Danish report to the Council of Europe on the non-accepted provisions of the European Social Charter

Submitted by the Government of Denmark
August 2023

In pursuance to article 23 of the Charter, copies of this report have been communicated to:
The Confederation of Danish Employers (DA)
Danish Trade Union Confederation (FH)
Local Government Denmark (KL)
Danish Regions (DR)
The Danish Confederation of Professional Associations (AC)
Danish Employee and Competence Agency (MEDST)

Introduction

Following the recent revision of the procedure provided by Article 22 of the European Social Charter, Denmark is hereby – for the first time, and as one of the first States Parties – submitting a report containing information on the non-accepted provisions of the European Social Charter, on the prospects for and possible obstacles to the ratification of the Revised Charter, as well as on the Collective Complaints procedure.

Ratifications

Denmark ratified the European Social Charter on 03/03/1965 and the Additional Protocol on 27/08/1996. It has ratified 45 of the 72 provisions of the Charter and all 4 articles of the Protocol.

Denmark has signed, but not yet ratified the Revised Social Charter and the Additional Protocol providing for a system of collective complaints.

Table of Accepted Provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
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18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4	AP = Additional Protocol				Grey = Accepted provisions			

Non-accepted provisions

The 27 provisions not accepted by Denmark are the following:

- Article 2§§1 and 4
- Article 4§§4 and 5
- Article 7§§1 to 10
- Article 8§§2 to 4
- Article 19§§1 to 10

Introductory remarks

This report is a factual assessment of the non-accepted provisions carried out at technical level by the following civil services of Denmark:

The Danish Ministry of Employment (competent authority as regards the Social Charter), Ministry of Foreign Affairs, Ministry of Justice, Ministry for Industry, Business and Financial Affairs, Ministry for Social Affairs and Housing, Ministry for Children and Education, Ministry for Immigration and Integration, Ministry for Taxation, Ministry for Transport, Ministry of Higher Education and Science, Ministry for Digitalisation and Gender Equality, Ministry for Senior Citizens, the Danish Agency for Labour Market and Recruitment, the Danish Working Environment Authority (WEA), the Danish Maritime Authority (DMA), and the Danish Financial Supervisory Authority (DFSA).

The report provides information on the law and practice in Denmark, taking due note of existing international standards and EU legislation. In the process of drawing up this report, Danish authorities have relied on the appropriate case law of the ECSR in the assessment of the provisions. The content of the report should be regarded as a preliminary technical assessment for further dialogue and examination including with the ECSR.

In accordance with Article 23 of the Social Charter, a copy of the report has been communicated to the relevant national organisations who are members of the international organisations of employers and trade unions. Denmark will forward comments from these organisations to the ECSR secretariat.

Non-accepted provisions and the situation in Denmark (1961 Social Charter)

Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

Article 2§1 - to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.

ECSR case law regarding article 2§1

Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. The aim is to protect worker's safety and health. The Committee examines the situation of workers "on call" or working discontinuous hours under this provision. Adequate protection must also be afforded to part-time workers in terms of this Article.

A reasonable period of work, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means. In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected. These limits should apply to all categories of workers and can only be exceeded under exceptional circumstances (i.e. natural disasters, situations of force majeure).

The Charter does not expressly define what constitutes reasonable working hours. Situations are therefore assessed on a case-by-case basis: The Committee found that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time.

In assessing States Parties' compliance with their obligations under Article 2§1, the Committee considers that in addition to the number of working hours laid down by law in that State, it also has to be taken into account the effect of collective agreements and the nature and extent of an employer's right to require overtime to be worked.

Working overtime must not simply be left to the discretion of the employer or the employee. The reasons for overtime work and its duration must be subject to regulation. States Parties must set up an appropriate authority to supervise that daily and weekly working time limits are respected in practice.

Article 2§1 provides for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These "other

factors" may be the nature of the work and the safety and health risks to which workers are exposed. The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.

For the purpose of protecting the private and family life of workers, the Committee attaches importance to the fact that they must be clearly and duly informed about any changes to their working hours.

Statutory provisions introducing or authorising the flexibility of working time have been adopted in many States Parties. Working hours are calculated as an average over given reference periods. The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period. The Committee considers that these measures are not as such in breach of the Charter. Flexibility measures regarding working time are not as such in breach of the Charter.

In order to be found in conformity with the Charter, domestic laws or regulations must fulfil three criteria:

(i) they must prevent unreasonable daily and weekly working time.
(ii) they must operate within a legal framework providing adequate guarantees.
(iii)they must provide for reasonable reference periods for the calculation of average working time. Periods that do not exceed four to six months are acceptable in terms of Article 2§1, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances. Objective or technical reasons or reasons concerning the organisation of work must justify such an extension of the reference period.

A total working week (usual hours plus overtime) which, within the framework of "flexibility regulations", may attain up to sixty hours per week or exceed sixty hours per week is unreasonable. The exclusion of certain categories of workers from statutory protection against unreasonable working hours is a ground of non-conformity. Seafarers' right to reasonable weekly hours must be guaranteed by law.

The Committee requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level.

Workers on flexible working time arrangements with long reference periods (i.e. one year) should not be asked to work unreasonable hours or an excessive number of long working weeks. Periods of on-call duty ("périodes d'astreinte") during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter. The assimilation of "périodes d'astreinte" to rest periods constitutes a violation of the right to reasonable working time provided

in Article 2§1. The absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at their disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

Danish remarks

Regulation of working hours is a core area in Denmark left for the social partners to regulate. Therefore, daily and weekly working hours are primarily regulated by collective agreements. In most areas, standard working hours are 37 hours per week regardless of productivity and other factors.

In order to fulfill the EU-directive on working time there are some legal requirements in the Act on Working Time. The act applies to areas not covered by collective agreements:

- A break during a work day exceeding 6 hours. The length of the break depends on the purpose of the break, e.g. whether it is a break intended for a meal.
- Weekly working hours of maximum 48 hours on average, including overtime.
- An employee on night shift must not work more than 8 hours on average per 24-hour period.

In the working environment legislation there are legal requirements with regard to rest periods:

- A daily rest period of at least 11 consecutive hours.
- One 24-hour period off per week, which must follow directly a daily rest period. No more than six 24-hour periods between two 24-hour periods off are allowed.

Article 2§4 - to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed.

ECSR case law regarding article 2§4

States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations. The Committee leaves the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. However, some sectors and occupations must be deemed dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise.

Whilst the elimination of dangerous and unhealthy occupations is an ideal to strive for, Article 2§4 requires that specific measures should be taken so long as these occupations still exist.

If, on the one hand, a constant improvement of the technical conditions in which certain dangerous or unhealthy occupations are carried out represents a major factor for the reduction of the risk of accidents or disease, on the other hand, a decrease in working hours and the granting of additional holidays are equally necessary, as they allow for a reduced accumulation of physical and mental fatigue and a reduction in the exposure to risk, whilst at the same time granting workers longer periods of rest.

In assessing States Parties' compliance with Article 2§4, the Committee examines firstly what measures have been taken to progressively eliminate the inherent risks in dangerous or unhealthy occupations. Secondly, it examines what compensatory measures are applied to workers who are exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures or because they have not yet been applied.

Elimination or reduction of risks

The first part of Article 2§4 requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which States Parties undertake to pursue policies and take measures to improve occupational health and safety. Where appropriate, the Committee will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter.

For example, a legislative provision to the effect that the employees' exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees' safety, health or reproductive health has been found in conformity with Article 2§4.

Self-employed workers must be sufficiently covered by occupational health and safety regulations.

Measures in response to residual risks

Where risk elimination is not possible or where risks have not been reduced or eliminated, Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. The Committee stressed the importance of reducing working hours and providing additional holidays both because of the need for workers in hazardous situations to be alert and in order to limit the period of exposure to safety and health risks.

In view of the emphasis in this provision on health and safety objectives, however, other approaches to reducing exposure to risks may also ensure conformity with the Charter. Alternative approaches will be assessed on a case-by-case basis.

Under no circumstances can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4. Early retirement, wage increases or food supplements are not relevant or appropriate measures to achieve the aims of Article 2§4 of the Revised Charter.

Compensation measures such as one additional day's holiday and a maximum weekly working time of 40 hours have been considered inadequate in that they do not offer workers exposed to risks regular and sufficient time to recover.

Measures intended to compensate workers for exposure to residual risks must be regulated at the central level and must not be left to the agreements between the social partners.

Danish remarks

According to the Holiday Act all workers are entitled to five weeks paid holiday per year regardless of occupation. Additional rights concerning additional holidays and time off due to dangerous or unhealthy occupations can be agreed upon by the social partners.

Article 4 - The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

Article 4§4 - to recognise the right of all workers to a reasonable period of notice for termination of employment.

ECSR case law regarding article 4§4

This paragraph forms part of the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before their current employment ends, i.e. while they are still receiving wages.

The Committee will assess the national situation regarding Art 4§4 on the basis of the following aspects:

1. *The rules governing the setting of notice periods (or the level of compensation in lieu of notice):*
   a. according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
   b. during any probationary periods, including those in the public service; the Committee wishes to see an explicit minimum period of notice even if the

length of the probationary employment period is short or has recently been reduced by law;
c. with regard to the treatment of employees in insecure jobs;
d.in the event of termination of employment for reasons outside the parties' control (including insolvency, death of the employer if they are a natural person); in principle such circumstances may not warrant failure to give notice;
e. and any circumstances in which employees can be dismissed without notice or compensation.

2. *Acknowledgment, by law, collective agreement or individual contract, of length of service, whether with the same employer or in circumstances of successive precarious forms of employment relations;*
3. *The components of the employee's remuneration during the notice period*

The Committee has refrained from defining in absolute terms the word "reasonable".

The right to reasonable notice of termination of employment applies to all categories of workers independently of their status, including those in non–standard such as fixed-term, temporary, part-time, intermittent, seasonal or complementary employment. It applies to civil servants and contractual staff in the civil service, to manual workers and in all sectors of activity. It also applies during the probationary period and upon early termination of fixed-term contracts. Domestic law must be broad enough to ensure that no workers are left unprotected.

The only exception to the right of all workers to a reasonable period of notice concerns immediate dismissal for serious offences set out in the Annex to the Charter. It may be the result of the accumulation of several less serious breaches, if there have been prior written warnings from the employer.

Danish remarks

Notice periods are generally not regulated by law, but by collective or individual agreement. In Denmark the social partners play a crucial role regulating wages and working conditions. The Danish labour market model builds on employers and workers being organised in strong associations and unions that represent the broad interests of members in collective agreement negotiations. As far as possible, the state refrains from intervening in the regulation of pay and working conditions.

The termination notice period applicable to both the worker and the employer must be stated in the employment contract. If the employment is covered by a collective agreement, then the termination notice for both parties typically follows the provisions therein.

If the employee is employed as per the Act on Salaried Employees (funktionærloven), then there are specific regulations that apply in conjunction with terminating their employment. Pursuant to the Act on Salaried Employees, the employee has to give their notice 1 month before their resignation. For employers, other regulations apply depending on how long the employee has been employed.

The employer's notice period is stipulated as per the Act on Salaried Employees according to the following scheme:

Duration of employment	**Notice periods**
0–6 months	1 month
6 months – 3 years	3 months
3–6 years	4 months
6–9 years	5 months
9+ years	6 months
Agreed probationary period of max. 3 months	14 days
Agreed temporary assignment of max. 1 month	No notice

The notice period of a salaried employee is based on a 1-month period. However, no notice is required from the employee during the agreed probationary period of max. 3 months or if the parties have agreed to a temporary employment of max. 1 month.

Article 4§5 - to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

ECSR case law regarding article 4§5

The deductions envisaged in Article 4§5 can only be authorised in certain circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award). Therefore, workers should not be allowed to waive their right to limitation of deductions from their wage, and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract. Article 4§5 also applies to civil servants and contractual staff in the civil service.

Such deductions must be subject to reasonable limits and should not per se result in depriving workers and their dependents of their means of subsistence. All forms of deduction are covered by this provision, including trade union dues, disciplinary fines, maintenance payments, repayment or wage advances, tax debts, compensation for benefits in kind, wage assignments or transfers, etc.

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

Danish remarks

The Danish labour market builds on employers and workers being organised in strong associations and unions that represent the broad interests of members in collective agreement negotiations. Pay and working hours are primarily regulated by collective agreement or individual employment contracts. There is no statutory minimum wage in Denmark. As far as possible, the state refrains from intervening in the regulation of pay and working conditions. Wages are not regulated by law but by collective agreements for different types of jobs - or agreed upon by individual agreements.

The pay may be set as hourly, daily or monthly rate or have been agreed upon in other ways. The pay may, for example, consist of a piece-work rate, performance related pay or similar. Some collective agreements will stipulate that the pay must include an individually negotiated supplement to the minimum rate. Some collective agreements stipulate that the pay is determined by negotiation with the company. The total pay often exceeds the hourly rate because of other pay components.

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

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

Article 7§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.

ECSR case law regarding article 7§1

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 (worker, 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 Labor Inspectorate has a decisive role to play in this respect.

Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States Parties are required to define the types of work which may be considered light, or at least to draw up a list of those which are not. The definition of light work authorized by legislation must be sufficiently precise. Work considered light ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.

The Committee considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and 30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.

Children who are still subject to compulsory schooling can carry out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance. However, a situation in which a child under the age of 15 works for between 20 and 25 hours per week during school term, or three hours per school day and six to eight hours on weekdays when there is no school is contrary to the Charter.

Children should be guaranteed at least two consecutive weeks of rest during the summer holidays.

Regarding work done at home, States Parties are required to monitor the conditions under which it is performed in practice.

Danish remarks

Denmark has laid down a number of detailed rules in this area of the law in order to make sure that work carried out by young people under the age of 18 is fully safe and sound.

According to article 28 and 29 in the Executive Order on the Work of Young Persons[1], youngsters at the age of 13 and 14, or young persons who are subject to

[1] Arbejdstilsynets bekendtgørelse nr. 1049 af 30. maj 2021 om unges arbejde

compulsory schooling, are only allowed to be employed with work tasks considered "light" and not implying any danger or harm to the young person's health and safety.

Article 29 of the Executive Order states that young persons who have turned 13 only can be employed with the types of light work that is listed in appendix 7-9. Appendix 7 lists the work tasks that are considered "light" according to Danish law, while appendix 8 and 9 contains detailed exemptions to appendix 7.

Denmark has furthermore laid down specific rules on how many hours young persons are allowed to work. To learn more about these rules please see more below about the Danish remarks concerning article 7§3.

Article 7§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

ECSR case law regarding article 7§2

In application of Article 7§2, domestic law must set 18 as 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 during the course of that work.

However, if such work proves absolutely necessary for their vocational training, children may be permitted to perform it before the age of 18, but only where such work is carried out in accordance with conditions prescribed by the competent authority. Children must have received training for performing dangerous tasks. The Labour Inspectorate must monitor these arrangements.

Danish remarks

According to Danish law, young people under the age of 18 cannot take on employment that can be regarded as dangerous or unhealthy.

Danish law specifically states that the employer of young people under the age of 18 must ensure that work tasks carried out by youngsters must be performed in a way that is fully healthy and safe for the young person in question. This follows from article 4 in the Executive Order on the Work of Young Persons.

Furthermore, Denmark has introduced rules that ensure that such young persons as a general rule cannot be employed with e.g. certain types of technical aid, most substances and materials, physical stress that can constitute a danger to their health and development, and work that involves risks of crash or collapsing. These rules are laid down in article 10 to 15 in the Executive Order on the Work of Young Persons.

However, if work tasks that are carried out by a youngster who has turned 15, and the work tasks forms a necessary part of his or her vocational training, these young people are exempted from some of the abovementioned prohibitions. This applies to the extent that is necessary according to the completion of the specific education or vocational training. This follows from article 9 in the Executive Order.

The competent authority in Denmark has not prescribed any further specific conditions, and it does not monitor such arrangements as mentioned in the case law. The Danish Working Environment Authority oversees that employers of people under the age of 18 comply with the rules in the area.

Article 7§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

ECSR case law regarding article 7§3

Article 7§3 requires States Parties to ensure that children still subject to compulsory education and employed to work are not deprived of the full benefit of their education.

Only light work is permissible for schoolchildren under this provision. The notion of "light work" is identical to that under article 7§1.

In the case of States Parties that have set the same age limit for admission to employment and the end of compulsory education, which is over 15 years, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that Article.

Adequate safeguards must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework.

Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.

In order not to deprive children of the full benefit of their education, States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. The assessment of compliance over the school year takes account of the length

and distribution of holidays, the timing of uninterrupted periods of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate.

States Parties must provide for a mandatory and uninterrupted period of rest during school holidays. Its duration shall not be less than 2 consecutive weeks during the summer holidays.

Danish remarks

Denmark has laid down specific rules for young persons aged between 13 and 15, or who are still a subject to compulsory education, in order to ensure that employment does not deprive them the full benefit from their schooling or education.

According to Danish law, such young persons are not allowed to work between 8 pm and 6 am. That being said, Denmark has not laid down rules that forbid this category of young people to deliver newspapers from 6 am in the morning before attending school, as stated in the ECSR case law.

These young persons are allowed to do light work up until 2 hours per day on school days. On non-school days, the daily limit for these young persons are 7 hours of work per day. In addition, they are allowed to work a maximum of 12 hours during school weeks, and 35 hours per week during weeks without school. This is stated in chapter 6 of the Executive Order on the Work of Young Persons.

About holiday rules, the Executive Order prescribes that young persons aged between 13 and 15, or who are still a subject to compulsory schooling, must – as far as possible – enjoy an entirely work free period during the school summer holidays.

Article 7§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.

ECSR case law regarding article 7§4

Under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice.

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to Article 7§4. However, for persons over 16 years of age, the same limits are in conformity with Article 7§4.

Danish remarks

In Denmark, the question of working hours is a matter for agreement between the social partners. The Act on Vocational Education §56 stipulates that the employer

only in exceptional circumstances demand that the apprentice carries out tasks without an educational purpose and only if the educational goals can still be achieved.

In addition, article 12 of the Executive Order on the Work of Young Persons states that persons under the age of 18 cannot be exposed to any physical stress that can harm their health or development in neither short nor long term. Furthermore, they must not be exposed to unnecessary physical strain or unsuitable working positions or movements.

When employing young persons under the age of 18 in Denmark, the employer must ensure that the work assignment can be carried out in a way that is fully safe and sound. Therefore, Denmark has laid down detailed rules on how many hours these young persons are allowed to work. These rules can be found in article 16-20 in the Executive Order on the Work of Young Persons.

Danish law furthermore contains rules stating that young persons, who are aged between 13 and 15, or who are subject to compulsory schooling, are only allowed to work the number of hours that is described in chapter 6 of the Executive Order on the Work of Young Persons. For further information, please see description of the Danish rules' conformity with the Social Charter's article 7§3.

When employing young persons who have turned 13, attention must be given to the person's age, development, health and schooling. This follows from article 42 in the Executive Order on the Work of Young Persons.

Article 7§5 - to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances

ECSR case law regarding article 7§5
In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentice's 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.

Young workers
The young worker's wage may be less than the adult starting wage, but any difference must be reasonable. It must not be too substantial and ought to be for a limited

time. For fifteen/sixteen-year-olds, a wage of 30% lower than the adult starting wage is acceptable and for sixteen/eighteen-year-olds, the difference may not exceed 20%.

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.

Apprentices

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the apprentice's allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end. After two- or three-years' vocational training, an apprentice is sufficiently trained and should be considered as an adult worker for wage purposes.

Danish remarks

In Denmark, remuneration is a matter for agreement between the social partners. The Act on Vocational Education §55 stipulates that the salary of apprentices should be at least the salary as determined by the social partners. If the area is not covered by collective agreement, the minimum salary will be determined by a board consisting of two representatives from the employer side and two representatives from the workers as well as a president appointed by the Danish Labour Court. A decision has to be taken by a majority of the social partner representatives.

Article 7§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

ECSR case law regarding article 7§6

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 − but not necessarily financed by the latter and be related to the young person's work.

Training time must thus be remunerated as normal working time (by either the employer or by public funds as the case may be), and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.

Danish remarks
Denmark has laid down a rule similar to article 7§6 in the Social Charter. The Danish rule states that if young people, who have turned 15, and who are not subject to compulsory schooling, work as part of an education, the time spend receiving education must be included in the daily and weekly working hours. This follows from article 18 in the Executive Order on the Work of Young Persons.

Denmark does not have rules about consent from the employer. Besides, Denmark has laid down a rule stating that, if the young person works for several employers, the all-in-all working time must be calculated in total according to article 19 in the before mentioned Executive order. Please also see article 7§4.

Article 7§7 - to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay

ECSR case law regarding article 7§7
In application of Article 7§7, young persons under eighteen years of age must be given at least four weeks' annual holiday with pay.

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3).

Employed persons under 18 should not have the option of waiving their annual paid holiday. They should not have the option of giving up their annual holiday for financial compensation either.

According to Article 7§7, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to secure to them the four weeks paid annual leave provided for in the Charter. This principle applies in all circumstances, regardless of whether incapacity begins before or during leave - and also in cases where a company requires workers to take leave at a specified time

Danish remarks
Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time applies in Denmark. According to the directive, an employee is entitled to paid annual leave of at least 4 weeks. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The Holiday Act does not contain special rules for employees under a certain age. According to the Holiday Act an employee cannot validly waive his right to holiday or the payment thereof

In Denmark, all employees are entitled to 5 weeks of annual paid holiday. 4 weeks may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

An employee who falls ill before the leave has the right to take the holiday at a later time. An employee who falls ill during the holiday is entitled to compensatory holiday after up to 5 sick days, depending on the duration of the employment relationship. The employee is thereby guaranteed 4 weeks of annual paid holiday. These rules also apply even if the holiday is covered by a collective holiday closure. If the employee cannot take the holiday before the end of the holiday taking period, as a result of illness, maternity or another fixed holiday impediment, the holiday is transferred to the following holiday taking period.

Article 7§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

ECSR case law regarding article 7§8

In application of Article 7§8, domestic law must provide that persons under eighteen years of age are not employed in night work.

Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations in very limited cases, if they are: explicitly provided in domestic law; necessary for the proper functioning of the economic sector, and if the number of young workers concerned is low.

It is up to domestic laws or regulations to define the period of time considered as being "night".

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.

Danish remarks

It is a general rule in Danish law that young persons under the age of 18 cannot be employed in night work.

Denmark has laid down specific rules about places and time of the day where young people under the age of 18 are not allowed to work. For instance, they cannot be employed within the opening hours in e.g. bakeries, kiosks, video stores and similar shops between 6 pm and 6 am at weekdays, and between 2 pm and 6 am on Saturdays, Sundays, holidays and bank holidays unless they are working there together with an adult. This follows from article 13 in the Executive Order on the Work of Young Persons.

That said, Danish law contains a few exemptions to this. For instance, if the young person works in a shopping center where there is either surveillance or safety guards patrolling the center, they are allowed to work there on their own. Under such circumstances, young persons under the age of 18 can work in expanded hours of the day, but never between 8 pm and 6 am.

Also, young persons who have turned 15, and who are not subject to compulsory schooling, are allowed to work from 4 am in certain parts of confectionery or bakery shops or in stables on farms within agriculture. This is stated in article 22 in the Executive Order. A few more exemptions can be found in article 22 of the Executive Order, for instance that this category of youngsters is allowed to work until midnight in cinemas, theaters, hotels and at similar places.

Article 7§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.

ECSR case law regarding article 7§9

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for persons under eighteen employed in those occupations specified by domestic laws or regulations.

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed. They may, however, be carried out by the occupational health services, if these services have the specific training to do so.

The obligation entails a full medical examination on recruitment and regular check-ups thereafter. The intervals between check-ups must not be too long: in this regard, an interval of two years has been considered excessive.

The medical check-ups foreseen by Article 7§9 should consider the skills required for the work envisaged.

Danish remarks

Denmark does not directly have any rules that require young persons under the age of 18 – employed in occupations prescribed by national law or regulations – to be subject to regular medical control.

The Danish rules constitute a safeguard against putting young people in situations where a regular medical control is necessary. This is because young people are not allowed to be put in situations that can be harmful to their health or safety.

Article 7§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

ECSR case law regarding article 7§10

Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This cover, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies.

States Parties must prohibit the use of children in forms of exploitation such as sexual exploitation, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. They must also take measures to prevent and assist street children. In all these cases, States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.

The fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. The issues dealt with under Article 17 include the protection of children from ill-treatment, including corporal punishment. However, the issue of corporal punishment is examined under Article 7§10, where a State Party has not accepted Article 17.

Personal scope

Article 7§10 is applicable to foreign children in an irregular situation on the territory of a State Party to the Charter as otherwise they would not be guaranteed their fundamental rights and could be exposed to serious impairments of their rights to life, health and psychological and physical integrity.

Likewise, 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 which threats their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.

Protection against sexual exploitation

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children.

- *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 explicit conduct or realistic images representing a child engaged in sexually explicit conduct.*
- *Trafficking of children is the recruiting, transporting, transferring, harboring, delivering, selling or receiving children for the purposes of sexual exploitation.*

In order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry. This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.

The following are minimum obligations:
- *Article 7§10 requires that all acts of sexual exploitation be criminalized; In this respect, it is not necessary for a Party 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. Furthermore, States Parties 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.*
- *a national action plan combating the sexual exploitation of children should be adopted, as well as a monitoring mechanism on the sexual exploitation of children and mechanisms for collecting statistical data on the sexual exploitation of children.*

Other measures to prohibit and combat all forms of sexual exploitation of children include awareness raising.

With regard more specifically to accompanied or unaccompanied migrant girls, these children are exposed to a heightened risk of becoming subject to sexual and gender-based violence. States Parties should therefore put in place specific preventive measures to address their needs in terms of living space, privacy and security within reception centers and other accommodation facilities, considering their extreme vulnerability. They should also provide for gender-sensitive reporting procedures and support services allowing said children to report possible cases of violence and abuse and ask for assistance in a safe manner.

Protection against the misuse of information technologies
The internet is becoming one of the most frequently used tools for the spread of child pornography.

With a view to combating sexual exploitation of children through the use of internet technologies States Parties must adopt measures in law and in practice, such as by providing that internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.). Some States Parties have adopted a provision on "child grooming" – i.e. arranging a meeting with a child below the age of sexual consent with the intent of committing a sexual offence.

Internet services providers should be under an obligation to remove or prevent accessibility to illegal material about which they have knowledge. Internet safety hotlines should be set up through which illegal material could be reported.

Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, States Parties should adopt measures in law and in practice to protect children from their misuse, such as unprotected access to harmful websites, audiovisual and print material.

Corporal punishment

The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10. In this connection, the Committee recalls having held the scope of the said two provisions overlap to a large extent. Therefore, when States Parties have not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under Article 7§10.

Under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not. The Committee has clearly stated that all forms of corporal punishment must be prohibited in all settings and this prohibition must have an explicit legislative basis. The sanctions available must be adequate, dissuasive and proportionate.

Protection from other forms of exploitation

States Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs. They must also take measures to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.

Street children are particularly exposed to trafficking and worst forms of child labour. In this respect, the Committee has referred to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child.

States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that the measures adopted are fully effective in practice. States Parties must take measures to improve the knowledge of relevant professionals (including police officers, social workers, professionals working with children, labour inspectors, medical staff, public prosecutors, judges, the media and other groups concerned) about trafficking and the rights of victims.

Danish remarks

According to the Executive Order on the Work of Young People (article 4), young persons under the age of 18 should be cared especially for when choosing their work tasks, and they cannot be employed with any work that constitutes a danger to their health or safety.

It follows from article 5 in the Executive Order, that when employing young persons under the age of 18, the employer must consider both the physical, biological, chemical and psychological implications that the young person can be exposed to because of the employment – in both long and short term.

Putting young persons under the age of 18 in situations as laid out in the case law – e.g. trafficking, prostitution and corporal punishment – is not compatible with Danish law. On the contrary, these matters are prohibited according to the Danish Criminal Code.

Finally, Denmark has laid down detailed rules forbidding young persons under the age of 18 to be employed in jobs that entail a particular risk of violence. Young persons can only possess such positions, if they work alongside a person who is 18 years or older. This follows from article 13 in the Executive Order on the work of young persons.

Article 8 - The right of employed women to protection

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

Article 8§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

ECSR case law regarding article 8§2

Article 8§2 requires that it be unlawful to dismiss employees from the time they notify the employer of their pregnancy to the end of their maternity leave. Article 8§2 applies equally to women on fixed-term and open-ended contracts. The notification of the dismissal, by the employer, during the period of protection does not as such amount to a violation of Article 8§2 provided that the period of notice and any procedures are suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures must apply in the event of notice of dismissal prior to the period of protection.

However, the dismissal of a pregnant woman is not contrary to this provision in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract. These exceptions are strictly interpreted. Dismissing a worker during maternity leave on other grounds, such as a collective redundancy, is not compatible with Article 8§2.

Redress in case of unlawful dismissal

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, workers who consider that their rights in this respect have been violated must be entitled to take their case before the courts. In the case of dismissal contrary to this provision, the reinstatement of the women should be the rule. Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured.1126 Compensation should be sufficient to deter the employer and compensate the employee. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. Moreover, if there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.

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.*

Danish remarks

The Act on Equal Treatment between Men and Women with regards to Employment etc.[2] (hereafter the Act on Equal Treatment) implements the principle of equal

[2] The Consolidated Act no. 645 of 8 June 2011 with later amendments.

treatment and the right to non-discrimination on grounds of sex as foreseen in the relevant EU-legislation such as the Maternity Leave Directive[3], the Recast Directive on Equal Treatment[4] and the Work Life Balance Directive[5].

§ 9 of the Act on Equal Treatment prohibits an employer from dismissing an employee or subject the employee to other less favourable treatment, because the employee has made a claim to use the right to leave or has been absent in accordance with §§ 6-14 of the Act on Maternity Leave, has made a request for changes in accordance with § 8 a, subparagraph 2 of this Act, or otherwise due to pregnancy, maternity or adoption.

Thus, the prohibited act is closely linked to the *grounds* for dismissal and not the dismissal itself.

§ 16, subparagraph 2, of the Act on Equal Treatment stipulates that if an employee is dismissed in violation of § 9, without the employee being reinstated, or if the employee is subjected to other less favourable treatment, the employer must pay compensation.

§ 16, subparagraph 4, of the Act on Equal Treatment stipulates a reverse burden of proof, if a dismissal or other less favourable treatment takes place during pregnancy, leave according to §§ 6-11, 13 and 14 of the Act on Maternity Leave and during notice periods according to § 16, subparagraph 2, of the Act on Maternity Leave.

The reversal of the burden of proof means that it is the employer's responsibility to prove that the dismissal or less favourable treatment is *not* due to matters related to pregnancy, maternity leave or parental leave.

The Danish legislation is considered to fully comply with the EU legislation and case law regarding the protection against discrimination and unfair dismissal due to pregnancy or maternity and parental leave.

Denmark considers that the requirement in Article 8§2 of the Charter is not adequately matched by the dismissal protection which follows from the Act on Equal

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[3] Directive 92/85 EC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).
[4] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
[5] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

Treatment and Equal Opportunities Act. Denmark reads the Committee's case law as implying that dismissal is prohibited on almost any ground during the period concerned. This is not the case in Denmark.

Article 8§3 - to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose

ECSR case law regarding article 8§3

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.

Time off for nursing should in principle be granted during working hours, be treated as normal working time and remunerated as such. However, provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.

Time off for nursing must be granted at least until the child reaches the age of nine months.

The Committee assesses States Parties' compliance with Article 8§3 on a case-by-case basis. The following measures have all been found to be in conformity with the Charter: two half–hour breaks where the employer provides a nursery or room for breastfeeding; one–hour daily breaks and legislation providing for two daily breaks for a period of one year for breastfeeding or entitlement to begin or leave work earlier.

Danish remarks

The Act on Maternity Leave was amended as of 1 July 2022.

Under the Act, expectant mothers have the right to leave 4 weeks prior to the expected birth of a child with state benefits at the level of sick leave benefits.

After the birth of the child the mother has the right to 42 weeks leave. 24 of the 42 weeks are with state benefits at the level of sick leave benefits. The right to state benefits is subject to fulfilment of the employment criteria laid down in the Act of Maternity Leave.

Under the Act, employees have a right to request flexible working arrangements, including part-time work, upon their return from leave, and the employer must respond to such requests while considering the needs of both the employer and the employee. Employers shall provide reasons for any refusal of such a request or for any postponement of such arrangements.

Reduced working hours resulting from an agreement on flexible working arrangements and the subsequent decrease in income may – to a certain extent – be compensated by state benefits.

Thus, Danish legislation does not provide for an explicit right for mothers to have time off for the purpose of breast-feeding once they return to work, but the legislation is considered to fully comply with the EU-legislation and caselaw regarding the right to maternity and parental leave.

Article 8§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.

ECSR case law regarding article 8§4

Article 8§4 requires States Parties to regulate night work for pregnant women, women who have recently given birth and women nursing their infants, in order to limit the adverse effects on the health of the woman.

To comply with this provision, States Parties are not obliged to enact specific regulations for women if they can demonstrate the existence of regulations applying without distinction to workers of both sexes.

The regulations must:

- *allow night workers with family responsibilities to transfer to a day work, and preclude employers from obliging such workers to move to night work;*
- *lay down conditions for night work of pregnant women, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.*

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 when an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. In particular, in cases where women cannot be employed in their workplace due to health and safety concerns and as a result, are transferred to another post or, should such a transfer not be possible, are granted leave instead, States Parties must ensure that during the protected period,

they are entitled to their average previous pay or provided with a social security benefit corresponding to 100% of their previous average pay. Further, women should have the right to return to their previous employment. This right should be guaranteed by law.

Danish remarks

In Denmark, there are no specific rules on night work in industry. Similarly, there is no gender distinction in the rules on night work. However, there are general rules protecting pregnant women in connection with night work.

Employers must ensure that pregnant women's night work is planned and organized in a way that does not pose a risk to their health or safety. This means that the employer must consider that there may be a need for pregnant employees to have their working hours changed, for example in the form of shorter shifts, restrictions on night work or exemption from night work.

The determination of working time, including night work, is largely a matter for the social partners in Denmark.

It is a legal requirement for workplaces to offer their employees a free health check before they start night work and at regular intervals thereafter, not exceeding 3 years. This applies to both women and men.

In Denmark there is no mining. Therefore, paragraph b is not relevant.

For these reasons, Denmark considers that the requirement in Article 8§4 of the Charter is not adequately matched by Danish rules and regulations.

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 Contracting Party, the Contracting Parties undertake:

Article 19§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

ECSR case law regarding article 19§1

This provision guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate. Information should be reliable and accurate and cover issues such as formalities to be completed and the living and working conditions they may expect in the country

of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).

Free information and assistance services for migrants must be accessible in order to be effective. While the provision of online resources is a valuable service, due to the potential restricted access to the Internet of migrants, other means of information are necessary, such as helplines and drop-in centres.

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. In order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.

States Parties must also take measures to raise awareness about misleading propaganda amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants

Danish remarks

When it comes to information on rules and conditions for foreign workers in order to obtain a residence and work permit in Denmark, all relevant information is available in English on the website of the immigration authorities[6].

Articles 19§§2 to 5

Denmark has not yet been able to assess whether these provisions could be accepted, but an attempt will be made to make an assessment ahead of the ECSR visit to Denmark on 10 November.

Article 19§6 - to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

ECSR case law regarding article 19§6

This provision obliges States Parties to allow the families of migrants legally established in State Party territory to join them. The worker's children entitled to family

[6] www.Newtodenmark.dk.

reunion are those who are dependent, unmarried, and who fall under the legal age of majority in the receiving State.

"Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies.

Where the national legislation prescribes a lower age, it suffices in practice that applications for reunion in respect of children up to 21 years of age should be generally accepted.

Where children aged 18 to 21 are not only disqualified in law from family reunion but also denied it in practice, the Committee assesses the proportion of children aged 18 to 21 refused family reunion.1967. A high proportion of children aged 18 to 21 refused family reunion leads to a finding of non-conformity with Article 19§6 in this respect.

Danish remarks

Denmark has several work-related schemes, under which foreign workers can apply for a residence and work permit depending on the nature of the planned activity in Denmark. The Danish Aliens Act entails provisions allowing foreign workers to be accompanied by their family members.

Article 19§7 - to secure for such workers lawfully within their territories' treatment not less favorable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article.

ECSR case law regarding article 19§7

Under this provision States Parties must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals. This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).

More specifically, any migrant worker residing or working lawfully within the territory of a State Party who is involved in legal or administrative proceedings and does not have counsel of their own choosing should be advised that they may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter. Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated. Such legal assistance should be extended to obligatory pre-trial proceedings.

Danish remarks
General access to the Danish Courts

A civil legal claim may – subject to certain preconditions – be pursued by instituting legal proceedings at the Danish courts. In order for someone to bring an action before the courts, he or she must have legal interest. The plaintiff is considered to have legal interest if the plaintiff's claim is legal and may be assessed according to law, if the plaintiffs' claim is of current interest, and if the plaintiff has a concrete interest in the case.

In addition, all decisions from immigration authorities related to the right to reside in Denmark as a worker can be appealed to the Immigration Appeals Board, which is an independent administrative body. Decision from the Immigration Appeals Board can be brought before the Danish Courts.

Access to the industrial disputes' procedure

In Denmark access to the industrial disputes' procedure is generally reserved for trade unions, employer's organizations or employers who are not a member of an employer's organization. Danish nationals and workers from abroad have equal opportunities with regard to membership of a Danish trade union and, accordingly, access to industrial disputes procedure and the Danish Labour Court.

Article 19§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;

ECSR case law regarding article 19§8
This provision obliges States Parties to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality. In cases where a fundamental right such as the right of residence is at stake, the burden of proof rests with the Government: to demonstrate that a person does not reside legally on its territory.

Such expulsions can only be in conformity with the Charter if they are ordered by a court or a judicial authority, or an administrative body whose decisions are subject to judicial review. Any such expulsion should only be ordered in situations where the individual concerned has been convicted of a serious criminal offence, or has been involved in activities which constitute a substantive threat to national security, the public interest or public morality. Expulsion orders must be proportionate, considering all aspects of the individual's behavior as well as the circumstances and the length of time of their presence in the territory of the State.

The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that they may have formed during this period, must also be considered to determine whether expulsion is proportionate.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.

The fact that a migrant worker is dependent on social assistance cannot be regarded as a threat against public order and cannot constitute a ground for expulsion.

States Parties must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body.

Collective expulsions are not in conformity with the Charter; decisions on expulsion may be made only on the basis of a reasonable and objective examination of the particular situation of each individual.

National legislation should reflect the legal implications of Articles 18§1 and 19§8 as well as the case law of the European Court of Human Rights: 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 protecting from deportation.

Danish remarks

Initially it is noted, that the rules regarding expulsion in the Danish Aliens Act do not distinguish between immigrants in general and foreign workers.

Sections 22-24 of the Danish Aliens Act regulate the rules for expulsion, when an alien is convicted of a criminal offence. As a main rule, the access to expulsion depends on the length of the alien's stay in Denmark and the seriousness of the committed crime. The national courts decide whether there are grounds for an expulsion order based on an individual assessment in connection with the criminal proceedings.

Furthermore, it follows by section 25 (1) of the Danish Aliens Act, that an alien can be expelled if the alien can be considered a danger to national security. The decision is made by the Ministry of Immigration and Integration and can be brought before the courts according to chapter 7 in the Danish Aliens Act. It also follows by section 25 (2) in the Danish Aliens Act, that an alien can be expelled if the alien must be considered a serious threat to public order, safety or health. The decision is made by the Danish Immigration Service with the right to appeal to the Immigration Appeals Board. In addition, sections 25-25b in the Danish Aliens Act contain rules regarding expulsion of aliens with less than six months lawful residency in Denmark. These rules are aimed at, *inter alia*, criminality and illegal stay/work in cases which have

been settled with a fine. These decisions are made by the Danish Immigration Service with the right to appeal to the Immigration Appeals Board.

All decisions on expulsion must take place within the scope of Denmark's international obligations.

State of ratification of the Revised Social Charter

The following articles are covered by this report:

- Articles and provisions which differ from the 1961 Social Charter
- Articles where Denmark has a reservation
- New articles

Articles which are identical to the ones in the 1961 Social Charter and which have been ratified by Denmark in 1965 are left out of this section.

Article 2 - The right to just conditions of work

Article 2§1 - to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

Danish remarks

Denmark has *not* ratified this provision in the original Social Charter.

Regulation of working hours is a core area left for the social partners to regulate. Therefore, daily and weekly working hours are primarily regulated by collective agreements. In most areas standard working hours are 37 hours per week regardless of productivity and other factors.

In order to fulfill the EU-directive on working time there are some legal requirements in the act on working time. The act applies to areas not covered by collective agreements:

- A break during a work day exceeding 6 hours. The length of the break depends on the purpose of the break, e.g. whether it is a break intended for a meal.
- Weekly working hours of maximum 48 hours on average, incl. overtime.
- An employee on night shift must not work more than 8 hours on average per 24-hour period.

In the working environment legislation there are legal requirements with regard to rest periods:

- A daily rest period of at least 11 consecutive hours.
- One 24-hour period off per week, which must follow directly a daily rest period. No more than six 24-hour periods between two 24-hour periods off are allowed.

Denmark has, in accordance with EU legislation[7], established rules on a minimum number of hours of rest for the seafarer, and not rules on working time.

Article 2§3 - to provide for a minimum of four weeks' annual holiday with pay.

Danish remarks
Denmark has ratified the provision in the original Social Charter. The Revised Social Charter increases the paid annual leave from 2 to 4 weeks.

According to the Danish Holiday Act, all employees are entitled to five weeks paid holiday per year regardless of occupation. 4 of the weeks cannot be replaced by a cash allowance in the current employment relationship.

An employee who falls ill before the holiday has the right to take the holiday at a later time. An employee who falls ill during the holiday is entitled to compensatory holiday after up to 5 sick days, depending on the duration of the employment relationship. The wage earner is thereby guaranteed 4 weeks of annual paid holiday.

These rules apply even if the holiday is covered by a collective holiday closure. If the employee cannot take the holiday before the end of the holiday period due to illness, maternity or another prescribed holiday impediment, the holiday is transferred to the subsequent holiday period.

Additional rights concerning additional holidays can be agreed upon by the social partners.

Seafarers' rights to holiday follow the Danish Holiday Act.

Article 2§4 - to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations

Danish remarks
In Denmark, the purpose of the working environment rules is to ensure a safe and healthy physical and mental working environment that is at all times in accordance with the technical and social development in the society. This follows from article 1 in the Executive Order of the Working Environment Act.

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[7] Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organization of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) - Annex

According to article 38 in the abovementioned Executive Order, recognized norms or standards concerning safety or health must be followed.

In the case where all rules, recognized norms or standards has been followed, but the work still constitutes a particular danger to the employees' health and safety, Denmark has laid down a rule that ensures that working hours can be reduced.

According to article 7§3 in the Executive Order on the Execution of the Work, The Danish Working Environment Authority can require for breaks and limited working hours for work that constitutes a particular danger to the employees' health and safety, and where it has not been possible to counter this danger in any other way. The provision also contains requirements for breaks and limited working hours when special work clothes and personal protective equipment are used.

It is not in accordance with Danish law to just reduce the working hours if it is possible to eliminate or reduce the risk of the work in other ways.

Furthermore, Danish law contains a provision regarding reduced working hours in the Executive Order on Work with Code-numbered Products. According to article 17, it is not permitted to work with respiratory protection for more than 6 hours on a working day when using an air-supplied respiratory protection and 3 hours on a working day when using a filtered respiratory protection. In addition, working hours must be reduced if there are particularly stressful situations due to the nature of the work, temperature conditions or the like.

Article 2§6 - to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.

Danish remarks
This provision on written contracts is new. The purpose of this provision is to ensure that employees are informed about essential aspects of their employment.
In Denmark it is required that workers are informed in writing no later than seven days after the date of commencing their employment of the essential aspects of the contract or employment relationship. Further detailed information must in some cases be given to the employee no later than one month after the beginning of the employment relationship.

Seafarers' rights to a written contract is enshrined in ILOs Maritime Labour Convention which Denmark has ratified and implemented.

Article 2§7 - to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Danish remarks
This provision is new. The definition of night work is left to national law or practice. Denmark has a reservation to this provision at the time of signing.

Night work is a natural part of seafarers' working conditions. During the ship's voyage it might be impossible to let seafarers benefit from special measures, as these could contaminate the rights of other seafarers or the voyage. Furthermore, it is unclear what such measures could be in relation to the provision.

Article 3 - the right to safe and healthy working conditions

Article 3§1 -This paragraph obliges the Parties to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.

Danish remarks
Denmark has ratified the provision in the original Social Charter. However, this provision is new in the Revised Social Charter. It states that member states must formulate a coherent occupational health and safety policy.

This condition already follows from ILO Convention No. 187, where each Member State shall promote a safe and healthy working environment by formulating a national policy. The national policy on occupational safety and health shall be developed in accordance with the principles set out in Article 4 of the ILO Occupational Safety and Health Convention, 1981 (No. 155).

In Denmark, there is a long-standing practice that when an existing health and safety policy expires, it is replaced by a new one. This applies e.g. political agreements on OSH.

For seafarers, similar requirements can be derived from ILOs Maritime Labour Convention which Denmark has ratified and implemented.

Article 3§4 - to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Danish remarks
This is a new provision. According to the appendix, it is left to the national level to set the rules on the functioning, organization and working conditions of the health service.

There are seven occupational medicine clinics in Denmark, which have specialized departments with, among other things, specialized doctors in hospitals throughout the country – all part of the public hospital system. An employee can be referred for examination at an occupational medicine clinic by a doctor, a trade union or the occupational health and safety organization. Occupational medicine clinics also

provide advice to employees, for example on preventive measures as part of the examination. It is free of charge for the employee to be examined and assessed at an occupational medicine clinic. It is based on a medical assessment and falls within to the doctor's examination and treatment competence under the health legislation to assess the need for continued health checks of an employee.

In addition, the Danish Working Environment Authority has Executive Order No. 1165 of 16 December 1992 on occupational medical examinations under the Working Environment Act. Regulation under the Working Environment Act, including on occupational medical examinations, are developed in Denmark by the responsible ministry in cooperation with the social partners.

It is thus the opinion of the Danish authorities that the Danish health system with occupational medicine clinics, together with the legislation on occupational medicine examinations under the Working Environment Act, establishes an occupational health service system for all workers in relation to employees.

As regards seafarers, Denmark already has a world leading occupational health service for seafarers in the Danish Centre of Maritime Health Service and has also established occupational health and safety councils for the maritime area as well as for fisheries.

Article 4 – The right to a fair remuneration

Article 4§4 - to recognize the right of all workers to a reasonable period of notice for termination of employment.

Danish remarks

Denmark has not ratified the provision in the original Social Charter.

In Denmark the social partners play a crucial role regulating wages and working conditions. The Danish labour market model builds on employers and workers being organised in strong associations and unions that represent the broad interests of members in collective agreement negotiations. Pay and working hours are primarily regulated by collective agreement or individual employment contracts. There is no statutory minimum wage in Denmark. As far as possible, the state refrains from intervening in the regulation of pay and working conditions.

All workers do not have a notice period in Denmark. This matter is a core area left for the social partners to regulate.

As regards to seafarers, duration of minimum notice periods for seafarers and shipmasters are in accordance with the provisions of ILOs Maritime Labour Convention which Denmark has ratified and implemented.

Article 4§5 - to the authorization of deductions from wages only under the conditions and to the extent prescribed by law or administrative regulations or established by collective agreements or arbitration decisions.

Danish remarks
Denmark has not ratified the provision in the original Social Charter.

In Denmark the social partners play a crucial role regulating wages and working conditions. The Danish labour market model builds on employers and workers being organised in strong associations and unions that represent the broad interests of members in collective agreement negotiations. Pay and working hours are primarily regulated by collective agreement or individual employment contracts. There is no statutory minimum wage in Denmark. As far as possible, the state refrains from intervening in the regulation of pay and working conditions. In Denmark it is possible to deduct wages under certain circumstances in accordance with an individual contract.

As regards to seafarers, a similar provision regarding deduction from remuneration for seafarers and shipmasters is enshrined in ILOs Maritime Labour Convention which Denmark has ratified and implemented.

Article 7 – The right of children and young persons to protection
Denmark has *not* ratified article 7 in the original Social Charter.

Article 7§2 - to provide that the minimum age of admission to employment shall be eighteen years with respect to prescribed occupations regarded as dangerous or unhealthy;

Danish remarks
According to Danish law, young people under the age of 18 are not allowed to take on employment that can be regarded as dangerous or unhealthy.

Danish law specifically states that the employer of young people under the age of 18 must ensure that work assignments carried out by youngsters must be performed in a way that is fully healthy and safe for the young person in question. This follows from article 4 in the Executive Order on the Work of Young Persons.

Denmark has also laid down rules that ensure that such young persons as a general rule cannot be employed with e.g. certain types of technical aid, most substances and materials, physical stress that can constitute a danger to their health and development, and work that involves risks of crash or collapsing. These rules are laid down in article 10 to 15 in the Executive Order on the Work of Young Persons.

Furthermore, Denmark has adopted statutory framework in Appendix 1 to the Executive Order on the Work of Young Persons. The appendix contains a number of

things that young persons under the age of 18 as the main rule are not allowed to handle or work with.

The list is not exhaustive, but it follows from article 10 in the Executive Order on the Work of Young Persons that youngsters under the age of 18 are not allowed to take on work or work assignments that contains similar risks as the ones mentioned in Appendix 1.

Denmark also upholds rules stating that young persons who have turned 15, are exempted from some of the abovementioned prohibitions if the work assignments constitute a necessary part of his or her vocational training. This applies to the extent that is necessary according to the completion of the specific education or vocational training. This follows by article 9 in the Executive Order.

The competent authority in Denmark has not prescribed any further specific conditions, and it does not monitor such arrangements as mentioned in the case law, but the Danish Working Environment Authority oversees that employers of people under the age of 18 comply with the rules in the area.

Article 7§4 - to provide that the working hours of persons under eighteen years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

Danish remarks

Article 12 in the Danish Executive Order on the Work of Young Persons states that persons under the age of 18 cannot be exposed to any physical stress that can harm their health or development in neither short nor long term. Therefore, they cannot not be exposed to unnecessary physical strain or unsuitable working positions or movements. Employers must always take any specific young employees needs of development in to consideration when choosing work tasks for he or she.

When employing young persons under the age of 18 in Denmark, the employer must ensure that their work tasks can be carried out in a way that is fully safe and sound. Therefore, Denmark has laid down detailed rules on how many hours these young people are allowed to work.

For instance, Danish law states that young persons, who have turned 15 and who are not a subject to compulsory schooling, are not allowed to exceed the number of working hours that adults carrying out the same job may work. The same rule also specifically states that these youngsters are not allowed to work more than 8 hours a day and 40 hours per week. Furthermore, when a young person at this age works 8 hours a day, the working time must be in continuation.

More rules concerning working hours for young persons at this age can be found in article 16-20 in the Executive Order on the Work of Young Persons.

When it comes to young persons, aged between 13 and 15, or who are subject to compulsory schooling, Danish law states that these youngsters only are allowed to work the number of hours that is described in chapter 6 of the Executive Order on the Work of Young Persons. As the main rule in that chapter states, young persons at this age are only allowed to work two hours per day on school days and 7 hours per day during non-school days.

The Danish rules also states, that when employing young persons who have turned 13, when letting them participate in cultural or similar events, care must be taken to the young person's age, development, health and schooling. This follows from article 42 in the before mentioned Executive Order.

There is a difference in the age limit between Denmark and the Revised Social Charter when it comes to the maximum of an 8 hour daily working time and a forty-hour working week.

Article 7§5 – to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

Danish remarks
In relation to Article 7, paragraph 5, which requires the party to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances, it should be noted that in Denmark, remuneration of apprentices is a matter for agreement between the social partners.

Section 55 of the Act on Vocational Education stipulates that the salary of apprentices should be at least the salary as determined by the social partners. If the area is not covered by collective agreement, the minimum salary will be determined by a board consisting of two representatives from the employer side and two representatives from the workers as well as a president appointed by the Danish Labour Court. A decision has to be taken by a majority of the social partner representatives.

Article 8 – The right of employed women to protection of maternity

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

Danish remarks
Denmark has not ratified paragraphs 2-4 in the original Social Charter. Paragraphs 2 and 4 are changed in the revised Social Charter. Paragraph 5 is a new provision.
Paragraphs 2-5 deal with the right of employed women to maternity protection by:

- deeming it unlawful for an employer to dismiss a female employee during her maternity leave,
- entitling breastfeeding mothers to adequate time off for breastfeeding,

- to regulate night work by pregnant, new or breastfeeding mothers; and
- prohibit female workers from engaging in mining or other similarly hazardous work.

Article 8§1- to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

Danish remarks
Denmark has ratified this article in the original Social Charter. The Revised Social Charter extends the period from 12 to 14 weeks.

Danish legislation provides for employed women to take leave before and after childbirth up to a total of 24 weeks. During leave the woman is entitled to maternity leave benefits at the level of sick leave benefits, provided she meets the criteria laid down in the Maternity Leave Act.

The right to pay from the employer is regulated by the Social Partners either through collective agreements or individual employment contracts.

However, female salaried employees *not* covered by a collective agreement are entitled to half pay for 14 weeks after the birth of the child under the Act on Salaried Employees.

According to Order no. 1011 of 28 June 2022 on maternity/paternity benefits for seafarers, female seafarers are entitled to maternity allowance from the time when it is estimated that there will be 4 weeks until the birth and maternity allowance can be granted for up to 28 weeks after the birth.

Article 8§2 - 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.

Danish remarks
Denmark has not ratified this provision in the original Social Charter. The provision has been amended in the Revised Social Charter with the addition of: "*the period from the time she notifies her employer that she is pregnant".*

Denmark notes that under the Act on Equal Treatment between Men and Women in relation to Employment etc. employers may not lawfully dismiss an employee or treat the employee less favorably on grounds of pregnancy, maternity, paternity or parental leave. This is considered direct discrimination under both Danish and EU-law.

Thus, an employer may not dismiss an employee or subject her/him to other less favorable treatment, because she/he has made a claim to exercise the right to leave, has been absent in accordance with the Maternity Act, has submitted a request for flexible working arrangements in accordance with § 8 a, paragraph 2, of the Maternity Act, or otherwise due to pregnancy, maternity or adoption.

However, there is no absolute prohibition against dismissals during pregnancy of leave and such cases are determined on their individual merits and in accordance with the rules of burden of proof.

1) If an employee is dismissed during pregnancy or rights-based leave under the Maternity Leave, or during periods of notice of such leave the burden of proof is reversed. This means that the employer must prove that the dismissal is *not* due to the worker being pregnant or on leave otherwise the dismissal will be found unlawful and the employee will receive compensation of 6-12 months' pay.

2) If the employee is dismissed during leave which is based on an agreement between the employee and the employer the burden of proof is shared. This means that if the employee establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the employer to prove that there has been no breach of the principle of equal treatment. If the employer is unable to do so the dismissal will be found unlawful and the employee will receive compensation of 6-12 months' pay.

If the employer is able to prove that the dismissal is *not* due to pregnancy or leave, but is due to for e.g. organizational changes within the company or the economic situation for the company, the dismissal is not considered unlawful.

Article 8§3 - to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

Danish remarks

Denmark has not ratified this provision in the Original Social Charter. Danish legislation does not explicitly provide for time off for women to nurse their infants.

Denmark notes that each parent has the right to 24 weeks leave with state benefits after the birth of the child. If the parent is an employee 13 of the 24 weeks may be transferred to the other parent.

Denmark notes that the national legislation complies with current EU-legislation and caselaw.

Article 8§4 – to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

Article 8§5 - 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.

Danish remarks
Denmark has not ratified paragraph 4 in the original Social Charter. The paragraph has been amended and combined with the new paragraph 5 in the Revised Social Charter.

This paragraph, which amends Article 8, paragraph 4.b of the Charter, limits the prohibition of employment of women in underground mining and in all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature to the case of maternity as defined in the preceding paragraph. It requires Parties to take appropriate measures to protect the employment rights of the women concerned.

By this, it has been understood that such workers should be given the possibility to transfer to suitable work, or to be granted leave from work if a transfer is not feasible, with the payment of salary or other adequate allowance and without loss of status, seniority or access to promotion.

The determination of working time, including night work, is to large extend a matter for the social partners in Denmark and is regulated in the collective agreements. There are no specific rules on the night work in the industry. Similarly, there is no gender distinction in the rules on the night work.

However, there is general protection of pregnant woman in regards to night work. This general protection of pregnant employees implies that their night work is planned and organized so there is no risk to their health or safety. This mean that the employer must consider that there may be a need for pregnant employees to have their work hours changed and tailored, precisely to ensure that there are no health and safety risks. For example, this might imply to shorter shifts, restrictions to night work or complete exemption from night work.

Furthermore, it is a legal requirement for workplaces to offer their employees a free health check-up before they start night work, and that these must be done within every 3 years. This applies to both men and women.

As the regulation of night work is a matter that is more or less exclusively regulated by the social partners it should be left up to them to decide whether to accept the provision or not. Any acceptance of the undertaking matters that are regulated by

collective agreement would entail that the State overtakes the responsibility for how these matters should be regulated in the future, which would result in a breach of the principle of non- intervention by the state in the collective autonomy of the social partners in Denmark. If the social partners accept the provision, such acceptance of Article 8§4 would require legislative measures.

In relation to Article 8§5, it is noted that here are no forms of underground mining in Denmark. An absolute prohibition of employing pregnant women in underground work is therefore not required. However, in relation to other forms of dangerous work environments as such, pregnant and nursing women are as already mentioned above covered by the general protection of pregnant women at work.

Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

Article 10§4 – to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed

Danish remarks

Denmark has ratified this article in the original Social Charter. However, in the Revised Social Charter it is a new provision which promotes the rehabilitation and integration of the long-term unemployed. The idea behind this new paragraph is that special measures need to be taken for the rehabilitation and integration of the long-term unemployed, as their chances of re-entering the labour market are low. The other paragraphs are unchanged.

According to Danish law, unemployed persons may be provided with special measures for retraining and reintegration.

The Danish active labour market policies divide the unemployed into different categories. Each category may receive different grants and employment-related services. The categories distinguish between how far the persons are from the job market.

Each category has the long-term goal of integrating the unemployed into the job market. The reason for having different categories is that each category has the possibility of using different means to achieve the common goal of integrating the unemployed into the job market.

Long-term unemployed may have other problems than the lack of a job. The Danish active labour market policies consider this. As such, the active labour market policies may be combined with a social or health related efforts.

As a way of getting back into the labor market, the unemployed person may be offered an internship at a private company or temporary employment in the public sector. Other relevant measures may include guidance and upgrading.

In 2021, a number of parties in the Danish Parliament entered into an agreement to allocate a total of DKK 159 million for a number of temporary initiatives in 2021 and 2022.

The initiatives aim to strengthen and improve the chances for long-term unemployed to return to the labor market through upgrading and practical work-related measures. For example, there is an initiative for a special wage subsidy for long-term unemployed seniors and an initiative for more funds for a pool for unemployed seniors over 50 years at risk of long-term unemployment.

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organizations, to take appropriate measures designed inter alia:

Article 11§3 – to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Danish remarks

Denmark has ratified this article in the original Social Charter. The provision has been amended with the addition of "as well as accidents". The other paragraphs are unchanged.

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

Article 12§2 – to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security

Danish remarks

Denmark has ratified this article in the original Social Charter. The provision on the right to social security has been amended by removing the reference to the International Labour Convention (No. 102) Concerning Minimum Standards of Social Security.

Article 15 - The right of persons with disabilities to independence, social integration and participation in the life of the community

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 (…)

Danish remarks
Denmark has ratified the article in the original Social Charter. The article has been amended in the Revised Social Charter and a paragraph 3 has been added. The protection of persons with disabilities has been extended compared to the original charter. It no longer only applies to vocational rehabilitation, but also to the right of persons with disabilities to independent social integration, personal autonomy and participation in the life of the community in general.

The Danish Act on Social Services contains the principle of equal opportunities which establishes that public services should aim at supporting persons with disabilities in achieving their potential on equal terms with persons without disabilities. Another principle is the principle of compensation which means that the support and assistance is provided to compensate the needs caused by the disability. Support and assistance can be given in the form of technical aids, personal assistance, accompaniment etc. Support and care for persons with disabilities is free of charge for the individual.

This means that the purpose of the Act on Social Services among other things is to promote the full social integration and participation in the community for persons with disabilities.

According to the Act on Social Services, the municipalities shall provide sheltered employment for persons under old-age pension age, who, on account of substantial impairment of physical or mental function or special social problems, are unable to find or maintain employment on the labour market on normal terms, and who are not provided for under any other legislation.

Article 15§1 – 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 specialized bodies, public or private;

Danish remarks
The purpose of the The Act on Early Childhood Education and Care (ECEC) is, among other, to prevent negative social heredity and social exclusion through the general work of supporting children, including children and young people with reduced mental and physical functioning (§1).

It also follows from the Act on ECEC that:

- The Act on ECEC Facilities provides a guarantee for equal access to an ECEC facility for all children below the school age. Guaranteed ECEC availability means that the local council must offer places in an age-

appropriate ECEC facility to all children older than 26 weeks and until they reach school age (§ 23).

- The local municipal council must ensure that children who need support in an ECEC facility in order to thrive and develop, are offered such support (§4)
- The learning environment in ECEC must consider the children's perspective and participation, the children's community, the composition of the children's group and the children's different preconditions (§ 8).

It follows from the Act number 2218 from 29/12/2020 "Act on amendment of the Act on Prohibition of Discrimination on the Ground of Disability":

- Children and young people with disabilities have the right to a reasonable individual adaptation of services in ECEC so that they can achieve the same opportunities for participation as other children and young people and avoid discrimination.

In relation to education, all students have the right to teaching in the Danish primary and lower secondary public schools (Folkeskolen). Therefore, children whose development requires special consideration or support must be offered this based on a concrete assessment of the educational needs of the individual. If the need exceeds nine hours a week, the children are offered special education. Special education support is a general right and is not provided as a focused effort for a specific sub-group of pupils.

In relation to upper secondary education and vocational education and training, it is possible to plan longer education periods if students due to disabilities or other difficulties cannot follow the normal course plans. For all types of upper secondary education and vocational education and training, it is possible to apply for special assistance that can take different forms (e.g. extra classes, tools or personal support) depending on the type of disability. In vocational education and training, the students and apprentices can extend the second basic course period with up to 50 percent and institution can create separate classes for those students and apprentices that follow the second school period on special conditions. Furthermore, the on-the-job training can be completed at less than full-time.

In upper secondary education, it is possible to add an extra year compared to the standard course plans and the institutions also have the opportunity to create specific classes for these students.

Article 15§3 – 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.

Danish remarks
It is the Ministry of Transport's assessment that the provision does not go beyond the obligations that Denmark already has in the field of transport in relation to the opportunities and rights of disabled people in relation to public transport, i.a. EU passenger rights and according to the UN's Disability Convention, which Denmark acceded to in 2009.

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

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.

Danish remarks
Denmark has ratified this article of the original Social Charter. There is a minor chance from the original article to the revised one, as the word "contracting" has been removed from the designation "contracting parties".

In addition, the protection offered to 'mothers' under Article 17 of the original Social Charter has not been maintained in the revised version of Article 17, Article 16 of the Revised Social Charter will now cover this group.

Article 17 – The right of children and young persons to social, legal and economic protection

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 organizations, to take all appropriate and necessary measures designed (...).

Article 17§1

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 person’s temporarily or definitively deprived of their family's support;

Danish remarks

Denmark has ratified article 17 in the original Social Charter. The article has been amended in the Revised Social Charter. Among other things, "legal" has been added to the title and it has been specified that children and young people should have access to free education. Furthermore, the article has been expanded with two separate paragraphs, which will be reviewed below.

The current framework of child protection in Denmark

In Denmark, any person who is lawfully residing in Denmark is eligible to receive assistance under the Act on Social Services that provides children with a variety of rights. In Denmark, the municipalities (kommuner) are responsible for the provision of special support to children and young persons under the age of 18 and their families pursuant to the Danish Act on Social Services. The municipalities also have a general obligation to monitor the living conditions of children and young persons within the municipality (section 146).

Special support for a child or young person under 18 is provided when the municipality considers the child or young person to have special needs. The municipality is obliged to give a child or young person the support he or she needs in accordance with the best interests of the child.

The purpose of assisting children and young persons with special needs is to provide such children and young persons with same opportunities for personal development, health and an independent adult life as other children and young person. Among other things, the support shall ensure continuity in the upbringing of the child or young person and a safe environment of care, for instance by supporting the child or young person's family relations and another network.

The Amended 17 in the Danish Legal Framework

The amended Article 17 of 1996 establishes a right of children and young persons to social, legal and economic protection. Within Danish legal framework, children have the overall right to social protection. Hence, every child lawfully residing in Denmark is eligible to receive assistance under the Act of Social Services. According to the Act, the municipal council shall supervise the conditions under which children, young persons under 18 years of age and expecting parents are living in the municipality. The municipal council shall discharge its supervisory duties in a manner enabling it to identify, as soon as possible, any cases where a child or young person under 18 years of age must be assumed to need special support or where a child must be assumed to acquire a need for special support immediately after being born. If the municipal council has reason to assume that a child or young person needs special support, the municipal council must conduct a child protection examination in order

to clarify the needs of the child or young person, in accordance with section 50 of the Act on Social Services.

Age specific support

It is stated in the Digest of the Case Law of the European Committee that "States Parties must take all the necessary legal, financial and operational measures to progressively provide all young children with the most appropriate care services in family-based and community-based family-type settings, particularly children under the age of three" (page 149).

In Denmark, all children have the right to special support, and it is up to an individual judgment by the caseworker to determine which kind of special support that is the right for the child, for instance a placement in care. This right is the same for all children regardless of age. Hence, the article would not strengthen the rights of the overall group of children by placing a specific focus on children under the age of three.

Number of children in care institutions

Further, it is stated that "a unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate more than 10 children" (page 150).

In accordance with Danish law, each institution where children can be placed in care has to be approved by the Social Supervisory Authority, which is a state authority. Here, it is also approved how many places the institution can have. The number of places that each institution can have will be decided based on the target group for the institution, psychical environment, and quality.

De-institutionalisation

Finally, it is stated: "Article 17 implies an obligation to initiate and carry forward a de-institutionalisation process, by effectively making community-based family-type services available to all young children who cannot grow up in a family environment or are temporarily or definitively deprived of their family's support. In doing so, States Parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources. Failure to do so violates Article 17" (page 151).

According to the Act on Social Service, the municipal council shall decide on the specific placement facility for the child when it has been decided that the child shall be placed in care outside home. In choosing the placement facility, the municipality shall choose the facility that is best suited to meet the needs of the child or young person. The municipality shall give priority to the possibility for the facility to offer

close and stable adult relations, which shall include assessing whether placement with a foster family, is the most appropriate solution. Thus, the choice of placement facility is based on an individual judgment. Hence, Danish law does not directly support the idea of deinstitutionalization as in some cases it will be the best choice for a child or young person to be placed in an institution that is specialized in handling the special needs that the specific child may have.

Article 17§2 - to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Danish remarks
In relation to article 17, paragraph 2, all pupils and students in Denmark have the right to education meeting the specific needs of the individual child. All children residing in Denmark are subject to compulsory primary and lower secondary education in accordance with the Folkeskole Act.

In relation to upper secondary education and vocational education and training, the Danish legislation is in general based on the assumption that pupils and students have a residence permit. A student that loses the right to residence permit will be able to complete the education if otherwise possible. In relation to vocational education and training, the student will have to cover education expenses if the residence permit is lost.

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:

Article 19§11 - 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

Article 19§12 - to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Danish remarks
Denmark has not ratified this article in the original Social Charter. Paragraphs 1-10 have not been amended. Only the appendix to paragraph 6 has been amended with the addition of a definition of "family of a foreign worker". In addition, paragraphs 11 and 12 have been added. Denmark has not ratified this article.

According to article 19, paragraph 11, ratifying member states must 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.

Danish language training is a central part of the integration effort in Denmark. All newly arrived adult immigrants are entitled to receive free Danish language training. Some immigrants are obliged to participate in Danish language training. This is the case for immigrants under the self-support and return program or introduction program who receive social benefits. For other groups of immigrants, primarily workers or students, Danish language training is an offer, and it is voluntary for this group to participate in Danish language training.

For both groups the language training offer consists of up to five years of language training that corresponds to a total of 1,2 years of full-time language training.

The local municipalities are responsible to provide newly arrived immigrants in the municipality with a language training offer, and this must be done no later than one month after the municipality has taken over responsibility for the immigrant.

The Danish state of law regarding adult immigrants complies with article 19, paragraph 11, and is assessed to be adequate in the case of Danish ratification of article 19, sub paragraph 11.

Furthermore, Denmark makes teaching in Danish available for all children of the compulsory education age, cf. section 5 (2) no. 1 (a) and section 5 (6) of the Folkeskole Act. The expenses for Danish as a second language tuition are defrayed by the local authorities. If the child is provided for by the Danish Immigration Service, the education is provided in accordance with the Immigration Act.

The Youth School Act contains rules on education specified for young immigrants in the Danish language and Danish social conditions, cf. section 3 (1) no. 4, and rules on Danish education for newly arrived immigrants between 18-25 years, as defined in the Danish Act on education for grown-up immigrants et. al, cf. section 3 (2) no. 4.

However, it follows in section 2 (1), paragraph 2, of the Youth School Act that the [youth school's] offer must be available for young people between 14-18 years registered in the municipality's population register. This includes the condition that the young individual must hold a legal residence permit. If the young individual does not have a legal residence permit, he/she must contact the Danish Immigration authorities.

Regarding article 19, paragraph 12, there is currently only an obligation to provide mother-tongue teaching to children of EU/EEA citizens, British citizens with residence permit according to the EU-UK Withdrawal Agreement and children whose mother-tongue is Faroese or Greenlandic cf. section 5 (6) of the Folkeskole Act. A reservation would therefore be necessary for this provision.

Article 24 – The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognize:

a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Danish remarks

This is a new article on the right to protection in the event of unfair dismissal. The article is based on two general principles: the right not to be dismissed without just cause and the right to adequate compensation in cases of unfair dismissal.

The provision is inspired by ILO Convention no. 158 of 1982. With regard to the independent complaints body, reference is made to article 8 of the ILO Convention. Denmark has not ratified ILO Convention no. 158.

In Denmark the social partners play a crucial role regulating wages and working conditions. The Danish labour market model builds on employers and workers being organised in strong associations and unions that represent the broad interests of members in collective agreement negotiations. Pay and working hours are primarily regulated by collective agreement or individual employment contracts. As far as possible, the state refrains from intervening in the regulation of pay and working conditions. In Denmark, legislation and collective agreements do not protect all workers against unfair dismissal. An obligation to ensure that all workers are protected against unfair dismissal would interfere with the scope for social partners to enter collective agreements.

Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Danish remarks
New article on the right of workers to protection of their claims in the event of the insolvency of their employer. The provision provides for the establishment of a guarantee fund or similar measures. Insolvency must be defined in accordance with national law and practice.

The article is inspired by ILO Convention No. 173 on "Protection of workers claims" of 1992 and by EC Directive No. 80/1987 "on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. Denmark has not ratified ILO Convention No. 173.

In Denmark "Lønmodtagernes Garantifond" (LG) ensures that employees are paid their respective salary, holiday allowances, and other things if the company where they are employed is in a state of insolvency or is closed down in a similar manner. Lønmodtagernes Garantifond means "Workers Salary Guarantee Fund and is established in accordance with the Insolvency Directive (Directive 2008/94/EC)

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Article 26 is a new article on the right to decent working conditions.

Article 26§1 - With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations, to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Danish remarks
General protection from sexual harassment

In Denmark sexual harassment is prohibited in general by the Act on Equal Treatment of Men and Women with regard to Employment (henceforth the Act). Sexual harassment is defined in § 1, para 6, of the Act, as any form of unwanted verbal, non-verbal or physical behavior with sexual undertones is displayed with the purpose or

effect of violating a person's dignity, in particular by creating a threatening, hostile, degrading, humiliating or uncomfortable climate.

According to § 4 of the Act the right of workers to equal terms of employment includes a ban on sexual harassment, as it is defined by the Act. The explicit mentioning of sexual harassment in the article were added in 2018 to further emphasize the prohibition of sexual harassment and to raise awareness for both workers and employers. § 4 entails a duty for the employer to provide a harassment-free environment. An employer is obliged to reasonably protect its employees against sexual harassment – also violations committed by other employees. The rules ensure that any employer employing men and women shall treat them equally as regards working conditions. This also applies in the event of dismissal.

Furthermore, the amendments to the Act in 2018 increased the compensation offered to victims of sexual harassment.

Finally, Denmark notes that the Tripartite Agreement of 4 March 2022 sets out 17 initiatives to combat sexual harassment in the work place and that several of these initiatives concerns awareness raising and prevention of sexual harassment at enterprise level.

Enforcement

Board of Equal Treatment considers complaints of differential treatment, which includes complaints on violations of the Act on Equal Treatment. The Board has the power to issue compensation to the injured party, and can annul a dismissal of a worker. A decision by the Board is legally binding but can be brought before the courts on appeal.

Burden of proof

In Denmark cases of sexual harassment are covered by the rules on shared burden of proof. This means that if an employee can demonstrate factual circumstances, which gives reason to suspect that direct or indirect discrimination has taken place, it is for the employer to prove that the principle of equal treatment has not been violated. This follows from § 16 a of the Act, which is a special rule in regards to burden of proof in cases of sexual harassment.

Working Environment Act

According to § 1 of the Executive Order of the Working Environment Act, the purpose of the working environment rules is to ensure a safe and healthy physical and mental working environment that is at all times in accordance with the technical and social development in the society. According to § 38, work shall be planned,

organized and carried out in such a way as to ensure health and safety, and approved standards of importance to health or safety shall be complied with.

In November 2020 Executive Order on Psychological Working Environment came into force. This Executive Order gathers all rules in regards to mental health and psychological influences in the working environment, but it does not create new rules or obligations. The articles in the Executive Order does however contain new rules that clarify the existing obligations.

§ 23 of the Executive Order Explicitly mentions sexual harassment in relation to offensive behavior and actions, and § 22 clarify that the employer has an obligation to ensure that the work is at all times planned, organized and carried out in such a way as to protect workers from offensive behavior and actions.

The Danish Working Environment Authority enforces the rules covering health and safety at work, and can require that action is to be taken immediately to ensure that workers are not subjected to sexual harassment. Fines can be issued if the rules are violated, and in severe cases, there is the possibility of criminal proceedings and imprisonment.

The Danish Working Environment Authority is also obligated to provide guidance to companies, the public, and workers' and employers' organizations on all questions related to health and safety at work. This includes guidance on sexual harassment, where The Danish Working Environment Authority has published a written guide in 2011, that is currently being updated. Furthermore, the Danish Working Environment Authority conducts information, awareness-raising and prevention campaigns in the workplace or in relation to work in order to combat sexual harassment, in particular in situations where harassment is likely to occur.

Article 26§2 - With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organizations to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Danish remarks

In Denmark workers are protected from negative and offensive actions through the rules stemming from the Executive Order of the Working Environment Act and the Executive Order on Psychological Working Environment. The Working Environment Act ensures this protection in general, and the Executive Order on Psychological Working Environment contains rules that clarify the obligations of the law.
According to § 1 of the Executive Order of the Working Environment Act, the purpose of the working environment rules is to ensure a safe and healthy physical and mental working environment that is at all times in accordance with the technical and

social development in the society. Furthermore, it follows by § 38, that work shall be planned, organized and carried out in such a way as to ensure health and safety, and approved standards of importance to health or safety shall be complied with.

Chapter 2 of the Executive Order on Psychological Working Environment states that the employer is obligated to ensure the health and safety in all aspects of the psychosocial working environment. Chapter 3 contains specific rules about certain influences that are considered especially important to the workers psychosocial wellbeing.

§ 22 explicitly states that the work must always be planned, organized and carried out in such a way as to ensure the health and safety in regards to offensive behavior and actions. Offensive behavior and actions are defined in § 23 as being actions, that one or more people in company grossly or repeatedly exposes one or more other people in the company to bullying, sexual harassment or other degrading behavior at work. The behavior must be perceived as degrading by the victim(s).

Employers are also obligated to provide adequate protection of the workers from violence and offensive actions caused by persons not employed or associated with the company (such as costumers and business partners). This obligation applies both to risk of violence at work and outside working hours, if there is a concrete risk because of the work that's being performed.

The Danish Working Environment Authority enforces the rules covering working environment, and can require for action to be taken immediately to ensure that workers are not subjected to offensive behavior and actions. Employers can be held liable in case of violation of the rules through fines.

The Danish Working Environment Authority also conducts information campaigns about offensive behavior and actions – both through the official website, but also through social media such as Facebook or Instagram, as this broadens the reach of the information.

The Danish Working Environment Authority has established a hotline which is open for reporting of bullying, abusive behavior and sexual harassment. The agency also publishes guidelines and other material to help employers and employees combat bullying and sexual harassment.

The Danish Social Partners (employers' and workers' organizations) also play an important role in ensuring that information on the prevention of offensive behavior and actions is given to both companies and the workers. The Social Partners have carried out several campaigns in unison and provide education programs to workers and employers to help combat the negative and offensive behavior and actions that can occur at work. Workers can also seek individual assistance from their trade

unions if they experience offensive behavior and actions and the trade unions have access to pursue all available remedies to seek reparation for the damages caused.

Many collective agreements also contain provisions regarding offensive behavior and actions. These agreements cover the vast majority of workers in Denmark and are enforced by the Social Partners and through labour Courts. The courts can issue reparation to the victim for both pecuniary and non-pecuniary damages.

Article 27 – the right of workers with family responsibilities to equal opportunities and equal treatment

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:

1. to take appropriate measures:
   a. to enable workers with family responsibilities to enter and remain in employment, as well as to reenter employment after an absence due to those 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 childcare arrangements;
2. 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. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Danish remarks

New article on the right to equal treatment in relation to family responsibilities. The inspiration is taken from ILO convention no. 156 from 1981. Danish reservation to this article at the time of signing. Denmark has not ratified ILO convention no. 156.

The provision stipulates, among other things, that an employee must be guaranteed a certain priority right to, for example, reinstatement in a job if termination has occurred for family reasons, that terms of employment must take such obligations into account, and that family obligations as such may not constitute a valid reason for termination.

Ministry of Employment

Denmark notes that each parent has the right to 24 weeks of leave with state benefits after the birth of the child. If the parent is an employee, 13 of the 24 weeks may be transferred to the other parent.

Under the Act on Equal Treatment between Men and Women in relation to Employment etc., employees are entitled to return to the same or similar work after maternity, paternity or parental leave and enjoy the same improvements in working conditions as the employee would have had, if she/he was not absent.

Denmark also notes that under the Act on Equal Treatment between Men and Women in relation to Employment etc., employers may not lawfully dismiss an employee or treat the employee less favorably on grounds of pregnancy, maternity, paternity or parental leave. This is considered direct discrimination under both Danish and EU law.

For further information Denmark refers to the remarks under Article 8.

Ministry of Children and Education

In regards to child daycare services and other childcare arrangements (article 27§1, c), the purpose of the Act on ECEC is – among other things – to "provide families with flexibility and options regarding different types of ECEC facilities and subsidies so the family can plan the family and working life according to their needs and wishes" (Act on ECEC, § 1).

Therefore, the Act on ECEC provides the following elements for increased flexibility for the parents:

- Access to request a specific ECEC
- The parents have the option of choosing either a public or private ECEC –
- Access to choose an ECEC facility in another municipality
- Municipalities can choose to provide subsidy for parents to hire private childminding and minding of own children from 24 weeks
- For parents with evening, weekend or night shifts: possibility to hire a private childminder as well as a part-time place in an ECEC
- The opening hours must cover local needs of the local parents.

The Danish Maritime Authority

The Danish Act on seafarers' employment conditions etc., stipulates that a seafarer shall be entitled to leave without pay when compelling family reasons apply in case of illness or accidents making the seafarer's immediate presence urgently necessary in the home (force majeure). The Act does not contain any prohibition against

termination due to family obligations apart from absence due to pregnancy, maternity and adoption.

Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a) they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
b) they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Danish remarks

The article is new. Denmark has a reservation to this article at the time of signing.

The provision is inspired by ILO Convention no. 135 (Workers representatives) of 1971, where the Danish contract-based protection of trade union representatives is accepted in relation to the fulfilment of the convention. The convention entered into force in Denmark on 6 June 1978. The convention protects the employee representative against actions by the employer that may harm the employee representative, including dismissal, and requires the employer to make facilities available so that the employee representative can perform his or her duties.

The article sets out a requirement that employee representatives must have the right to perform their duties, and that they must be protected against dismissal due to activities that are justified in their duties. The provision considers the individual country's labor market system. However, legislation and collective agreements regarding workers' representatives do not cover all small undertakings.

Article 29 – the right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned

Danish remarks

This is a new article on the right to information and consultation in collective redundancy procedures. It is modelled on EC directive no. 92/56 of 1992, which amended directive no. 75/129 "on the approximation of the laws to collective redundancies".

In addition, ILO convention no. 158 (termination of employment) has also been considered. Denmark has not yet ratified ILO convention no. 158. Denmark has a reservation to this article at the time of signing.

The Danish law about collective redundancy procedures implements the EU *Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies*.

The law concerns collective redundancies within a 30-day period of: 1) at least 10 employees within corporations of 20-99 employees, 2) at least 10 pct. of employees within corporations of between 100-299 employees, 3) at least 30 employees within corporations of at least 300 employees. If the redundancy concerns at least 50 pct. of at least 100 employees, there are stricter rules on the notice period, the earliest effective date of the redundancies and the size of compensation for non-compliance with the rules on negotiations and notice.

The employer must negotiate with the workers or their representatives, if representatives are chosen or appointed. The selection of possible representatives is not regulated further.

Employers must initiate negotiations with workers or their representatives as early as possible about avoiding or reducing the redundancies as well as mitigating the consequences of them by activities that aim to redeploy or retrain the workers concerned.

After the negotiations, the employer shall notify the regional labour market council (RAR) about the redundancies. The workers/their representatives receive a copy of the messages.

Regional labour market councils (RAR) consist of representatives from social partner organizations. Employers are required to notify RAR about the collective redundancies. RAR can decide when a corporation with more than one local workplace is regarded as one or as multiple workplaces in regards to the law.

The law mandates sanctions within both civil and criminal law in case of an employer’s disregard of rules about information, notification and negotiation.

Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
b. to review these measures with a view to their adaptation if necessary.

Danish remarks

New article on the right to protection against poverty and social exclusion.

Denmark has general welfare provisions for all people with legal residence in Denmark. The welfare provisions include a broad range of policy areas, such as health, employment, social services, etc. Some of the services and benefits are universal, while others target people with special needs. Most welfare services are a municipal responsibility.

The Act on Social Services obliges municipalities to offer a large variety of services, support, and benefits to people social marginalized people or people in risk of social marginalization.

People in socially marginalized positions and in risk of social marginalization often experience that their personal and social problems often lie within several problem areas. The municipal council shall therefor consider applications and enquiries for assistance, having regard to all possibilities available to render assistance under the social legislation, including counselling and guidance. In addition, the municipal council shall consider the possibility that assistance may be available from another authorities.

<u>Access to education</u>

The Danish Act on ECEC states that the purpose of the Act is, among other, to prevent negative social heritage and social exclusion by making ECEC both an integral part of the municipality's overall general provision for children, as well as the municipality's preventive and support measures for children in need of special measures.

The Act on ECEC Facilities provides a guarantee for equal access to an ECEC facility for all children below the school age. Guaranteed ECEC availability means that the local council must offer places in an age-appropriate ECEC facility to all children

older than 26 weeks and until they reach school age. It is provided in the Act on ECEC that the municipality, as a starting point, gives subsidies for a place in ECEC for a minimum of 75 pct. of the budgeted gross operating expenditure for a child in ECEC, while parents pay a maximum of 25 % of services for children. Families receive a sibling discount. Additionally, the parents may apply for a financially aided place subsidy, which is calculated on the basis of the parents' financial situation. This place subsidy is increased for single-parent families.

The aim of the rules is to ensure that all children, regardless of socio-economic background, have equal access to ECEC.

Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources

Danish remarks

New article on the right to housing. It is up to member states to decide what constitutes "housing of an adequate standard".

Denmark has a welfare system aimed at ensuring access to housing of an adequate standard for all citizens:

1. Promotion of access to housing of an adequate standard: Denmark has implemented various initiatives and policies to promote access to housing of sufficient quality. Building regulations and standards have been put in place to ensure that housing meets certain quality standards. Additionally, the government has implemented various housing policies to facilitate access to housing for vulnerable groups such as youth, the elderly, and low-income families.
2. Prevention and reduction of homelessness: Denmark has an ambitious approach to addressing homelessness with the aim of gradually eliminating it.
3. Making housing prices accessible to those without adequate resources: There are various housing subsidy programs and social benefits available for individuals without adequate resources.

It is important to note that Denmark continues to work on improving conditions within the housing sector and addressing challenges such as housing shortages and rising prices.

All people who are lawfully staying in Denmark are entitled to assistance under The Act on Social Services (Lov om social service). The Act on Social Services obliges

municipalities to help people, who are living in or are in the risk of homelessness or unable to function in their own home, and must provide a number of services, covering temporary accommodation, such as repatriation centers and shelters.

In 2021, a new political agreement on combatting homelessness was agreed upon. The ambition is to reduce the number of homeless citizens significantly and end long-term homelessness with an increased focus on the Housing First-method. To fulfill the ambition the government will provide more affordable housing and strengthen the economic incentives for the municipalities to accommodate homeless people in permanent housing and use of evidence based supporting methods in line with the Housing First-approach.

Following the agreement, in May 2023 Danish parliament passed a bill on rearrangement of efforts against homelessness.

The bill gives people in homelessness and in the risk of homelessness the right to support by evidence based supporting methods in line with the Housing First-approach. The state shall reimburse 50% of the expenses incurred by municipalities in respect of support-in-housing for 2 years following a stay in temporary and emergency accommodation. With the bill municipalities are enabled to discharge a citizen form a shelter on the condition that, the citizen is given adequate housing, social support and an action plan.

Article E – Non-discrimination

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

Excerpt from the ESCR case-law:

Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all. The insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the fundamental rights contained therein.

Article E does not constitute an autonomous right which could in itself provide independent grounds for a complaint. It has no independent existence and has to be combined with a substantive provision of the Charter. Nevertheless, a situation which in itself is in conformity with the substantive provision concerned may infringe

this provision when read in conjunction with Article E, if that situation is of a discriminatory nature.

Danish remarks

Denmark is already bound by other international instruments which stipulate similar prohibitions of discrimination, notably the European Convention on Human Rights (Article 14), the EU Charter of Fundamental Rights, the two UN Covenants and ILO Convention 111.

Article E codifies the practice of the ECSR already applied to the 1961 Charter prior to the adoption of the 1996 Revised Charter on the basis of the non-discrimination clause in the Preamble to the 1961 Charter.

The article states that the rights within the charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. Denmark shares the overall ambition of anti-discrimination. The article includes concepts that are not directly addressed in Danish legislation. A more detailed and holistic analysis of the impact of the Article on all areas and sectors is therefore needed in Denmark. The following remarks can be shared at this stage.

As regards anti-discrimination at the workplace, national law prohibits discrimination with regards to employment on the grounds of race, colour, religion or belief, political opinion, sexual orientation, sexual orientation, gender identity, gender expression, gender characteristics, age, disability or national, social or ethnic origin. The list of protected criteria in Denmark is adequate and complies with current EU-legislation and case law.

As regards gender equality in particular, the Revised Social Charter is not contrary or in breach with the Danish Gender Equality Act in relation to Article E on anti-discrimination. Nor does accession require amendments of the Danish Gender Equality Act which states that no one may subject another person to direct or indirect discrimination based on gender, sexual orientation, gender identity, gender expression or gender characteristics, cf. Article 2 (2). The purpose and scope of the abovementioned Article 2 (2) in the Gender Equality Act is found in Chapter 2 on anti-discrimination. Chapter 2 applies to 1) every employer, authority and organization within public administration and general business and 2) authorities and organizations and all persons who provide goods and services which are available to the public irrespective of the person concerned as regards to both the public and private sectors, including public bodies, and which are offered outside of private and family life and the transactions carried out in this context.

As regards Danish seafarers, special attention is given to the new provision in Part V, Article E, which is a general extension of the anti-discrimination criteria

enshrined in the preamble of the original Social Pact. The same applies to ILO Convention 111 on discrimination in employment and occupation. The criteria are also broader than the criteria in the Danish Act on Prohibition of Discrimination in the Labor Market, etc.

Additional Protocol providing for a system of collective complaints
The ECSR monitors compliance with the Charter through a regular reporting by States Parties.

The collective complaints procedure was introduced by the Additional Protocol which entered into force in 1998. The argument for introducing a supplementary procedure was to include the social partners and the international non-governmental organizations in the monitoring of the Charter.

The complaints should raise questions in general concerning non-compliance of a State's law or practice with one or more of the provisions of the Charter. Complaints about individual situations may not be submitted. Because of its particular nature, complaints may be lodged without exhausting domestic remedies and without the complainant organization necessarily being a victim of the alleged violation. Complaints can only be made about cases within the organizations' area of competence.

16 Member States have ratified the Additional Protocol providing for a system of collective complaints[8]. Four Member States have signed, but not yet ratified[9]. The remaining Member States neither signed, nor ratified[10].

The procedure
The ECSR receives complaints and prepares a report to the Committee of Ministers within 4 months on whether or not the State concerned complies with the Social Charter. On this basis, the Committee of Ministers can issue a recommendation.

In cases where the Committee of Ministers has addressed recommendations to States Parties after the ECSR has found that the Charter has not been applied in a satisfactory manner, States Parties will be asked to submit a single report on the follow-up undertaken two years after the recommendation. The assessment of the ECSR on the follow-up reports will then be transmitted to the Committee of Ministers. Depending on the assessment of the European Committee of Social Rights, the Committee of Ministers may:

- close the case with a resolution,
- renew the recommendation,
- before renewing the recommendation, refer the case to the Governmental Committee for further consultations. In the light of the outcome of these consultations, the Committee of Ministers decides whether to close the procedure or renew the recommendation.

Member States that accept collective complaints submit statutory reports every four years instead of every second year. The reporting required will take account of decisions on collective complaints pertaining to the provisions reported on.

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[8] Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia, Spain and Sweden.
[9] Austria, Denmark, Hungary and Slovak Republic
[10] Full list - Treaty Office (coe.int)

Danish remarks

Denmark has signed, but not yet ratified the Additional Protocol providing for a system of collective complaints.

Denmark has previously hesitated to ratify the Additional Protocol, as the procedure weakens the role of the Governmental Committee. In the Governmental Committee, the national representative can clarify and elaborate the legal aspects of the country-specific case. The members of the GC know the context and background of the cases from the ongoing work in the committee as well as from the processing of current cases and conclusions and can therefore take societal and other relevant considerations into account in the assessment. However, in the collective complaints system the legal assessment is separated from the political assessment. Furthermore, the Committee of Ministers' possibility to challenge the legal assessment from the ECSR is limited.

Denmark is also reluctant due to the increased workload associated with the procedure. The collective complaints procedure is an add on to the existing procedure which, ceteris paribus, implies more work in terms of the ongoing processing of complaints and the additional follow-up report after a recommendation. We are aware that Member States that accept collective complaints submit statutory reports every four years instead of every second year, but the procedure still entails additional administrative burdens to the Member State.

It is also worth mentioning that the social partners are invited under Article 27, paragraph 2, to be represented at the meetings of the Governmental Committee. Denmark is skeptical about the added value of the system, as Denmark already has a well-organized and comprehensive organizational structure.