



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

5 October 2015

**Statement of interpretation on the rights of refugees under
the European Social Charter**

(elaborated during the 280th session of the European Committee of Social Rights in Strasbourg, 7-11 September 2015)

This text may be subject to editorial revision

The function of the European Committee of Social Rights is to rule on the conformity of States Parties' national law and practice with the European Social Charter (revised), the 1988 Additional Protocol and the 1961 European Social Charter.

The Committee is composed of 15 independent, impartial members who are elected by the Committee of Ministers of the Council of Europe for a term of office of six years, renewable once.

It adopts conclusions within the framework of the reporting procedure and decisions under the collective complaints procedure.

Its conclusions and decisions are available on the website of the European Social Charter and in the case law database available on this site.

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1. The Committee emphasises the urgent and unconditional need to treat with solidarity and dignity the men, women and children who arrive on European territory, and who have a right under international law and the relevant national and European laws to the protection of European States as refugees, as described by the 1951 Convention on the Status of Refugees. It is even more important in light of the current humanitarian crisis resulting from the exodus of such people from their homes. Those people are driven by circumstances which prevail in their homelands to seek refuge from war, terror, torture or persecution, and to build a safer and better life for themselves outside the borders of their country of origin. Their proper integration into the European societies which welcome them is the best way to ensure their safety and well-being.
2. The Committee considers that the obligations undertaken by the States Parties by virtue of the European Social Charter are appropriate to promote and to firmly establish the prompt social integration of refugees in the host societies. It recalls that these obligations require a response to the specific needs of refugees and asylum seekers, such as courses for learning the language of the host state; the recognition of their qualifications; the liberal administration of the right to family reunion; and the right to undertake gainful employment and thus contribute to the economy.
3. The Committee underlines that States Parties must ensure that everyone within their territory is treated with dignity and without discrimination. This means not only to ensure respect for their civil rights, but also to support their physical and mental integrity, and to recognise their fundamental human needs of community and belonging. The fundamental rights of every human being which bind the international community are universal, indivisible and interdependent. The social and economic integration of every individual is an essential part of their right to lead a dignified life.
4. In recognition of this, the Committee reiterates that the rights guaranteed by the Charter are to be enjoyed to the fullest extent possible by refugees (cf.

Conclusions XVII-1 (2004), Statement of Interpretation on the personal scope of the Charter). It recalls that it has held that certain rights afforded by the Charter apply to refugees and other vulnerable groups, for example Article 17 (Conclusions 2003, Bulgaria), Article 13 (Conclusions 2013, Bosnia and Herzegovina) and Article 31 (FEANTSA v. the Netherlands, Complaint No. 86/2012, Decision on the Merits of 2 July 2014). It recalls that it has previously outlined the protection of stateless persons under the Charter (Conclusions 2013, Statement of Interpretation on the rights of stateless persons). The Committee adds to that reasoning the following observations.

5. The Appendix forms an integral part of the Charter, and the interpretation thereof, in the light of its object and purpose, is thus entrusted to the European Committee of Social Rights. The Appendix to the Charter reads:

“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]¹, 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.”

6. Article 1A of the 1951 Convention relating to the Status of Refugees (CSR), read in conjunction with Article 1 paragraph 2 of the 1967 Protocol², defines a refugee as follows:

“For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to

¹ The 1967 Protocol does not appear in the Appendix to the 1961 Charter, however, all of the States bound by the 1961 Charter as of 7 September 2015 have also ratified the 1967 Protocol.

² In respect of Turkey, the instrument of accession stipulates that “the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention to the effect that no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey.”

such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

A refugee as contemplated by the CSR and its 1967 Protocol is thus anyone who has fled the country of his nationality or habitual residence, and is unwilling, through well-founded fear of being persecuted, to return to it. Having regard to the above definition, the Committee underlines that the protection of a refugee under the CSR, and his or her resultant protection under the Charter, does not depend on the administrative recognition of refugee status by a State, which is done by the granting of asylum.

7. The Committee recalls that the Charter is a living instrument dedicated to the values which inspired it, namely dignity, autonomy, equality and solidarity. It must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, Decision on the Merits of 8 September 2004, §29). The Charter should also so far as possible be interpreted in harmony with other rules of international law (Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, Decision on the Merits of 20 October 2009, §35).

8. In this respect, the Committee points out that Article 25 paragraph 1 of the United Nations Universal Declaration of Human Rights sets out the following with regard to the universal right to an adequate standard of living:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

9. The Committee further notes that the Committee of Ministers of the Council of Europe in its Recommendation No. R(2000)3 (Adopted on 19 January 2000 at the 694th meeting of the Ministers' Deputies), has recommended that Member States:

"[...] recognise, at national level, an individual universal and enforceable right to the satisfaction of basic material needs (as a minimum: food, clothing, shelter and basic medical care) for persons in situations of extreme hardship."

"The exercise of this right should be open to all citizens and foreigners, whatever the latter's position under national rules on the status of foreigners, and in the manner determined by national authorities."

10. Having in mind the same concerns, the Committee recalls that in *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*, Complaint No. 86/2012, Decision on the Merits of 2 July 2014, it held that the right to emergency shelter and to other emergency social assistance is not limited to those belonging to certain vulnerable groups, but extends to all individuals in a precarious situation, pursuant to the principle of upholding their human dignity and the protection of their fundamental rights. The Committee considers that certain social rights directly related to the right to life and human dignity are part of a “non-derogable core” of rights which protect the dignity of all people. Those rights therefore must be guaranteed to refugees, and should be assured for all displaced persons.

11. The wording of the Appendix to the Charter demonstrates the express undertaking to provide “treatment as favourable as possible” to the persons it covers. The Committee thus considers that the rights contained in the Charter should as far as possible be guaranteed to refugees on an equal footing with other persons subject to the jurisdiction of the host State. It is therefore incumbent upon them to take meaningful steps towards the achievement of equality for refugees under each article of the Charter by which they are bound. In any case, as is expressly stated in the Appendix to the Charter, the treatment of refugees must not be less favourable than that guaranteed by the CSR. When the achievement of a right in question is exceptionally complex and particularly expensive to resolve, States Parties must attempt to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (cf. *Autism-Europe*

v. France, Complaint No. 13/2002, Decision on the Merits of 4 November 2003, §53).

12. The CSR grants social and economic rights to refugees with reference to three levels of protection. Article 7 paragraph 1 CSR provides that “[e]xcept where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally”. Other provisions of the Convention guarantee that States Parties afford refugees treatment equal to that of nationals, while some provide for “the most favourable treatment accorded to nationals of a foreign country”, and others “treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances”.
13. The CSR coincides with the Charter in guaranteeing many social and economic rights to refugees.
14. Refugees must be accorded treatment equal to nationals in respect of elementary education (Article 22 CSR), which is guaranteed by Article 17§1 of the Charter; and public relief and assistance (Article 23 CSR), which is accorded under Article 13 of the Charter (social and medical assistance) and implied by Article 30 of the Charter (the right to protection against poverty and social exclusion).
15. Labour legislation and social security (Article 24 CSR) are the areas of greatest correspondence between the two instruments. The following Articles of the Charter all cover rights for which the CSR guarantees the same treatment as nationals: Article 2 (working hours, holidays with pay, overtime arrangements); Article 4 (remuneration); Article 6 (the enjoyment of the benefits of collective bargaining); Article 7 (a minimum age of employment, young persons’ employment rights and apprenticeships); Article 8 (rights of women in the workplace); Article 10 (training opportunities); Article 11 (healthcare); Article 12§§1, 2, 3 (the right to social security covering healthcare, sickness, unemployment, old age, employment injury or disease,

family benefits and maternity benefits); Article 16 (family benefits); 19§7 (access to courts); and Article 23 (rights of the elderly).

16. The CSR guarantees the right to the most favourable treatment accorded to nationals of a foreign country in respect of the right to belong to trade unions (Article 15 CSR), which is guaranteed by Articles 5 and 19§4 of the Charter; and the right to engage in wage-earning employment (Article 17 CSR), which is guaranteed by Articles 1 and 18 of the Charter.
17. Finally, the CSR guarantees treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, in relation to the right to self-employment (Article 18 CSR), which is covered in Article 1 and 18 of the Charter; the right to access to housing (Article 21 CSR), which is dealt with under Articles 16 and 31 of the Charter; and the right to further education (Article 22 CSR), which is guaranteed by Article 10 (vocational education) and Article 17 (secondary education) of the Charter.
18. The rights contained within the CSR are to be guaranteed without discrimination (Article 3 CSR). Certain articles of the Charter explicitly prohibit discrimination in a number of circumstances (e.g. Article 1§2 (discrimination in employment); Article 15 (discrimination on the grounds of disability); Article 20 (discrimination on grounds of sex)). The application of the rights guaranteed by the Charter must also be secured without discrimination, pursuant to Article E of the Revised Charter, or must take account of the preamble of the 1961 Charter.
19. The CSR guarantees the right to free access to the courts of law, with refugees enjoying the same treatment as nationals in respect of legal assistance or court fees. Many of the Charter provisions require effective mechanisms for their exercise, including the right to appeal against decisions of the relevant authorities. The Committee considers that refugees must enjoy the same treatment in respect of juridical procedures involving their rights under the Charter.

20. Finally, Article 32 of the CSR stipulates that the Contracting States shall not expel a refugee lawfully on their territory save on grounds of national security or public order, in which case expulsion shall take place only in pursuance of a decision reached in accordance with due process of law. The Committee thus considers that refugees must be guaranteed the protection of the Charter in respect of expulsion (cf. Article 19§8) on an equal footing with nationals of other States Parties to the Charter.
21. The Committee therefore requests that all States Parties provide up-to-date and complete information relevant to the situation of refugees and displaced persons on their territory, in their reports concerning the rights identified in this Statement of Interpretation. Where specific measures apply to such persons these should be clearly described, and any difference of treatment in relation to the treatment of other persons subject to their jurisdiction should be justified with reference to the principles of Article 31 of the 1961 Charter and Article G of the Revised Charter.