



European Social Charter (Revised)

Strasbourg, 3.V.1996

Appendix

Scope of the Revised European Social Charter in terms of persons protected

- 1 Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

- 2 Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.
- 3 Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

- a to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
- b where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

- a if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;
- b if the undertaking concerned ceases to operate;
- c if the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 19, paragraph 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Article 20

- 1 It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.
- 2 Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.
- 3 This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.
- 4 Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

- 1 For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

- 2 The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
- 3 For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
- 4 It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
- 5 It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
- 6 The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

- 1 This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
- 2 The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

Article 24

- 1 It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.
- 2 It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
 - a workers engaged under a contract of employment for a specified period of time or a specified task;
 - b workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
 - c workers engaged on a casual basis for a short period.

- 3 For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
 - a trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
 - b seeking office as, acting or having acted in the capacity of a workers' representative;
 - c the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
 - d race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
 - e maternity or parental leave;
 - f temporary absence from work due to illness or injury.
- 4 It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

- 1 It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.
- 2 It is understood that the definition of the term "insolvency" must be determined by national law and practice.
- 3 The workers' claims covered by this provision shall include at least:
 - a the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;
 - b the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;
 - c the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.
- 4 National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

- a Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;
- b Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;
- c Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;
- d Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the threat of war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term "amendment" shall be extended so as to cover also the addition of new articles to the Charter.