.

- 122 However, less attention was thereby given to the (enforcement of) social rights protection of volunteers (e.g. most recommendations went/go in the direction of reviewing/abolishing all legal constraints/obstacles for people to become volunteer and/or to ensure that volunteering is clearly distinguished from paid employment) and even less attention went to avoiding/rectifying eventual abuses of using volunteering for paid employment. Below some scarce references are provided.

1. EU Institutions

a) **Recommendation of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers**¹⁰²

- 123 This Recommendation provides amongst others the following:

(10) (...) In addition, since **voluntary work** is an activity which specifically involves solidarity, is non-profit-making and unpaid, it should not be treated, under national legislation, as employment.

(12) (...) The **diversity of the status** in the Member States of students, **persons undergoing training**, teachers and trainers, **particularly with regard to provisions on the right of residence, employment law, social security and taxation, is an obstacle to mobility.** (...)

I. **HEREBY RECOMMEND** that Member States:

1. Measures which concern all categories of people covered by this Recommendation:
(a) take the measures they consider appropriate to **remove the legal and administrative obstacles to the mobility of persons undertaking a course of studies, a period of training or a voluntary activity**, or providing teaching or training in another Member State, particularly in the context of Community programmes (including Socrates, Leonardo da Vinci and Youth) but also outside them (...)

4. Measures which specifically concern **volunteers**:

(...) (c) take the measures they consider appropriate, in accordance with Community law and in the framework of their national law, so that volunteers and their families are not discriminated against because of their mobility with respect to relevant social protection, such as health care and social welfare policies;

(d) take the measures they consider appropriate, under national legislation, **to ensure that recognised voluntary activities are not treated as employment.**(...)

[Volunteering: Recognising and Promoting Crossborder Voluntary Activities in the EU, Brussels, COM\(2011\) 568 final, 20.9.2011.](#)

¹⁰¹ E.g. the Treaty on the Functioning of the European Union includes a specific reference to voluntary aid in Article 214(5) in the chapter on humanitarian aid; however, on the other hand there are no such references in other areas of EU policies to which volunteering is mostly linked, used and/or promoted such as youth or social policy.

¹⁰² [Recommendation of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers](#) 2001/613/EC, OJ L 215, 9.8.2001, p. 30–37.

b) Opinion of the European Economic and Social Committee of 13 December 2006) on Voluntary activity: its role in European society and its impact¹⁰³

124 This opinion provides amongst others the following:

1.3 ***In all the Member States a legal framework must be drawn up to guarantee the right to carry out voluntary activity independently of an individual's legal or social status. There should be equal opportunities for all individuals engaging in voluntary activity, including people with disabilities. In some Member States the legal environment still impedes the development of voluntary activity and, as a result, makes it difficult to enlist stronger social support. Sometimes its development is restricted or even prevented by legal provisions such as prohibitions on activity. These restrictions should be examined and voluntary activity promoted by means of a legal framework which makes provision for insurance and the reimbursement of expenses.***

3.2 ***The purpose of voluntary activity is not to replace paid work — indeed, it is highly desirable that paid work should not be substitutable by voluntary activity. (...)***

3.6 *A clear distinction can be made between two kinds of volunteering: (i) one which, as defined by the UN and the ILO, involves working for a not-for-profit organisation for pay which is often below the going rate and (ii) the other which is unpaid but during which expenses are reimbursed. Moves to clarify the legal status of these activities should take account of this distinction in order to simplify the situation for volunteers as well as for students on compulsory placement at NGOs.*

Voluntary work as defined by the ILO and UN agencies is work carried out in not-for-profit organisations, i.e. charitable associations or humanitarian or non-profit-making non-governmental organisations by 'voluntary' workers who usually receive remuneration in the form of a salary. They are salaried employees, the voluntary nature of their work being defined by the fact that their wages are often below market rate; this is what defines and constitutes its voluntary element and nature. For example, a logistician working for an emergency humanitarian organisation, or a lawyer working for a refugees' rights association will be a salaried employee, but with a different (i.e. lower) salary than he could expect in the world of business (e.g. transport or legal consultancies).

3.7 *This opinion does not discuss paid voluntary work within the meaning of the ILO and UN definition, such as activity by Médecins Sans Frontières.*

c) Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 16 May 2007 on implementing the common objectives for voluntary activities of young people¹⁰⁴

125 In this Resolution, the Council and the Representatives of the Governments of the Member States emphasise that:

(...) 2. voluntary activities need to be clearly distinguished from employment and should by no means replace it;

¹⁰³ [EESC Opinion of 13 December 2006\) on Voluntary activity: its role in European society and its impact](#) (2006/C 325/13).

¹⁰⁴ [Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 16 May 2007 on implementing the common objectives for voluntary activities of young people](#), OJ C 241, 20.9.2008, p. 1.

d) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” (2007)

126 This Communication provides amongst others the following:

5. ACTIVE YOUNG CITIZENS

5.2. Voluntary activities

*Voluntary activities provide a valuable non-formal learning experience, which enables young people to acquire skills and facilitate their transition from education to employment. Through volunteering, young people develop values such as mutual understanding, dialogue and solidarity. **However, it must be pointed out that voluntary activities are not a substitute for paid employment.** (...)*

Obstacles such as visa difficulties and lack of insurance should be eliminated, and the linkage to entitlements to social security provisions, including unemployment benefits, needs to be improved. Cross-sectoral cooperation between different authorities and appropriate legal frameworks are necessary (...)

e) European Parliament resolution of 22 April 2008 on the role of volunteering in contributing to economic and social cohesion¹⁰⁵

127 The Resolution states amongst others that:

*“[The European Parliament] 7. Strongly supports the view that **volunteering and voluntary activity should not take the place of paid work;**”*

128 In the accompanying report under the chapter “Contributions of Volunteering to Economic Cohesion (!). 1) Promoting Employability” is emphasized that:

*(..) It is important to note that while **volunteering** is an important instrument to promote employability, it **must not be exploited as an alternative employment measure.** (...)*

f) Council Decision on the European Year (2011)¹⁰⁶

129 The Decision states that

*“In line with the recommendations of the Council of Europe, which, in a 2001 recommendation, called on Member States to seek to “identify and eliminate, in their laws and practice, any obstacles which directly or indirectly prevent people from engaging in voluntary action, and to reduce tax pressure which penalises voluntary action” and “**give voluntary workers legal status and adequate social protection while respecting their independence, and removing financial obstacles to volunteering.**”*

g) Council Conclusions of 3 October 2011 on “The role of voluntary activities in social policy”¹⁰⁷

130 These Conclusions provide for

(...) 2. Voluntary activities need to be clearly distinguished from paid employment and should by no means replace it. They should not perpetuate gender inequalities in paid

¹⁰⁵ [European Parliament resolution of 22 April 2008 on the role of volunteering in contributing to economic and social cohesion.](#)

¹⁰⁶ [Council Decision on the European Year \(2011\), 3 June 2009 \(SEC\(2009\)725.](#)

¹⁰⁷ [Council Conclusions of the 3114th Employment, Social Policy, Health and Consumer Affairs Council meeting, Luxembourg, 3 October 2011.](#)

and unpaid work and may not encourage employee's reduction of working time or withdrawal from the labour market;

h) Opinion of European Economic and Social Committee on 'The European Voluntary Humanitarian Aid Corps: enabling and encouraging citizens from across the Union's Member States to participate in EVHAC' (2014)¹⁰⁸

131 This EESC opinion states that:

*1.6 The EESC would like to emphasise the genuine nature of voluntary action **and the confusion with other types of action involving work. In times of economic crisis such as these, this aspect is particularly relevant, both within the EU and its external action (...)***

i) European Parliament resolution of 27 October 2016 on European Voluntary Service and the promotion of volunteering in Europe¹⁰⁹

132 The EP Resolution provides amongst others that:

*3. Encourages the Member States to implement concrete validation processes in the framework of the Council Recommendation of 2012 to ensure better understanding and comparability of skills and experience; asks for any future European Skills Passport and Europass initiatives to give volunteering greater relevance as informal and non-formal learning; recalls that volunteering helps people to gain skills and competences that can facilitate their access to the labour market; **underlines that volunteers should never be considered or used as replacement labour; (...)***

2. Council of Europe

Council of Europe Congress of local and regional Authorities Resolution 414 (2017) of 29 March 2017 on "Forever young? The role of youth policies and youth work at local and regional levels in supporting young people's transition to autonomy and working life"¹¹⁰

133 This Resolution provides amongst others the following:

11. For this purpose, the Congress invites local and regional authorities, depending on their competences, to assist young people in their transition to autonomy and adulthood by taking the following actions:

c. As regards employment:

(...)

*ii. establish a local government programme for official **recognition as professional experience of competences developed in the context of traineeships and volunteer work;***

¹⁰⁸ [EESC Opinion on 'The European Voluntary Humanitarian Aid Corps: enabling and encouraging citizens from across the Union's Member States to participate in EVHAC'](#), OJ C 67, 6.3.2014, p. 11–15.

¹⁰⁹ [European Parliament resolution of 27 October 2016 on European Voluntary Service and the promotion of volunteering in Europe \(2016/2872\(RSP\)\)](#).

¹¹⁰ [Council of Europe Congress of local and regional Authorities Resolution 414 \(2017\) of 29 March 2017 on "Forever young? The role of youth policies and youth work at local and regional levels in supporting young people's transition to autonomy and working life"?](#)

134 In the accompanying report CGR32(2017) 1 final of 29 March 2017 and in particular the explanatory memorandum to the Resolution the following is highlighted:

i. Access to employment

(...)

*56. Young people are sometimes faced with the paradox of not having experience. Companies often look for young employees with several years of work experience. For young people finishing school this is simply absurd. **This leads some young people to volunteer in public institutions or business companies and to engage themselves in different unpaid internships programmes that do not contribute enough in fighting this situation. Usually volunteering and internship programmes are misused by the employers and, instead of helping young people, they create more challenges on their way to autonomy and employment treating youth as cheap or sometimes even free labour force.***¹¹¹

57. For many young people, access to employment starts through first professional experiences in often unpaid internships or volunteering. If properly accompanied, these experiences can be lifeforming, helping young people to put their knowledge into practice, to learn by doing, to experience, to develop life skills, to work on attitudes. They can learn about team work and working "rules", trial and error. They can develop leadership skills and better understand the market.

58. However, internships and volunteering are only of added value when limited in time. They do not replace paid employment and should therefore not last forever. Volunteering can be a very rewarding experience for young people who can invest their energy, their competences and their values into a particular cause thus participate actively in society and feel useful and valued.

III. Specific national situation

A. Legislation

135 To recall, the main content of the complaint is described in the Decision on admissibility of 5 December 2017 and contains mainly that the Volunteer Rights Act of 3 July 2005, permitting the practice of unpaid internships, and the lack of enforcement of a number of provisions in the national legislation aiming to restrict internships, violate Articles 4§1 and 7§5 of the of the Charter.

136 In this section, ETUC provides an overview of material relating to the particular Belgian situation on unpaid internships and the Volunteer Rights Act which were firstly, not mentioned by YFI in the complaint, secondly, were not yet public and thirdly, which were provided following consultation with ETUC' Belgian affiliates CSC, CSLGB and FGTB. This, firstly, in support of the arguments provided by YFI that firstly (many) unpaid internships are being performed, secondly, that there exists still doubts about the exact link between the Volunteer Rights Act and Belgian labour law in general and, thirdly, that even some official advisory bodies to (regional) governments strongly advice to end the system of unpaid internships.

¹¹¹ A footnote 22 specifies here: "22 Paragraph quoted from [the YSRN report "Employability United", 2015\)](#)".

1. The Volunteer Rights Act of 2005

- 137 Despite the title of Chapter VI of the 2005 Law entitled “Labour law”, this law did not explicitly go into the labour law protection of volunteers, except when it concerns foreigners.
- 138 It is thereby also to be noted that the initial version of the 2005 Law, contained an article 9, paragraph 1, which provided the competence to the King to exclude volunteers partially or fully from the scope of certain pieces of Belgian labour law, namely,
- The Law on Labour of 16 March 1971;
 - The Law of 4 January 1974 on public holidays;
 - The Law of 4 August 1996 concerning the wellbeing of workers at work;
 - The Law of 8 April 1965 on the introduction of Rules of Work;
 - The law of 5 December 1968 concerning collective agreements and bipartite committees;
 - A Royal Decree n° 5 of 23 October 1978 concerning social documents.
- 139 The main purpose of this article was to facilitate volunteer work by excluding (or giving the possibility to exclude) them from certain law provisions specifically designed for workers but useless or not workable to implement on volunteers. However, the envisaged Royal Decrees to implement these exclusions were never elaborated and, even more, this article 9§1 was deleted, even before it came into force, following an amendment by a Law of 19 July 2016.
- 140 So, this leaves still a lot of unclarity on the actual application of labour law on volunteer work.
- 141 This is also confirmed by an opinion of the Belgian High Council for Volunteers (“*Hoge Raad voor Vrijwilligers*” / *Conseil Supérieur des Volontaires*)¹¹² adopted at the occasion of the 10th anniversary of the Volunteer Act of 2005. In that opinion and in particular on the relationship between/application of Belgian labour law and the 2005 Volunteer Act, the High Council recommended to the Minister of Social Affairs to:

Conduct, together with the Minister of Labour and in cooperation with the High Council, an in-depth analysis of the application of different parts of labour law. Such an analysis, is a necessary prerequisite for every interpretation or amendment of the law. Such an analysis should also take into account the financial impact of eventual measures for voluntary organisations. The High Council asks that any proposed amendments to the regulation following this analysis would be implemented as soon as possible.¹¹³

¹¹² This Council, established in 2012, is a Federal Advisory body the Federal Administration on Social Security. According to its website, next to opinions, “it guarantees constant attention to the specific problems of volunteers in different areas like liability law, social security, taxation, labour law, (...)” See for more information on this Council: <http://hogeraadvrijwilligers.belgium.be/fr/index.htm>.

¹¹³ [Conseil supérieur des volontaires \(2016\) « 10 ans d'existence de la loi relative aux droits des volontaires. Deux avis pour une perspective d'avenir »](#), see in particular page 10-11 and Annex 2.

- 142 It is even furthermore confirmed in an opinion of the Belgian National Labour Council (CNT/NAR) of 18 July 2017 in which the CNT/NAR provides its views on proposed changes to the 2005 Act, based on the evaluation of the High Council, in particular to certain (financial) compensations to volunteers. The CNT/NAR in its general considerations that since 2005 a number of bottlenecks and/or interpretation problems have arisen (including on remuneration/compensation aspects) for which appropriate solutions have to be found. However, by amending the law, it should thus be taken into account that one has to tread the legal status of the volunteer with caution and avoid that again new uncertainties are created. So, in dealing with issues like (finance) compensations, it is advised that “any explicit reference to the worker/employee status should be avoided in a regulation for volunteers”.¹¹⁴
- 143 Also academic literature confirms that there exists still a lot of ambiguity and unclarity, despite the new Volunteer Act, on the actual coverage of Belgian labour law on voluntary work/volunteers.¹¹⁵ Scholars indeed consider the current lack of clear regulation in relation to the applicability of (Belgian) labour law to voluntary work as unsatisfactory. In a lot of cases, volunteers are (or could be) conducting work or activities under the same conditions and in the same circumstances as “normal” workers and are thus exposed to the same (occupational) risks.
- 144 Since the second half of the last century, it has indeed been the tendency to expand the application of (parts of) Belgian labour law to other categories beyond the traditional workers and employers and in particular to persons who provide work under the same conditions and in the same circumstances as “normal” workers. And this in particular by applying the so-called “*gelijkgestelde personen*” (“assimilated persons”), i.e. persons who, not under the form of an employment contract, perform work under the authority of another person”. In particular, since in first instance, Belgian labour law is only applicable to persons who are bound by an employment contract and there is thus the presence of (classical) constituent elements like “work performed for remuneration under the authority of another person/organisation”.
- 145 It shows from the preparatory work (“*travaux préparatoires*”) to the Volunteer Work Act of 2005, that the Belgian legislator was aware of the fact that volunteer work is/can exhibit(ing) a lot of similarities with work performed by normal workers and that the risk of abuse was real(istic). For instance littera d) in Article 3 (1) on the definition of volunteer work in the 2005 Act states that it should concern work “that is not performed by the same person and for the same organization in the framework of an employment contract, a service contract or a statutory/public servant relationship”.¹¹⁶

¹¹⁴ [CNT/NAR \(2017\) AVIS 2050 du 18.07.2017. Projet de loi modifiant la loi du 3 juillet 2005 relative aux droits des volontaires et d'autres dispositions légales en matière de volontariat](#), pp 3 and 5.

¹¹⁵ See on fundamental rights and the extension of labour law in Belgium to non-workers, and the particular case of volunteers, K. Reyniers, Hoofdstuk 10. De grondrechten en de uitbreiding van het arbeidsrecht naar de niet-werknemers: ook voor vrijwilligers? in Latinne, A. and Rigaux M. (2014) Actuele problemen van het arbeidsrecht 9, Intersentia, p. 375-397.

¹¹⁶ On the [website of the ONSS \(Office national de sécurité sociale\)](#) a further clarification/interpretation of this provision can be found, but which shows at the same time the unclarity or risk of confusion between different systems being used at the same time. Normally, employers need to declare to the ONSS workers with an employment contract but also trainees. Volunteers, when fulfilling the conditions/criteria of the Volunteer Act, in principle do not have

Another example is Article 11 of the 2005 Volunteer Rights Law which defines that if the (financial) thresholds/limits set in Article 10 of the Law (on compensations for volunteer work) are not respected or exceeded, the work performed cannot (anymore) be considered as volunteer work. The purpose of these provisions was exactly to avoid that volunteer work would be abused as a cheap alternative for paid (professional) work and amount to a sort of “bogus volunteer work”.¹¹⁷ Recently there has been several claims before Belgian courts (including the highest Court de Cassation, albeit with differing (both positive and negative) results).¹¹⁸

- 146 In fact, it shows from this literature that before the entry into force of the Volunteer Rights Act, in doctrine it was usually assumed that volunteers were/could be considered as “with workers assimilated persons”, performed their work under the authority of another person and they were/could thus be covered by the application of labour law. However, the “in principle” application of labour law to volunteer work as not embedded explicitly in the Volunteer Rights Law. In fact, one of the main reasons to abolish/delete the initial article 9§1 by the amending law of 2006 (see above) was “to return to the situation existing before the 2005 Law”, i.e. that volunteers were/could be considered as “assimilated persons”.
- 147 One of the major drivers for this, also in the debate before the Belgian Parliamentary Commission of Social Affairs on the draft 2005 law, seemed to have been the concern that the labour inspection could continue to keep its competence to control such cases of abuse. However, the representative of the then Minister of Work declared to the Commission that in that sense a **pragmatic approach** would be adopted and that it

to be declared. But in case a person combines volunteer work with another form of “employment” for the same employer, things get really complicated and confusing. In case of such a cumulation of “statutes”, the website mentions in French the following:

*« Combinaison d'une activité volontaire avec une autre occupation chez le même employeur
L'activité volontaire ne peut être exercée pour la même organisation dans le cadre d'un contrat de travail, d'un contrat d'entreprise ou d'une désignation statutaire. Toutefois, les travailleurs peuvent effectuer une activité volontaire pour le compte de leur employeur pour autant que l'activité volontaire ne soit pas liée aux activités qu'ils ont normalement à effectuer dans le cadre de leur emploi rémunéré.*

Le cumul au cours de la même année calendrier d'une occupation comme volontaire avec une occupation de moniteur et/ou d'étudiant auprès du même employeur, est possible avec exonération des cotisations de sécurité sociale pour autant que les conditions d'exonération de chacun de ces régimes soient respectées.

Vu qu'un étudiant et un moniteur ont un contrat de travail et qu'un volontaire ne peut à la fois, pour des activités similaires, être occupé comme volontaire et sous contrat de travail chez le même employeur, les activités de volontaire ne peuvent jamais être exercées pendant le contrat de travail en tant que moniteur ou en tant qu'étudiant. En principe c'est bien possible avant la date de début ou après la date de fin du contrat de travail, mais il est clair qu'il doit y avoir de bonnes raisons pour cela et que l'ONSS ne l'acceptera certainement pas s'il ressort que l'intention est de contourner les conditions d'exonération de la réglementation des étudiants et des moniteurs. »

¹¹⁷ And which would have serious (financial) consequences for both the organisation/“employer” and the volunteer (e.g. payment of outstanding social security contributions, reclassification of volunteer as worker (incl. claims for outstanding payment of wages, holiday pay, etc.)

¹¹⁸ In fact in a decision of 10 March 2014 on volunteers that received a limited compensation for their work, the Cour de Cassation considered that “as work under the law on labour contracts in Belgium should be considered the work to which a worker has committed him/herself by a contract, for remuneration and under the authority of an employer, but irrespective whether the agreed remuneration is limited and irrespective whether that work is performed as leisure and without the objective to gain an income”.

“was **not the intention to systematically inspect voluntary organisations which did not conduct commercial activities** and serve a societal purpose; however, the possibility to prevent abuse in semi-commercial purposes had to be upheld.”¹¹⁹ It seems that this pragmatic approach is still applicable as a quick search on the websites of the different labour law/social security inspection services in Belgium reveals hardly no information on (inspections of) volunteer work/volunteers and certainly no statistics on such eventual inspections.¹²⁰

- 148 In sum, a majority of legal doctrine in Belgium considers that volunteers could fall within the category of “assimilated persons”. Also that thus all constituent elements of an employment contract (work performed, remuneration and authority by another person/organization), and which are the same elements to which the Government (and Regions) refer in their observations on the admissibility, can be put into question in relation to volunteer work on a case to case basis (i.e. if the concerned person files a (legal/judiciary) complaint. And that there is thus need for a clear legal framework in relation to the applicability of labour law to volunteer work.

2. The Flemish Youth Council (“Vlaamse Jeugdraad”)¹²¹

- 149 Already in an extensive Opinion on “Access to work” (“*Advies 1702: Toegang to werk*”), the Flemish Youth Council clearly recommended to establish a specific (legal) status for internships outside formal education. This legal framework should lay down amongst others the social protection of interns, the quality criteria for internships, the minimum remuneration/financial compensation for interns and a system for recognition of the competences gained during the internships.¹²²
- 150 Following and based on this recommendation, the Flemish Youth Council elaborated its own proposal for a legal framework in its specific Opinion on “Unpaid internships outside education” (“*Advies 1711: Onbetaalde stages buiten de opleiding*”).¹²³ The Opinion is largely based and following the main recommendations of the European

¹¹⁹ See Reyniers, p. 395.

¹²⁰ For an overview of these inspection services, see http://www.emploi.belgique.be/detailA_Z.aspx?id=916 . Again only the [website of the ONSS](#) provides for the following:

« *Formalités*

Les volontaires ne doivent être déclarés ni en Dimona ni en DmfA. Afin de pouvoir exercer un contrôle sur la réglementation des volontaires, les administrations sont tenues de tenir une liste nominative dans laquelle, par année calendrier, les indemnités perçues par chaque volontaire sont mentionnées. Cette liste doit pouvoir être présentée à tout moment à l'Inspection de l'ONSS ».

¹²¹ The Flemish Youth Council is the **official advisory body** of the Flemish Government on all matters concerning children and young people. This means that all Flemish Ministers have to ask the Flemish Youth Council for advice whenever they want to make a decision that will have consequences for children and young people. It also means that the Flemish Youth Council may give advice of its own accord, if policy makers forget to ask for advice or when we deem it necessary.

¹²² See Recommendation 36 and section 2.6.4 in particular. [Vlaamse Jeugdraad, “Advies 1702: Toegang tot werk”](#), 5 April 2017 (Available in Dutch only).

¹²³ [Vlaamse Jeugdraad, “Advies 1711: Onbetaalde stages buiten de opleiding”](#), 4 October 2017 (Available in Dutch only).

Quality Charter on Internships and Apprenticeships as established by the complainant organisation European Youth Forum.¹²⁴

151 **Next to the general recommendation that unpaid internships taking place outside/after formal education should ideally not exist**, if they exist they should meet the following criteria to ensure the social rights of interns:

- C. existence of a written and legally binding contract outlining the length, remuneration of the internship, a description of learning objectives and tasks should be attached to the contract;*
- D. **decent remuneration** not below the EU poverty line of 60% median income or national minimum wage, if more favourable, in accordance to the tasks which are performed by the intern and to working hours (overtime should be additionally compensated). Internship remuneration should be regulated either in law or collective agreements in accordance with national practice;*
- E. use of internships should be limited to pupils, students and very recent graduates, length of internships period should be restricted to a reasonable and fixed number of months;*
- F. **reimbursement of costs** incurred during the internship;*
- G. inclusion of the intern in the social security system, especially those of health, unemployment, pension systems;*
- H. mid-term evaluation, discussion of the possibilities to be hired as a permanent employee during the internship period and a final evaluation at the end of the internship period;*
- I. limited number of interns per internship provider;*
- J. transparent advertising that includes a detailed task description and working conditions.(underlining added)*

B. Belgium (Brussels) as host of international/European institutions and organisations

152 Belgium, and in particular Brussels, are not only host of the headquarters/regional offices of important international and European political institutions but also for reasons of (lobbying) proximity of even more international and European (non-governmental) organisations, all of which also (tend to) make use of internships and volunteers for their activities. This (might) exacerbate thus the number of persons who could be doing such internships but at the same time the number of persons having to do so without respect of their social rights, including not receiving pay and/or compensations.

153 A query on the website of InternsGoPro, which is a social enterprise with as main mission is to improve the overall conditions of internships in Europe and is also co-organiser of the international intern day, provides interesting figures. InternsGoPro also established a “European Label for the Best Internships” whereby, based on reviews of interns, they rate/certify enterprises, organisations and institutions on the quality of internships provided.¹²⁵

¹²⁴ [European Youth Forum, European Quality Charter on Internships and Apprenticeships](#), April 2014.

¹²⁵ <https://ratings.internsgopro.com/en/internships/filters/all/BE/all/all/all/1-10/sort/date/asc/page> and <http://www.internsgopro.com/en/home/>.

- 154 A search on such organisations and institutions situated/providing internships in Belgium, gives a total of 195 institutions/organisations which are reviewed, however not less than 73 out of them has a rating between 0-6 whereby only as from a rating of 7/10 an organisation is considered to provide a good, very good or excellent environment for doing an internship. Main reason why so many are low rated is because they offer unpaid or low paid internships.
- 155 Another interesting initiative that “tracks” internship-providers comes from “Brussels Interns NGO”¹²⁶ which launched in 2016 the campaign “JustPay! Unpaid is illegal!”. After only one year, they already found around 60 worrying cases of adverts for internships which were unpaid or where at least it was unclear what would be eventually paid. Un(der)paying employers include media outlets, lobby groups and human rights organisations.¹²⁷

IV. Reactions to the Belgian Governments observations

- 156 Firstly, the ETUC would like to share with the ECSR the following input it received from the Belgian ETUC affiliates in relation to the observations on the admissibility made by the Belgian (federal and regional) authorities¹²⁸:

Walloon region

B. Les stagiaires non rémunéré.

Il faut tenir compte de plusieurs éléments pour l'entité fédérale wallonne francophone.

1. Stage en entreprise / stage en milieu ouvert.

Avant la 6^{ème} Réforme de l'Etat, L'ONEm donne des autorisations collectives à certaines agences Intérim afin qu'elles puissent organiser des stages en entreprises (Stage en milieu ouvert – Dispense C45G collective). Le demandeur d'emploi, pour effectuer ces stages, rentre un document de dispense individuel (C45G individuel) à son OP et ne noirci pas de case sur sa carte de chômage – protection juridique. Aucun salaire/rémunération n'est dû pour le demandeur d'emploi.

Après la 6^{ème} Réforme de l'Etat, au 01/01/2016, la compétence concernant la délivrance des autorisations pour ces stages en entreprises est transférée au FOREM. Néanmoins, les dispenses collectives et individuelles dites C45G n'existe plus pour les wallons (francophone) car pas transférées. Le seul cadre juridique qui permet encore aux agences intérim d'organiser ce genre de stage en entreprise en Wallonie est la loi sur les CIP (Convention Immersion Professionnelle – loi du 2 août 2002).¹²⁹ Cela signifie

¹²⁶ <https://www.bingo-brussels.eu/>

¹²⁷ <http://justpay.strikingly.com/>.

¹²⁸ Input was received from all three Belgian ETUC affiliates, i.e. FGTB/ABVV (Jeunes), CSC/ACV and CGSLB/ACLVB.

¹²⁹ Cette loi a pour objectif de donner un cadre légal aux stages qui ne sont pas cadrés par ailleurs. Les exigences sont légères et elles prévoient une convention écrite reprenant des point obligatoires (article 106), ainsi qu'une indemnité minimum au moins égales à celle de l'apprentissage des professions salariées. (Article 17). Par contre, dans cette loi CIP, le rôle du FOREM est limité à l'agrément du plan de formation. Il s'agit d'un contrat bipartite et non d'un contrat dans lequel le FOREM est partie prenante. Aucune obligation de suivi ou d'engagement n'est prévue dans cette loi.

que le demandeur d'emploi doit noircir la case de sa carte de chômage contre une rétribution équivalente à la moitié du revenu mensuel moyen garanti (RMMG) (781,30€/mois) au prorata des jours de stage prestés.

Les conséquences [EN THEORIE] pour le demandeur d'emploi ont des effets sont positifs car sa rémunération en tant que stagiaire n'est plus de 0€ : il est rétribué (RMMG/2) pour le stage presté en entreprise et noirci les cases en fonction des jours prestés sur sa carte de chômage.

Néanmoins, [EN PRATIQUE] pour le demandeur d'emploi c'est une aberration. Il doit noircir les cases sur sa carte de chômage (protection juridique) contre une rétribution de 1€/h (=/= de la loi qui dit la moitié du RMMG). Si sa protection juridique est garantie, il n'en va pas de même pour sa protection financière. Il a une perte significative pour chaque jour de stage presté (les 1€/h sont loin de couvrir la perte de chômage) avant même d'avoir travaillé un seul jour dans l'entreprise. Alors, les jeunes doit payer pour effectuer un stage. Les agences Intérim n'applique pas la loi programme, elle font ce qu'elles veulent sans aucun contrôle.

Par ailleurs, l'ONEm stipule (n°RioDoc 060823) que pour les stages en milieu professionnel (entreprises, ASBL,...) : « Il faut toutefois faire une distinction entre une activité pour le compte d'un tiers d'une part et une activité dont le but du travail est la formation du chômeur et pas le caractère productif d'autre part. Un stage appartient à cette dernière catégorie. » Un stagiaire peu produire mais le fruit de cette production ne peut pas être vendu afin de réaliser un profit.

2. Convention collective de travail n° 50 du 29 octobre 1991 relative à la garantie d'un revenu minimum mensuel moyen aux travailleurs âgés de moins de 21 ans (CCT n° 50)¹³⁰

Les taux décroissants de la CCT n° 50 s'appliquent aux apprentis de moins de 21 ans qui effectuent des stages en entreprise. Pour ces jeunes travailleurs qui sont encore couverts par la CCT n° 50, le RMMG n'est pas exprimé en une somme forfaitaire, mais en un pourcentage du RMMG de la CCT n° 43. Ce pourcentage est dégressif: plus bas est l'âge, plus bas est le pourcentage.

- pour les travailleurs de 16 ans: 70% du RMMG (€ 1.093,81)
- pour les travailleurs de 17 ans: 76% du RMMG (€ 1.187,56)
- pour (étudiants / formation en alternance) de 18 ans: 82% du RMMG (€ 1.281,32)
- pour (étudiants / formation en alternance) de 19 ans: 88% du RMMG (€ 1.375,07)
- pour (étudiants / formation en alternance) de 20 ans: 94% du RMMG (€ 1.468,83)

3. Formation alternée du FOREM¹³¹

Les stagiaires de moins de 25 ans peuvent pendant 12 mois à temps plein toucher une rémunération de maximum 350€/mois pour effectuer cette « formation » où 80% est consacré à la pratique d'entreprise.

Flanders/ Flemish region

From the information provided by the Flemish authorities (attached to the observations on the admissibility by the Belgian government), it is clear that, like in the other regions, also in the Flemish region manifold schemes of traineeships exist(ed) each of them often with a different approach regarding objectives, target group, contract forms,

¹³⁰ Modifiée par les conventions collectives de travail n° 50 bis du 28 mars 2013 et n° 50 ter du 26 mai 2015 (ratifiées par l'AR du 17 décembre 1991, 10 octobre 2013 et 10 août 2015, parus au MB des 10 janvier 1992, 22 octobre 2013 et 24 août 2015) ; CCT n°50 disponible à <http://www.cnt-nar.be/Cct-liste.htm>

¹³¹ <https://www.leforem.be/particuliers/formation-alternee.html>

working/learning conditions (incl.), etc. In order to, amongst others, simplify this diversity of statutes and schemes, as well as to enhance the added value and quality of work-based learning, the Flemish government adopted on 15 September 2017 a draft Decree on “Dual learning and working” which is currently for debate and approval before the Flemish Parliament.¹³²

157 Furthermore, ETUC affiliates consider that the overall approach of the response of the government (and also the Regions) is almost to deny everything. By stating that in principle only paid internships are possible, does not exclude that there do exist unpaid intern/traineeships in Belgium. In fact, in some of the contributions of the Regions this is clearly spelled out.

“En outre le gouvernement régional flamand dispose d’une ligne budgétaire, le Flanders Trainee Programme, pur le financement de stages auprès d’organisations internationales et, dédiée aux jeunes qui effectuent un stage non rémunéré auprès d’une organisation internationale, au Conseil de l’Europe p.ex. Le jeune qui souhaite effectuer un stage non rémunéré d’une durée de deux mois minimum à six mois maximum dans l’organisation internationale doit être âgé d’au moins de 35 ans (!) (...) » (Reply Flemish Region)

« La Fédération Wallonie-Bruxelles et la Région wallonne offre un large éventail de stages, rémunérés ou non. (...) Les administrations des entités fédérées en Belgique recourent aussi aux stage non-rémunérés, y compris Wallonie-Bruxelles-International. (...) La Fédération Wallonie-Bruxelles et la Région wallonne encouragent les stages non rémunérés à l’étranger au moyen des toutes sortes de dispositifs, (...) (reply by/for Fédération Wallonie-Bruxelles et la Région Wallone)

158 In addition, it is interesting (though also worrying) to read from the observation of the Government (and Regions) that:

- the competence to regulate traineeships has transferred from the federal to the regional level in the framework of the 6th State Reform (agreed upon in December 2011), but that this subject *“n’as pas encore fait l’objet de modifications décrétales (en Wallonie)”* (Reply by/for Fédération Wallonie-Bruxelles et la Région Wallone)
- the Federal Service SPF Emploi, Travail et Concertation sociale, is in principle not anymore responsible in general for the regulation (and decision of remunerating) of traineeships, but remains competent on the other hand for “disguised traineeship”, i.e. which via which work is performed under the authority of an employer and for which no conform remuneration is received”.(reply SPF the Federal Service SPF Emploi, Travail et Concertation)
- *“Any traineeship conducted without agreement with the school//educational institution or authorization of the SPFs is to be considered as illegal work”* (Reply Actiris, 29/06/2017)
- *“the time invested in the training of young person is a service rendered, often lost by the enterprise or administration”* and that it is a service *“given to young people who demand expressly and on a voluntary basis to provide them with the possibility to stay a few months in an administration or entreprise”*. (Reply by/for Fédération Wallonie-Bruxelles et la Région Wallone)

¹³² For more information (although mostly in Dutch only) see amongst others: [Press release Flemish government](#), [concept notes](#) and [draft Decree](#).

V. Final (legal) Considerations and Conclusion

A. (Legal) Considerations

- 159 As mentioned in the Introduction, through these observations, ETUC has tried to demonstrate that for many years and in particular since the economic crisis, apprenticeship-, trainee- and internships, and more recently voluntary work/volunteering, are heavily promoted to enhance the employability, skills and competences of young persons.
- 160 The enhanced attention has led to the introduction (or a reshaping) of a multitude of these schemes both within the same country as well as within the same kind of scheme (e.g. several apprentice-, trainee- or internships formulas being applicable at the same time with only some nuances in for instance target groups, etc.). This growth of systems led mainly to a very confusing and unclear picture not the least in relation to the rights and obligations of all actors involved in the different schemes.
- 161 Indeed, when looking at comparative different analyses conducted by international and European actors in order to identify the key success factors as well as an appropriate framework for each scheme, it showed that, although these different schemes are (or at least are intended to be) distinct, the main challenges, problems and solutions were and are often identical.
- a. Lack of a clear (separate) legal framework providing a legal status, clear (and shared) definitions, identification of the respective rights and obligations of concerned actors, etc.
 - b. Need for formal contracts.
 - c. A lot of attention is given to how best the objectives of employability/learning can be reached, but hardly any attention to the protection of fundamental social right, such as fair working conditions and in particular decent/fair wages/remuneration/compensations.
 - d. Also, hardly any attention is paid to ensuring effective monitoring and enforcement mechanisms (including collection of data and thus no knowledge of the actual numbers of persons involved) (e.g. inspection, reclassification of legal status).
 - e. All these problems get only aggravated if these training- or internships are performed outside formal education frameworks.
- 162 Furthermore, whereas so far international and European case law has mainly focussed on the rights of apprenticeships, rights of trainees and internships are (far) less looked upon and there exists hardly no case law on the particular situation of unpaid internships in the framework of volunteer work/volunteering or more broadly “outside formal education” circumstances and this despite the fact that the risk of abuse seems to be even higher in these circumstances. In a positive sense, and as mentioned above, one could highlight the following:

CESCR General Comment No. 23 on article 7 of the ICESCR

(b) *Young workers and older workers: (...) **An excessive use of unpaid internships and training programmes**, as well as of short-term and fixed-term contracts that negatively affect job security, career prospects and social security benefits, is not in line with the right to just and favourable conditions of work.* (...)

(j) *Unpaid workers: (...) Unpaid workers, such as workers in the home or in family enterprises, **volunteer workers and unpaid interns**, have remained beyond the coverage of ILO conventions and national legislation. **They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security***

CEACR General Survey on ILO Minimum Wage Fixing Convention n° 131

187. *The Committee is fully cognizant, however, that problems have been raised in several countries relating to **unpaid internship** programmes and other similar arrangements, when they are used to evade the payment of applicable minimum wages and to curtail employment opportunities. (...)*

188. *Recalling the overarching principle of equal pay for work of equal value, the Committee considers that persons covered by apprenticeship or **traineeship contracts** should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid.*

ECSR Conclusions XXVII-1 (2006) Croatia

***"It also asks** what is the notion of volunteer work used in the Labour Act, and **which are the guarantees to ensure that the waiving of remuneration does not lead to abuses.** (...)*

163 Nevertheless, actors on international, European but also on Belgian level increasingly are aware and seemed to have a commonly shared view that, firstly, un(der)paid internships are unacceptable, secondly, the risk for using them as cheap labour is real and, thirdly, better protection and enforcement of their rights needs to be ensured. This is clear from the following selected references out of the manifold authoritative sources referred to in Part II and III:

ILO report of the Director General on Decent Work (1999)

*"The **ILO Constitution** calls for the improvement of the "conditions of labour", whether organized or not, and **wherever work might occur**, whether in the formal or the informal economy, whether at home, in the community **or in the voluntary sector.**"*

ILC Resolution on "The youth employment crisis: A call for action" (2012)

*(...) In this context, **internships**, apprenticeships and other work-experience schemes have increased as ways to obtain decent work. However, such mechanisms can run the risk, in some cases, of being used as a way of obtaining cheap labour or replacing existing workers (...)*

26. *Governments should give serious consideration, as appropriate, to:*

*(e) **Regulating and monitoring** apprenticeship, **internship** and other work-experience schemes, including through certification, to ensure they allow for a real learning experience and **not replace regular workers.** (...)*

Committee of Ministers Recommendation CM/Rec(2015)3 of 21 January 2015 on access of young people from disadvantaged neighbourhoods to social rights

*(...) - ensuring (in particular through legislation) that **internships are a secure and legal form of employment** and a viable entry point into the labour market for young people starting out.(...)*

Committee of Ministers Recommendation CM/Rec (2016)7 of 28 September 2016 on “Young people’s access to rights”

*– (...) **ensuring that internships and apprenticeships, (...) are decently remunerated and regulated;** (...)*

*– **facilitate young people’s access to social rights by strengthening the implementation of the European Social Charter’s provisions***

*With the **growth in the use of unpaid internships (...)** Internships provide an important step in the transition process for some, **but they should be properly compensated to protect equal opportunities and to support young people’s right to autonomy and to a decent standard of living. Internships can be exploitative, with too many young people moving between several badly paid or unpaid internships. There is mounting evidence that internships outside formal education are frequently replacing quality employment for young people. Ensuring young people have full access to rights in this area requires improved protection from bad practice such as the perpetuation of internships,** (...)*

PACE Resolution 1855 (2012) of 16 June 2012 on “The young generation sacrificed: social, economic and political implications of the financial crisis

*6.3.7. **promote the establishment of a basic statute for young trainees in all member States, defining a set of minimum guarantees for working traineeships based on a written contract, social security contributions and, at least, the national minimum wage for traineeships of more than three months;***

PACE Recommendation 1978 (2011) of 24 June 2011 on “Towards a European framework convention on youth rights

*(...) Member states should take concrete measures to facilitate the entry of young people into employment (...) thereby (...) **preventing the excessive use of unpaid work experience or low paid employment.***

European Parliament Resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status

C. whereas employers seem to be using traineeships and internships more frequently to replace regular employment, thereby exploiting the obstacles to entering the labour market faced by young people; whereas such forms of exploitation of young people need to be addressed and effectively eradicated by Member States, (...)

The European Ombudsman who considered **unpaid traineeships** as “discriminatory” towards those coming from a less privileged social background (para. 5), “may perpetuate social exclusion” (para. 7) and “constitutes maladministration”

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” (2007)

*“However, **internships with little or no pay and limited educational added-value should be avoided.** Member States should ensure that internships are properly defined” and “However, it must be pointed out that **voluntary activities are not a substitute for paid employment**”*

Opinion of the European Economic and Social Committee of 13 December 2006) on Voluntary activity: its role in European society and its impact

*(...) The purpose of voluntary activity is not to replace paid work — indeed, it is highly desirable that **paid work should not be substitutable by voluntary activity.** (...)*

European Parliament resolution of 22 April 2008 on the role of volunteering in contributing to economic and social cohesion

(..) It is important to note that while volunteering is an important instrument to promote employability, it must not be exploited as an alternative employment measure. (...)

Flemish Youth Council

“Next to the general recommendation that unpaid internships taking place outside/after formal education should ideally not exist, if they exist they should meet the following criteria to ensure the social rights of interns: (...) D. decent remuneration not below the EU poverty line of 60% median income or national minimum wage, (...) “

164 As for the particular situation covered by this complaint (i.e. unpaid internships under the Volunteer Work Act of 2005) but also more broadly (i.e. practice of unpaid internships in- or outside formal education), and although Belgium belongs to the category of countries that firstly has a (too) well-elaborated legal framework for all trainee/internship schemes that exist and secondly, has a legislation on volunteer work, the above provided material in Part III “Specific national situation” and Part IV “Reactions to the Belgian governments’ observations”, there exist in the view of ETUC (still) several problems both in law and practice. These particularly relate to

- The (legal) uncertainty and unclarity of the legislative framework and protection of social rights of unpaid internships (under the Volunteer Work Act)
- The lack or at least insufficient monitoring and enforcement due to the “pragmatic” and “restricted” approach taken by the Belgian authorities in relation to inspection
- The existing and continuing practice of using/allowing unpaid internships (both inside and outside the framework of formal education); a practice (which is admitted by Belgian authorities) which might even be aggravated because of the presence of manifold international, European organisations (and who also might rely on internships under the Volunteer Work Act).

B. Conclusions

165 Therefore, and given all the above mentioned, ETUC supports the complaint of YFI against Belgium and indeed considers that Belgium both in law and practice is violating articles 4§1 and 7§5 of the Revised European Social Charter in relation to permitting the practice of unpaid internships (and the lack of enforcement thereof).

Table of Contents

INTRODUCTION.....	3
I. ETUC VIEWS/COMMITMENTS ON APPRENTICE-, TRAINEE- AND INTERNSHIPS AND VOLUNTARY WORK	5
A. ETUC STATEMENTS, RESOLUTIONS AND POSITIONS	6
B. EUROPEAN SOCIAL DIALOGUE.....	10
II. GENERAL FRAMEWORK	12
A. INTERNATIONAL LAW AND MATERIAL ON TRAINEES AND/OR INTERNS	13
1. <i>United Nations</i>	13
a) Universal Declaration of Human Rights	13
Article 2	13
Article 7	13
Article 23	13
Article 26.....	13
b) International Covenant on Civil and Political Rights	14
Article 2	14
Article 26	14
c) International Covenant on Economic, Social and Cultural Rights	14
Article 2.....	15
Article 6.....	15
Article 7.....	15
Article 10.....	15
General Comments.....	15
CECSR General Comment No 20 on “Non-discrimination in economic, social and cultural rights” .	15
B. Other status	15
C. Age	16
CECSR General Comment No. 18 on “The Right to Work” (Article 6 of the International Covenant on Economic, Social and Cultural Rights).....	16
I Introduction and Basic Premises.....	16
II. Normative Content of the right to work	16
A. Special topics of broad application	16
III. States parties’ obligations	16
B. Specific legal obligations	16
CECSR General Comment No. 23 on “the right to just and favourable conditions of work”	16
A. Article 7 (a): remuneration which provides all workers, as a minimum, with:.....	16
B. Article 7 (b): safe and healthy working conditions.....	18
E. Special topics of broad application.....	18
2. <i>UNESCO</i>	18
a) Convention on Technical and Vocational Education 1989.....	18
Article 2	18
b) Recommendation concerning technical and vocational education and training (TVET) (2015)	19
3. <i>International Labour Organisation</i>	19
a) Convention No. 111	19
Article 1	20
b) Minimum Age Convention No. 138.....	21
Article 6	21
c) Minimum Age Recommendation, 1973 (No. 146)	22
IV. Conditions of Employment	22
d) Recommendations relating to Apprenticeships.....	23
e) Minimum Wage Fixing Convention, 1970 (No. 131)	23

f)	Labour Inspection Convention No. 81	24
	Article 3	24
g)	Other relevant material	25
	ILO report of the Director General on Decent Work (1999)	25
	ILC Resolution on “The youth employment crisis: A call for action” (2012)	25
	ILO Contribution to the G20 Task Force on Employment (2012)	26
4.	<i>Council of Europe</i>	26
a)	European Convention on Human Rights (and Protocol No. 12).....	26
	Article 14 - Prohibition of discrimination.....	26
	Article 1 - General prohibition of discrimination	27
b)	European Social Charter (ESC)	27
	Article 4 – The right to a fair remuneration.....	27
	Article 7 – The right of children and young persons to protection	27
	Article 1 – The right to work	27
	Article 10 – The right to vocational training	28
	Article E – Non-discrimination	28
	Compilation of case law (Digest 2008 and HUDOC-ESC database).....	28
	Article 1§2.....	28
	Digest 2008	28
	Article 1§4.....	29
	Digest 2008	29
	Article 4§1.....	29
	Digest 2008	29
	Recent Conclusions on Belgium	30
	Conclusions 2014	30
	Article 7§5.....	32
	Digest 2008	32
	Young workers	32
	Apprentices	33
	Interpretative statements.....	33
	Recent Conclusions on Belgium (Article 7§5).....	33
	Conclusions 2011	33
	Article 10§2.....	35
	Digest 2008	35
	Interpretative statements.....	35
	Article 10§5.....	35
	Digest 2008	35
	Recent Conclusions on Belgium (article 10§5)	36
	Conclusions 2016	36
	Article 14§2.....	36
	Digest 2008	36
	Article E.....	37
	Digest 2008	37
	Volunteers/voluntary work in the ECSR case law	37
c)	Further pertinent material.....	39
	Committee of Ministers.....	39
	Committee of Ministers Recommendation CM/Rec(2015)3 of 21 January 2015 on access of young people from disadvantaged neighbourhoods to social rights.....	39
	Committee of Ministers Recommendation CM/Rec (2016)7 of 28 September 2016 on “Young people’s access to rights”	39
	Parliamentary Assembly	40
	PACE Resolution 1855 (2012) of 16 June 2012 on “The young generation sacrificed: social, economic and political implications of the financial crisis”	41
	PACE Recommendation 1978 (2011) of 24 June 2011 on “Towards a European framework convention on youth rights”	42

5.	<i>European Union (EU)</i>	42
a)	EU primary law.....	42
b)	European Pillar of Social Rights	44
	Chapter I: Equal opportunities and access to the labour market	44
	1. Education, training and life-long learning	44
	3. Equal opportunities	44
	4. Active support to employment	44
	Chapter II: Fair working conditions.....	44
	6. Wages	44
c)	Secondary law	45
	Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	45
	Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work	45
	Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP	46
	Other Council Directives referring/applying to trainees/apprenticeships/volunteers	46
	Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.....	46
	Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities	47
	Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.....	47
d)	Case law of the Court of Justice of the European Union (CJEU)	48
e)	Other relevant EU texts	49
	Council	49
	Council Recommendation of 10 March 2014 on a Quality Framework for Traineeships	49
	European Parliament.....	51
	European Parliament Resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status.....	51
	European Parliament Youth Intergroup “Manifesto for Fair internships” (2017).....	52
	European Commission	53
	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” (2007)	53
	Digital Traineeships Opportunity	53
	International Interns Day.....	53
	European Ombudsman.....	54
B.	INTERNATIONAL LAW AND MATERIAL ON VOLUNTARY WORK/VOLUNTEERING	54
1.	<i>EU Institutions</i>	56
a)	Recommendation of the European Parliament and of the Council of 10 July 2001 on mobility within the Community for students, persons undergoing training, volunteers, teachers and trainers	56
b)	Opinion of the European Economic and Social Committee of 13 December 2006) on Voluntary activity: its role in European society and its impact	57
c)	Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 16 May 2007 on implementing the common objectives for voluntary activities of young people	57
d)	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on “Promoting young people’s full participation in education, employment and society” (2007)	58
e)	European Parliament resolution of 22 April 2008 on the role of volunteering in contributing to economic and social cohesion	58
f)	Council Decision on the European Year (2011).....	58
g)	Council Conclusions of 3 October 2011 on “The role of voluntary activities in social policy”	58

h) Opinion of European Economic and Social Committee on ‘The European Voluntary Humanitarian Aid Corps: enabling and encouraging citizens from across the Union’s Member States to participate in EVHAC’ (2014)	59
i) European Parliament resolution of 27 October 2016 on European Voluntary Service and the promotion of volunteering in Europe.....	59
2. Council of Europe	59
III. SPECIFIC NATIONAL SITUATION	60
A. LEGISLATION.....	60
1. <i>The Volunteer Rights Act of 2005</i>	61
2. <i>The Flemish Youth Council (“Vlaamse Jeugdraad”)</i>	64
B. BELGIUM (BRUSSELS) AS HOST OF INTERNATIONAL/EUROPEAN INSTITUTIONS AND ORGANISATIONS	65
IV. REACTIONS TO THE BELGIAN GOVERNMENTS OBSERVATIONS.....	66
V. FINAL (LEGAL) CONSIDERATIONS AND CONCLUSION	69
A. (LEGAL) CONSIDERATIONS.....	69
B. CONCLUSIONS.....	72
TABLE OF CONTENTS.....	73