

Statement of interpretation on Article 19§8

Article 19§8 of the Charter prohibits the expulsion of migrant workers lawfully residing within the territory of a State Party, except where they endanger national security or offend against public interest or morality.

The legislation of a number of countries has already gone beyond this requirement by providing that neither may expulsion be imposed, even where the right to reside is forfeited especially in connection with circumstances of unemployment, upon migrant workers who have previously resided lawfully in their territory for a certain time and/or entered into marriage there or had offspring.

Both in these countries and in those whose legislation embodies no provision of this kind, several types of problem are posed by the situation of migrant workers who, being without employment, are ineligible for renewal of their residence permits and thereby at risk of removal from the territory:

1. Firstly, if they have conferred the right of residence on a spouse and/or children, loss of their own right of residence cannot affect their family members' independent rights of residence, which may have a longer term of validity than their own, a contagious effect, so the Committee has consistently held.
2. Secondly, for as long as a migrant workers' family members hold a right of residence it must not be possible to remove even a foreigner, who has personally lost this right except where they endanger national security or offend against public interest or morality; such is the implication of Article 8 of the European Convention for the Protection of Human Rights as often interpreted by the ECtHR, especially by the decisions in the cases of *Berrehab v. Netherlands* of 21 June 1988 and *Mengesha Kimfe and Agrau v. Switzerland* of 2010. The *Berrehab* decision found that the "economic well-being of the country" was not apt to justify the expulsion or removal of a foreigner whose daughter also resided in the territory of the state wishing to take this measure. The *Kimfe and Agrau* decisions disallow the same ground with regard to a restricted residence measure in two different cantons imposed on two spouses whose removal does not seem feasible at least for some time.
3. Thirdly, the impossibility of expelling or removing a migrant worker which follows either from a State Party's undertakings pursuant to the Charter or from choices specific to that state and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence, i.e. holds the necessary documents to travel both in the country and beyond its borders and to obtain the social benefits which can be claimed by migrant workers whose situation is in order.
4. Lastly, national legislation should reflect the legal implications of Article 18§1 of the Charter read in conjunction with Article 19§8 as informed by the case-law of the ECtHR, in keeping with the developments which, for several decades now, have transformed migratory trends. Foreign nationals who have been resident for a sufficient length of time in a state, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules that already protect other foreign nationals from deportation. In order to assess the current practices of States Parties to the Charter, either in accordance with

their legislation or in parallel with it, the Committee therefore invites the States to notify it of their usual practices in this respect.”