



## CHILDREN'S RIGHTS UNDER THE EUROPEAN SOCIAL CHARTER

Information Document prepared by the Secretariat of the ESC<sup>1</sup>

The European Social Charter complements the European Convention on Human Rights in the field of economic and social rights. It sets out rights and fundamental freedoms and establishes a supervisory mechanism based on collective complaints and state reports, guaranteeing their respect by states parties. It was recently revised and the 1996 Revised European Social Charter is gradually replacing the initial 1961 Charter. The Charter guarantees a wide range of rights; rights relating to housing, health, education, employment, social protection, movement of persons and non-discrimination.

The Charter (either the 1961 text or the 1996 revised text) has been signed by all 47 member states of the Council of Europe and ratified by 39.

The European Committee of Social Rights' (ECSR) function is to judge the conformity of the national law and practice with the Charter. Its 15 independent and impartial members are elected by the Council of Europe Committee of Ministers for a period of six years renewable once.

The Charter is the major European treaty which secures children's rights. It guarantees the rights of a child in many circumstances from birth to adulthood in two different manners:

- Firstly, many of the rights guaranteed by the Charter have a specific relevance to children; for example Article 16 (right of the family to social, legal and economic protection) which protects the rights of children as family members and Article 11 (right to protection of health);
- Secondly, the Charter contains specific rights relating exclusively to children; Article 7 (right of children and young persons to protection) and Article 17 (right of children and young persons to social, legal and economic protection).

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<sup>1</sup> This document is not binding on the ECSR.

The Charter guarantees rights to children from birth (and before) up to the age of 18 in respect of the following issues:

- A**    ***Protection before birth -maternal health protection***
- B**    ***Rights of the Family***
- C**    ***Legal status of the Child***
- D**    ***Criminal liability of and criminal law in respect of children***
- E**    ***Health protection of children***
- F**    ***Special protection of children-protection from violence, abuse and exploitation, special protection for vulnerable groups***
- G**    ***Right to education***
- H**    ***Prohibition of child labour***
- I**    ***Specific working conditions between 15 and 18***
- J**    ***Rights of migrant children***

<b>A</b> <b><i>Maternal health protection</i></b>
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The following rights concern more directly the mother but they also affect the child before his/her birth.

*i) right to maternity leave*

Article 8 (right of employed women to protection of maternity) of the Charter guarantees women a period of paid maternity leave; maternity leave of fourteen weeks should be guaranteed, six of which must be taken post-natally.

*ii) right to maternity pay*

Maternity pay must be assured, either by social security benefits, or from public funds. The obligation to guarantee maternity pay may only be fulfilled by the continued payment of a salary or through payment of a benefit equal to the salary or close to its value.

*iii) Prohibition of dismissal during pregnancy*

The Charter prohibits dismissal from the time the working mother notifies her employer that she is pregnant until the end of her maternity leave.

*iv) Right to health of the mother and the child-maternal and infant protection of health*

Under Article 11 (right to protection of health), states are required to bring infant and maternal mortality under control. All measures should be taken to approach a

result as close as possible to zero risk. In this respect the Committee monitors the rates of maternal and infant mortality.<sup>1</sup>

Under Article 8 of the Charter working mothers must be granted time off to nurse their babies, such time off must be treated as normal working time and remunerated as such.<sup>2</sup>

## **B Rights of the Family**

Article 16 of the Charter specifically protects the family; no distinction is made between the various models of family except for ensuring that greater protection exists for certain more vulnerable types such as single parent families. Closely linked to Article 16 is Article 27 of the Revised Charter (the right of workers with family responsibilities to equal opportunities and treatment).

### *i) Family benefits or other forms of financial assistance to the family*

Article 16 requires states to implement a genuine family policy by various means. It must for example guarantee an adequate standard of living for families, and to this end states must operate a family or child benefit scheme<sup>3</sup>. Such benefits must constitute an adequate income supplement for a significant number of families (although they may be subject to a means test)<sup>4</sup>.

Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children are relevant to the implementation of this provision.

### *ii) Housing*

Article 16 also covers the availability and construction of suitable family housing (including social housing)<sup>5</sup> as well as financial assistance to families who are without sufficient resources to access appropriate housing (e.g. grants or subsidies for the purchase or construction of a family home, tax relief on mortgage repayments, subsidised loans for acquiring the first home, subsidised rent for families, housing allowances, etc. Article 31 of the Revised Charter (right to housing) provides more detailed guarantees in respect of the right to housing.

<sup>1</sup> See conclusion in respect of Turkey, Bulgaria, Moldova and Romania where the Committee found the situation to be in breach of the Charter as the rate of maternal and/or infant mortality were too high (Conclusions XV-2 and Conclusions 2005).

<sup>2</sup> The Charter does not specify the length of time off nor the period during which it must be granted; therefore the ECSR appraises each situation on its merits, in certain cases flexible working time (part time arrangements) may be sufficient if they are compensated.

<sup>3</sup> The obligation it imposes in this respect is more extensive than those imposed under Article 12 (right to social security).

<sup>4</sup> See Slovakia Conclusions XVI-2, Romania Conclusions 2002, Bulgaria Conclusions 2004

<sup>5</sup> See European Roma Rights Center (ERRC) v. Greece, Collective complaint No. 15/2003, where the applicants alleged inter alia, discrimination in access to housing and lack of appropriate housing.

### *iii) Child care*

By virtue of Article 16 child-care services, particularly for infants, must exist in sufficient numbers to meet families' needs, in addition they must be affordable and accessible to all. They must offer a high standard of service (ratio of staff to children, staff training, suitable premises etc).

Article 27 of the Revised Charter provides *inter alia*, that there should be a possibility for either parent to take parental leave. It also obliges states to promote child day care services and other child-care arrangements.

### *iv) Breaking up of families*

When families break up, Article 16 applies in particular to children. States must therefore take account of children's interests when settling questions of custody and access and allow them to express their views in proceedings concerning them. In this respect legislation is required.

### *v) Prohibition of discrimination on the ground of family responsibilities*

Article 1§2 prohibits all forms of discrimination in employment. 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). Legal measures should make the prohibition of discrimination effective. Paragraph 3 of Article 27 of the Revised Charter provides that family responsibilities may not as such constitute a valid ground for termination of employment.

## **C Legal status of the Child**

### *i) Right to equal status independent of the conditions of birth*

Article 17 requires that there is no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations<sup>1</sup>.

### *ii) Right to an identity*

Under the Charter there must be procedures for establishing parentage, adoption must be adequately regulated and further, in principle, there must be a right for an adopted child to know his or her origins<sup>2</sup> (Article 17).

<sup>1</sup> See for example Conclusions XIII-2 (France, Malta), Conclusions XVII-2 (Malta)

<sup>2</sup> See the ECSR's Conclusions in respect of France (Conclusions 2003).

## **D Criminal liability and criminal law in respect of children**

As regards children and the criminal law, Article 17 of the Charter requires that the age of criminal responsibility must not be too low<sup>1</sup>. Further the criminal procedure relating to children and young persons must be adapted to their age. Minors should only exceptionally be remanded in custody and only for serious offences and should in such cases be separated from adults.

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration<sup>2</sup> and the length of sentence must be laid down by a court. Likewise, pretrial detention should not be of an excessive duration.

<sup>3</sup>Young offenders should not serve their sentence together with adult prisoners.

## **E Right to Protection of Health**

Under Article 11 health education at school must be a priority of public health policy. It should be provided throughout schooling and should form part of the curricula. There should be a particular focus on smoking, drugs, alcohol abuse, health nutrition and sex education. Medical services should exist at school and periodical medical examinations should be carried out throughout schooling<sup>4</sup>.

Vaccination programmes must be widely accessible and there must be high vaccination coverage rates<sup>5</sup>.

Health care must be available to all children without discrimination, including children of illegal or undocumented migrants<sup>6</sup>.

<sup>1</sup> ECSR has found the situation in Malta, Turkey and the United Kingdom to be in violation of Article 17 as the age of criminal responsibility is manifestly too low, Conclusions XVII-2.

<sup>2</sup> See Turkey Addendum to Conclusions XV-2, Conclusions XVII-2.

<sup>3</sup> See France, Conclusions 2005, Hungary, Turkey, Conclusions XVII-2.

<sup>4</sup> See for example Belgium and France, Conclusions XV-2.

<sup>5</sup> See Belgium and Turkey which were found to be in breach with Article 11§3 because the immunization coverage rates for some diseases were not sufficient (Conclusions XV-2).

<sup>6</sup> See International Federation of Human Rights Leagues (FIDH) v. France, Collective complaint No. 14/2002.

<b>F</b> <b><i>Special protection of children</i></b>
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*i) Ill treatment and abuse*

The criminal law must penalise the different forms of ill-treatment of children. There must be agencies and services designed to protect and prevent the ill-treatment of children.

To comply with Article 17, states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.<sup>1</sup>

Even if violence against the person is punished under the criminal law and provides for increased penalties where the victim is a child, this will not constitute a sufficient prohibition in law to comply with Article 17§1 of the Charter unless a state can demonstrate that such legislation is interpreted as prohibiting corporal punishment and effectively applied as such.

*ii) Sexual and other forms of exploitation*

Article 7§10 guarantees the right of children to be protected against all forms of exploitation.

Protection against sexual exploitation

All forms of commercial sexual exploitation of children are covered: child prostitution, child pornography and trafficking of children in the following meaning:

Child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration.

Child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually

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<sup>1</sup> To date Belgium, Czech Republic, Estonia, France, Greece, Hungary, Lithuania, Malta, Moldova, the Netherlands, Poland, Portugal Romania and United Kingdom, Slovakia, Slovenia, Spain and Turkey have been held not to comply with the Charter as the corporal punishment of children is not effectively prohibited (Conclusions 2005, Conclusions XVII-2). In *World Organisation Against Torture (OMCT) v. Greece* No. 17/2003, *OMCT v. Ireland* No. 18/2003, *OMCT v. Belgium 21/2003*, *OMCT v. Portugal 34/2006* the ECSR found a violation in all cases on the grounds that the corporal punishment of children was not effectively prohibited in all circumstances.

explicit conduct or realistic images representing a child engaged in sexually explicit conduct.

Trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

In order to comply with Article 7§10, states must take specific measures to prohibit and combat all forms of sexual exploitation of children.

To this effect, states must:

Criminalize all acts of sexual exploitation<sup>1</sup>

All aspects of child prostitution, child pornography and trafficking of children as defined above must be criminalized.

It is not necessary for a state to adopt a specific mode of criminalization of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts.

States must criminalize the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.

Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.

Adopt a national action plan combating the sexual exploitation of children<sup>2</sup>

Protect children against the misuse of information technologies

In light of the spread of sexual exploitation of children through the means of information technologies, states must adopt measures in law and in practice to protect children from their misuse.

Protection against other forms of exploitation

States Parties must prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic

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<sup>1</sup> Poland and the Czech Republic were found not to be in conformity with this provision as young persons between the ages of 15 and 18 were not adequately protected against sexual exploitation (Conclusions XVII-2). Likewise, Slovenia has been found to be in breach due to the lack of legislation notably prohibiting the possession of child pornography and criminalizing the trafficking of children for the purposes of sexual exploitation. (Conclusions 2004; see also Portugal, Conclusions XVII-2).

<sup>2</sup> Poland is not in conformity with Article 7§10 of the Charter as there is an insufficient number of activities to combat the sexual exploitation of children (*inter alia* there is no national plan on action to combat the sexual exploitation of children) (Conclusions XVI-2, Conclusions XVII-2).

exploitation, begging, pickpocketing, servitude or the removal of organs, and shall take measures to prevent and assist street children.

*iii) Protection against exposure to harmful material -information technologies*

The Charter obliges states to take legislative and other measures to prevent the exposure of children to harmful material on the Internet as well as audiovisual and print material.

*iv) Children in public care*

Any restrictions or limitations of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.

The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Institutional care should be organised in small units and should be as close to a family setting as possible.

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.

National legislation must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. Further a procedure must exist for complaining about the care and treatment in institutions.

There must be adequate supervision of the child welfare system, and in particular of the institutions involved.

<b>G</b> <i>Right to education</i>
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*i) Free primary and secondary education*

Article 17 of the Revised Charter includes a general right to education (in addition to Article 10, 15 etc). It requires states to establish and maintain an education system that is free of charge.

The Appendix provides that Article 17§2 does not imply that there is an obligation to provide compulsory education up to the age of 18. Nevertheless the ECSR considers that education should be compulsory for a reasonable period in general until the minimum age for admission to employment.

*ii) Accessible and effective education*

The education system must also be both accessible and effective.

In assessing whether the system is effective the ECSR examines whether there is a functioning system of primary and secondary education, the number of children enrolled in school, the number of schools, class sizes, the teacher pupil ratio, and the system for training teachers. School drop out rates and the number of children who successfully complete compulsory education and secondary education must be monitored. Where there is a significant number of children dropping out of school or failing to successfully complete compulsory education, measures must be taken to improve the situation<sup>1</sup>.

An effective system of education further requires the existence of a mechanism to monitor the quality of education delivered and to ensure a high quality of teaching.

Accessibility requires firstly that there is a fair geographical and regional distribution of schools (in particular as regards urban/rural areas). Secondly that the basic education system is free of charge; any hidden costs such as books, uniforms etc must be reasonable and assistance must be available to limit their impact on the most vulnerable groups. Thirdly equal access to education must be guaranteed for all children.

*iii) Professional guidance*

Article 9 guarantees, *inter alia*, vocational guidance within the school system.

*iv) Professional training*

Article 10 (right to vocational training) covers access to vocational training in the traditional sense, as well as access to higher education and apprenticeships. It

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<sup>1</sup> Moldova and Romania have been found to be in violation of this provision due to the level of non-attendance at compulsory schooling (Conclusions 2003, Conclusions 2005).

obliges States to promote technical and vocational training for all following compulsory schooling.

*v) Apprentices*

A system of apprenticeships and other systematic arrangements for training young people in their various employments must exist. Any fees or charges must be reduced or abolished and financial aid in appropriate cases should be granted. The effectiveness of apprenticeship and other training schemes for young people must be monitored.

*vi) Access to Universities*

Access to higher technical and university education should be conditional upon individual aptitude only.

*vii) Equal access to education for children from vulnerable groups*

Particular attention must be paid to ensure that vulnerable groups benefit from the right to education and have equal access; for example children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, and children in young offender institutions/serving custodial sentences. Where necessary, special measures should be undertaken to ensure equal access to education for these children. However special measures for Roma children must not involve the establishment of separate/segregated schooling facilities<sup>1</sup>.

The ECSR examines the right of children with disabilities to education under Article 15§1 where a Contracting Party has accepted this provision otherwise it examines their situation under Article 17<sup>2</sup>.

Article 15 (right of persons with disabilities to independence, social integration and participation in the life of the community) applies in respect of all disabilities; physical, mental and intellectual. The first paragraph relates to education and training. All persons with disabilities including children have a right to education and training. Education encompasses general education; basic compulsory education and further education as well as vocational training in the traditional sense.

Children with disabilities should be integrated into mainstream facilities; education and training should be made available within the framework of ordinary schemes and only where this is not possible through special facilities. Education in special schools or adapted education in mainstream schools should be of a sufficient quality.

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<sup>1</sup> See conclusion in respect of Slovenia (Conclusions 2005).

<sup>2</sup> Bulgaria has been held to be in breach of this provision as children with disabilities are often denied an effective right to education (Conclusions 2005).

Under this provision of the Revised Charter non-discrimination legislation in relation to disability in the field of education is required.

In the case of *Autism Europe v. France*, Collective Complaint No. 13/2002, the applicant alleged there was insufficient education *inter alia* for children with autism in the mainstream and special schools. The ECSR, after reviewing all the evidence available to it, found a violation of Articles 15§1 and 17§1 (whether alone or in conjunction with Article E) on the grounds that France had failed to achieve sufficient progress in advancing the provision of education for children with autism.

## **H Prohibition of child labour**

Article 7§1 of the Charter sets 15 years as the minimum age for admission to employment. This provision, in conjunction with Article 7§3, aims primarily to protect the education rights of children of compulsory school age.

The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other). In addition this age limit must be respected in practice.

In the case of *International Commission of Jurists (ICJ) v. Portugal*, Collective Complaint No. 1/1998, the complainant alleged that, while Portuguese legislation was in conformity with Article 7§1 of the Charter, it was not adequately enforced and illegal child labour was in fact widespread. The ECSR recalling that the aim and purpose of the Charter being a human rights instrument, is to protect rights not merely theoretically but also in fact, stated that legislation must not only exist, it must be effectively applied and rigorously supervised. It then observed from all the evidence submitted that a large number of children were employed illegally in Portugal and found a violation of Article 7§1 of the Charter.

The Charter allows an exception concerning light work, i.e. work which does not endanger the child's health, morals or education. National law may either set down a list of specific tasks which children are permitted to perform, or define the types of work which may be considered light in this context. No work may be considered light if working time is too long.

During school term, the time for which children may work must be limited so as not to interfere with their attendance, receptiveness and homework<sup>1</sup>.

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<sup>1</sup> Allowing children to work for up to 3 hours per day has been considered excessive. On the other hand, up to 2 hours of work per day and 17 hours per week during school term has not been found to exceed this provision of the Charter. During the summer holidays, longer working hours may be allowed to children.

### **I Specific working conditions between 15 and 18**

Article 7 paragraphs 2, 4 - 9 provide special rights for *young workers*. Domestic law must limit the hours worked by young people under the age of eighteen who are no longer in compulsory schooling<sup>1</sup>.

Domestic law must further provide for the right of young workers and apprentices to a fair wage or other appropriate allowances. The ECSR assesses this by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (age eighteen or over). In accordance with the methodology adopted under Article 4§1 the ECSR takes into consideration wages after deduction of tax and social security contributions<sup>2</sup>.

Time spent on vocational training by young people during normal working hours must be treated as part of the working day. Such training must, in principle, be done with the employer's consent and be related to the young person's work.

Workers under eighteen years of age must be given at least four weeks' annual holiday with pay.

18<sup>3</sup> is the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work. States should clearly indicate the minimum age required for the performance of any such work.

However, if such work proves essential for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary.

Persons under eighteen year of age are not to be employed on night work, with the exception of certain occupations specified in national laws or regulations. This law or regulation must not concern only industrial work.

### **J Rights of migrant children**

Article 19 (right of migrant workers and their families to protection and assistance) of the Charter has a specific relevance for *migrant children*. It provides that the

<sup>1</sup> The ECSR has set no definite limit on hours worked under this provision, but regards any law which allows persons under sixteen years of age to work as many as eight hours a day or forty hours a week as contrary to this provision. For young workers over the age of sixteen years an upper limit of eight hours daily and 40 hours weekly has been considered to be in conformity with this provision.

<sup>2</sup> The young worker's wage may be less than the adult starting wage, but the difference must be reasonable and the gap must close quickly.

<sup>3</sup> Under the 1961 Charter it was "a higher minimum age" (higher than 15).

right to family reunion for children (under 21 in the 1961 Charter and minor, i.e. under 18 in the Revised Charter). Moreover, family members of a migrant worker (including children) may not be deported as an automatic consequence of the deportation of the migrant worker (Article 19§8). Further paragraphs 11 and 12 of Article 19 of the Revised Charter provide that migrant children should have the possibility of learning both their language of origin and the language of their host country.

## APPENDIX I

**Please consult our web site to find further information on the monitoring procedure, reporting procedure and collective complaints procedure**

[www.coe.int](http://www.coe.int)

## APPENDIX II

### **Provisions from the Charter and Revised Charter – Extracts**

#### **Article 7**

Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.

1. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.
2. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy

*Appendix: 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.*

3. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
4. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

5. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

6. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

7. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

8. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

*Appendix: 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 the great majority of persons under eighteen years of age shall not be employed in night work.*

9. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

## **Article 8**

Employed women, in case of maternity, have the right to a special protection in their work

1. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide either by paid leave, by adequate social security benefits or by benefits from public

funds for women to take leave before and after childbirth up to a total of at least 12 weeks;

2. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

*Appendix: 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.*

3. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

5. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining, and all other work which is unsuitable by reason of its dangerous, unhealthy, or arduous nature and to take appropriate measures to protect the employment rights of these women.

## **Article 9**

Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests.

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

## **Article 10**

Everyone has the right to appropriate facilities for vocational training

1. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
2. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary:
  - a adequate and readily available training facilities for adult workers;
  - b special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;
4. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;
5. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as:
  - a reducing or abolishing any fees or charges;
  - b granting financial assistance in appropriate cases;
  - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
  - 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 11**

**Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.**

1. With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia* to remove as far as possible the causes of ill-health;

2. With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia* to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia* to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

## **Article 15**

Disabled persons have the right to independence, social integration and participation in the life of the community.

1. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

2. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their full social integration and participation in the life of the community in particular through

measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

## **Article 16**

The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

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

## **Article 17**

Children and young persons have the right to appropriate social, legal and economic protection.

1. With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

2. With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed to

provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

*Appendix: 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.*

## **Article 19**

Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party.

1. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
4. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
  - a remuneration and other employment and working conditions;
  - b membership of trade unions and enjoyment of the benefits of collective bargaining;
  - c accommodation;

5. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

*Appendix : 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.*

7. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

11. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of

these languages, to migrant workers and members of their families;

12. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

## **Article 27**

All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.

1. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to take appropriate measures :

- a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to the responsibilities, including measures in the field of vocational guidance and training;
- b. to take account of their needs in terms of conditions of employment and social security;
- c. to develop or promote services, public or private, in particular child day care services and other child care arrangements;

2. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.