

APPENDIX 1961 CHARTER

Questions on Group 4 provisions Conclusions XXII-4 (2023)

Children families and migrants

This questionnaire covers Thematic Group 4 – Children, families and migrants, comprising Articles:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection, (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to social, legal and economic protection (Article 19),

The ECSR will pursue the targeted and strategic approach adopted since 2019 (see Conclusions XXII-1 (2020), and XXII-2 (2021)). It is therefore not asking that national reports address all accepted provisions in the Group. Certain provisions are excluded, except:

- when connected to other provisions which are the subject of specific questions
- when the previous conclusion was one of non-conformity
- when the previous conclusion was one of deferral due to lack of information
- when the previous conclusion was one of conformity pending receipt of specific information.

Moreover, given the magnitude, implications and expected longer-term consequences of the Covid-19 pandemic, the ECSR will pay particular attention to pandemic-related issues. In this connection, it is relevant to note that the reference period for Conclusions XXII -4 (2023) is 1 January 2018 to 31 December 2021. The Committee draws attention to relevant parts of its Statement on Covid-19 and social rights adopted on 24 March 2021.

Given the date of transmission of this questionnaire, the Committee requests that state reports be submitted by **31 December 2022** (and not the usual deadline of 31 October).

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

Excerpts from the ECSR's case law

In application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years.

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).

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

The ECSR has noted that many states' legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the ECSR has expressed concern about the situation in practice. There is data that suggests that in many countries there are significant numbers of children working illegally. However, there is little official data on the extent of the problem.

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.

Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.), which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic.

Article 7§10 is applicable to foreign children in an irregular situation on the territory of a State Party to the Charter as not considering States Parties to be bound to comply with this obligation in the case of foreign minors who are in a country unlawfully would mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.

Therefore, measures should be taken to ensure the protection of unaccompanied or separated minors. The failure to care for unaccompanied foreign minors present in the country and take the necessary measures to guarantee these minors the special protection against physical and moral hazards causes a serious threat to their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity, in violation of Article 7§10.

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

1. 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;

a) Please provide information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the informal economy. In this regard, please provide information on the number of children actually working (either from existing statistics on this issue or from surveys to be conducted to obtain such information), as well as on measures taken to identify and

monitor sectors where it is strongly suspected that children are working illegally (General question, Conclusions XXI-4 (2019)).

b) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

2. to provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the question(s) raised.

3. 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;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

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

- a) Please provide updated information on net minimum wages and allowances payable to persons under 18 years of age. Please provide information on measures taken to ensure that fair remuneration is guaranteed to young workers:*
- i) In atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.)*
 - ii) in the gig or platform economy and*
 - iii) having zero hours contracts.*
- b) Please provide information on measures taken to ensure that this right is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions) (General question, Conclusions XXI-4 (2019)).*

- c) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

6. 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;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of three weeks' annual holiday with pay;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

8. 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;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

9. 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;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

10. 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.

- a) *Please provide updated information on the measures taken to strengthen the protection of children, including migrant, refugees, and displaced children, from sexual exploitation and abuse (in particular in response to the risks posed by the*

Covid-19 pandemic) during the reference period, including information on the incidence of such abuse and exploitation.

- b) Please provide information on the impact of the Covid-19 pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen monitoring mechanisms.*
- c) Please provide information on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).*
- d) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 8 – The right of employed women to protection

Excerpts from the ECSR's case law

Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity. The aim of such protection is the protection of the health of a mother and a child. Such protection is possible where employed women are entitled to safe and healthy working conditions, i.e. such working conditions which take due regard to their specific needs during respective periods. Safe and healthy working conditions include also protection against less favourable treatment due to pregnancy and maternity.

Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination.

It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

With a view to ensuring the effective exercise of the right of employed women to the protection, the Parties undertake:

1. 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;

- a) Please provide information whether the Covid-19 crisis had an impact of on the right to paid maternity leave (in particular whether all employed women*

concerned – in the private as in the public sector - continue to receive at least 70% of their salary during the whole length of the compulsory maternity leave during the Covid-19 crisis).

- b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence;

- a) *Please provide information:*

i) *whether the Covid-19 crisis had an impact on the possibility of dismissing pregnant employees and employees on maternity leave and*

ii) *whether there were any exceptions to the prohibition of dismissal during pregnancy and maternity leave during the pandemic.*

- b) *If the previous conclusion was one of non-conformity, please explain whether and how the non-conformity was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.

4. a to regulate the employment of women workers on night work in industrial employment;

b to prohibit the employment of women workers in underground mining, and, as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

- a) *Please provide updated information to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.*

- b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 16 – The right of the family to social, legal and economic protection

Excerpts from the ECSR's case law

Article 16 of the Charter applies to all forms of violence against women and domestic violence and States Parties are required to ensure an adequate protection against such violence in both law and practice. It follows that States Parties must show due diligence in deploying measures such as restraining orders penal sanctions for perpetrators, adapted judicial procedures, and adequate compensation for victims, and training, particularly for police officers and other working directly with victims as well as collection and analysis of reliable data. States must ensure provision of shelter or protected accommodation for victims or for women at risk of violence, as well as services to reduce the risk of violence and support and rehabilitate victims. Victim empowerment should also be strengthened through early advice and protection measures as well as minimum or supplemented income for victims or would-be victims.

States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test.

Family benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.).

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

- a) *Please provide updated information on measures taken to reduce all forms of domestic violence against women including information on incidence and conviction rates.*
- b) *Please provide updated information on the availability of adequate affordable housing for families.*
- c) *Are family or child benefits provided subject to a means-test? If so, what is the percentage of families covered?*
- d) *Please provide information about the amounts paid in child/family benefit as well as the median equivalised income for the reference period.*
- e) *Is there a length of residence requirement imposed on nationals of other States Parties lawfully resident in your country for eligibility to child/family benefits?*

- f) *What measures have been taken to ensure that vulnerable families can meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services)?*
- g) *If specific temporary measures were taken to financially support vulnerable families during the Covid-19 pandemic, will they or are they expected to they been maintained or withdrawn? If they have been withdrawn, what effect is this expected to have on vulnerable families?*
- h) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 17 – The right of mothers and children to social and economic protection

Excerpts from the ECSR's case law

The ECSR has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals. Therefore, the ECSR examines what measures have been taken by States Parties to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and identifying children who were not registered at birth).

The prevalence of child poverty in a States Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

- a) *Please provide information on measures taken by the State to:*
 - i) *reduce statelessness (e.g., ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth) and*

- ii) *facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation. (General question posed in Conclusions XXI-4 (2019)).*
- b) *Please provide information on measures taken to:*
- j) *child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.) and*
 - ii) *combat discrimination and promote equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.*
 - iii) *States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.*
- c) *Please provide information on any measures adopted to protect and assist children in crisis situations and emergencies.*
- d) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

Article 19 – The right of migrant workers and their families to protection and assistance

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:

1. 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. 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. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. 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. 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. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. 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. 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. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.