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FOREWORD

The Digest presents the interpretation given by the European Committee of Social Rights to each of the provisions of the European Social Charter, in its revised version of 3 May 1996.

It includes a compilation, article by article and for each paragraph, of the main explanations of the text of the Charter resulting from the examination of the national situations of States Parties on the basis of national reports since 1968, and the processing of complaints submitted since 1998. It also contains a presentation of the principles of interpretation of the Charter and a description of the collective complaints procedure.

The Digest is intended for legal practitioners, officials of Member States’ administrations, social partners, civil society and the general public, in order to enable them to better know and understand the European Social Charter.

In its Report on the State of democracy, human rights and the rule of law (2017), the Secretary General of the Council of Europe stated as follows:

“Respect for social rights enables our societies to remain united and overcome their problems, whether social or economic. Such respect restores and strengthens the public’s trust in institutions and political leaders, both nationally and at European level. It is a means of combating social exclusion and poverty by enforcing the principle of the interdependence of human rights, which commands an international consensus; it plays a part in the social reintegration of the most vulnerable people in society and people who, for various reasons, have become marginalised.

Clearly, respect for social rights is even more necessary in times of crisis and economic hardship than in normal times. If growth were to benefit only a minority this would weaken social cohesion and democratic security on the continent. Whatever the substance of the economic policies implemented, governments must always consider the realisation of fundamental rights that meet citizens’ everyday needs. Disregarding them means creating fertile ground for anti-social, anti-political, anti-European and racist movements, or movements based simply on political exploitation of social egoism.”

The Charter therefore occupies an essential and unique place with a view to achieving the goal that the States have assigned to the Council of Europe by enshrining it in Article 1 of the Statute, which reads: "The aim of the Council of Europe is to achieve greater unity between its members in order to safeguard and promote the ideals and principles which are their common heritage and to foster their economic and social progress".

This version of the Digest is up to date as of 31 December 2018.

I would like to thank all the staff of the Secretariat of the European Committee of Social Rights who have contributed to the updating of the Digest since the last edition in 2008.

Comments and suggestions from all stakeholders are strongly encouraged in view of for the next edition.

Régis Brillat
Executive Secretary of the European Committee of Social Rights
1/11/1993 – 30/6/2018
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INTRODUCTION

The European Social Charter is a Council of Europe treaty adopted in 1961, revised in 1996 which complements the European Convention on Human Rights by guaranteeing economic and social rights.

The European Committee of Social Rights (referred to below as “the Committee”) assesses whether countries respect the rights provided in the Charter.

The Digest presents the interpretation that the Committee has made of the different articles of the European Social Charter, in its revised version from 1996 (referred to below as “the Charter”). Prepared by the Secretariat of the Committee, it is not binding on the Committee.

The European Committee of Social Rights

1. Composition of the Committee (by order of precedence on 1 January 2018 according to Rule 1 of the Committee’s rules)

End of term of office

Giuseppe PALMISANO, President (Italian) 31/12/2022
Monika SCHLACHTER, Vice-President (German) 31/12/2018
Karin LUKAS, Vice-President (Austrian) 31/12/2022
Eliane CHEMLA, General Rapporteur (French) 31/12/2018
Birgitta NYSTRÖM (Swedish) 31/12/2018
Petros STANGOS (Greek) 31/12/2020
Jozsef HAJDU (Hungarian) 31/12/2018
Marcin WUJCZYK (Polish) 31/12/2020
Krassimira SREDKOVA (Bulgarian) 31/12/2020
Raul CANOSA USERA (Spanish) 31/12/2020
Marit FROGNER (Norwegian) 31/12/2020
François VANDAMME (Belgian) 31/12/2020
Barbara KRESAL (Slovenian) 31/12/2022
Kristine DUPATE (Latvian) 31/12/2022
Aoife NOLAN (Irish) 31/12/2022

2. Functions of the Committee

The Committee decides whether the situation in the States Parties is in conformity with the European Social Charter. According to Article 2 of its Rules:


2. It adopts conclusions in the framework of the reporting procedure and decisions under the complaints procedure.”

i) Conclusions (Reporting procedure)

a) Reporting obligations in respect of States Parties which have not accepted the collective complaints procedure

Every year, the States Parties, which have not accepted the collective complaints procedure, submit a report indicating how they implement the Charter in law and in practice. Each report concerns a selection of the accepted provisions of the Charter.
The Social Charter provisions are divided into four groups presented below in a chronological order:

<table>
<thead>
<tr>
<th>Thematic Groups:</th>
<th>Provisions:</th>
<th>Date of submission of States Parties’ reports:</th>
<th>European Committee of Social Rights Conclusions to be adopted on:</th>
</tr>
</thead>
</table>
| **Group 1** Employment, training and equal opportunities | Article 1  
Article 9  
Article 10  
Article 15  
Article 18  
Article 20  
Article 24  
Article 25 | 31/10/2015 | December 2016  
(to be published in January 2017) |
| **Group 2** Health, social security and social protection | Article 3  
Article 11  
Article 12  
Article 13  
Article 14  
Article 23  
Article 30 | 31/10/2016 | December 2017  
(to be published in January 2018) |
| **Group 3** Labour rights | Article 2  
Article 4  
Article 5  
Article 6  
Article 21  
Article 22  
Article 26  
Article 28  
Article 29 | 31/10/2017 | December 2018  
(to be published in January 2019) |
| **Group 4** Children, families, migrants | Article 7  
Article 8  
Article 16  
Article 17  
Article 19  
Article 27  
Article 31 | 31/10/2018 | December 2019  
(to be published in January 2020) |

In case of lack of information after examination of Group 1 “Employment, training and equal opportunities”, the State Party concerned has to submit the requested information when reporting on Group 3 “Labour” and vice versa.

In case the Committee concludes that a situation is not in conformity because of a lack of information after examination of Group 2 “Health, social security and social protection”, the State Party concerned has to submit the requested information when reporting on Group 4 “Children, families, migrants” and vice versa.
b) Reporting obligations in respect of States Parties which have accepted the collective complaints procedure

Since October 2014, States Parties having accepted the collective complaint procedure have to provide a national report every two years only.

The 15 States which have accepted the collective complaints procedure are divided into two groups.

The groups will be composed by distributing the States according to the number of complaints registered against them (from the highest to the lowest), as follows:

- Group A, made up of eight States: France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland
- Group B, made up of seven States: Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic

The system will function as follows:

<table>
<thead>
<tr>
<th>Date</th>
<th>Provisions from Group</th>
<th>Normal report</th>
<th>Simplified report</th>
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</thead>
<tbody>
<tr>
<td>October 2014</td>
<td>Group 4</td>
<td>Children, families, migrants</td>
<td>All states except the ones from group A</td>
</tr>
<tr>
<td>October 2015</td>
<td>Group 1</td>
<td>Employment, training and equal opportunities</td>
<td>All states except the ones from group B</td>
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<tr>
<td>October 2016</td>
<td>Group 2</td>
<td>Heal, social security and social protection</td>
<td>All states except the ones from group B</td>
</tr>
<tr>
<td>October 2017</td>
<td>Group 3</td>
<td>Labour rights</td>
<td>All states except the ones from group A</td>
</tr>
<tr>
<td>October 2018</td>
<td>Group 4</td>
<td>Children, families, migrants</td>
<td>All states except the ones from group B</td>
</tr>
<tr>
<td>October 2019</td>
<td>Group 1</td>
<td>Employment, training and equal opportunities</td>
<td>All states except the ones from group A</td>
</tr>
<tr>
<td>October 2020</td>
<td>Group 2</td>
<td>Heal, social security and social protection</td>
<td>All states except the ones from group A</td>
</tr>
<tr>
<td>October 2021</td>
<td>Group 3</td>
<td>Labour rights</td>
<td>All states except the ones from group B</td>
</tr>
</tbody>
</table>

etc.

States Parties which draw up a simplified report will be required to state what follow-up action has been taken in response to the decisions of the Committee on collective complaints and reply to any questions put in the event of non-conformity for lack of information for the relevant provisions.
As new States Parties accept the collective complaints procedure, they will be assigned on an alternating basis to Group B then Group A, then to Group B again, and so on.

The new system entered into force for all States Parties which have already accepted the procedure since October 2014 and, for other States Parties, will enter into force one year after acceptance.

**Fulfilment of the reporting obligations by the States Parties**

In Conclusions 2009 (§§19-22), the Committee expressed itself on the subject as follows: “The Committee has in the past taken note of instances of non-submission by certain States Parties of reports on the application of the Charter within the deadline set by the Committee of Ministers. Although the situation has improved somewhat since the entry into force of the new system for submission of reports, serious delays nevertheless persist in respect of a limited number of States. Thus, in the present supervision cycle the reports of Hungary, Iceland and Ireland had to be examined after the conclusions for all other States Parties had been adopted and made public. The Committee invites the States Parties to observe scrupulously the reporting deadlines so as not to undermine the impact of the Charter’s supervisory mechanism.

The Committee recalls that a new Form for Reports was adopted by the Committee of Ministers on 26 March 2008 and it considers that the general impression of the first reports based on this new Form is encouraging. However, the quality of certain reports is still not adequate and does not allow the Committee to make an assessment of the situation forcing it to defer the conclusion. Information provided is not always pertinent, is not sufficiently clear and/or exhaustive or is lacking entirely. The Committee wishes to point out in this respect that it is not enough to provide lists of national legislation relevant to the Charter provisions concerned. All references to legislation should be accompanied by the appropriate explanations of how they ensure application of the Charter.

In deciding about the nature and extent of the information to include in the report, the national authorities should take into account the case law of the European Committee of Social Rights as it is reflected in the Committee’s previous conclusions and decisions. They may refer to various publications on the case law, including to the Digest published under the responsibility of the Secretariat. The Committee further recalls that each report shall contain replies to any questions raised by the Committee in its conclusions, whether questions of a general nature addressed to all States Parties (such questions appear in the “General Introduction”) or specific questions contained in the conclusions proper in respect of each State for each provision. As regards statistical information it is understood that, if official statistics are lacking, governments may supply data or estimates based on ad hoc studies and surveys, or use valid data from other sources.

Having regard to the fact that the current system for submission of reports entails a period of four years between reports on any given accepted provision of the Charter and being committed to avoiding as far as possible the deferral of conclusions, the Committee has decided that it will defer a conclusion for lack of information only once before adopting a conclusion of non-conformity on the ground that it has not been established by the State in question that the situation is in conformity with the Charter. In practical terms, this means that where conclusions contained in the present volume have been deferred, the requested information must be included in the next report on the provision concerned (i.e. in four years’ time), otherwise the conclusion will be one of non-conformity.”
Publication of conclusions and follow-up

The Committee’s conclusions are published annually. They are available on the Council of Europe’s internet site: www.coe.int/socialcharter.

When the Committee concludes that a situation is not in conformity, the State Party has to bring the situation into conformity. If the State Party takes no action, the Committee of Ministers may address a recommendation to that state, asking it to change the situation in law and/or in practice. The Committee of Ministers’ work is prepared by a Governmental Committee comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers’ organisations and trade unions (European Trade Union Confederation (ETUC), Business Europe (ex UNICE) and the International Organisation of Employers (IOE)).

ii) Decisions (Collective complaints’ procedure)

Complaints alleging violations of the Charter may be lodged by trade unions, employers’ organisations and NGOs.

a) Decisions on admissibility

The Committee examines the complaint and, if the formal requirements have been met, declares it admissible. The decisions are public and available on the Council of Europe’s website www.coe.int/socialcharter

b) Decisions on the merits

When and if the complaint has been declared admissible, a written procedure commences, with an exchange of submissions between the parties. The Committee may decide to hold a public hearing in the course of examining the complaint.

The Committee finally takes a decision on the merits of the complaint, which it forwards to the parties to the complaint and the Committee of Ministers in a report, which is made public within four months.

The decisions when they become public are available on the Council of Europe’s website www.coe.int/socialcharter.

3. **Status of Committee members**

The Committee’s fifteen members are independent and impartial members.

They are elected by the Council of Europe Committee of Ministers for a term of office of six years, renewable once. According to the Amending Protocol of 1991 (“The Turin Protocol”), members of the European Committee of Social Rights shall be elected by the Parliamentary Assembly of the Council of Europe. However, this provision of the Protocol is the only one which is not provisionally applied in practice, pending the entry into force of the Protocol.

According to the Rules of the Committee:

“Rule 3: Duties of Committee Members
Members shall perform their duties with the requirements of independence, impartiality and availability inherent in their office and shall keep secret the Committee’s deliberations.”
**Rule 4: Solemn declaration**

Before taking up duties, each member of the Committee shall, at the first meeting of the Committee at which the member is present after election, make the following declaration:

“I solemnly declare that I will exercise my functions as a member of this Committee in conformity with the requirements of independence, impartiality and availability inherent in my office and that I will keep secret the Committee’s deliberations.”

**Rule 5: Incompatibility**

1. Members of the Committee shall not during their term of office perform any function which is incompatible with the requirements of independence, impartiality or availability inherent in their office.

2. If it appears that a member of the Committee has accepted to undertake functions which are susceptible to be incompatible with the provisions of paragraph 1, he/she is obliged to draw the consequences thereof. Failing this, as well as in cases of a violation of the provisions of Rule 3, the Committee is, on the basis of a report by the President, required to take a decision on the situation.”

In addition, under the General Agreement on privileges and immunities of the Council of Europe and its Protocol, members of the European Committee of Social Rights shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind.
- Inviolability for all papers and documents.
- The right to use codes and to receive papers or correspondence by courier or in sealed bags.
- Exemption in respect of themselves and their spouses from immigration restrictions or aliens registration in the State which they are visiting or through which they are passing in the exercise of their functions.

4. **Working methods of the Committee**

The Committee holds seven sessions per year at the Council of Europe premises in Strasbourg.

Each Committee member is Rapporteur for a certain number of provisions of the Charter in respect of the reporting system and for complaints.

National reports are examined by two Sub-Committees, each of them being responsible for a certain number of provisions. The Sub-Committee prepare the work of the plenary Committee.

Collective complaints are examined by the plenary Committee.

The Committee is assisted by a secretariat composed of Council of Europe Staff.

5. **Rules of the Committee**

The Committee’s Rules contain the Rules for the operation of the Committee as well as the conduct of the two procedures for the control of the application of the Charter; the complaints procedure and the reporting procedure.

The Rules currently in force were adopted during the 201st session on 29 March 2004 and revised:
- during the 207th session on 12 May 2005;
- during the 234th session on 20 February 2009;
- during the 250th session on 10 May 2011;
- during the 251st session on 28 June 2011;
- during the 266th session on 12 September 2013;
- during the 268th session on 6 December 2013;
- during the 273rd session on 9 September 2014;
- during the 286th session on 6 July 2016.

The previous Rules were adopted on 9 September 1999:

6. **The Committee's case-law**

What is called the Committee’s “case-law” are all the sources in which it sets out its interpretation of the Charter’s provisions.

These include:

- Decisions on collective complaints: decisions on admissibility, decisions on the merits, striking out decisions and decisions on immediate measures.

- **Conclusions.** arising from the reporting procedure and published each year according to the following referencing system:
  - for the 1961 Charter, the volumes are numbered I, II, III, IV..., XX-1, XX-2, XX-3, XX-4 etc;
  - for the Revised Charter, they are numbered 2002 (...), 2014, 2015 etc.

- **Statements of Interpretation**, included in the volumes of conclusions.

Until 1997, the conclusions were presented article by article and the statements appeared at the start of each chapter. Since 1998, conclusions have been published country by country, with statements of interpretation repeated in each country chapter. To avoid such repetition, as of 2006 these statements appear in the general introduction to the conclusions.

**How the Committee makes its assessments**

In deciding whether situations are in conformity with the Charter, the Committee first checks whether existing laws and regulations are consistent with Charter rights and do not impede their application.

If this first “test” is passed, it then goes on to verify that the law is properly applied in practice.

A situation is “not in conformity” with the Charter if the relevant legislation is incompatible with its requirements or if compatible legislation is incorrectly or not fully applied.

**Dissenting opinions of Committee members**

The Committee adopts its conclusions and decisions by vote. In most cases, voting is unanimous. Occasionally, though, decisions are taken by majority vote. The Committee's Rules allow any member who has voted against a conclusion or a decision on the merits of a complaint to present a dissenting opinion, which is published at the same time as the conclusion or decision.
Publication of the Committee’s decisions and conclusions

The Council of Europe publishes all these documents. They are also available on the HUDOC database, which is accessible on the Council of Europe’s internet site [www.coe.int/socialcharter](http://www.coe.int/socialcharter). There are scroll down menus for most of the fields and text strings should be in inverted commas.

References to Committee conclusions and decisions

Conclusions are cited as follows:

*Reference to the volume of conclusions, state, article and paragraph.*
For example: Conclusions 2003, France, Article 6§2.

Decisions are cited as follows:

*Name of the complainant organisation v. name of the respondent State (Complaint No. order of the complaint / year of registration), decision on admissibility of [date]/ decision on the merits of [date], § 111*

For example: European Roma Rights Center (ERRC) v. France, Complaint No. 52/2008, decision on the merits of 19 October 2009, §82.

7. **Rights guaranteed by the Charter**

The rights guaranteed by the Charter concern all individuals in their daily lives, with special attention for vulnerable persons and groups

**Housing**

- Legal framework providing for housing of an adequate standard (safe, healthy and of adequate size);
- Legal and procedural safeguards in case of eviction;
- Policy and action to prevent homelessness;
- Provision of adequate emergency accommodation for all homeless persons;
- Provision of affordable housing through social housing of adequate quality and quantity or other means.

**Health**

- Ensuring a healthy environment;
- Promotion of public health through health education and screening;
- Prevention of diseases and accidents;
- Provision of and effective access to adequate and affordable healthcare;
- Emergency medical assistance to everyone in need, including those irregularly present;
- Protection of maternity, access to maternal health services, regulation of working conditions of women in relation to maternity, maternity leave;
- Safe and healthy working environment.
Education

- Free primary and secondary education for all children;
- Free and effective vocational guidance services;
- Vocational training (including continuing training), apprenticeship and access to higher education based solely on individual aptitude;
- Access of persons with disabilities to mainstream education and training as well as rehabilitation;
- Language education for migrants.

Employment

- Access to employment
  - Full employment policy and action promoting equal and effective access to employment;
  - Free employment services for job-seekers and reinsertion measures for long-term unemployed people;
  - Access of persons with disabilities to rehabilitation and mainstream employment;
  - Removal of obstacles to the engagement of workers in gainful occupation in other States Parties.
- Equal opportunities and equal treatment [for/of] women.
- Prohibition of exploitation
  - Prohibition of forced or compulsory labour, regulation of prisoners’ work and domestic labour;
  - Prohibition of employment of children under 15.
- Collective employment relations
  - Freedom to form or to join trade unions and employers’ organisations, independence and guarantees for trade union activities and protection of workers’ representatives;
  - Joint consultation, collective bargaining, settlement of labour disputes and collective action;
  - Workers’ information, consultation and involvement in the determination and improvement of working environment and conditions.
- Protection of workers
  - Health and safety at work, fair working conditions and decent remuneration.
  - Workers’ privacy, protection against all forms of harassment;
  - Specific protection of young workers (aged between 15 and 18 years), employed women in relation to maternity and workers with family responsibilities.
- Guarantees in case of termination of employment.
Social protection

- Protection from poverty and social exclusion;
- Adequate social security, including equal treatment of persons moving between the States Parties;
- Adequate social and medical assistance for all persons in need;
- Prevention, abolition or alleviation of need;
- Effective social services of adequate quality, including counselling, advice, home help, residential care, etc.;
- Measures in favour of families (e.g. family counselling, mediation services, protection from domestic violence, family benefits), equality of spouses, protection of parental rights, provision of childcare facilities and services;
- Protection of minors against physical and moral dangers such as sexual exploitation, trafficking, misuse of information technologies, and ill-treatment and abuse, including corporal punishment.

Integration and participation

- Enabling elderly persons to remain active members of society through adequate resources and services, as well as to choose their life-style through the provision of housing and health care; for those living in institutions, respect of privacy, protection from abuse and participation in decisions concerning living conditions;
- Participation of persons with disabilities in the life of the community through non-discrimination guarantees, policies drafted in consultation with those directly concerned, technical and financial aid to increase autonomy, inclusive measures related to communication, mobility and transport, housing, culture and leisure;
- Guarantees concerning the journey of migrant workers; Family reunion for migrant workers and safeguards against deportation;
- Equal treatment of migrant workers regarding remuneration and other employment conditions, membership of trade unions and enjoyment of the benefits of collective bargaining, regarding accommodation, as well as taxes and contributions and access to justice.

Non-discrimination

The rights of the Charter must be guaranteed to everybody concerned, including foreigners lawfully resident and/or working, without discrimination on any ground such as race, colour, sex, age, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status, including disability (E).
# Table of Ratifications

**Situation at 31 December 2018**

<table>
<thead>
<tr>
<th>Member States</th>
<th>Signature Date</th>
<th>Ratifications Date</th>
<th>Acceptance of the collective complaints procedure</th>
</tr>
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<tbody>
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<td>Albania</td>
<td>21/09/98</td>
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**NUMBER OF STATES**

| 2 + 5 = 47 | 9 + 34 = 43 | 15 |

The dates in bold correspond to the dates of signature or ratification of the 1961 Charter; the other dates correspond to the signature or ratification of the 1996 revised Charter.

* States whose ratification is necessary for the entry into force of the 1991 Amending Protocol. In practice, in accordance with a decision taken by the Committee of Ministers, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it.
8. **“A la carte” acceptance**

According to Article A States Parties may chose provisions of the Charter they intend to accept at the time of ratification. Article A reads as follows: “Subject to the provisions of Article B below, each of the Parties undertakes:

- a) to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;
- b) to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;
- c) to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.”

The table of provisions accepted by States Parties is featured on the Internet site: [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

The Committee has made the following comment concerning the relationship between accepted and non-accepted provisions:

“9. The Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States Parties stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions.” (Mental Disability Advocacy Center (MDAC) v. Bulgaria, complaint No. 41/2007, decision on admissibility of 26 June 2007, §9)
PART I: COLLECTIVE COMPLAINTS PROCEDURE
The collective complaints procedure was established under the 1995 Protocol and the Committee Rules of Procedure. It has also been further clarified by successive Committee decisions on the admissibility and merits of complaints submitted.

## A - ADMISSIBILITY

1. **The conditions for admissibility set out in the Protocol and the Committee’s Rules of Procedure**

   a) **The complaint:**

   - must be submitted in writing;
   - must be sent to the Executive Secretary of the Committee acting on behalf of the Secretary General of the Council of Europe;
   - must state why the organisation submitting the complaint considers that the Charter has not been respected;

   On this last point, succinct grounds may be given.

   The fact of the grounds comprising a factual error does not necessarily make the complaint inadmissible.

   Some types of allegation lie outside the scope of the complaints procedure and therefore cannot constitute grounds for declaring the complaint admissible.

   The complaint must indicate the provisions the violation of which is alleged, including, if appropriate, Article E of the Charter. On the contrary, a violation of article G of the Charter cannot be alleged since this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted and cannot lead to a violation as such. This provision may, however, provide a reference for the interpretation of the substantive rights provisions of the Charter. These rules apply *mutatis mutandis* to Article F of the Charter.

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1 World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, §§ 2 and 5
2 European Group of women graduates of Universities v. Belgium, claim No. 124/2016; Decision on the admissibility of 4 July 2017, §§ 6-9 et al
3 European Federation of Employees in Public Services (EUROFEDOP) v. Portugal, Complaint No. 5/1999, decision on admissibility of 10 February 2000, §§ 4, 9 and 10
4 World Organisation against Torture (OMCT) v. Belgium, Complaint No. 21/2003, decision on admissibility of 9 December 2003, §§ 2 and 3
5 Syndicat national des dermato-vénéréologues (SNDV) v. France, Complaint No. 28/2004, decision on admissibility of 13 June 2005, §§ 7 and 8
6 Syndicat des hauts fonctionnaires (SAIGI) v. France, Complaint No. 29/2005, decision on admissibility of 14 June 2005, §§ 6, 7 and 8
8 Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, complaint No. 76/2012, decision on admissibility of 23 May 2012, §§5-7
9 Equal Rights Trust (ERT) v. Bulgaria, complaint No. 121/2016, decision on admissibility of 5 July 2016 § 11
10 Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, complaint No. 76/2012, decision on the merits of 7 December 2012, §48
11 Equal Rights Trust (ERT) v. Bulgaria, complaint No. 121/2016, decision on admissibility of 5 July 2016 § 11
12 Greek General Confederation of Labour (GSEE) v. Greece, complaint No. 111/2014, decision on admissibility of 19 May 2015, §10.
The complaint may be admissible vis-à-vis some of the provisions invoked and not be sufficiently grounded for the others: in this case the complaint is only admissible for some of the provisions invoked.\(^{13}\)

The complainant parties are bound by the Committee’s decision on admissibility in respect of the provisions of the Charter to which the complaint relates.\(^{14}\)

The Committee may, however, decide during the procedure to examine the complainant organisation’s allegations from the angle of a different provision of the Charter from that relied upon. In such cases, the Committee invites the respondent Government to submit its observations on the said provision.\(^{15}\)

- Complaints must concern a provision accepted by the respondent state.\(^{16}\)

**b) Complaints may be submitted by:**

- International organisations of employers or international trade union organisations as set out in Article 27 para. 2 of the 1961 Charter (Article 1. a. of the Protocol).

Article 27 §2 of the 1961 Charter reads as follows:

“Article 27 – Sub-Committee of the Governmental Social Committee

(…)

2 The sub-committee shall be composed of one representative of each of the Contracting Parties. It shall invite no more than two international organisations of employers and no more than two international trade union organisations as it may designate to be represented as observers in a consultative capacity at its meetings. Moreover, it may consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare and the economic and social protection of the family.”

In practice, three organisations are invited to participate in the work of the Governmental Committee:

- two organisations of employers: the International Organisation of Employers and Business Europe;
- one organisation of workers: the European Trade Union Confederation.

These three organisations are therefore entitled to submit complaints against any state which has accepted the collective complaints procedure.

- any INGO included on the list of organisations entitled to submit complaints (Article 1.B. of the Protocol).

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\(^{15}\) Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, decision on admissibility of 23 September 2008, § 3.

\(^{16}\) European Federation of Employees in Public Services (EUROFEDOP) v. Greece, Complaint No. 3/1999, decision on admissibility of 13 October 1999.
International non-governmental organisations (INGOs) holding participatory status with the Council of Europe and included on the corresponding list drawn up by the Governmental Committee of the Charter for a period of four years renewable.

This list is established by the Governmental Committee in accordance with the following procedure as decided by the Committee of Ministers (decision of 22 June 1995):

– INGOs which hold participatory status with the Council of Europe and which consider themselves particularly competent in any of the fields covered by the Charter are invited to express their wish to be included on a special list of INGOs entitled to submit complaints;

– each application must be supported by detailed and accurate documentation aiming to show in particular that the INGO has access to authoritative sources of information and is able to carry out the necessary verifications and obtain appropriate legal opinions, etc, in order to draw up complaint files that meet basic requirements of reliability;

- all applications are transmitted to the Governmental Committee, accompanied by an opinion of the Secretary General which reflects the degree of interest and participation shown by the INGO in its normal dealings with the Council of Europe;

– an application is considered accepted by the Governmental Committee unless it is rejected in a ballot by a simple majority of votes cast;

– inclusion on the special list is valid for a period of four years, after which it lapses, unless the organisation applies for renewal in the six-month period preceding the expiry date. The procedure described above applies to renewal applications.

The list can be consulted on the Council of Europe website under “Social Charter”, www.socialcharter.int.

The fact of an INGO entitled to present complaints being assisted by a national NGO, acting as spokesperson for such an organisation, or submitting a complaint mainly drawn up by a national NGO does not render the complaint inadmissible.17 18 19

- a representative national trade union or organisation of employers (Article 1. c. du Protocol).

a) Notion of trade union
The Committee considers whether in accordance with Article 1§c of the Protocol, the complainant organisation is a national trade union20 or an organisation of employers21 and, if so, whether it is representative for the purposes of the complaint.

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17 International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, decision on admissibility of 23 September 2008, §§ 2 and 8
18 Defence for Children International v. The Netherlands, Complaint No. 47/2008, decision on admissibility of 23 September 2008, §§ 2 and 8
19 Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, decision on admissibility of 10 September 2013, § 6
20 Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013, decision on admissibility of 2 December 2014, §§ 5-10.
In order to be considered as a trade union, for the purpose of the collective complaint procedure, the complainant organisation must exercise functions which can be considered as trade union prerogatives, and does not depend on the name or the form of the organisation.\textsuperscript{22 23}

b) Representativeness

The representativeness of national trade unions, for the purpose of the collective complaints procedure, is an autonomous concept which is not necessarily the same as the national representativeness concept; in other words, a trade union which is not considered representative at the national level may be considered representative for the purposes of the collective complaints procedure\textsuperscript{24 25 26 27}, even though, obviously, the fact of a trade union being representative at the national level for collective bargaining is taken into account (see below). However, if a trade union is not considered representative at the national level for collective bargaining, it may be considered representative for the purposes of the collective Claims Procedure\textsuperscript{28}.

The criteria used by the Committee to assess whether a trade union is representative for the purposes of the collective complaints procedure include:

- the overall appraisal of the contents of the case-file;\textsuperscript{29}
- the fact of a trade union representing the great majority of professionals working in the relevant sector of activity;\textsuperscript{30}
- the fact of the trade union being representative at the national level and therefore being able to negotiate collective agreements;\textsuperscript{31}
- the fact of a trade union exercising, in a geographical area where it is established, activities in defence of the materiel and non-material interests of workers in a given sector of whom it covers a sufficient number, in conditions of independence vis-à-vis the employment authorities.

The same criteria are taken into account for organisations of employers\textsuperscript{32}.

The Committee has sometimes considered that it could not determine whether this condition was fulfilled\textsuperscript{33}, or that it was unnecessary to do so owing to its findings on the reasons given for the complaint\textsuperscript{34}.

\textsuperscript{22} Associazione sindacale « La Voce dei Giusti » v. Italy Complaint No. 105/2014, decision on admissibility of 17 March 2015
\textsuperscript{23} Movimento per la Libertà della psicanalisi-Associazione Culturale Italiana v. Italy, complaint No. 122/2016, decision on admissibility of 24 March 2017, § 8-11.
\textsuperscript{26} Bedriftsforbundet v. Norway, Complaint No. 103/2013, decision on admissibility of 14 May 2014, § 13.
\textsuperscript{27} Associazione Professionale e Sindacale (ANIEF) v Italy, Complaint No 146/2017, decision on admissibility of 12 September 2017, §6
\textsuperscript{28} Associazione Professionale e Sindacale (ANIEF) v Italy, Complaint No 146/2017, decision on admissibility of 12 September 2017, §6
\textsuperscript{29} Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No. 9/2000, decision on admissibility of 7 November 2000, §§ 6-7 ; Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013, decision on admissibility of 2 December 2014, § 12.
\textsuperscript{31} Tehy ry and STTK ry v. Finland, Complaint No. 10/2000, decision on admissibility of 12 February 2001, § 6.
\textsuperscript{33} Syndicat national des dermato-vénérologues (SNDV) v. France, Complaint No. 28/2004, decision on admissibility of 13 June 2005, § 5.
\textsuperscript{34} Syndicat des hauts fonctionnaires (SAIGI) v. France, Complaint No. 29/2005, decision on admissibility of 14 June 2005, § 3.
Where a trade union is considered representative for the purposes of the collective complaints procedure, it can submit complaints even if they relate to occupational categories other than those which it represents at the national level.\textsuperscript{35}

- a representative national non-governmental organisation (Article 2 §1 of the Protocol, for States Parties which have made a declaration to this effect.

Only Finland has made such a declaration.

The concept of ‘representativeness’ for national non-governmental organisations is the same, \textit{mutatis mutandis}, as for national trade unions. For the purposes of the collective complaints procedure, the representativeness of trade unions is an autonomous concept which has a different scope from the national representativeness concept. This applies even more to to associations. It is therefore incumbent on the Committee gradually to establish the nexus of criteria enabling it to assess the representativeness of national organisations, taking account, \textit{inter alia}, of their social purposes fields of activity.\textsuperscript{36, 37}

c) The complaint must be signed by a person entitled to represent the NGO or trade union. This criterion was initially set out in Rule 20 of the Committee’s Rules but has now been transferred to Rule 23.

The complainant organisation must prove that the signatory has been duly empowered to submit a complaint, otherwise the complaint will be inadmissible.\textsuperscript{38}

The complaint may be signed by the Chair or the Director General provided that this person is entitled to do so under the organisation's Statutes. This is the case if the Statutes give the signatory of the complaint \textit{locus standi} or entitle him to defend the organisation's interest or to conduct all the acts necessary for achieving the organisation's statutory goals.\textsuperscript{39}

Where the signatory has not been permanently authorised by the Statutes, he can be authorised under a decision from the association's or trade union's governing body. In such cases there is no deadline for the said decision, which may even be taken after the submission of the complaint,\textsuperscript{40, 41, 42, 43} although the admissibility decision cannot be taken before the governing body decision.

The delegation can be effected sequentially if the requisite conditions are fulfilled at every stage.\textsuperscript{44}

\begin{itemize}
\item \textsuperscript{35} \textit{Syndicat SUD Travail Affaires Sociales} v. France, Complaint No. 24/2004, decision on admissibility of 7 December 2004, §§ 10 and 11.
\item \textsuperscript{36} The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011, decision on admissibility of 7 December 2011, § 6.
\item \textsuperscript{37} Finnish Society of Social Rights v Finland, Complaint No 107/2014, decision on admissibility and on the merits of 6 September 2016, §§28-30.
\item \textsuperscript{38} \textit{Frente Comum de Sindicatos da Administração Pública} v. Portugal, Complaint No. 36/2006, decision on admissibility of 5 December 2006, § 4.
\item \textsuperscript{39} \textit{Syndicat des Agrégés de l’Enseignement Supérieur} (SAGES) v. France, Complaint No. 26/2004, decision on admissibility of 7 December 2004, § 5.
\item \textsuperscript{40} World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, § 5.
\item \textsuperscript{41} European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, § 7.
\item \textsuperscript{42} \textit{Centrale générale des services publics} v. Belgium, Complaint No. 25/2004, decision on admissibility of 6 September 2004, §§ 2 and 8.
\item \textsuperscript{43} European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on admissibility of 30 June 2015, § 8.
\item \textsuperscript{44} \textit{Syndicat des Agrégés de l’Enseignement Supérieur} (SAGES) v. France, Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 4 and 5.
\end{itemize}
The signatory may be a vice-chair if the Statutes so provide or if the latter is delegated in accordance with the above-mentioned principles.\textsuperscript{45-46}

The fact of the signatory leaving the complainant organisation during the procedure (even before the decision on admissibility) does not invalidate the referral retroactively.\textsuperscript{47}

Where the complaint is submitted on behalf of several organisations, the signatory must be officially authorised by each of the organisations.\textsuperscript{48-49}

There are no particular formal conditions for the signature: the signature must be on one of the documents, i.e. the complaint itself, the accompanying letter, or a document sent subsequently.\textsuperscript{50}

d) If the complaint is submitted by an (international or national) NGO, the complaint must relate to a field with which the NGO in question is particularly well qualified to deal.

The Committee notes such special qualification on examining:

- the NGO’s Statutes\textsuperscript{51-53} and/or;
- its purpose\textsuperscript{54-55} or goals;\textsuperscript{56}
- its activities\textsuperscript{57} demonstrating the complainant’s particular long-standing involvement and interest in the fields covered by the complaint\textsuperscript{58} or illustrating general competence in the human rights field\textsuperscript{59} and a very broad mandate;\textsuperscript{60}
- its recognised qualification in other areas, particularly within the Council of Europe (Conference of INGOs).\textsuperscript{61}

\textsuperscript{45} Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, decision on admissibility of 10 February 2000, §§ 9 and 10
\textsuperscript{46} Syndicat occitan de l’éducation v. France, Complaint No. 23/2003, decision on admissibility of 13 February 2004, § 8
\textsuperscript{47} Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on admissibility of 30 March 2009, § 14
\textsuperscript{48} Syndicat SUD Travail Affaires Sociales v. France, Complaint No. 24/2004, decision on admissibility of 7 décembre 2004, §§ 3 and 7
\textsuperscript{49} Transgender Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on admissibility of 9 September 2015, § 8.
\textsuperscript{50} World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, § 5
\textsuperscript{51} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, decision on admissibility of 1 April 2008, § 5
\textsuperscript{52} European Council of Police Trade Unions v. Portugal, Complaint No. 11/2001, decision on admissibility of 17 October 2001, § 5
\textsuperscript{53} International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, decision on admissibility of 12 December 2002, § 7
\textsuperscript{54} International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on admissibility of 16 May 2003, § 5
\textsuperscript{55} World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, § 6
\textsuperscript{56} Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, decision on admissibility of 28 June 2000, § 8
\textsuperscript{57} European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on admissibility of 16 June 2003, § 5
\textsuperscript{58} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on admissibility of 10 October 2005, §§ 3, 7 and 12
\textsuperscript{59} Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on admissibility of 26 June 2007, § 6
\textsuperscript{60} International Federation of Human Rights (FIDH) v. Ireland, Complaint No. 42/2007, decision on admissibility of 16 October 2007, §§ 7-9
\textsuperscript{61} Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013, decision on admissibility of 10 September 2010, § 8

23
– the area of competences of the national organisation in the respondent state affiliated to the complainant INGO is irrelevant;³²
– the failure of the NGO to demonstrate that it has conducted activities in the respondent state does not detract from its special qualification when it conducts activities at the European level;³³
– the INGO does not necessarily have to demonstrate its competence in the complaint itself, but can do so in a subsequent procedural document.³⁴

2. Objections as to inadmissibility raised by respondent governments vis-à-vis other aspects

On examining objections as to inadmissibility raised by governments in fields other than those mentioned in the articles of the Protocol or the Rules of Procedure, the Committee has clarified the procedure with the following further information:

*Non-exhaustion of domestic remedies*

1) The collective complaints procedure does not require exhaustion of domestic remedies, even where such remedies exist.³⁵ ³⁶

*Repetition of the action*

2) A complaint may be declared admissible even if a similar case has already been submitted to another national or international authority, including the UN Committee on Human Rights and the Committee for the elimination of discrimination against women.³⁷

3) The fact of a provision of the Charter having already been the subject of a previous complaint does not lead *per se* to the inadmissibility of another complaint relating to this provision.³⁸

*Link with the reporting system*

4) The legal principles *res judicata* and *non bis in idem* are inapplicable to relations between the collective complaints procedure and the procedure for examining reports. Neither the fact of the Committee having already examined a given situation during the procedure for examining national reports nor the fact that it will be called on to re-examine it during subsequent supervision cycles can lead *per se* to the inadmissibility of a collective complaint concerning the same provision and the same Party.³⁹ ⁴⁰ ⁴¹ The submission of new elements in the context of a complaint may lead the Committee to make a new assessment of a situation already examined in previous complaints and,

³² Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on admissibility of 2 July 2013, § 14
³³ Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on admissibility of 2 July 2013, § 11
³⁴ Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on admissibility of 2 July 2013, § 13
³⁵ Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 11 and 12
³⁶ European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, § 10
³⁷ Conference of European Churches (CEC) v. The Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2013, § 13
⁴⁰ Association for the Protection of All Children (APPROACH) Ltd v. France, Complaint No. 92/2013, decision on admissibility of 2 July 2013, § 10
⁴¹ European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 104/2014, decision on admissibility of 30 June 2014, § 9.
where appropriate, to take decisions that may differ from conclusions already adopted.

4bis) The allegation that the complaint appears to be an alternative and not a complement to the procedure for the examination of government reports, since it also addresses the other 14 States that have accepted the collective complaints mechanism, has no bearing on the admissibility where the complaint contains allegations about the specific situation in the country concerned.

5) The allegation that the complaint mentions no new fact is immaterial to admissibility if the complaint contains allegations concerning the *de jure* and *de facto* situation which continues to produce effects at the time of submission of the complaint.

6) The fact that the Governmental Committee has not – under the reporting procedure – proposed that the Committee of Ministers adopt a recommendation on the situation to which the complaint relates has no effect on admissibility.

**Collective nature of the complaint**

7) The complaint is collective but may be illustrated by individual cases.

**Alleged manifest ill-foundedness of the complaint**

8) The alleged manifest ill-foundedness of the complaint concerns the merits of the complaint and is not considered at the admissibility stage.

Similarly, consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaint, not its admissibility.

Again, the consideration of an allegation to the effect that the complaint has used and quoted obsolete sources is a matter for the examination of the merits of the complaint.

9) The same applies to allegations that the complaint falls outside the scope of an article of the Charter, that the persons targeted by the complaint are outside the
personal scope of the Charter as laid down in the Appendix, or that the complaint mistakenly relied on one article of the Charter rather than another.

Consequences of ‘à la carte’ acceptance of the Charter

10) The same situation arises where the contentions relate to different provisions of the Charter which have not all been accepted by the respondent state. It would be different if they related to provisions none of which had been accepted, since complaints must concern a provision accepted by the Respondent State.

Interpretation of domestic law

11) Issues of interpreting domestic law also involve consideration of the merits of the complaint, not admissibility.

Amendments to domestic law

12) The fact of a government intending to amend the provisions at issue in the complaint is immaterial to the admissibility of the complaint and instead relates to the merits, even where the revision procedure has been initiated.

13) Contentions that the complaint is intended to influence the constitutional or legislative process have no effect on the admissibility of a complaint.

14) Nor can contentions that the situation has changed since the registration of the complaint affect admissibility, as they are a matter for the examination of the merits.

Government’s responsibility

15) Where the complaint concerns facts implicating third persons/parties, the question of the extent of the government’s responsibility is not a matter for the examination of admissibility but rather for the appraisal of the merits of the complaint.

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83 European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on admissibility of 6 December 2004, §§ 2 and 7
84 Conference of European Churches (CEC) v. The Netherlands, Complaint No. 90/2013, decision on admissibility of 1 July 2013, §§ 10 and 12
85 Federation of Catholic Family Associations in Europe (FAFCE) v. Ireland, Complaint No. 89/2013, decision on admissibility of 2 July 2013, § 15
86 Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on admissibility of 26 June 2007, §§ 8-10
87 European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 104/2014, decision on admissibility of 30 June 2014, § 9
88 European Federation of Employees in Public Services (EUROFEDOP) v. Greece, Complaint No. 3/1999, decision on admissibility of 13 October 1999
91 Association for the Protection of All Children (APPROACH) Ltd v. Cyprus, Complaint No. 97/2013, decision on admissibility of 2 July 2013, § 11
93 International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007, decision on admissibility of 1 April 2008, § 7
Jurisdiction ratione temporis

16) The date of the Charter’s entry into force in respect of a given state is the starting point of the Committee’s jurisdiction ratione temporis, by virtue of the principle of non-retroactivity of treaties as codified in Article 28 of the 1969 Vienna Convention on Treaty Law. This principle cannot, however, be adduced against decisions which were taken or facts which occurred before the Charter’s entry into force in respect of a Party and which continue to produce effects after this date, which can lead to a finding of continued violation.95 96

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95 European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on admissibility of 2 December 2008, § 8

96 Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, decision on admissibility of 30 March 2009, § 18
**B- THE MERITS**

The present part only deals with the procedural aspects related to the merits stage of the complaints procedure.

As regards the substantive aspects of the procedure, that is the interpretation given by the Committee to the provisions of the Charter when examining complaints, reference is made to Parts III and IV of the Digest.

**A) The procedure**

1. *Written procedure, adversarial*

Once a complaint has been declared admissible the European Committee on Social Rights asks the respondent State Party to submit in writing, within a deadline which it fixes, submissions on the merits of the complaint.

The President of the Committee then invites the organisation that lodged the complaint to submit, under the same conditions, a response to these submissions.

The President of the Committee then invites the State Party concerned to submit a further response.

In principle, the written procedure ends at this stage. However, the President may accept that the parties to the complaint submit additional observations while respecting the adversarial nature of the proceedings.

When he/she considers it appropriate, the President, after consultation with the Rapporteur, shall decide that the written procedure is closed. After this decision, further documents may only be submitted exceptionally and based on a reasoned request.

All documents submitted by the parties to the complaint are public, unless otherwise decided by the Committee on a case by case basis (for example, a list of witnesses). The complaints, submissions, written replies and written observations, and any piece communicated during the procedure are published on the website of the Council of Europe (except for the appendices).

“The text of each registered complaint as well as any appendices and also all submissions, responses or observations submitted by virtue of Rules 31, 32, 35 and 36 shall be public on their transmission to the Committee, unless the Committee decides otherwise on a case by case basis.” (Rule 37 of the Rules)

2. *Third Party Intervention*

During the written procedure, different types of third-party intervention are foreseen.

   a) Other States having accepted the complaints procedure

Only states having accepted the complaints procedure may submit comments on any complaint declared admissible brought against another State.

The deadline given to them corresponds to that fixed for the submissions of the respondent Government on the merits.
In practice, it is rare and even exceptional that States Parties avail themselves of this option. The following examples may be noted:

- **Syndicat occitan de l'éducation** v. France, Complaint No. 23/2003 (Observations by Belgium);
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006 (Observations by Finland);
- **Confédération Française de l'Encadrement «CFE-CGC»** v. France, Complaint No. 56/2009 (Observations by Finland);
- European Trade Union Confederation (ETUC)/ **Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB)** v. Belgium, Complaint No. 59/2009 (Observations by Finland).

b) **International trade unions and employers’ organisations**

International organizations of employers and workers (ie. the European Trade Union Confederation (ETUC), Business Europe and the International Organization of Employers (IOE)) are invited to submit observations on complaints lodged by national employers’ organizations and workers or (I)NGOs. The observations presented in this context are communicated to the organization that lodged the complaint and the respondent State.

The European Trade Union Confederation (ETUC) submitted observations on the following complaints:

- International Commission of Jurists (CIJ) v. Portugal, Complaint No.1/1999;
- European Federation of Employees in Public Services (EUROFEDOP) v. France, Complaint No. 2/1999;
- European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999;
- European Federation of Employees in Public Services (EUROFEDOP) v. Portugal, Complaint No. 5/1999;
- **Syndicat national des professions du tourisme** v. France, Complaint No. 6/1999;
- International Federation of Human Rights (FIDH) v. Greece, Complaint No. 7/2000;
- Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000;
- **Confédération Française de l'Encadrement « CFE-CGC »** v. France, Complaint No. 9/2000;
- Tehy ry and STTK ry v. Finlanede, Complaint No. 10/2000;
- European Council of Police Trade Unions (CESP) v. France, Complaint No. 11/2001;
- Confederation of Swedish Enterprise v. Sweden Complaint No. 12/2002;
- International Association Autism-Europe (AIAE) v. France, Complaint No. 13/2002;
- European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003;
- World Organisation against Torture (OMCT) v. Greece, Complaint No. 17/2003;
- World Organisation against Torture (OMCT) v. Irlande, Complaint No. 18/2003;
World Organisation against Torture (OMCT) v. Italy, Complaint No. 19/2003;
World Organisation against Torture (OMCT) v. Portugal, Complaint No. 20/2003;
World Organisation against Torture (OMCT) v. Belgium, Complaint No. 21/2003;
Syndicat SUD Travail Affaires Sociales v. France, Complaint No. 24/2004;
Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004
European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004;
International Movement ATD Fourth World v. France, Complaint No. 33/2006;
World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006;
Federation of Finnish Enterprises v. Finland, complaint No. 35/2006;
European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 37/2006;
European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006;
European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 40/2007;
European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 46/2007;
Federation of employed pensioners of Greece (IKA –ETAM) v. Greece, Complaint No. 76/2012;
Panhellenic Federation of Public Service Pensioners v. Greece, Complaint No. 77/2012;
Pensioners’ Union of the Athens-Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012;
Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI.) v. Greece, complaint No. 79/2012;
Pensioner’s Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012;
Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012;
Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013;
Bedriftsforbundet v. Norway, Complaint No. 103/2013;
Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014;
Matica hrvatskih sindikata v. Croatia, Complaint No. 116/2015;
University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, Complaints No. 124-138/2016;
Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016;
European Youth Forum (YFJ) v. Belgium, Complaint No. 150/2017.
IOE submitted observations on the following complaints:

- Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002;
- European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats chrétiens de Belgique (CSC)/Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009;
- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012;
- Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014;
- Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016

Business Europe submitted observations on only one single complaint so far, namely:

- Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012.

3. Observations

On a proposal by the Rapporteur, the President of the Committee may invite any organization, institution or person to provide observations. Any observations received by the Committee shall be communicated to the respondent state and the organization which lodged the complaint.

To date, the following organisations were invited to submit observations:

- The Office of the United Nations High Commissioner for Refugees (UNHCR) on Defence for Childrens International (DCI) v. Belgium, Complaint No. 69/2011;
- Platform for International Cooperation on Undocumented Migrants (PICUM) on DCI v. Belgium, Complaint No. 69/2011;
- Centre for Equal Opportunities and Opposition to Racism on International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 75/2011 and on Mental Disability Advocacy Center (MDAC) v. Belgium v. Belgium, Complaint No. 109/2014;
- European Centre for Law and Justice (ECLJ) on International Planned Parenthood Federation European Network (IPPF EN) v. Italy, Complaint No. 87/2012;
- Movimento italiano per la vita, Associazione Luca Coscioni per la Libertà di Ricerca Scientifica and Associazione Italiana per l’Educazione Demografica AIED on IPPF-EN v. Italy, Complaint No. 87/2012 and Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013;
- Association “Giuristi Per La Vita” on Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013;
- Swedish Association for Sexuality Education (RFSU), Center for Reproductive Rights and Ordo Iuris Institute on FAFCE v. Sweden, Complaint No. 99/2013;
- Organismo Unitario Magistrati Onorari Uniti (OUMOU) and Unione Nazionale Italiana Magistrati Onorari (UNIMO) on Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013;
- The Défenseur des droits on European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015 and European Roma and Travellers Forum (ERTF) v. the Czech Republic, Complaint No. 119/2015;
- EQUINET on University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, Complaints No. 124-138/2016;
- The European Union on Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 11/2014 and University Women of Europe (UWE) v. Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden, Complaints No. 124-138/2016;
- Associazione Finanzieri Cittadini e Solidarieta (FICIESSE) on Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016;
- Interfederal Centre for Equal Chances (UNIA) and Délégué général de la communauté française aux droits de l’enfant on International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017;

4. Questions asked to the parties by the Committee

The Committee may also ask questions to a party to the complaint (or both) before deliberating on the merits.

By way of example, the following complaints where questions were addressed to the parties may be mentioned:

- European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 37/2006;
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006;
- International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No. 45/2007;
- The Central Association of Carers in Finland v. Finland, Complaints No. 70/2011 and No. 71/2011;
- International Federation of Human Rights (FIDH) v. Greece, Complaint No. 72/2011;
- European Confederation of Police (EUROCOP) v. Ireland, Complaint No. 83/2012;
- European Federation of National Organisations Working with the Homeless (FEANTSA) v. The Netherlands, Complaint No. 86/2013;
- International Planned Parenthood Federation European Network (IPPF EN) v. Italy, Complaint No. 87/2012;
- Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013;
- Associazione Nazionale Giudici di Pace v. Italy, Complaint No. 102/2013.
5. Public hearings

The procedure is in most cases written only. However, the Protocol provides that the Committee may organise a hearing between the parties.

A hearing permits the complainant organisation to publicly expose their allegations, which is one of the essential components of a judicial procedure, the hearing also offers the opportunity for dialogue between the Committee and the parties.

The hearing may be organised at the request of a party or on the initiative of the Committee. If requested by a party, it is for the European Committee of Social Rights to decide whether to hold a hearing. The hearing shall be public unless the President decides otherwise.

In addition to the parties to the complaint, States and organisations that have expressed their wish intervene in support of a complaint or for its rejection, are invited to participate in hearing.

Public hearings, however, are exceptional since to date the Committee has held only 9, as follows:

- 9 October 2000: European Federation of Employees in Public Services (EUROFEDOP) c. France, Complaint No. 2/1999; European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999 and European Federation of Employees in Public Services (EUROFEDOP) v. Portugal, Complaint No. 5/1999;
- 11 October 2004: European Roma Rights Centre v. Greece, Complaint No. 15/2003;
- 21 June 2010: Centre on Housing Rights and Evictions (COHRE) v. Italy, complaint No. 58/2009;
- 7 September 2015: Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013;
- 20 October 2016: Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014.

6. Proceedings

It is for the Rapporteur appointed by the President upon the registration of a complaint to propose a draft decision on the merits which then is the subject of one or more deliberations within the Committee.

The Committee shall hold as many deliberations as is necessary in order to reach a decision. The dates of the deliberations are indicated in the description of the procedure set out in the decision.
All Committee documents relating to the deliberation are secret and are not intended to be made public.

Decisions are adopted by a majority of members present. Only members of the Committee who participated in the essential parts of the deliberations may vote on a decision on the merits. Where a hearing is held, any member who is not present at the hearing cannot participate in the deliberations on the merits.

In case of an equal number of votes, the President has the deciding vote.

Once adopted and finalised, the decision is signed by the Rapporteur, the President and the Executive Secretary (or his/her Deputy).

The decision is then included in a report which also contains, where appropriate, the admissibility decision.

B) **The assessment criteria**

1. **Reorganisation of allegations according to their importance**

“The Committee notes that the complainant organisation alleges violation of Articles 13, 14, 16 and 23 of the Charter using the same argument. The Committee decides to examine the present case, in the order of the most relevant provisions for the purpose of the complaint, namely Articles 23, 14, 13 and 16.”

2. **Reclassification**

“In assessing the complainants' allegations, the Committee considered that the substance of the arguments made in respect of Article 12§2 concerned instead the provisions of Article 12§3 (see § 45 below). On that basis, in accordance with its Rules of Procedure, the Committee reclassified the complaint.”

“Bearing this in mind, the complaints under Articles 20 and E (relating to the discriminatory arrangements for the management of the careers, including the promotion, of civil servants who have remained in the redeployed corps) should be reclassified so that they can both be examined under Article 1§2 of the Charter.”

3. **Sources and evidence**

The Committee "may consider all information submitted to it by the parties, irrespective of the period to which they relate".

Claims must be accompanied by evidence.

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97 The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012, §18.
98 General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §6.
100 International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §34.
101 International Commission of Jurists against Portugal, decision on the merits of 9 September 1999, Complaint No 1/1998, § 42 ; labor inspection.
4. Evidence (burden of proof shifted in cases of discrimination)

“The Committee recalls its case law regarding disputes about discrimination in matters covered by the Revised Charter, adopted in the framework of reporting procedure, that the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment. It also applies to the collective complaints procedure. The Committee therefore relies on the specific data sent to it by the complainant organisation, such as its statistics which show unexplained differences. It is then for the Government to demonstrate that there is no ground for this allegation of discrimination.” 102

5. Right to date of the decision

“The Committee recalls that within the scope of the collective complaints procedure it bases its assessment of conformity with the Charter on the domestic law and practice applicable on the date of the decision on the merits of the complaint” 103

C) The result of the assessment: decisions

1. The types of decisions

In the framework of the collective complaints procedure, the Committee adopts five types of decisions: decisions on admissibility, decisions on the merits, decisions on admissibility and merits, decisions on striking out, and decisions on immediate measures.

a) The typical scenario: two separate decisions, one on admissibility, one on the merits.

b) In some cases: a single decision on the admissibility and merits.

The aim of a single decision is to expedite the procedure when a complaint prima facie appears to fulfill the conditions of admissibility. The Committee invites the respondent state to submit at the same time observations on the admissibility and merits in a single submission:

“… in conformity with Article 6 of the Additional Protocol providing for a system of collective complaints, the European Committee of Social Rights wishes to receive written observations from … on the admissibility of the above mentioned complaints and written submissions on the merits should the Committee eventually declare the complaints admissible.”

In this case, in order to permit other States Parties to the Protocol to submit, if they wish, comments on the merits, the Committee invites them to do so before taking the single decision:

“Taking account of Article 7§1 in fine of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the Committee invites hereby the Parties to the Protocol, the States having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter and international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter, to submit any submissions they may wish to make on the merits of the aforementioned complaints before […]”

102 Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41-2007, decision on the merits of 3 June 2008, §52
103 Conseil européen des syndicats de police (CESP), v. France, Complaint No. 57/2009, decision on the merits of 1r December 2010, §52
Although containing a section on admissibility, the decision on admissibility and merits is subject to the same rules regarding publication as a decision solely on the merits.

c) Decision to strike out

The Committee has so far struck out two complaints:

- in a case of bankruptcy of the non-governmental organisation which had lodged the complaint. In this case, the Committee observed that it was unable to pursue the adversarial nature of the procedure and that in the absence of one party, the complaint had to be struck out from the list of pending complaints.
- in a case where a complainant requested the withdrawal of the complaint as there had been developments in domestic law which according to the complainant organisation, brought the situation into conformity with the Charter.

Prior to striking out a complaint, the Committee however verifies that there are no compelling reasons of general interest to continue consideration of the complaint in the absence of one party.

d) Decisions on immediate measures

Since 2011, the Rules provide that upon or at the same time as the adoption of a decision on admissibility of a collective complaint, or at any time thereafter during the course of the procedure, before or after the adoption of the decision on the merits, the European Committee of Social Rights may, at the request of a party or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary to avoid severe irreparable damage and ensure the effective respect of the rights recognised by the Charter.

In the case of a request for immediate measures made by a complainant organisation, the request must specify the reasons for the request, the likely consequences if the request is not granted, and the nature of the measures requested. A copy of the request is immediately transmitted to the State concerned. The President of the European Committee of Social Rights fixes for the state concerned a date for submissions on the request for immediate measures.

The decision of the European Committee of Social Rights on immediate measures shall be accompanied by reasons and shall be signed by the President, the Rapporteur and the Executive Secretary of the Committee (or his/her Deputy). It is notified to the Parties. The European Committee of Social Rights may invite the parties to provide information on any question relating to the implementation of immediate measures.

To date, the Committee has received five requests for immediate measures to be indicated to the respondent Governments.

In two cases, namely FEANTSA v. the Netherlands and Conference of European Churches (CEC) v. the Netherlands, it invited the Government to:

“Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of persons at immediate risk of destitution, through the implementation of a coordinated approach at national and municipal levels with a view to ensuring that their basic needs (shelter, clothes and food) are met; and
Ensure that all the relevant public authorities are made aware of this decision.”

In the other cases, namely the Association for the Protection of all Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013, the Association for the Protection of all Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013 and the Decision on admissibility and on immediate measures: Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy, Complaint No. 113/2014, it dismissed the requests stating the following:

“(...) immediate measures can only be ordered exceptionally, when they are necessary to avoid the risk of a serious irreparable injury and to ensure effective respect for the rights recognised in the European Social Charter (Rule 36§1), insofar as the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact.”

In one case, the Committee delivered a decision on both admissibility and immediate measures.

2. Form of a decision

The Committee reaches a conclusion as to whether there has been a violation of the provision of the Charter concerned or no violation.

In some cases it has found an "aggravated violation". It defined this concept as follows:

- measures violating human rights specifically targeting and affecting vulnerable groups are taken;
- public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.

Where the Committee makes a finding of aggravated violation it invites the Committee of Ministers to ensure immediate publication of the decision.

For the respondent Government, the finding of aggravated violations implies not only the adoption of adequate measures of reparation, but also the obligation to offer appropriate assurances and guarantees that such violations cease and do not recur.

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105 European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on immediate measures of 25 October 2013, §1.
106 Decision on immediate measures: Association for the Protection of all children (APPROACH) Ltd v; Ireland, complaint No 93/2013
“These aggravated violations do not simply concern their victims or their relationship with the respondent State. They also pose a challenge to the interests of the wider community and to the shared fundamental standards of all the Council of Europe’s member States, namely those of human rights, democracy and the rule of law. The situation therefore requires urgent attention from all the Council of Europe member States. The Committee invites them to publish its decision on the merits, once it has been notified to the parties and to the Committee of Ministers.\textsuperscript{111}

3. Notification and publication of the decision

The report is communicated to the parties to the complaint and the Committee of Ministers of the Council of Europe.

It cannot be published within 4 months of the decision unless the Committee of Ministers adopts a resolution before the expiry of that period.

The rule in Article 8 of the Protocol means that the decision cannot be published. However, it is brought to the attention of a significant number of actors:

\begin{itemize}
  \item the parties to the complaint, complainant organisations, respondent states;
  \item representatives of state parties or rather the representatives of the parties, lawyers/agents;
  \item member States of the Council of Europe within the Committee of Ministers.
\end{itemize}

In the exceptional case of a finding of an aggravated violation, the Committee considers that due to the specific characteristics of the violation, the report containing its decision should not remain confidential during a four-month period provided for Article 8 of the Protocol. As it is unable to make public its decision itself, the Committee invites the Committee of Ministers to do so for the transmissions. Moreover in the case Centre on Housing Rights and Evictions (COHRE) against France, Complaint No. 63/2010, the Committee of Ministers followed this demand by adopting a resolution that:

"Taking into consideration the suggestion of the European Committee of Social Rights that the report is made public immediately,

1. Takes note of the report which, in accordance with Article 8 of the Additional Protocol, will become public through the adoption of this resolution;

(…)"

The decision is published on the website of the European Social Charter Department as well as on the HUDOC database.

\textsuperscript{111} Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, § 53
PART II: FUNDAMENTAL PRINCIPLES OF INTERPRETATION OF THE CHARTER
i. **Reference period**

In the reporting procedure, the Committee rules on the situation during the reference period covered by the report. Under the current reporting system the reference period is 4 years. Sometimes the Committee extends the reference period to take into account changes that have taken place outside the reference period. However the Committee will maintain its findings of non-conformity for the reference period where changes putting the situation into conformity entered into force outside the reference period.113 However as regards the collective complaints procedure, the Committee rule on the situation as it exists on the day of its decision on the merits.114

ii. **Personal scope**

The personal scope of the European Social Charter is defined in the Appendix to the Charter as interpreted by the Committee: see Part III, Appendix to the Charter.

iii. **Nature and aim of the Charter**

The Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a supplement to the European Convention on Human Rights.

In this perspective, while respecting the diversity of national traditions of the Council of Europe’s member States, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:

- consolidate adhesion to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member States.

The primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, these implementation strategies, if not accompanied by appropriate safeguards, may put at risk the actual implementation of the undertakings under the Charter.115

iv. **Concrete and effective rights**

On the occasion of the examination of several complaints, the Committee explained the nature of the States Parties’ obligations in order to implement the Charter.

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112 Addendum to Conclusions VI (1982), Iceland
113 Conclusions XV-1 (2000), Denmark
114 European Council of Police Trade Unions (CESP), v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, §52
115 Conclusions 2006, general introduction
The Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact.\textsuperscript{116,117}

In this respect it considers that the implementation of the Charter cannot be achieved solely by the adoption of legislation if its application of it is not accompanied by an effective and rigorous control.

The implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter.\textsuperscript{118}

In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.\textsuperscript{119}

\textbf{v. The Charter is a living instrument}

The Committee interprets the rights and freedoms set out in the Charter in the light of current conditions\textsuperscript{120} and in the light of relevant international instruments\textsuperscript{121}, as well as in light of new emerging issues and situations, in other words, the Charter is a living instrument.\textsuperscript{122}

\textbf{vi. Progressive implementation of certain rights in the Charter}

Certain rights guaranteed by the Charter require immediate implementation as from the entry into force of the Charter in the State concerned.

Other rights may be implemented progressively by States Parties. This is the case for rights the implementation of which is particularly complex and may involve significant budgetary costs.

The Committee has, however stated with precision what methods of progressive implementation may be in conformity with the Charter.

When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including,

\begin{footnotesize}
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\item \textsuperscript{116} International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32
\item \textsuperscript{117} European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28
\item \textsuperscript{118} International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53
\item \textsuperscript{119} International Movement ATD Fourth World v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53
\item \textsuperscript{120} Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194
\item \textsuperscript{121} ILGA v. Czech Republic decision on the merits of 15 May 2018, §75
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especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.\textsuperscript{123}

In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective (…) In connection with timetabling (…), it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.\textsuperscript{124}

The Committee assesses the reasonable character of the delay in the implementation taking into account the margin of discretion enjoyed by States Parties.\textsuperscript{125}

In any event, in respect of provisions of the Charter which require States Parties to devise and implement appropriate measures in order to ensure, gradually and in due course, the effective exercise of the right in question and do not require the States Parties to guarantee immediate results or to adopt conduct which may be capable in the absolute of guaranteeing the right immediately (immediate due diligence), the conduct of a State Party which fails to comply with the legal obligation to offer a particular social service to the extent that it denies access to this service to the persons concerned and excludes them from any solution of this type, is found not to comply with this provision of the Charter.\textsuperscript{126}


The Committee has referred to the case-law of the Court when defining the following principles and concepts:

- **The Committee’s temporal jurisdiction**

It is the date of the treaty’s entry into force with regard to a state which marks the beginning of the Committee’s temporal jurisdiction.\textsuperscript{127} However, referring to the Court’s judgment in the case of Papamichalopoulos and Others v. Greece in 1993, the Committee considers that there are exceptions to this rule when events occurring before the entry into force of a treaty continue to occur after this date and constitute a continuing violation of the rights enshrined in the Charter.

The Committee refers to the case-law of the Court’s Grand Chamber in the cases of Blecic v. Croatia of 2006 and Silih v. Slovenia of 2009, in which it stated that its temporal jurisdiction was to be determined in relation to the facts constituting the alleged interference.\textsuperscript{128} The Committee considers that this principle should also apply to the interpretation of the Social Charter. It adds that the special nature of the rights at issue can be relevant in assessing whether a situation can be said to be ongoing, as

\textsuperscript{123} International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53

\textsuperscript{124} International Movement ATD Fourth World v. France, Complaint No.33/2006, decision on the merits of 5 December 2007, §65-66

\textsuperscript{125} Action Européenne des Handicapés (AEH) c. France, Réclamation n° 81/2012, Décision sur le bien-fondé du 11/09/2013, paras 95-100

\textsuperscript{126}Fédération internationale des Ligues des Droits de l’Homme (FIDH) c. Belgique, Réclamation collective n° 75/2012, Décision sur le bien-fondé du 18/03/2013, paras 140-151

\textsuperscript{127} Marangopoulos Foundation for Human Rights (MFHR) c. France, Réclamation collective n° 75/2005, decision on admissibility of 10 October 2005, §15

\textsuperscript{128} Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No.52/2008, decision on the merits of 22 June 2010, §§22-26
accepted by the Grand Chamber of the European Court of Human Rights in the Šilih case cited above.

- **Non-discrimination: Article E of the Charter**

  - **Principle that Article E must be read in conjunction with another article of the Charter**

    The Committee considers that the function of Article E is similar to that of Article 14 of the Convention. Referring to the Court’s Belgian linguistics judgment of 1968, the Committee considers that Article E has no independent existence and must be combined with one of the Charter’s substantive provisions.\(^{129}\)

    The Committee reiterates this point, stating that there can be no room for the application of Article E of the Charter unless the facts at issue fall within the ambit of one or more of its other clauses, but basing itself this time on the Rasmussen judgment of 1984.\(^{130}\)

    It adds that a measure complying with the substantive provision concerned may nonetheless infringe Article E read in conjunction with the provision in question on the ground that it is discriminatory in nature.

  - **Definition of discrimination**

    The Committee refers to the Court’s judgment in the case of *Thlimmenos v. Greece* of 2000, in which it held that there was discrimination within the meaning of Article 14 of the Convention when the States Party did not apply a different treatment to persons in a different situation.\(^{131}\)\(^{132}\)

    Taking up this case-law, the Committee considers, in the first decision referred to above, that Article E not only prohibits direct discrimination but also all forms of indirect discrimination and that 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.

    In the second decision, it points out that failure to take appropriate measures to take account of existing differences may amount to discrimination.

    Referring to the Court’s judgment in the case of *Abdulaziz, Cabales and Balkandali* of 1984, the Committee considers that the notion of discrimination includes cases where a person or group is treated less favourably than another without proper justification.\(^{133}\)

  - **Definition of a “discriminatory difference in treatment”**

    Referring to the Court’s judgments in the Belgian linguistics case of 1968, the *Marckx* case of 1978 and the *Rasmussen* case of 1984, the Committee considers that a difference of treatment is discriminatory if it “has no objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is not a

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\(^{129}\) Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v. France, Complaint No.26/2004, decision on the merits of 15 June 2005, §34

\(^{130}\) Confédération française démocratique du travail (CFDT) v. France, Complaint No.50/2008, decision on the merits of 9 September 2009, §§37-39 and 42

\(^{131}\) International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, § 52

\(^{132}\) Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No.41/2007, decision on the merits of 3 June 2008, §§ 50-51

\(^{133}\) Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, §§39 and 41
“reasonable relationship of proportionality between the means employed and the aim sought to be realised”. It adds that while the States Party enjoy a certain “margin of appreciation” in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law, it is ultimately for the Committee to decide whether the difference lies within this margin.\(^{134}\) \(^{135}\)

- **Interpretation of the concept of “racial discrimination”**

The Committee applies to the Charter the interpretation of racial discrimination used by the Court in its *Timishev v. Russia* judgment of 2005, which is that discrimination on account of one’s actual or perceived ethnicity is a form of racial discrimination and that no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society.\(^{136}\)

- **The positive obligation for States Party to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education**

Referring to the Court’s *Folgerø and Others v. Norway* judgment of 2007, the Committee states that the States Party have a positive obligation to ensure the effective exercise of the right to protection of health by means of non-discriminatory sexual and reproductive health education which does not perpetuate or reinforce social exclusion and the denial of human dignity.\(^{137}\)

This obligation has two facets: children must not be subject to discrimination in accessing such education and this education must not be used as a means of reinforcing stereotypes and perpetuating forms of prejudice which contribute to the social exclusion of historically marginalised groups or other forms of social disadvantage which have the effect of undermining their human dignity.

### - Rights of the Roma and Sinti populations

- **Taking account of the vulnerability of the Roma community in law and in practice**

The Committee refers to the Court judgments in three cases against the United Kingdom, *Buckley* of 1996, *Chapman* of 2001 and *Connors* of 2004, in which it was stated that special consideration should be given to the different needs and lifestyle of the Roma community in law and in practice.\(^{138}\)

The Committee draws on this case-law, stating that the States Party are expected to take both the legal and practical action required to give full effect to the rights recognised in the Charter.

- **De facto recognition of Roma communities**

\(^{134}\) *Confédération française démocratique du travail* (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, §§37-39 and 41

\(^{135}\) European Roma Rights Centre (ERRC) v. France, Complaint No.51/2008, decision on the merits of 19 October 2009, §82


\(^{137}\) International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, Complaint No.45/2007, decision on the merits of 30 March 2009, §§50 and 61

\(^{138}\) European Roma Rights Centre (ERRC) v. Greece, Complaint No.15/2003, decision on the merits of 8 December 2004, §§19-21 and 25
Reiterating the Court’s finding in its *Oneryildiz v. Turkey* judgment of 2004, the Committee considers that, where illegal Roma settlements have existed for many years and public services such as electricity are provided – albeit irregularly – and charged to the inhabitants, the state authorities can be considered to have acknowledged and tolerated de facto the actions of the Roma.\(^{139}\)

### - Protection of Roma and Sinti populations in order to preserve cultural diversity

The Committee considers, like the Court in its judgments on *Chapman v. the United Kingdom* in 2001, *Muñoz Díaz v. Spain* in 2009 and *Orsus v. Croatia* in 2010, that the purpose of the obligation to protect minorities’ identities and lifestyles is both to protect their interests and to preserve cultural diversity of value to the whole community.\(^{140}\)

### - Obligation for States Party to take every legal and practical step to combat racism and xenophobia towards Roma and Sinti in the press

Referring to the Court’s *Jersild v. Denmark* judgment of 1994, the Committee accepts that although it is difficult to strike the right balance between the freedom of the press and the protection of others in cases of dissemination of racist remarks, governments must take all the necessary steps to combat misleading propaganda through legal and practical measures tackling racism and xenophobia affecting Roma and Sinti, as was not done in the case cited.\(^{141}\)

### - Discretion enjoyed by States Party in cases relating to an individual’s identity

In relation to census operations on the Roma and Sinti populations and, in particular, to fingerprinting and the gathering and storage of photometric and other personal information, the Committee considers, with reference to the *Connors v. the United Kingdom* judgment of 2004 and the *Evans v. the United Kingdom* judgment of 2007, that the relevant national authorities have a limited margin of discretion in this sphere where the issue at stake is the individual’s effective enjoyment of intimate or key rights or a particularly important facet of the individual’s existence or identity.\(^{142}\)

The Committee adds that these principles of interpretation are also valid in the context of Article 16 of the Charter.

Referring to the Court’s judgments in the cases of *Malone v. the United Kingdom* in 1984 and *Rotaru v. Romania* and *Amann v. Switzerland* in 2000, it considers, like the Court, that the conditions in which the operations were carried out, particularly due to the emergency legislation in place, constituted an obstacle to real protection against arbitrariness.

### -The right to establish relationships with the outside world

The Committee also considers, with reference to Article 8 of the Convention and the Court’s *P.G. and J.H. v. the United Kingdom* judgment of 2001, that Article 16 of the


Charter protects a right to personal development and the right to establish and develop relationships with other human beings and the outside world.\textsuperscript{143}

- The concept of expulsion: Article 16 of the Charter

  - The definition of “collective expulsion”

The Committee takes its definition of collective expulsion from Article 4 of Protocol No. 4 to the Convention, which is “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group”.\textsuperscript{144}

It also extends to the Charter the interpretation made by the Court in its \textit{Conka v. Belgium} judgment of 2002, which was that when a large number of people of the same origin were expelled, there was good reason to suspect that the expulsion might be collective.

  - Compliance with procedural safeguards relating to expulsion

On the subject of procedural safeguards relating to expulsion, the Committee refers to the Court’s \textit{Connors} judgment of 2004, in which it holds that “the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8”.\textsuperscript{145}

- The non-equivalence of Community law and European Social Charter

Referring to the Court’s \textit{Cantoni v. France} judgment of 1996, the Committee asserts that the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and the supervision of the Committee.\textsuperscript{146} \textsuperscript{147} \textsuperscript{148}

Furthermore, the Committee points out that even though the Court has found that in certain circumstances there may be a presumption of conformity of European Union law with the European Convention on Human Rights, no similar presumption – even rebuttable – may be applied with regard to the European Social Charter.

- Criteria to be fulfilled by the States Party to achieve the objectives set by the Charter

Referring to the Court’s \textit{Ialascu and Others v. Moldova and Russia} judgment of 2004, the Committee considers that even if securing one of the rights enshrined in the Charter is particularly complex and expensive, the States Party must attempt to

\textsuperscript{143} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No.49/2008, decision on the merits of 11 December 2009, §§37 and 58
\textsuperscript{144} Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§155-156
\textsuperscript{145} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece, Complaint No. 49/2008, decision on the merits of 11 December 2009, §§37 and 38
\textsuperscript{146} Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No.16/2003, decision on the merits of 12 October 2014, §30
\textsuperscript{147} Confédération Française de l’Encadrement (CFE-CGC) v. France, Complaint No.56/2009, decision on the merits of 23 June 2010, §30, 32-33, 87-88
achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.149

Referring to the Hatton and Others v. the United Kingdom judgment of 2001, it considers that the measures taken by the States Parties parties must meet the following criteria: a reasonable timeframe, measurable progress and a funding arrangement which makes the best possible use of available resources.

- Interpretation of Article 31 of the Charter (right to housing)

The Committee considers that its interpretation of Article 31 must be in line with the European Court of Human Rights’ interpretation of the relevant provisions of the Convention.150 151 152

- Interpretation of the concepts of corporal punishment inflicted at school and parental corporal punishment: Article 17 § 1b of the Charter

The Committee refers to the interpretation by the Court of the concepts of the judicial birching of children (Tyrer v. the United Kingdom, 1978), corporal punishment inflicted at school (Campbell and Cosans v. the United Kingdom, 1982) and parental corporal punishment (A. v. the United Kingdom, 1998) in order to interpret Article 17 §1b of the Charter on the protection of children and young persons against negligence, violence or exploitation.153 154 155 156 157

- Right of parents to give their children a sexual education in keeping with their own convictions

The Committee considers that parents are entitled to give their children a sexual education in keeping with their own religious or philosophical convictions. For this purpose it draws on the Court’s findings in its judgment of 1976 in the case of Kjeldsen, Busk Madsen and Pedersen v. Denmark.

- Complementarity of Article 11 of the Charter (right to protection of health) and Article 2 of the Convention (right to life)

The Committee sees a clear complementarity between Article 11 of the Charter (right to protection of health) and Article 2 of the Convention (right to life), as interpreted by the Court.158

- Violation of Article 5 of the Charter (right to organise)

149 European Roma Rights Centre v. Bulgaria, Complaint No.31/2005, decision on the merits of 18 October 2006, §§35, 37 and 54
151 European Federation of National Organisations working with the Homeless (FEANTSA) v. France, Complaint No.39/2006, decision on the merits of 5 December 2007, §§64-65
152 European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No.53/2008, decision on the merits of 8 September 2009, §§32-35
153 World Organisation against Torture (OMCT) v. Greece, Complaint No.17/2003, decision on the merits of 7 December 2004, §31
154 World Organisation against Torture (OMCT) v. Ireland, Complaint No.18/2003, decision on the merits of 7 December 2004, §§60 and 63
155 World Organisation against Torture (OMCT) v. Italy, Complaint No.19/2003, decision on the merits of 7 December 2004, §41
156 World Organisation against Torture (OMCT) v. Portugal, Complaint No.20/2003, decision on the merits of 7 December 2004, §34
157 World Organisation against Torture (OMCT) v. Belgium, Complaint No.17/2003, decision on the merits of 7 December 2004, §38
158 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No.30/2005, decision on the merits of 6 December 2006, §196 and 202
Drawing on the Court’s Gustafsson v. Sweden judgment of 1998, the Committee considers that a system in which employers are treated differently depending on whether or not they are members of an organisation is incompatible with Article 5 of the Charter (the right to organise) but only if the very substance of the freedom of association is affected.\(^{159}\)

- **Right of foreign minors to protection**

Like the Court in its judgments in the cases of Moustaquim v. Belgium of 1991 and Beldjoudi v. France of 1992, the Committee recognises that States Parties have the right to control the entry, residence and expulsion of aliens from their territories.\(^{160}\)

However, in accordance with the findings of the Court in the case of Mubilanzila Mayeka and Kaniki Mitunga v. Belgium of 2006, the Committee considers that foreign minors, especially if unaccompanied, should not be deprived of the protection their status warrants in order to reconcile the protection of fundamental rights and the constraints imposed by a state’s immigration policy.

vii. **Interpretation of the Charter in the light of other international instruments**

The Committee interprets the Charter in the light of other international treaties which are relevant in the field of rights guaranteed by the Charter as well in light of the interpretation given to these treaties by their respective monitoring bodies.

The Committee refers in particular to:

- **The United Nations International Covenant on Economic Social and Cultural Rights**

The Committee has referred to Article 11 of the Covenant as well as to General Comments no 4 and 7 of the UN Committee on Economic, Social and Cultural rights as regards the right to housing in general (Article 31)\(^{161}\) and in respect of forced evictions.\(^{162}\)

As regards the right to education (Article 17) the Committee has referred to General Comment no 13 of the UN Committee on Economic, Social and Cultural Rights.\(^{163}\) The Committee also refers to Article 8 of the Covenant in respect of the right to organise.

- **The United Nations International Covenant on Civil and Political Rights**

The Committee refers to Article 8 of the Covenant in respect of the right to organise.\(^{164}\) The Committee also refers to Article 22 of the Covenant in respect of the right to form and join trade unions.\(^{165}\)

- **The United Nations Convention on the Rights of the Child**

\(^{159}\) Federation of Finnish Enterprises v. Finland, Complaint No.35/2006, decision on the merits of 16 October 2007, §§28-29

\(^{160}\) Defense for Children International v. the Netherlands, Complaint No.47/2008, decision on the merits of 20 October 2009, §§41-42

\(^{161}\) Mouvement international ATD Quart Monde v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§68-71

\(^{162}\) Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§20-21

\(^{163}\) Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §37

\(^{164}\) European Council of Police Trade Unions (CESP) v. France, complaint No. 101/2013, decision on the merits of 27 January 2016, §31

\(^{165}\) European Council of Police Trade Unions (CESP) v. France, complaint No. 101/2013, decision on the merits of 27 January 2016, §30
The Committee refers, in a general manner to the Convention as interpreted by the Committee on the Rights of the Child when ruling on allegations of violations of the rights of the child guaranteed by the Charter.

In particular, when ruling on situations where the interpretation of the Charter concerns the rights of a child, the Committee considers itself bound by the internationally recognised requirement to apply the principle of the best interests of the child. It thus follows the invitation of the Committee on the Rights of the Child: "Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children’s rights and interests are or will be affected by their decisions and actions – by, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children".166

Prohibition of corporal punishment; the Committee referred to Article 19 of the UN Convention and to the comments of the Committee on the Rights of the Child.167

As regards the right to shelter for non-accompanied minors (Article 31§2 and Article 17) the Committee referred to the UN Convention and to the comments of the Committee on the Rights of the Child.

- The International Convention on the Elimination of all forms of Racial Discrimination of 21 December 1965

- Judgments of the Inter American Court of Human Rights168

- Decisions of the African Commission on Human and Peoples Rights169

- The Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the Pinheiro Principles (United Nations Sub-Commission on the Promotion and Protection of Human Rights)170

These principles provide specific policy guidance regarding how to ensure the right to housing and property restitution in practice. They provide a consolidated text relating to the legal, policy, procedural, institutional and technical implementation mechanisms for housing and property restitution.

- the report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report 2009, 1 August 2009, A/64/272171

viii. Interpretation of the Charter in light of the law of the European Union

166 Defence for Children International (DCI) v. The Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §29
167 World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §61
169 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §196
170 Centre on Housing Rights and Evictions (COHRE), v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010, §§17-18
171 Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §81
The Committee takes account of the law of the European Union when interpreting the Charter.

Furthermore the Charter contains, in comparison to the original text of 1961, amendments which take into account developments in community law since 1961 and which influence the manner in which Parties implement the Charter.

For example

- the modifications made to women’s rights to ensure full equality between women and men, with the sole exception of the protection of maternity, are directly inspired by the law of the European Union (Article 8 of the Charter); for example the definition of a female worker as protected in the Charter - pregnant women, women who have recently given birth and breastfeeding women is inspired by Council Directive 92/85/EEC 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.

- The minimum age for admission to employment for certain occupations deemed dangerous or unhealthy which was not specified in the 1961 Charter has been fixed at 18 years in the Charter. These provisions were inspired by Council Directive 94/33 of 22 June 1994 relating to the protection of young people at work (Article 7§2 of the Charter).

- Article 29 which provides that Parties must ensure that employers inform and consult employee representatives before collective dismissals/redundancies. The authors, in particular, were inspired by Council Directive 92/56/EEC of 24 June 1992 amending Directive 75/129 concerning the approximation of member States laws relating to collective redundancies.

The Committee has clarified the links between the law of the Charter and the law of the European Union. While the law of the European Union may play a positive role in the implementation of the Charter, there exists no presumption of conformity with the Charter where a state may be in conformity with a Directive relating even to a matter covered by the Charter. The Committee has stated:

31. “The Government considers that the national situation is in compliance with European Union law and, as a result, that it is in conformity with the Charter.

32. In reply to this argument, the Committee reiterates that the fact that the provisions at stake are based on a European Union directive does not remove them from the ambit of the Charter (CFE-CGC v. France, complaint No. 16/2003, decision on the merits of 12 October 2004, §30; see also, mutatis mutandis, Cantoni v. France, judgment of the European Court of Human Rights of 15 November 1996, §30).

33. In this regard, the Committee has already stated that it is neither competent to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter. However, when member States of the European Union agree on binding measures in the form of directives which relate to matters within the remit of the European Social Charter, they should – both when preparing the text in question and when transposing it into domestic law – take full account of the commitments they have taken upon ratifying the
European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the transposition of a European Union directive into domestic law may affect the proper implementation of the Charter.

34. The Committee notes that the European Court of Human Rights has already found that in certain circumstances there may be a presumption of conformity of European Union Law with the European Convention on Human Rights ("the Convention") by reason of a certain number of indicators resulting from the place given in European Union law to civil and political rights guaranteed by the Convention.

35. The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter.

36. Furthermore, the lack of political will of the European Union and its member States to consider at this stage acceding to the European Social Charter at the same time as to the European Convention on Human Rights reinforces the Committee’s assessment.

37. The Committee will carefully follow developments resulting from the gradual implementation of the reform of the functioning of the European Union following the entry into force of the Treaty of Lisbon, including the Charter of fundamental rights. It will review its assessment on a possible presumption of conformity as soon as it considers that factors which the Court has identified when pronouncing on such a presumption in respect of the Convention and which are currently missing insofar as the European Social Charter is concerned have materialised.

38. In the meantime, whenever it has to assess situations where States Parties take into account or are bound by legal texts of the European Union, the Committee will examine on a case-by-case basis whether respect for the rights guaranteed by the Charter is ensured in domestic law.”

It falls to the Committee therefore to determine for every Article of the Charter whether the provisions of the relevant European Union Directive are such that would mean that national situations implementing the Directive would be in conformity with the Charter.

As regards safety and health at work, the measures in terms of prevention and protection against the risks must be aligned with the international reference norms. A state may be considered as fulfilling this general obligation if it has transposed a large part of the community acquis in the field of health and safety at work.173

As regards asbestos for example international reference standards are Community Directive 83/477 on the protection of workers from the risks related to exposure to asbestos at work as amended by Directive 2003/18/EC of the European Parliament.

173 Conclusions 2005, Cyprus
and Council of 27 March 2003 as well as ILO Convention No 162 of 1986 on asbestos.\textsuperscript{174}

As regards \textit{ionising radiation}, national norms must take into account the recommendations of the International Commission on Radiological Protection (ICRP recommendation formulated in 1990 publication no 60) as regards the dose limits in terms of work related exposure as well as dose limits to persons who while not directly working with radiation may occasionally be exposed. The transposition of Directive 96/29/Euratom of the Council of 13 May 1996 on the protection of the population and workers against the dangers of ionising radiation sufficient is sufficient as the dose limits laid down by the ICRP 103 are reflected in it.\textsuperscript{175}

As regards \textit{working time}, the Committee has examined Directive 2003/88/EC of the European Parliament and the Council of 4 November 2003 concerning certain aspects of the organisation of working time.\textsuperscript{176} The Committee considered that while, the preamble of this Directive does not make any reference to the Charter, although the Charter has been ratified by all member States of the European Union and the Treaty on the European Union explicitly refers to it on several occasions, the concerns underlying the text of this Directive undoubtedly show the authors’ intention to comply with the rights enshrined in the Charter. The Committee believes that the practical arrangements agreed between member States of the European Union, if properly applied, do not prevent a concrete and effective exercise of the rights contained in particular in Articles 2§1 and 4§2 of the Charter.

However, the Committee notes that the Directive at stake provides for many exceptions and exemptions which may adversely affect respect for the Charter by States Parties in practice. It thus considers that depending on how member States of the European Union make use of those exemptions and exceptions or combine them, the situation may be compatible or incompatible with the Charter.

As regards the \textit{right to health} the Committee has stated that in its interpretation of the right to a healthy environment it has taken into account several judgments of the European Court of Justice.\textsuperscript{177}

As regards the \textit{right to family reunion}, the Committee considers that Directive of the European Union (EU) 2003/86/EC on the right to family reunification contains provisions allowing the member States concerned to adopt and apply rules that infringe Article 19§6 of the Charter.\textsuperscript{178}

These provisions concern in particular:

a) The length of residence requirement for migrant workers wishing to be joined by members of their family.

In this connection, the Committee has always considered,\textsuperscript{179} taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS

\textsuperscript{174} Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§1 of the 1961 Charter
\textsuperscript{175} Conclusions 2005, Cyprus
\textsuperscript{176} Confédération Générale du Travail (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 39-42
\textsuperscript{177} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §196
\textsuperscript{178} Conclusions 2011, Statement of Interpretation on Article 19§6
\textsuperscript{179} Conclusions I (1969), Germany
No. 93), that a length of more than one year is excessive and, consequently, in breach of the Charter.

b) the exclusion of social assistance from the calculation of the income of a migrant worker who has applied for family reunion (in connection with the criteria relating to available means).

The Committee notes that the Court of Justice of the EU (CJEU) has already limited the possibility provided by the above-mentioned Directive to restrict family reunification on the ground of available income (see CJEU judgment of 4 March 2010, case Chakroun, C-578/08, paragraph 48).

The Committee recalls in this respect that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied the right to family reunion because of the origin of such income, in so far as they are legally entitled to the benefits they may receive.

In view of the above and of the relevant case-law of the European Court of Human Rights (ECtHR) - see judgment of 19 February 1996, Gül v. Switzerland, No. 23218/94 – the Committee considers that the above-mentioned exclusion is such as to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

c) the requirement that members of the migrant worker’s family sit language and/or integration tests to be allowed to enter the country, or pass these tests once they are in the country to be granted leave to remain.

In this connection, the Committee considers that, in so far as this requirement, because of its particularly stringent nature, discourages applications for family reunion, it constitutes a condition likely to prevent family reunion rather than facilitating it. It accordingly constitutes a restriction likely to deprive the obligation laid down in Article 19§6 of its substance and is consequently not in conformity with the Charter.

ix Implementation of the Charter in time of economic crisis

In conclusions 2009, the Committee made a Comment on the application of the Charter in the context of the global economic crisis.

Under the Charter the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. From this point of view, the Committee considers that the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.\(^{180}\)

In its decision on the merits of 23 May 2012, in respect of General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, complaint No. 65/2011, the

\(^{180}\) Conclusions 2009, General Introduction
Committee indicated that this principle also applies to labour rights under the Charter.\textsuperscript{181}

In its decision on the merits of 7 December 2012, Federation of employed pensioners of Greece (\textsc{(IKA –ETAM) v. Greece, complaint No. 76/2012}, the Committee indicated that this principle also applies to social security rights.\textsuperscript{182}

\textsuperscript{181} General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, complaint No. 65/2011, decision on the merits of 23 May 2012, §§ 16 to 18

\textsuperscript{182} Federation of employed pensioners of Greece (\textsc{(IKA –ETAM) v. Greece, complaint No. 76/2012}, decisions on the merits of 7 December 2012, § 75
PART III: INTERPRETATION OF THE DIFFERENT PROVISIONS OF THE CHARTER
Article 1 The right to work

Everyone shall have the opportunity to earn his living in an occupation freely entered upon

1.1 With a view to ensuring the effective exercise of the right to work, the Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible

By accepting Article 1§1 of the Charter, States Parties undertake to pursue a policy of full employment. This means that States Parties:

- must adopt and follow an economic policy which is conducive to creating and preserving jobs;
- and must take adequate measures to assist those who become unemployed in finding and/or qualifying for a job.

Article 1§1 is an obligation of conduct rather than of result, which means that failure to achieve full employment not even the existence of high rate of unemployment will not as such be regarded as being a breach of the Charter. However, the efforts made by States Parties to reach the goal of full employment must be adequate in the light of the economic situation and the level of unemployment.

The decline of unemployment alone is not a sufficient indication of efforts towards the achievement of full employment. On the other hand, an increase in the rate of unemployment would not prevent the Committee from concluding that the Charter was being satisfied, so long as a substantial effort is made to improve the labour market situation.

The assessment of conformity rests on a number of economic and social indicators and takes into account the results achieved by States Parties in transforming economic growth into employment and providing assistance to unemployed persons.

First of all a wide range of indicators are examined, relating to the national economic situation (e.g. GDP growth, inflation, job growth), to patterns of employment (e.g. the employment rate, proportion of part-time and fixed-term employment) as well as to the structure and level of unemployment paying special attention to the situation of vulnerable groups such as youth, the long-term unemployed, persons belonging to minorities and persons with disabilities.

In the light of this information, the policy pursued is examined, relying both on evidence of legal or declaratory commitment to full employment as well as on data reflecting actual State effort such as the scope of the employment measures implemented (e.g. number of actual jobs created, number of participants in measures as a proportion of all unemployed, average duration of unemployment spells before being offered participation in a measure), the

183 Conclusions I (1969), Statement of Interpretation on Article 1§1
184 Conclusions III (1973), Statement of Interpretation on Article 1§1
185 Conclusions (2002), Statement of Interpretation on Article 1§1
amount of resources devoted to the various measures (e.g. total expenditure as a share of GDP, balance between active and passive measures).

Labour market measures should be targeted, effective and regularly monitored.\textsuperscript{186}

The constraints imposed on national policy by international economic trends and of the complexity of effectively combating unemployment are taken into account.

Certain national situations are breach of the Charter, for example:

- where there was an absence both of a declaratory commitment to full employment and of any concerted employment policy;\textsuperscript{187}
- where unemployment, and notably youth unemployment and long-term unemployment, was extremely high and in the light of which the measures taken were insufficient (as indicated, \textit{inter alia}, by a low number of participants in active measures and a low level of expenditure);\textsuperscript{188}
- where there were negative developments in the employment policy, both in terms of the extent of activation of unemployed persons and the level of overall expenditure, at a time when unemployment, despite economic growth, was increasing sharply.;\textsuperscript{189}
- where too few job seekers had access to training.\textsuperscript{190}
- where public expenditure on active labour market policies amounted to a very low % of GDP.\textsuperscript{191}

1.2 With a view to ensuring the effective exercise of the right to work, the Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon

\textit{Appendix: This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.}

Article 1§2 covers three different issues:

1) the prohibition of all forms of discrimination in employment,
2) the prohibition of forced or compulsory labour,
3) the prohibition of any practice that might interfere with workers’ right to earn their living in an occupation freely entered upon,\textsuperscript{192} \textsuperscript{193}

Article 1§2 is inherently linked to other provisions of the Charter, in particular Article 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex), Article 8§2 (Right of employed women to the protection of maternity), Article 15§2 (Right of persons with disabilities to employment), Article 23(Right of elderly persons to social protection), and Article 27 (The right of workers with family responsibilities to equal opportunities and equal treatment). Where a State Party has accepted these provisions, non-discrimination in employment in relation to
women, persons with disabilities or workers with family responsibilities is examined under these more specific provisions.

1. **Prohibition of all forms of discrimination in employment**

   Article 1§2 prohibits discrimination in employment.

   **a) Prohibited grounds of discrimination**

   Under Article 1§2, legislation should prohibit any discrimination in employment inter alia on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion, including on grounds of conscientious objection or non-objection.

   There must be adequate legal safeguards against discrimination in respect of part-time work. In particular, there must be rules to prevent non-declared work through overtime, and equal pay, in all its aspects, between part-time and full-time employees.

   **b) Material scope**

   Discrimination is prohibited in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).

   **c) Definition of discrimination**

   Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued.

   Indirect discrimination arises when a measure or practice applied in an identical manner for everyone, persons having a particular religion or belief, a particular disability, a particular age, a particular sexual orientation, a particular political opinion, a particular ethnic origin etc.

   Discrimination may also result from failing to take 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.

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194 Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, Decision on the merits of 2 July 2013, §§115-117
195 Conclusions 2006, Albania, Conclusions 2012 Iceland, Moldova and Turkey
196 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No 91/2013, Decision on the merits of 12 October 2015 §238
197 Conclusions XVI-1 (2002), Austria
198 Conclusions XVI-1 (2002), Austria
200 Conclusions XVI-1 (2002), Greece
201 International Association Autism-Europe (IAAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52
203 International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010 decision on the merits of 21 March 2012 §49
204 Médicins du Monde v. France, Complaint No. 67/2011 decision on the merits of 11 September 2012 §§107,132,144,153 and 163
d) Required content of domestic law prohibiting discrimination
Legislation should prohibit both direct and indirect discrimination.\textsuperscript{205}

In order to make the prohibition of discrimination effective, domestic law must at least provide for the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms’ own regulations.\textsuperscript{206}

The setting up a special, independent body to promote equal treatment, particularly by providing discrimination victims with the support they need to take proceedings also contributes to combating discrimination in accordance with Article 1§2 of the Charter.

e) Procedural issues
Domestic law must provide appropriate and effective remedies in the event of an allegation of discrimination.

- Firstly, there must be a right to appeal to a court in case of alleged discrimination. Recognising the right of trade unions to take action in cases of employment discrimination, including action on behalf of individuals;\textsuperscript{207} and granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action also contributes to combating discrimination in accordance with Article 1§2 of the Charter.

- Secondly, there must be a protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;\textsuperscript{208}\textsuperscript{209}

- Thirdly, domestic law should provide for a shift in the burden of proof in favour of the plaintiff in discrimination cases.\textsuperscript{210}\textsuperscript{211}

- Fourthly, remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore, compensation for all acts of discrimination including discriminatory dismissal, must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. A ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.\textsuperscript{212}

\begin{footnotes}
\footnotetext{205}{Conclusions XVIII-I (2006), Austria}
\footnotetext{206}{Conclusions XVI-1 (2002), Iceland}
\footnotetext{207}{Conclusions XVI-1 (2002), Iceland}
\footnotetext{208}{Conclusions XVI-1 (2002), Iceland}
\footnotetext{209}{Syndicat de Défense des fonctionnaires v. France Complaint No. 73/2011, decision on the merits 13 September 2012, § 59}
\footnotetext{210}{Conclusions 2002 France}
\footnotetext{211}{Syndicat de Défense des fonctionnaires v. France Complaint No. 73/2011, decision on the merits 13 September 2012, §59}
\footnotetext{212}{Conclusions 2012, Andorra}
\end{footnotes}
f) **Specific issue of access of foreigners to certain jobs**

States Parties may make foreign nationals’ access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

Exclusion of individuals from functions, either in the form of refusal to recruit or dismissal, on grounds of previous political activities, is prohibited when it is not necessary within the meaning of Article G in that it does not apply solely to services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities.

2. **Prohibition of forced or compulsory labour**

i) **Forced labour for the production of goods or services**

Forced or compulsory labour in all its forms must be prohibited. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on ILO Convention 29 on forced labour: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2§1).

The non-application in practice of legislation which is contrary to the Charter is not sufficient to bring a situation into conformity with the Charter.

The prohibition of forced or compulsory labour may be infringed when e.g.:

a. Provisions authorise criminal sanctions in the event of disciplinary offences on the part of seamen or sanctions for seamen who abandon their post, even when the safety of a ship or the lives or health of the people on board are not at stake.

b. Career army officers who have received several periods of training are required to complete a term of compulsory service that may last up to twenty-five years or the decision to grant early retirement is left to the discretion of the Minister of Defence, which could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation.

c. Powers of requisition in exceptional circumstances are too broadly defined. Any such powers must be defined with sufficient clarity and fall within the scope of Article G of the Charter.

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213 Conclusions 2006, Albania
214 Conclusions 2012, Albania
215 Conclusions 2006, Lithuania
216 Conclusions XIII-3 (1995), Ireland
218 Conclusions 2012 Portugal
220 Conclusions 2004, Ireland
221 Conclusions 2012, Ireland
222 Conclusions XVI-1 (2002), Greece
ii) Prison work
Prisoners' working conditions must be properly regulated, particularly if they are working, directly or indirectly, for employers other than the prison service. In accordance with the principle of non-discrimination, this regulation, which may be carried out by means of laws, regulations or agreements (particularly where companies act as subcontractors in prison workshops), must concern pay, hours and other working conditions and social protection (in the sphere of employment injury, unemployment, health care and old age pensions). 223

iii) Requirement to accept the offer of a job or training or otherwise lose unemployment benefit
The requirement for persons claiming unemployment benefit to accept the offer of a job or training or otherwise no longer be entitled to unemployment benefit is dealt with under Article 12§1. However, the loss of benefit or assistance when an unemployed person rejects a job offer may constitute a restriction on freedom to work where the person concerned is compelled, on pain of losing benefit, to accept any job, notably a job:

- which only requires qualifications or skills far below those of the individual concerned;
- which pays well below the individual's previous salary;
- which requires a particular level of physical or mental health or ability, which the person does not possess at the relevant time;
- which is not compatible with occupational health and safety legislation or, where these exist, with local agreements or collective employment agreements covering the sector or occupation concerned and therefore may affect the physical and mental integrity of the worker concerned;
- for which the pay offered is lower than the national or regional minimum wage or, where one exists, the norm or wage scale agreed on for the sector or occupation concerned, or where it is lower, to an unreasonable extent, than all of the unemployment benefits paid to the person concerned at the relevant time and therefore fails to ensure a decent standard of living for the worker and his/her family;
- which is proposed as the result of a current labour dispute;
- which is located at a distance from the home of the person concerned which can be deemed unreasonable in view of the necessary travelling time, the transport facilities available, the total time spent away from home, the customary working arrangements in the person's chosen occupation or the person's family obligations (and in the latter case, provided that these obligations did not pose any problem in the person's previous employment);
- which requires persons with family responsibilities to change their place of residence, unless it can be proved that these responsibilities can be properly assumed in the new place of residence, that suitable housing is available and that, if the situation of the person so requires, a contribution to the costs of removal is available, either from the employment services or from the new employer, so respecting the worker's right to family life and housing.

223 Conclusions 2012, General Introduction, Statement of Interpretation on Article 1§2
Decisions by relevant authorities on the permanent withdrawal or temporary suspension of unemployment benefit because the recipient has rejected a job offer must be open to review by domestic courts in accordance with the rules and procedures established under the legislation of the State which took the decision.\textsuperscript{224}

\textbf{iv. Forced labour in the domestic environment}
Domestic work and work in family enterprises may give rise to forced labour and exploitation, State Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them.\textsuperscript{225}

3. Other aspects of the right to earn one's living in an occupation freely entered upon

Several other practices may be in breach of Article 1§2:

i) Length of service to replace military service (conscientious objection)
The length of service to replace military service (alternative service during which persons are deprived of the right to earn their living in an occupation freely entered) must be reasonable. The length of such replacement must be proportionate to the length of military service and not excessive overall.\textsuperscript{226 227 228}

ii) Minimum periods of service in the Armed Forces
Under Article 1§2 any minimum period must be of a reasonable duration and in cases of longer minimum periods due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training. Likewise any fees/costs to be repaid on early termination of service must be proportionate.\textsuperscript{229}

iii) Workers' right to privacy
The emergence of new technologies which have revolutionised communications have permitted employers to organise continuous supervision of employees and in practice enabled employees to work for their employers at any time and in any place, with the result that the frontier between professional and private life has been weakened. The right to undertake work freely includes the right to be protected against interferences with the right to privacy. Under Article 1§2 individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation, in particular through modern electronic communication and data collection techniques.\textsuperscript{230 231}

\textsuperscript{224} Conclusions 2012, General Introduction Statement of Interpretation on Article 1§2
\textsuperscript{225} Conclusions 2008, Statement of Interpretation on Article 1§2
\textsuperscript{226} Conclusions 2012, Statement of Interpretation on Article 1§2
\textsuperscript{227} Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, Decision on the merits of 25 April 2001, §§ 23-25
\textsuperscript{228} Conclusions 2012, Cyprus
\textsuperscript{229} Conclusions 2012, France
\textsuperscript{230} Conclusions 2006, Statement of Interpretation on Article 1§2
\textsuperscript{231} Conclusions 2012, Statement of Interpretation on Article 1§2
1.3 With a view to ensuring the effective exercise of the right to work, the Parties undertake to establish or maintain free employment services for all workers

Article 1§3 provides for the right to free employment services. All workers enjoy this right and therefore services must operate effectively throughout the national territory and with respect to all sectors of the economy. The main function of such services is to place unemployed job-seekers in employment as well as employed workers looking for another job. Basic placement services such as registration of job-seekers and notification of vacancies must be provided free of charge for both employees and employers\(^{232}\) and must be effective.

Fees imposed on employers for the notification of vacancies is contrary to Article 1§3, even where the fees are small and aimed only at covering administrative costs.\(^{233}\) The existence of fee-charging by private employment agencies is not contrary to Article 1§3 provided that fully-fledged free employment services exist in all occupational sectors and geographical areas.

Quantitative indicators used to assess the effectiveness in practice of free employment services\(^{234}\) include the placement rate (i.e. placements made by the employment services as a share of notified vacancies), the number of employment services staff in relation to the number of job seekers, and the respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market.

Trade union and employers’ organisations must have the possibility of participating in the organisation and running of the employment services.\(^{235}\)

1.4 With a view to ensuring the effective exercise of the right to work, the Parties undertake to provide or promote appropriate vocational guidance, training and rehabilitation

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities.\(^{236}\)

States Parties must provide these services, grant access to them, to all those interested and ensure equality of treatment in particular for nationals of other States Parties to the Charter lawfully resident or working regularly on the territory of the Party concerned\(^{237}\) and for persons with disabilities.\(^{238}\)

\(^{232}\) Conclusions XIV-1 (1998), Statement of Interpretation on Article 1§3
\(^{233}\) Conclusions XIV-1 (1998), Turkey
\(^{234}\) Conclusions XIV-1 (1998), Greece
\(^{235}\) Conclusions XV-1 (2000), Addendum, Poland
\(^{236}\) Conclusions 2003, Bulgaria
\(^{237}\) Conclusions 2012, Georgia
\(^{238}\) Conclusions XII-1 (1991), Statement of Interpretation on Article 1§4
Article 1§4 covers the following questions:

- whether the labour market offers vocational guidance and training services for employed and unemployed persons and guidance and training aimed specifically at persons with disabilities;
- access: how many people make use of these services;
- the existence of legislation explicitly prohibiting discrimination on the ground of disability in the field of training.  

The indicators allowing an assessment of the effectiveness of vocational guidance services are: their funding, their staffing and the number of beneficiaries.

No length of residence requirement may be imposed on students or trainees who reside in whatever capacity or are authorised to reside, because of their links with persons legally residing in the country, in the territory of the party concerned, before they can begin their training. If such a length of residence requirement exists for foreigners wishing to receive vocational guidance, training or rehabilitation this situation constitutes an unequal treatment contrary to the Charter.

Article 1§4 is complemented by Articles 9 (right to vocational guidance), 10§3 (right to continuing vocational training of adult workers) and 15§1 (the right of persons with disabilities to guidance, education and vocational training), which contain more specific rights to vocational guidance and vocational training with a broader material scope.

Where a States Party has accepted the above-mentioned provisions (9, 10§3 and 15§1) no separate examination of the situation is made under Article 1§4 and instead reference is made to the assessment made under Articles 9, 10§3 and 15§1. Since these provisions set out a broader range of rights than Article 1§4 a conclusion of non-conformity under one of them is taken up under Article 1§4 only where the ground of non-conformity is linked specifically to the [general] aspects covered by Article 1§4 (see above). Where a State Party has not accepted one or more of articles 9, 10§3 or 15§1, the conformity of the situation is examined in substance under Article 1§4, but only in respect of the [general] aspects covered by this provision.

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239 Conclusions 2008, Albania
240 Conclusions XX-1 (2012), Iceland
241 Conclusions 2008, Bulgaria
242 Conclusions 2007, Bulgaria
243 Conclusions 2008, Statement of Interpretation on Article 1§4
244 Conclusions 2003, Bulgaria
Article 2 The right to just conditions of work

All workers have the right to just conditions of work

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

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.245 246

To this end, 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.247

The Charter does not expressly define what constitutes reasonable working hours. Situations are therefore assessed on a case by case basis: extremely long working hours e.g. 16 hours within a period of 24 hours248 249 or, under certain conditions, more than 60 hours in one week250 are contrary to the Charter. These limits should apply to all categories of workers and can only be exceeded in situations that go beyond what can be considered as exceptional circumstances (i.e. natural disasters, situations of force majeure).251

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.252

Article 2§1 provides also 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.253

245 Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1
246 Confédération Générale du Travail (CGT) v. France, Complaint No. 22/2003, Decision on the merits of 7 December 2004, §34
247 Conclusions I (1969), Statement of Interpretation on Article 2§1
248 Conclusions XIV-2 (1998), Norway
249 Conclusions (2014), Armenia
250 Conclusions XIV-2 (1998), Netherlands
251 Conclusions (2014), Netherlands
252 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
253 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
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. The maximum daily and weekly hours referred to above must not be exceeded in any case.

(ii) they must operate within a legal framework providing adequate guarantees. The framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time. This legal framework has to be more strengthened when collective agreements could be reached at the enterprise level.

(iii) they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances, if it is justified by objective or technical reasons or reasons concerning the organisation of work. 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 absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her 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.

2.2 With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay

Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements.

The Charter does not stipulate the number of public holidays. The number of public holidays varies, depending on the State parties. There has been no finding of non-conformity with this provision because of States Parties granting too few public holidays.

255 Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1
256 Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1
257 Conclusions XIX-3 (2010), Spain
258 Conclusions XX-3 (2014), Germany
259 Confédération générale du travail (CGT) v. France (§§ 64-65), Complaint No 55/2009, Decision on the Merits of 23 June 2010
As a rule, work should be prohibited during public holidays. However, work can be carried out on public holidays under specific circumstances set by law or collective agreements.261

Work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between States Parties in this regard, States Parties enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday.262

In assessing whether the compensation for work performed on public holidays is adequate, levels of compensation provided for in the form of increased salaries and/or compensatory time off under the law or the various collective agreements in force are taken into account, in addition to the regular wage paid on a public holiday, be it calculated on a daily, weekly or monthly basis.263 For example a compensation corresponding to the regular wage increased by 75% is not sufficiently high to constitute an adequate level of compensation for work performed on a public holiday264.

2.3 With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for a minimum of four weeks annual holiday with pay

Article 2§3 guarantees the right to a minimum of four weeks (or 20 working days) annual holiday with pay.

The taking of annual holiday may be subject to the requirement that the twelve working months for which it is due have fully elapsed.265

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave.266 This principle does not prevent however the payment of a lump sum to an employee at the end of his employment in compensation for the paid holiday to which he was entitled but which he had not taken267.

At least two weeks uninterrupted annual holidays must be used during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.268

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate.269

261 Conclusions 2014, Netherlands
262 Conclusions 2014, Andorra
263 Conclusions 2014, France
264 Conclusions XX-3 (2014), Greece
265 Conclusions I (1969) Statement of interpretation on Article 2§3
266 Conclusions I (1969), Ireland
267 Conclusions I (1969) Statement of interpretation on Article 2§3
268 Conclusions 2007, Statement of interpretation on Article 2§3
269 Conclusions XII-2 (1992), Statement of Interpretation on Article 2§3

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

The 1961 Charter had been drafted at a time when working hours were longer and the main aim of occupational health and safety policies was not to prevent and eliminate risks but to compensate for them. Since then, daily and weekly working hours have generally decreased and, above all, prevention has become the priority, most often taking the form of reduction in exposure times to the minimum length considered not to present a threat to workers' health. The revised Charter takes account of this development by dividing Article 2§4 into two parts, the first requiring States Parties to take the necessary measures to eliminate risks and the second requiring them to provide for compensation in the event of residual risks. This change ensures consistency with Articles 3 (right to safe and healthy working conditions) and 11 (right to protection of health).270

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 infra). The assessment of national situations under Article 2§4 takes into account the information provided and the conclusion reached in respect of Article 3§2.271

Measures in response to residual risks

The second part of Article 2§4 requires States Parties to ensure some form of compensation for workers 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 referred to above or because they have not yet been applied.272 273

States Parties enjoy a certain margin of discretion to determine the activities and risks concerned.274 275 They must at least consider sectors and occupations that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation,276 extreme temperatures and noise.277

The aim of the compensation must be to offer those concerned sufficient and regular time278 to recover from the associated stress and fatigue, and thus maintain their vigilance.279

271 Conclusions 2005, Statement of Interpretation on Article 2§4
272 Conclusions XII-1 (1991), United Kingdom
273 Conclusions XX-3 (2014), Germany
274 Conclusions II (1971), Statement of Interpretation on Article 2§4
275 STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §20
276 STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §27
277 Conclusions XIV-2 (1998), Norway
278 Conclusions V (1977), Statement of Interpretation on Article 2§4
279 Conclusions III (1973), Ireland
Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. 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. They need to be assessed on a case by case basis.\textsuperscript{280}

For example, a 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.\textsuperscript{282}

On the other hand, under no circumstances can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4,\textsuperscript{283} nor is early retirement\textsuperscript{284} or the provision of food supplements.\textsuperscript{285}

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.\textsuperscript{286}

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.\textsuperscript{287}

2.5 With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest.

Article 2§5 guarantees a weekly rest period, which insofar as possible shall coincide with the day traditionally or normally recognised as a day of rest in the country or region concerned.

Although the rest period should be “weekly”, it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two–day rest period.

Derogations to this rule might be in conformity with Article 2§5 when the postponement is truly exceptional and surrounded by strict safeguards (such as the authorisation of the labour inspectorate, with the agreement of the trade union or, as the case may be, the representatives of the employees, or the possibility for the safety representative to react if the employer does not respect the relevant rules).\textsuperscript{288}

\textsuperscript{280} Conclusions 2005, Statement of Interpretation on Article 2§4
\textsuperscript{281} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §236
\textsuperscript{282} Conclusions 2014, Finland
\textsuperscript{283} Conclusions XIII-3 (1995) Greece
\textsuperscript{284} Conclusions 2003, Bulgaria
\textsuperscript{285} Conclusions 2007, Romania
\textsuperscript{286} Conclusions XX-3 (2014), Greece
\textsuperscript{287} Conclusions 2014, Netherlands
\textsuperscript{288} Conclusions 2010, Romania; Conclusions 2014, Sweden; Conclusions XX-3 (2014) Denmark
The right to weekly rest periods may not be replaced by compensation and workers may not be permitted to give it up.

However, the rest period can be taken on a day other than the traditional day, either when the type of activity requires it, or for reasons of an economic nature. At all events, another day of rest during the week must be provided for.289

Periods of on-call duty during a weekly rest period and during which an employee has not been required to work, cannot be regarded as a weekly rest period.290

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

Appendix: Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 2§6 guarantees the right of workers to written information when starting employment. This information can be included in the employment contract or another document.291

This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee’s normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee’s conditions of work.292

289 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§5
291 Conclusions 2014, Republic of Moldova
292 Conclusions 2003, Bulgaria
2.7 With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Article 2§7 guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be “night work” within the context of this provision, namely what period is considered to be “night” and who is considered to be a “night worker”.293

The measures which take account of the special nature of the work must at least include the following:

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- continuous consultation with workers’ representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.294

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293 Conclusions 2014, Bulgaria
294 Conclusions 2003, Romania
**Article 3 The right to safe and healthy working conditions**

**All workers have the right to safe and healthy working conditions**

The right of every worker to a safe and healthy working environment is a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights. The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life. It applies to the whole economy, covering both the public and private sectors, employees and the self-employed.

In relation to the application of the right to safe and healthy working conditions set out in Article 3, new trends such as increased competition; free movement of persons; new technology; organisational constraints; self-employment, outsourcing and employment within small and medium-sized enterprises; increased work intensity, produce constant change in the work environment and new forms of employment which generate, increase and shift factors of risk to the workers’ health and safety. In particular, new technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk, leading to work-related stress, aggression, violence and harassment. These may in turn cause mental health problems for the persons concerned, with serious consequences on work performance, illness rates, absenteeism, accidents and staff turnover. They have also been identified as some of the most significant factors of disease and disability worldwide, cutting across age, sex and social strata, impacting low-income and high-income countries alike.

Recent studies have also established that occupational safety and health policies and psychosocial risk management are more common in larger undertakings, and that in practice, the main drivers for addressing in particular psychosocial risks are compliance with legal obligations and requests by workers. They further show that drivers for, and barriers to, psychosocial risk management are per se multidimensional, insofar as the employers’ willingness to act depends on a variety of factors such as organisational rationality, economic opportunity, or in any event compliance with legal obligations. Such complex and multidimensional factors place greater demands on the competence, resources and institutional capacity of labour inspection systems, which States Parties should consider when seeking to fulfil their obligations under the Charter.

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295 Conclusions I (1969), Statement of Interpretation on Article 3
296 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3
297 Conclusions II (1971), Statement of Interpretation on Article 3
298 Conclusions 2013, Statement of Interpretation on Article 3

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3.1 With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment.

In Article 3§1, States Parties undertake to formulate, implement and periodically review a coherent occupational health and safety policy in consultation with social partners.\(^{299}\)

- Taking into account work-related stress, aggression and violence when examining whether policies are regularly assessed or reviewed in the light of emerging occupational risks\(^{300}\);
- Checking research, knowledge and communication activities on psychosocial risks, when examining the involvement of public authorities in the improvement of occupational health and safety.\(^{301}\)

**General objective of national policy**

The main policy objective must be to foster and preserve a culture of prevention in the areas of health and safety at national level,\(^{302}\) as opposed to a purely curative or compensatory approach.


The policies and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.\(^{306}\)

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\(^{299}\) Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria

\(^{300}\) Conclusions 2013, Statement of Interpretation on Article 3§1

\(^{301}\) Conclusions 2013, Statement of Interpretation on Article 3§1

\(^{302}\) Conclusions 2009, Armenia

\(^{303}\) Conclusions 2005, Lithuania

\(^{304}\) Conclusions 2013, Albania

\(^{305}\) Conclusions 2013, Austria

\(^{306}\) Conclusions 2005, Lithuania
Organisation of occupational risk prevention

A culture of prevention implies that all the partners – authorities, employers and workers – are actively involved in occupational risk prevention, working within a well-defined framework of rights and duties and predetermined structures.

The main aspects are:

– in respect of companies: besides compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well as information and training for workers.\(^\text{307}\) This includes assessing risks specific to the workplace, which is the only aspect covered by Article 3§1, whereas follow-up measures to such assessment come under the rights covered by Article 3§2. Special attention should be given to some sectors of activity (construction; agriculture; fishing; forestry; metalworks, mining, etc.), some enterprises (small and medium-sized) and special forms of employment (interim; fixed-term; temporary; seasonal), which are particularly exposed. Concerning special forms of employment, employers and/or users are required to provide appropriate information, training and medical supervision, so as to take account of exposure to occupational risks while working for different employers;

– in respect of public authorities: the development of an appropriate system of public prevention and supervision of the implementation of occupational safety and health rules.\(^\text{308}\) The only aspect of labour inspection covered by Article 3§1 is the duty, as part of information, training and prevention activities, to share the knowledge about risks and risk prevention acquired during inspections and investigations.\(^\text{309}\)

Improvement of occupational health and safety (research and training)

Public authorities must, in order to increase general awareness, knowledge and understanding of the concepts of danger and risk as well as of ways of preventing and managing them, participate in the following activities:\(^\text{310}\)

– training (qualified staff);
– information (statistical systems and dissemination of knowledge);
– quality assurance (professional qualifications, certification systems for facilities and equipment);
– research (scientific and technical expertise).

\(^{307}\) Conclusions 2009, Armenia
\(^{308}\) Conclusions 2007, Cyprus
\(^{309}\) Conclusions 2009, Malta
\(^{310}\) Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria
Consultation with employers’ and workers’ organisations

When devising and implementing national policies and strategies chosen by the relevant authorities, consultation with employers’ and workers’ organisations, must take place at national, sectoral and company level. 311

Article 3§1 requires consultation not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues.

Mechanisms and procedures of consultation with employers’ and workers’ organisations must be set up at national and sectoral level. The right to consultation is satisfied where there are specialised bodies made up of representatives of the government and of employers’ and workers’ organisations, which are consulted by the public authorities. If these consultations may take place on a permanent or ad hoc basis; they must in any case be efficient with regard to powers, procedures, participants, frequency of meetings and matters discussed, in promoting social dialogue in occupational safety and health matters.312

3.2 With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations, to issue safety and health regulations

The determination and implementation of an occupational safety and health policy must be based on a precise legal framework.

Risks that must be covered by the legal framework313

States Parties’ first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Under §2, this obligation entails issuing safety and health regulations providing for preventive and protective measures against workplace risks recognised by the scientific community and laid down in Community and international regulations and standards.314

The Charter does not actually define the risks to be regulated. Supervision takes an indirect form, referring to international technical occupational health and safety standards such as the ILO Conventions and European Union Directives on health and safety at work.

311 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3
312 Conclusions 2009, Lithuania
313 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
314 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §224
Domestic law must include framework legislation – often the Labour Code – setting out employers’ responsibilities and the workers’ rights and duties as well as specific regulations. In view of the particularly variable nature of the subject matter in the light of technological, ergonomic and medical advances, existing regulations must be geared to new circumstances where the rules prove to be out of keeping with the situation.

The risks currently referred to are as follows:

i. Psychosocial risks\(^{315}\), stress, aggression and violence in the workplace\(^{316}\)

ii. Establishment, alteration and upkeep of workplaces — Work equipment\(^{317}\)
   – workplaces and equipment, particularly the protection of machines, manual handling of loads, work with display screen equipment;
   – hygiene (shops and offices);
   – maximum weight;
   – air pollution, noise and vibration; personal protective equipment; safety and/or health signs at work.

iii. Hazardous agents and substances\(^{318}\)
   – chemical, physical and biological agents, particularly carcinogens, including: white lead (in paint), benzene, asbestos, vinyl chloride monomer, metallic lead and its ionic compounds and ionizing radiation;
   – control of major accident hazards involving dangerous substances.

iv. Sectoral risks\(^{319}\)
   – indication of weight on packages to be transported by boat;
   – protection of dockers against accidents;
   – dock handling;
   – building safety rules, temporary or mobile construction sites;
   – mines, extractive industries using drilling and opencast or underground mining;
   – ships and fishing vessels;
   – prevention of major industrial accidents;
   – agriculture;
   – transport.

**Levels of prevention and protection**

Limits must be aligned with those adopted in the above-mentioned international reference standards.\(^{320}\)

A State Party has satisfied this general requirement if it has transposed most of the *acquis communautaire* on occupational safety and health into its domestic legislation.\(^{321} \) \(^{322}\)

In sectors of activity in which the *acquis* is incomplete, e.g. in shipping or fishing, main international standards are offered by the ILO conventions.\(^{323}\)

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\(^{315}\) Conclusions 2013, Statement of Interpretation on Article 3
\(^{316}\) Conclusions 2013, Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
\(^{317}\) Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
\(^{318}\) Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
\(^{319}\) Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
\(^{320}\) Conclusions XIV-2 (1998), Italy
\(^{321}\) Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter);
\(^{322}\) Conclusions 2005, Cyprus
Protection against dangerous agents and substances

States Parties are required to pay particular attention with regard to asbestos and ionizing radiation, producing evidence that workers are protected up to a level at least equivalent to that set by international reference standards.

i. Protection against asbestos

The framework is set by Recommendation 1369 (1998) of the Parliamentary Assembly of the Council of Europe on the dangers of asbestos for workers and the environment. The international reference standards, which determine minimum exposure limit values to be implemented at national level, are ILO Asbestos Convention No. 162 (1986), the Rotterdam Convention (2004) and Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended. The exposure limit values must be reviewed and updated in light of technological progress and development in technical and scientific knowledge. A total ban on asbestos, though such a measure “will ensure that the right provided under Article 3 of the Charter is more effectively guaranteed” is not yet required under Article 3§2, but could be expected as soon as technical knowledge allows. Use in the workplace of asbestos in what are recognised as its most harmful forms (amphiboles) must be prohibited. Since Council Directive 83/477/EC was repelled, reference must be made to a single limit value for all fibres, reduced to 0.1 fibres/cm$^3$ set out in Directive 2009/148/EC of the Parliament and the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work.

ii. Protection against ionizing radiation

National standards with regard to ionizing radiation must take account of the recommendations made in 2007 by the International Commission on Radiological Protection (ICRP, publication No. 103), relating in particular to maximum doses of exposure in the workplace but also to persons who, although not directly assigned to work in a radioactive environment, may be exposed to radiation occasionally. The transposition into domestic law of Directive 2013/59/Euratom of the Council of 5 December 2013 laying down basic safety standards against the dangers arising from exposure to ionizing radiation and repealing Directives 89/618 / Euratom, 90/641 / Euratom, 96/29 / Euratom, 97/43 / Euratom and 2003 / 122 / Euratom (EU MS have until 6 February 2018 to transpose it) is sufficient as this Directive takes up the ICRP’s recommendations. The transposition of complementary legislation of Directive 2006/117/Euratom of 20 November 2006 on the maritime transport of radioactive waste; and Council Directive 2009/71 / Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations are also examined; Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel; and

323 Conclusions 2013, Malta
324 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
325 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
326 Conclusions 2009, Estonia
327 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
328 Conclusions 2013, Portugal
329 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter);
330 Conclusions 2007, Romania
331 Conclusions 2009, Andorra
332 Conclusions 2005, Cyprus

**Personal scope of the framework law and specific regulations**

All workers, all workplaces and all sectors of activity must be covered by occupational safety and health regulations.  

The term “workers” used in Article 3 covers both employed and self-employed persons, especially as the latter are often employed in high-risk sectors. The aim is to ensure that the working environment is safe and healthy for all operators, where necessary by adopting rules adapted to the operators’ specific situation.  

The protection of interim, temporary, seasonal workers and those on fixed-term contracts, without necessarily being specific, must take the exposure to dangerous agents and substances accumulated with several successive employments into account, in order to avoid any discrimination in respect of occupational safety and health with permanent workers. If needed, regulations must prohibit the hiring of temporary workers for some particularly dangerous activities. In this regard, the Committee takes into account the implementation of international reference standards in the field: ILO Fee-charging Employment Agencies Convention No. 96 (1949) and Private Employment Agencies Convention No. 181 (1997); ILO Convention No. 155 on the safety and health of workers (1981); Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship, as amended by Directive 2007/30/EC of the European Parliament and the Council of 20 June 2007. It also takes into account obligations under the regulations benefitting temporary workers on medical checks, on information and training in occupational safety and health matters upon recruitment, transfer or the introduction of new technology, as well as the representation of these workers in occupational safety and health matters, and even measures adopted to reduce the high incidence of occupational accidents suffered by these workers.  

All economic sectors must be covered by the framework law and the regulations. It is not necessary for a specific text to be adopted for each activity or sector, but the wording of texts should be sufficiently precise to allow their effective application in all sectors, taking particular account of the scale of or degree of danger in each sector. Sectors must be covered in their entirety and all companies must be covered regardless of the number of employees.

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333 Conclusions 2013, Bulgaria  
334 Conclusions II (1971), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)  
335 Conclusions 2005, Estonia  
336 Conclusions III (1973), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)  
337 Conclusions IV (1975), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)  
338 Conclusions XIII-4 (1996), Belgium  
339 Conclusions 2009, Andorra  
340 Conclusions 2013, Bulgaria  
341 Conclusions 2009, Romania  
342 Conclusions 2009, Lithuania  
343 Conclusions 2009, Belgium  
344 Conclusions I (1969), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)  
345 Conclusions XIII-1 (1993), Greece
No workplace, even if habited, can be “exempted” from the application of health and safety rules. Workers employed on residential premises, i.e. domestic staff and home workers, must therefore be covered but the rules may be adapted to the type of activity and the relatively risk-free nature of these workers’ occupations and be worded in general terms.

Independent workers who intervene in several workplaces must suffer no discrimination in occupational safety and health matters, as compared to wage-earning workers or civil servants, and hence must also be covered by the regulations. The duty to provide for regulations goes beyond the prevention, training and medical supervision policies advocated by Council Recommendation 2003/134/EC of 18 February 2003. High figures on independent workers may be a factor to be taken into account.

To comply with the provisions of Article 3§2, States Parties must specifically cover most of the risks listed and examine measures taken by public authorities to protect workers against work-related stress, aggression and violence specific to work performed under atypical working relationships, in examining the personal scope of occupational safety and health regulations.

Consultation with employers’ and workers’ organisations

Regulations must be drawn up in consultation with employers’ and workers’ organisations.

Consultation goes beyond mere tripartite – public authorities, employers’ and workers’ organisations – co-operation in the search for ways to improve the working conditions and environment in general, and includes the co-ordination of their actions and the co-operation in the drafting of laws and regulations at all levels and in all sectors.

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346 Conclusions XIII-1 (1993), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
347 Conclusions XIV-2 (1998), Belgium
348 Conclusions 2005, Estonia
349 Conclusions XIX-2 (2009), Spain
350 Conclusions 2013, Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)
351 Conclusions 2017, Ukraine
3.3 With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations, to provide for the enforcement of such regulations by measures of supervision.

The aim of Article 3§3 is to guarantee the effective implementation of the right to safety and health at work. This implies monitoring development of the number of injuries at work and occupational diseases, checking the application of regulations and consulting employers’ and workers’ organisations on this subject.\footnote{Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No 30/2005, decision on the merits of 6 December 2006, §231}

**Occupational injuries and diseases\footnote{Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)}**

Frequency and trends in occupational injuries are decisive in assessing the effective implementation of the rights set out in Article 3§3\footnote{Conclusions 2003/670/CE of 19 September 2003 concerning the European list of occupational diseases and of the ILO Recommendation no 194 concerning the list of occupational diseases and the registration and notification of occupational accidents and a new list of occupational diseases approved by the administrative Council on 25 March 2010, which includes a range of internationally recognised}. In this regard, the number of all occupational accidents is monitored (accidents excluding road traffic accidents with more than three days’ absence) and the number of such accidents in relation to the workforce (compared to the number of workers in each economic sector) (the standard incident rate per 100 000 workers defined by EUROSTAT which takes into account the relative importance of each sector in the economy of the country)\footnote{Conclusions 2017, France}. Monitoring covers the total number of accidents in all sectors, some sectors\footnote{Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)}, some types of workers.\footnote{Conclusions 2009, Italy} The situation is considered incompatible with the Charter where, for several years, this frequency is clearly too high for it to be maintained that the right to health and safety at work is being effectively secured. This assessment can be made on the basis of absolute figures\footnote{Conclusions 2013, Lithuania.} or in relation to the average in the States Parties to the Charter.\footnote{Conclusions 2003, Slovenia}

The same approach applies to the number of fatal occupational accidents and to their number in relation to the workforce. A fatal accident rate of more than double the European Union average indicates that measures taken to reduce fatal accidents are inadequate and the situation is therefore not in conformity with the Charter.\footnote{Conclusions XIV-2 (1998), Portugal}

States Parties must provide information on incidence rates of major occupational diseases, although no criteria have been developed as of yet for assessing the conformity of different levels of incidence rates for these diseases.

However, the Committee takes into account the Commission Recommendation 2003/670/CE of 19 September 2003 concerning the European list of occupational diseases and of the ILO Recommendation no 194 concerning the list of occupational diseases and the registration and notification of occupational accidents and a new list of occupational diseases approved by the administrative Council on 25 March 2010, which includes a range of internationally recognised
occupational diseases, ranging from health problems caused by chemical, physical and biological agents, to respiratory and skin diseases and musculoskeletal disorders and occupational cancers. The collection and presentation of data on occupational accidents and diseases must be reliable and exhaustive and be in accordance with accepted statistical methods. States Parties must take measures to combat possible non-reporting and/or concealment of accidents and diseases. An ineffective or failing system of reporting of accidents and diseases may lead to a finding of non-conformity.

Enforcement of laws and regulations by the labour inspectorate

The enforcement of safety and health regulations by measures of supervision is carried out in light of Part III Article A§4 of the Charter, whereby States Parties shall maintain a system of labour inspection appropriate to national conditions. In particular, States Parties must:

- take measures to address increasingly complex and multidimensional demands on the competence, resources and institutional capacity of labour inspection systems;
- implement measures to focus labour inspection on small and medium-sized enterprises (SMEs).

The proper application of the Charter “cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.” Monitoring of compliance with laws and regulations on occupational safety and health, including coercive measures (prevention is dealt with under Article 3§1, above), is a prerequisite for the right guaranteed by Article 3 to be effective.

i. Organisation and jurisdiction

Article 3§3 does not prescribe any standard model for the organisation of labour inspection as article A§4 of Part III refers to a system “appropriate to national conditions”. Labour inspection services may be divided between several bodies having specialised jurisdiction. The excessive divide of services between several monitoring bodies that work under a lack of resources and imperfect cooperation may, however, deprives labour inspection of its efficiency.

ii. Activities and means

States Parties must allocate them enough resources to enable them to conduct “a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3” and that the

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361 Conclusions XXI-2 (2017), Iceland
362 Conclusions IV (1975), Statement of interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter). See also the Resolution concerning statistics of occupational injuries (resulting from occupational accidents), adopted by the Sixteenth International Conference of Labour Statisticians (October 1998).
363 Conclusions 2013, Albania.
364 Conclusions 2013, Albania.
365 Conclusions 2013, Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)
366 Conclusions 2017, Latvia
367 International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32
368 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §228
369 Conclusions 2013, Austria
370 Conclusions 2013, Ukraine
371 Conclusions XIV-2 (1998), Belgium
risk of accidents is reduced to a minimum. In examining the resources allocated takes account of:372

- the number and frequency of inspection visits on occupational safety and health conducted by labour inspection services;
- the number of enterprises subject to inspection visits by sector of activity;
- the number and percentage of workers covered by inspection visits in each sector of activity, this information being broken down as possible by sex and age of the workers;
- the number of staff employed in labour inspectorates on occupational safety and health for each sector of activity; Article 3§3 is violated when the staffing of the inspection services and the number of visits carried out is manifestly inadequate for the number of employees concerned.373 374 375
- the measures taken with a view to maintaining the professional capability of inspectors, taking account of technological and legal developments.
- where applicable, general reports from the central inspection authorities, including those they periodically communicate to the ILO.

Inspectors must be entitled to inspect all workplaces, including residential premises, in all economic sectors,376 private as public.377 They must also have sufficient and appropriate means of information and powers of investigation and enforcement, in particular powers to take emergency measures where they notice an immediate danger to the health or safety of workers.378

iii. Measures and sanctions
The system of penalties in the event of breaches of the regulations must be efficient and dissuasive. The situation will be examined in the light of:379 380

- the number of offences recorded in relation to the number of penalties imposed;
- the frequency of offences in relation to the severity of penalties;
- the types of penalty imposed and their administrative or criminal nature;
- the gross amount of fines and the way in which they are fixed, in particular whether they are proportionate to the number of workers concerned. Whether a result of legislation or of its application in practice, a level of sanctions which is excessively low deprives labour inspection of its efficiency.381

372 Conclusions XIII-1 (1993), Statement of Interpretation on Article 3§3 (i.e. Article 3§2 of the 1961 Charter)
373 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, Decision on the merits of 6 December 2006, §229
374 Conclusions 2017, Belgium
375 Conclusions 2017, Turkey
376 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)
377 Conclusions 2013, Statement of interpretation on Article 3§3 (i.e. of Article 3§2 of the 1961 Charter)
378 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)
379 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§3 (i.e. on Article 3§2 of the 1961 Charter)
380 Conclusions 2017, Estonia
381 Conclusions 2013, Romania
Consultation with employers’ and workers’ organisations

The enforcement of the regulations in law and in practice must be done in consultation with employers’ and workers’ organisations with regard to labour inspectorate activities other than participation in company inspections which is included in the “right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking” guaranteed by Article 22 of the Charter.  

3.4 With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations, to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions

Appendix: It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 3§4 requires to promote, in consultation with employers’ and workers’ organisations, the progressive development of occupational health services that are accessible to all workers, in all branches of economic activity and for all enterprises. If those services are not established within all enterprises, public authorities must develop a strategy, in consultation with employers’ and workers’ organisations, for that purpose.

Any strategy to promote the progressive development of occupational health services must include the full national territory, cover nationals of other States Parties, and not only some branches of activity, major enterprises or especially severe risks, but all types of workers.

The number of occupational physicians in the total workforce, the number of enterprises providing occupational health services or who share those services, as well as any increase in the number of workers supervised by those services in comparison to the previous reference period, is relevant on the assessment of the conformity to this provision, as is the ratification of ILO Occupational Health Services Convention No. 161 (1985), or the transposition of Council Directive 89/391/EEC of 12 June 1989 on the introduction of

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382 Conclusions 2005, Norway
383 Conclusions 2003, Bulgaria
385 Conclusions 2009, Albania
386 Conclusions 2013, Ukraine
387 Conclusions 2009, Slovenia
388 Conclusions 2009, Albania
measures to encourage improvements in the safety and health of workers at work.\textsuperscript{389}

Where there is no statutory legislation, one should refer to the consequences provided for whenever employers choose not to make use of occupational health services, the impact of the strategy to promote the progressive development of such services in small and medium-sized enterprises, as well as the rate of enterprises providing such services or who share those services.\textsuperscript{390}

Occupational health services have essentially preventive and advisory functions, which are specialised in occupational medicine,\textsuperscript{391} beyond mere safety at work. They contribute to conducting workplace-related risk assessment and prevention, to worker health supervision, to training in matters of occupational safety and health, as well as to assessing working conditions impact on worker health.\textsuperscript{392} They must be trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.\textsuperscript{393}

\textsuperscript{389} Conclusions 2009, France
\textsuperscript{390} Conclusions 2007, Lithuania
\textsuperscript{391} Conclusions 2009, Ukraine
\textsuperscript{392} Conclusions 2003, Bulgaria
\textsuperscript{393} Conclusions 2013, Statement of Interpretation on Article 3§4
Article 4 The right to fair remuneration

All workers the right to a fair remuneration sufficient for a decent standard of living for themselves and their families

4.1 With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to remuneration such as will give them and their families a decent standard of living

Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. It applies to all workers, including to civil servants and contractual staff in the state, regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment), and to special regimes or statuses (minimum wage for migrant workers).

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

“Remuneration” relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities. On the other hand, social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair within the meaning of Article 4§1, the minimum wage paid in the labour market must not fall below 60% of the net average national wage. The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of this amount.

When a statutory national minimum wage exists, its net value for a full-time worker is used as a basis for comparison with the net average full-time wage. Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid. This may be the lowest wage in a representative sector, for example, the manufacturing industry.

If the lowest wage in a given State Party does not satisfy the 60% threshold, but does not fall very far below (in practice between 50% and 60%), the Government in question will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold. In particular, consideration will be given to the costs of having health care, education, transport, etc.

394 Conclusions XX-3 (2014), Greece
395 Conclusions 2014, France
396 Conclusions 2014, Andorra
397 Conclusions 2010, Statement of Interpretation on Article 4§1.
398 Conclusions XVI-2 (2003), Denmark
399 Conclusions XVI-2 (2003), Denmark
In extreme cases, for instance where the lowest wage is less than half the average wage the situation is held to be in breach of Charter independently of such evidence.\textsuperscript{400}

It should be noted that providing for a lower minimum wage to younger workers who are under 25 years old is not contrary to the Charter if, and only if it furthers a legitimate aim of employment policy and is proportionate to achieve that aim.\textsuperscript{401} The Committee has considered a reduction of the minimum wage below the poverty level and applied to all workers under the age of 25 to be disproportionate.\textsuperscript{402}

\section*{4.2 With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases}

Article 4§2 is inextricably linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Overtime is work performed in addition to normal working hours.\textsuperscript{403}

The principle of this provision is that work performed outside normal working hours because it requires an increased effort on the part of the worker, who should be paid at a rate higher than the normal wage.\textsuperscript{404, 405} This increase must apply in all cases.\textsuperscript{406}

In case of a flat-rate payment, the level of flat-rate or its effects on their purchasing power is not considered; the issue is whether those concerned receive remuneration for overtime work at a higher rate than their normal pay.\textsuperscript{407}

Granting leave to compensate for overtime (instead of granting an increased remuneration) is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.\textsuperscript{408}

Mixed systems for compensating overtime, for example where an employee is paid the normal rate for the overtime worked but also receives time in lieu, are not contrary to Article 4§2.\textsuperscript{409, 410}

\textsuperscript{400} Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1.
\textsuperscript{401} General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §60
\textsuperscript{402} General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §§68 and 70
\textsuperscript{403} Conclusions I (1969), Statement of Interpretation on Article 4§2
\textsuperscript{404} Conclusions XIV-2, Statement of Interpretation of Article 4§2
\textsuperscript{405} Conclusions I (1969), Statement of Interpretation on Article 4§2
\textsuperscript{406} European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, Decision on the merits of 5 November 2012, §76, 77 and 86 to 88
\textsuperscript{407} European Council of Police Trade Unions (CESP) v. France, complaint No. 57/2009, decision on the merits of 1st December 2010:
\textsuperscript{408} Conclusions XIV-2 (1998), Belgium
\textsuperscript{409} European Council of Police Trade Unions (CESP) v. Portugal Complaint No. 60/2010, decision on the merits of 17 October 2011, § 21
\textsuperscript{410} Conclusions XX-3 (2014), Slovenia
Article 4§2 may be implemented through collective agreements, statutory regulations or other means appropriate to national conditions so long as it applies to all employees.

In a number of countries, working time is calculated on the basis of average weekly hours over a period of several months. Over such periods, weekly working hours may vary between specified maximum and minimum figures without any of them counting as overtime, and thus qualifying for a higher rate of pay. Arrangements of this kind do not, as such, constitute a violation of Article 4§2, provided that the conditions laid down in Article 2§1 are respected.⁴¹¹ ⁴¹²

The right of workers to an increased rate of remuneration for overtime work can have exceptions in certain specific cases. These “special cases” have been defined as “state employees, and management executives of the private sector”:⁴¹³ ⁴¹⁴

- State employees: The only acceptable exception is the category of “senior officials”. That concerns, for example, police commissioners⁴¹⁵ or administrative court judges.⁴¹⁶ Exceptions to a higher rate of overtime pay for all police members irrespective of their rank and their responsibilities,⁴¹⁷ or for all state employees or public officials, irrespective of their level of responsibility does not conform with Article 4§2.⁴¹⁸

- Managers: Exceptions may be applied to all senior managers. However, certain limits must apply, particularly on the number of hours of overtime not paid at a higher rate.⁴¹⁹

Restrictions to an increased remuneration for additional hours of work can exist only if they are provided by law, pursue a legitimate aim and are proportionate to that aim.⁴²⁰

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⁴¹¹ Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§2
⁴¹² Conclusions XX-3 (2014), Portugal
⁴¹³ Conclusions IX-2 (1986), Ireland
⁴¹⁴ Conclusions X-2 (1990), Ireland
⁴¹⁵ Conseil Européen des Syndicats de Police (CESP) v. France, Complaint No 57/2009, Decision on the merits of 1 December 2010, §42-44
⁴¹⁶ Union syndicale des magistrats administratifs (USMA) v. France, Complaint No. 84/2012, Decision on the merits of 2 December 2013, §§ 67 and 69
⁴¹⁸ Conclusions XV-2 (2001), Poland
4.3 With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of men and women workers to equal pay for work of equal value

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex. This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case-law under Article 20 (see infra) applies mutatis mutandis to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

The principle of equal pay

Women are entitled to equal pay for work of equal value, as men are. This means that the equal pay principle applies to the same work, but also to different works of the same value.

The principle of equality should cover all the elements of pay, that is wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment. It must also apply between full-time and part-time employees.

Guarantees of enforcement

Legislative means

The right of women and men to “equal pay for work of equal value” must be expressly provided for in legislation.

As far as setting wage levels is concerned, States Parties are free to choose their own methods and can treat this as a matter to be decided by collective bargaining. Domestic law must however ensure that violations of the principle of equal pay will be sanctioned and lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the state must intervene using legal wage-fixing methods or any other appropriate means.

Judicial safeguards

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Workers who claim that they have suffered discrimination must be able to take their case to court.

Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.

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421 Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of Additional Protocol
422 Conclusions I (1969), Statement of Interpretation on Article 4§3
423 Conclusions XVI-2 (2003), Portugal
424 Conclusions XV-2 (2001), Slovak Republic
425 Conclusions XX-3 (2014), Georgia
426 Conclusions I (1969), Statement of Interpretation on Article 4§3
Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e., compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender. In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.

Methods of classification and comparison and other measures

Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison. This is important in order to ensure that job appraisal systems are effective under certain circumstances, particularly in companies where the workforce is largely, or even exclusively, female.

Pay comparisons outside the company should possible in equal pay litigation cases, when the differences identified in the pay conditions of female and male workers performing work of equal value are attributable to a single source e.g. employees working for the same legal person or group of legal persons, employees of several undertakings or establishments covered by the same collective works agreement or regulations.

States Parties must provide information on unadjusted pay gap (the difference between average earnings of female and male employees in all occupations) and adjusted pay gap (corrected gender pay differential for work of equal value).

States Parties must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.

Retaliatory dismissal

When the dismissal is the consequence of a worker’s claim about equal wages, the employee can file a complaint for unfair dismissal. In this case, the employer must reintegrate him in the same or a similar post. If this reinstatement is not possible, he has to pay compensation, which must be sufficient to compensate the worker and to deter the employer. Courts have the competence to fix the amount of this compensation, not the legislator.

This principle applies both to litigations involving equal pay and reprisal dismissals.

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427 Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
428 Conclusions XVI-2 (2003), Malta
429 Conclusions XVI-2 (2003), Portugal
430 Conclusions XX-3 (2014), Romania
431 Conclusions XVII-2 (2005), Czech Republic
432 Conclusions XIX-3 (2010), Iceland
433 Conclusions XIII-2 (1994), Malta
434 Conclusions XIX-3 (2010), Germany
435 Conclusions XX-3 (2014), Germany
4.4 With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment.

Appendix: This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

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 his or her current employment ends, i.e. while he or she is still receiving wages.

Reasonable character of the period of notice

The concept of “reasonable” notice has not been defined in abstracto nor ruled on the function of the period of notice or the compensation in lieu thereof. It assesses the situations on a case by case basis. The major criterion for the assessment of reasonableness is length of service. It has concluded, for example, that the following periods of notice and/or compensation in lieu thereof were not in conformity to the Charter:

- five days’ notice after less than three months of service;
- one week’s notice after less than six months of service;
- two weeks’ notice after more than six months of service;
- less than one month’s notice after one year of service;
- eight weeks’ notice after at least ten years of service;
- twelve weeks’ notice for workers dismissed for long-term working incapacity who have five or more years of service.

Receipt of wages in lieu of notice is admitted, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice. Periods of notice and/or compensation in lieu thereof may, however, not be left at the sole disposal of the parties to the employment contract.

Cases of application of the notice period

Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer who is a natural person.

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

436 Conclusions XIII-3 (1995), Portugal
437 Conclusions 2007, Armenia
438 Conclusions 2007, Albania
439 Conclusions XIII-3 (1995), Portugal
440 Conclusions XVI-2 (2003), Poland
441 Conclusions XIV-2 (1998), Spain
442 Conclusions 2010, Turkey
443 Conclusions 2010, Estone
444 Conclusions 2010, Turkey
445 Conclusions 2014, Russian Federation
446 Conclusions XIV-2 (1998), Spain
447 Conclusions XIV-2 (1998), Spain
448 Conclusions XVIII-2 (2007), Slovak Republic
449 Conclusions 2010, Bulgaria
the civil service,\textsuperscript{450} to manual workers\textsuperscript{451} and in all sectors of activity.\textsuperscript{452} It also applies during the probationary period\textsuperscript{453} and upon early termination of fixed-term contracts.\textsuperscript{454} Domestic law must be broad enough to ensure that no workers are left unprotected.

When a decision to terminate employment on grounds other than disciplinary is subject to certain procedures being followed, the period of notice starts only after the decision has been taken. The period of notice for part-time workers is calculated on the basis of length of service and not of the effective weekly working time.\textsuperscript{455} That of workers with consecutive fixed-term contracts is calculated on the basis of length of service accrued on all consecutive contracts. Any reduction of the legal period of notice by collective agreement is allowed only insofar as a reasonable period of notice is maintained.\textsuperscript{456} The period of notice applied in the probationary period may be shorter as long as it remains reasonable in relation to the authorised maximum length of the probationary period.\textsuperscript{457}

**Cases of exclusion of the notice period**

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.\textsuperscript{458}

By way of example, the Committee considered that the following facts amounted to serious misconduct:

- disclosure of state, professional, commercial or technological secrets,\textsuperscript{459}
- violation of equal opportunities policy or sexual harassment,\textsuperscript{460}
- refusal to provide information as required by law, regulation or work regulations,\textsuperscript{461}
- working under the influence of alcohol, narcotic or toxic substances,\textsuperscript{462}
- abandonment of post,\textsuperscript{463}
- refusal to undergo mandatory medical checks,\textsuperscript{464}
- unjustified absences of more than five consecutive days or more than ten days per year,\textsuperscript{465}
- abnormal decrease in productivity,\textsuperscript{466}
- immoral acts making it impossible for workers to be kept in teaching positions.\textsuperscript{467}

\textsuperscript{450} Conclusions 2010, Georgia
\textsuperscript{451} Conclusions XVI-2 (2003), Greece
\textsuperscript{452} Conclusions I (1969), Italy
\textsuperscript{453} General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, Decision on the merits of 23 May 2012, §§26 and 28
\textsuperscript{454} Conclusions XIV-2 (1998), Spain
\textsuperscript{455} Conclusions XVIII-2 (2007), Slovak Republic
\textsuperscript{456} Conclusions XVIII-2 (2007), The Netherlands
\textsuperscript{457} Conclusions 2014, Estonia
\textsuperscript{458} Conclusions 2010, Albania
\textsuperscript{459} Conclusions 2014, Lithuania
\textsuperscript{460} Conclusions 2014, Lithuania
\textsuperscript{461} Conclusions 2014, Lithuania
\textsuperscript{462} Conclusions 2014, Lithuania
\textsuperscript{463} Conclusions 2014, Lithuania
\textsuperscript{464} Conclusions 2014, Lithuania
\textsuperscript{465} Conclusions 2014, Portugal
\textsuperscript{466} Conclusions 2014, Portugal
\textsuperscript{467} Conclusions 2014, Russian Federation
Other permitted grounds of dismissal without a period of notice or compensation, in particular a failure by the worker to perform, a loss of trust in the worker or a call up of the worker for military service have been found not to be in conformity with the Charter. Immediate dismissal on the following grounds has also been rejected:

- death of the employer who is a natural person or winding-up of the company;
- withdrawal of administrative licenses required to perform the job;
- request by bodies or officials authorised by the law;
- duly certified unfitness for work;
- economic, technological or organisational circumstances requiring changes in the workforce;
- insufficient qualification for the post;
- transfer of the employment contract to a successor employer;
- force majeure;
- arrest and custody.

### 4.5

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

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.

Article 4§5 guarantees workers the right to their wage being subject to deductions. These 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 applies also 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.\textsuperscript{481}

\textsuperscript{481} Conclusions 2014, Estonia
Article 5 The right to form associations

Employers and workers have the right to freedom of association in national or international associations for the protection of their economic and social interests

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 5 guarantees workers’ and employers’ freedom to organise. This covers not only workers in activity but also persons who exercise rights resulting from work (pensioners, unemployed persons).\(^{482}\)

Forming trade unions and employer associations

Trade unions and employer organisations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply.\(^{483}\)

If fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs.\(^{484} \quad 485\)

Requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations.\(^{486}\)

Trade unions and employers’ organisations must be free to form federations and join similar national and international organisations\(^{487}\) and so States Parties may not limit the degree to which they are authorised to organise.

There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld.\(^{488}\)

Freedom to join or not to join a trade union

Workers must be free not only to join but also not to join a trade union.\(^{489}\)

\(^{482}\) Conclusions XVII-1 (2004), Poland
\(^{483}\) Conclusions 2010, Georgia
\(^{484}\) Conclusions XV-1 (2000), United Kingdom
\(^{485}\) Conclusions XVI-1 (2002), United Kingdom
\(^{486}\) Conclusions XIII-5 (1997), Portugal
\(^{487}\) Conclusions I (1969), Statement of Interpretation on Article 5
\(^{488}\) Conclusions 2016, Malta
\(^{489}\) Conclusions I (1969), Statement of Interpretation on Article 5
Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. Trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.

Furthermore, no worker may be forced to join or remain a member of a trade union. Any form of compulsory trade unionism is incompatible with Article 5. The freedom guaranteed by Article 5 implies that the exercise of a worker’s right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom. To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (including automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company). Consequently, clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Article 5.

The same rules apply to employers’ freedom to organise.

Trade union activities

Trade unions and employers’ organisations must be autonomous in respect of their organisation or functioning. Trade unions are entitled to choose their own members and representatives. The following examples constitute infringements in breach of Article 5: prohibiting the election of or appointment of foreign trade union representatives, substantially limiting the use that a trade union can make of its assets and substantially limiting the reasons for which a trade union is entitled to take disciplinary action against its members.

Trade unions and employers’ organisations must be largely independent where anything to do with their infrastructure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme. Consequently, any excessive state interference constitutes a violation of Article 5.

Trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers’ interests and company requirements permit.
Representativeness

Domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone.

For the situation to comply with Article 5, the following conditions must be met:

a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions;\(^{500}\)

b) areas of activity restricted to representative unions should not include key trade union prerogatives;\(^{501}\)

c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.\(^{502}\)

Personal scope

a) Article 5 applies to all workers in both public and private sector.\(^{503}^{504}\)

b) The prohibition to form “trade unions” for unemployed and retired workers is not contrary to Article 5, only if they are entitled to form organisations which can take part in consultation processes connected with their rights and interests.\(^{505}\)

c) Under Article 19§4b of the Charter, States Parties must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of becoming a founding member of and membership of trade unions and enjoyment of the benefits of collective bargaining.\(^{506}^{507}\)

d) Restrictions with regard to the police

With regard to the police “it is clear, in fact, from the second sentence of Article 5 and from the ‘travaux préparatoires’ on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article”.\(^{508}\)

In other words, police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions, and freedom of association.\(^{509}^{510}\) Compulsory membership of organisations also constitutes a breach of Article 5.\(^{511}\)

The right of members of the police service to affiliate to national employees’ organisations shall not be restricted if this has as consequence of disallowing them to negotiate on pay, pensions and service conditions engaged in by these organisations.\(^{512}\)

\(^{500}\) Conclusions 2014, Andorra

\(^{501}\) Conclusions XV-1 (2000), Belgium

\(^{502}\) Conclusions XV-1 (2000), France

\(^{503}\) Conclusions I (1969), Statement of Interpretation on Article 5

\(^{504}\) Conclusions XIX-3 (2010), Poland

\(^{505}\) Conclusions 2010, Statement of Interpretation on Article 5

\(^{506}\) See mutatis mutandis Conclusions XIII-3 (1995) Turkey, Article 19§4b

\(^{507}\) See mutatis mutandis Conclusions XIX-3 (2010) "the former Yugoslav Republic of Macedonia", Article 5

\(^{508}\) Conclusions I (1969), Statement of Interpretation on Article 5


\(^{510}\) European Council of Trade Unions (CESP) v. France Complaint No. 101/2013, Decisions on the merits of 27 January 2016 § 61-63

\(^{511}\) Conclusions I (1969), Statement of Interpretation on Article 5

\(^{512}\) European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §§ 119 and 121
A restriction on the right to organise for the police is only in conformity with the Charter if it satisfies the conditions laid down in Article G, which provides that any restriction has to be prescribed by law, pursue a legitimate purpose and be necessary in a democratic society for the pursuance of this purpose.  

As long as basic trade union guarantees are foreseen, States Parties may make distinctions according to different categories of police personnel and grant more or less favourable treatment to these different categories. They may even exclude, under specific circumstances and provided the requirements under Article G of the Charter are met, senior police officers from the scope of the right to organise.

In the context of police associations that affiliation may be made conditional upon whether the latter organisations are considered to be pursuing similar goals as the police associations.

Moreover, the situation is in conformity with Article 5 even if members of the police service have not the right to form “trade unions” as long as they are given the right to establish “professional associations” having similar characteristics and competences as trade unions.

e) Armed Forces

With regard to the armed forces, Article 5 states as follows: “The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations”. The Committee verifies, however, that bodies defined in domestic law as belonging to the armed forces do indeed perform military functions.

Article 5 of the Charter allows States Parties to impose restrictions upon members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter. However, these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations, military representative associations should under certain conditions be entitled to affiliate with national employees’ organisations.

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513 Conclusions XX-3 (2014), United Kingdom,
514 European Council of Trade Unions (CESP) v. France Complaint No. 101/2013, Decisions on the merits of 27 January 2016 § 61-63
516 European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §109.
517 European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §79.
519 European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, § 77
520 European Federation of Employees in Public Services (EUROFEDOP) v. France, Complaint No. 2/1999, Decision on the merits of 4 December 2000, §28
521 Conclusions XVIII-1 (2006), Poland
522 European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, §§59
523 European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §82,
524 European Organisation of Military Associations (EUROMIL) v. Ireland Complaint No. 112/2014, Decision on the merits of 12 September 2017
Article 6 The right to bargain collectively

All workers and employers have the right to bargain collectively

The exercise of the right to bargain collectively and the right to collective action represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter, including for example those relating to:

- just conditions of work (Article 2),
- safe and healthy working conditions (Article 3),
- fair remuneration (Article 4),
- information and consultation (Article 21),
- participation in the determination and improvement of the working conditions and working environment (Article 22),
- protection in cases of termination of employment (Article 24),
- protection of the workers’ claims in the event of the insolvency of their employer (Article 25),
- dignity at work (Article 26),
- workers’ representatives protection in the undertaking and facilities to be accorded to them (Article 28),
- information and consultation in collective redundancy procedures (Article 29).

Nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular. Therefore, any restrictions must comply with the requirements set out in Article G of the Charter.

6.1 With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote joint consultation between workers and employers

Within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them. Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing.

If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it.

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525 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, § 109
526 European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, §159
527 European Council of Police Trade Unions (CESP) v. France, complaint No. 101/2013, decision on the merits of 27 January 2016, §118
528 Conclusions I (1969), Statement of Interpretation on Article 6§1
529 Conclusions V (1977), Statement of Interpretation on Article 6§1
530 Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41
Consultation must take place on several levels: national, regional/sectoral and enterprise.\textsuperscript{531} It should take place in the private and public sector (including the civil service).\textsuperscript{532} \textsuperscript{533} Consultation at the enterprise level is dealt with under Article 6§1 and Article 21. For the States Parties which have ratified both provisions, consultation at enterprise level is examined under Article 21.\textsuperscript{534}

Consultation must cover all matters of mutual interest, and particularly: productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.).\textsuperscript{535} \textsuperscript{536}

It is open to States Parties to require trade unions to meet representativeness criteria subject to certain conditions. Such a requirement must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativity criteria should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal.\textsuperscript{537}

### 6.2 With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements

According to Article 6§2, domestic law must recognise that employers’ and workers’ organisations may regulate their relations by collective agreement. If necessary and useful, i.e. in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place, collective bargaining should remain free and voluntary.\textsuperscript{538}

States Parties should not interfere in the freedom of trade unions to decide themselves which industrial relationships they wish to regulate in collective agreements and which legitimate methods should be used in their effort to promote and defend the interest of the workers concerned, including the use of collective action. Trade unions must be allowed to strive for the improvement of existing living and working conditions of workers and in this area the rights of trade unions should not be limited by legislation to the attainment of minimum conditions.\textsuperscript{539}

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\textsuperscript{531} Conclusions 2010, Ukraine, Article 6§1
\textsuperscript{532} Conclusions III (1973), Denmark, Germany, Norway, Sweden
\textsuperscript{533} Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41
\textsuperscript{534} Conclusions 2004, Ireland
\textsuperscript{535} Conclusions I (1969), Statement of Interpretation on Article 6§1
\textsuperscript{536} Conclusions V (1977), Ireland
\textsuperscript{537} Conclusions 2006, Albania
\textsuperscript{538} Conclusions I (1969), Statement of Interpretation on Article 6§2
\textsuperscript{539} Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§111 and 120
The extent to which collective bargaining applies to public officials, including members of the police and armed forces, may be determined by law. Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them. A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6§2 of the Charter. On the contrary, it is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment and thereby provide for a possibility to influence the outcome. Especially in a situation where trade union rights have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism.

The rapidly changing world of work and proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, has resulted in an increasing number of workers falling outside the definition of a dependent employee, including low-paid workers or service providers who are de facto “dependent” on one or more labour engagers. These developments must be taken into account when determining the scope of Article 6§2 in respect of self-employed workers.

In establishing the type of collective bargaining that is protected by the Charter, it is not sufficient to rely on distinctions between worker and self-employed, the decisive criterion is rather whether there is an imbalance of power between the providers and engagers of labour. Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining.

It follows from the above that an outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of this provision.

It is open to States Parties to require trade unions to meet an obligation of representativeness subject to certain conditions. With respect to Article 6§2 such a requirement must not excessively limit the possibility of trade unions to participate effectively in collective bargaining. In order to be in conformity with Article 6§2, the criteria of representativeness should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals. It was considered that the restriction to the collective bargaining to trade unions representing at least 33% of the employees concerned by this bargaining, was in violation of the Article 6§2.

The extension of collective agreements “should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied”.

540 Conclusions III, (1973) Germany
544 Conclusions 2006, Albania
545 Conclusions XIX-3 (2010), “the former Yugoslav Republic of Macedonia”
546 Conclusions 2010, Statement of Interpretation on Article 6§2
6.3 With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes.

According to Article 6§3, conciliation, mediation and/or arbitration procedures should be instituted to facilitate the resolution of collective conflicts. They may be instituted by law, collective agreement or industrial practice. Article 6§3 applies also to the public sector.

Article 6§3 applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, or to political disputes.

Conciliation is a process aimed at the peaceful settlement of a labour conflict, while arbitration can resolve the conflict on the basis of a decision taken by one or more individuals selected by the parties. The result of a conciliation proceeding is not binding on the parties. On the contrary, the result of the arbitration proceedings is binding on the parties.

All arbitration systems must be independent, and the outcome of arbitration may not be predetermined by pre-established criteria.

Any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the Government or any other authority to defer the dispute to arbitration without the consent of one party or both. Such a restriction is only allowed within the limits prescribed by Article G.

6.4 With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Appendix: It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 6§4 guarantees the right to strike and the right to call a lock-out. The right may result from statutory law or case-law.
In the former case, the Committee examines the case law of domestic courts in order to verify whether the courts do not overly restrict the right to strike and in particular if any intervention by domestic courts does not reduce the substance of the right to strike so as to render it ineffective.\footnote{Conclusions I (1969), Statement of Interpretation on Article 6§4} In this regard for example, the fact that a national judge may determine whether recourse to strikes are “premature” is not in conformity with Article 6§4 as this allows the judge to exercise one of the trade unions’ key prerogatives.\footnote{Conclusions XVII-1 (2004), Netherlands}

A general prohibition of lock-out is not in conformity with Article 6§4\footnote{Conclusions VIII (1984), Statement of Interpretation on Article 6§4}, although it is not protected to the same degree as the right to strike.\footnote{Conclusions VIII (1980) Statement of interpretation on Article 6§4}
1. **Group entitled to call a collective action**

The decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities.\(^{562}\)\(^{563}\) The Committee considers that the reference to “workers” in Article 6§4 relates to those who are entitled to take part in collective action but says nothing about those empowered to call a strike. In other words, this provision does not require states to grant any group of workers authority to call a strike but leaves them the option of deciding which groups shall have this right and thus of restricting the right to call strikes to trade unions. On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4.\(^{564}\)

Once a strike has been called, any employee concerned, irrespective of whether he is a member of the trade union having called the strike or not, has the right to participate in the strike.\(^{565}\)

2. **Permitted objectives of collective action**

Article 6§4 applies to conflicts of interests. It does not concern conflicts of rights, i.e. related to the existence, validity or interpretation of a collective agreement and to the violation of a collective agreement.\(^{566}\) Political strikes are not covered by Article 6, which is designed to protect “the right to bargain collectively”, such strikes being obviously quite outside the purview of collective bargaining.\(^{567}\)

Thus, the specific German approach of leaving conflicts of rights to be determined by courts while requiring that collective action must be directed towards resolving conflicts of interest is in principle in conformity with the provisions of Article 6§4 of the 1961 Charter, as long as excessive constraints are not imposed upon the right of workers and employees to engage in collective action in respect of conflicts of interest.\(^{568}\)

3. **Specific restrictions to the right to strike**

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.\(^{569}\) The expression “prescribed by law” means, not only statutory law, but also case-law of domestic courts, if it is stable and foreseeable. Moreover this expression includes the respect of fair procedures.\(^{570}\)

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\(^{562}\) Conclusions 2004, Sweden

\(^{563}\) Conclusions 2014, Germany

\(^{564}\) Conclusions XV-1 (2000), France

\(^{565}\) Conclusions XVI-1 (2002), Portugal

\(^{566}\) Conclusions I (1969), Statement of Interpretation on Article 6§4

\(^{567}\) Conclusions II (1971), Statement of Interpretation on Article 6§4

\(^{568}\) Conclusions XX-3 (2014), Germany

\(^{569}\) Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter)

\(^{570}\) European Trade Union Confederation (ETUC)/ Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/ Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §43-44
The prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (e.g. goals which do not relate to the enjoyment of labour rights, or relate to discriminatory objectives) is not necessarily contrary to Article 6§4 of the Charter. In this context, excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law.\(^{571}\)

In contrast, national legislation which prevents \textit{a priori} the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards are not in conformity with Article 6§4 of the Charter, as it infringes the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers.\(^{572}\)

Article 6§4 guarantees also the right to participate in secondary action.\(^{573}\)

Moreover, legal rules relating to the exercise of economic freedoms established by State Parties either directly through domestic law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by, further to the Charter, domestic laws, EU law, and other international binding standards. In particular, national and EU rules regulating the enjoyment of such freedoms should be interpreted and applied in a manner that recognises the fundamental importance of the right of trade unions and their members to strive both for the protection and the improvement of the living and working conditions of workers, and also to seek equal treatment of workers regardless of nationality or any other ground. Consequently, the facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking to provide services in the territory of other States – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated, from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater \textit{a priori} value than core labour rights, including the right to make use of collective action to demand further and better protection of the economic and social rights and interests of workers. In addition, any restrictions that are imposed on the enjoyment of this right should not prevent trade unions from engaging in collective action to improve the employment conditions, including wage levels, of workers irrespective of their nationality.\(^{574}\)

\(^{571}\) Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits: §119

\(^{572}\) Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits §120

\(^{573}\) Conclusions XX-3 (2014), United Kingdom.

\(^{574}\) Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 119-122
i. Restrictions related to essential services/sectors

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.

ii. Restrictions related to public officials

Public officials enjoy the right to strike under Article 6§4. Therefore prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4. They must be entitled to withdraw their labour. Allowing public officials only to declare symbolic strikes is not sufficient.

The right to strike of certain categories of public officials, such as members of the armed forces, may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.

Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Article 6§4 only if there are compelling reasons justifying it. On the other hand the imposition of restrictions as to the mode and form of such strike action can be in conformity to the Charter.

iii. Interference by Parliament or Government to end a strike

The conformity of such an interference is only assessed when it is imposed to end a strike in sectors which are not prima facie covered by Article G. In other words, the use of compulsory arbitration to terminate a strike is contrary to the Charter except in the cases established by Article G (any restrictions or limitations can only be those which are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals”). The Committee emphasises that the authorities must demonstrate that these conditions are satisfied for each case and it reserves the right to verify whether in its opinion the conditions of Article G1 are fulfilled.

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575 Conclusions I (1969), Statement of Interpretation on Article 6§4
576 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §24
577 Conclusions XVII-1 (2004), Czech Republic
578 Conclusions I (1969), Statement of Interpretation on Article 6§4
579 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §44-46
580 Conclusions I (1969), Statement of Interpretation on Article 6§4
581 Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §46
582 EUROMIL v Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017 §113-117
583 European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, § 211
584 Conclusions 2004, Norway
585 Conclusions 2014, Norway, Article 6§4
4. Procedural requirements

a) Peace obligation
The systems of industrial relations in which collective agreements are seen as a social peace treaty during which strikes are prohibited are in conformity with Article 6§4. However, a peace obligation must reflect with certainty the will of social partners. Whether this is the case, is subject to assessment inter alia with reference to the industrial relations background in the given state.586

b) Other procedural requirements
Subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6§4, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited.587 588

The exhaustion of conciliation/mediation procedures requirement before strike is in conformity with Article 6§4 – given Article 6§3 – as long as such machinery is not so slow that the deterrent effect of a strike is affected.589

Periods of notice or cooling-off periods prescribed in connection with pre-strike conciliation procedures are in conformity with Article 6§4 as long as they are of a reasonable duration.590

In the specific case of Denmark, the powers granted to the Public Conciliator to decide that several settlement proposals in different sectors are to be considered as a whole for voting purposes, so that the results of the voting in the different sectors are linked together (the so-called "linkage rule") are in conformity with the Charter as long as the activities of the conciliators are subject to judicial supervision, negotiation possibilities are exhausted before applying the "linkage rule" and a compromise proposal may not be put forward against the wish of the social partners.591

5. Consequences of a strike
A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal. If however, in practice, strikers are fully reinstated when the strike has ended and their previously acquired entitlements (e.g. concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Article 6§4.592

Any deduction from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their strike participation.593 594

Workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members.595

586 Conclusions 2004, Norway
587 Conclusions II (1971), Cyprus
588 Conclusions XIV-1 (1998), United Kingdom
589 Conclusions XVII-1 (2004), Czech Republic
590 Conclusions XIV-1 (1998), Cyprus
591 Conclusions XX-3 (2014), Denmark
592 Conclusions I (1969), Statement of Interpretation on Article 6§4
593 Conclusions XIII-1 (1993), France
595 Conclusions XVIII-1 (2006), Denmark
Article 7 The right of children and young persons to protection

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

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

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

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

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The 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 who are not. Work considered to be 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.

Moreover, 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, in particular by the Labour Inspectorate.603

7.2 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy.

Appendix: This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

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 in the course of work.604

However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements.605

The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information.606 The Labour Inspectorate must monitor these arrangements too.607

7.3 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education.

Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn.608

Only light work is permissible for schoolchildren under this provision. The notion of “light work” is the same as under article 7§1.609 610

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603 Conclusions 2006, General Introduction on Article 7§1
604 Conclusions 2006, France
605 Conclusions 2006, Norway
606 Conclusions 2006, Sweden
607 Conclusions 2006, Portugal
608 Conclusions I (1969), Statement of Interpretation on Article 7§3
609 Conclusions I (1969), Statement of Interpretation on Article 7§1
610 Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
In the case of States Parties that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, 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.\textsuperscript{611}

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.\textsuperscript{612, 613}

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework.\textsuperscript{614, 615}

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.\textsuperscript{616}

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. Its duration shall not be less than 2 weeks during the summer holidays. Furthermore the assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of uninterrupted period of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate.\textsuperscript{617}

\textbf{7.4 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training}

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.\textsuperscript{618}

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article.\textsuperscript{619} However, for persons over 16 years of age, the same limits are in conformity with the article.\textsuperscript{620}

\begin{footnotesize}
\textsuperscript{611} Conclusions 2006, Statement of Interpretation on Article 7§3
\textsuperscript{612} Conclusions V (1977), Statement of Interpretation on Article 7§3
\textsuperscript{613} Conclusions 2006, Portugal
\textsuperscript{614} Conclusions 2006, Albania
\textsuperscript{615} Conclusions 2015, Statement of Interpretation on Articles 7§1 and 7§3
\textsuperscript{616} Conclusions XVII-2 (2005), Netherlands
\textsuperscript{617} Conclusions 2011, Statement of Interpretation on Article 7§3
\textsuperscript{618} Conclusions 2006, Albania
\textsuperscript{619} Conclusions XI-1 (1991), Netherlands.
\textsuperscript{620} Conclusions 2002, Italy
\end{footnotesize}
7.5 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

The “Fair” or “appropriate” character of the wage is assessed by comparing young workers’ remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).\textsuperscript{621}

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 and the gap must close quickly.\textsuperscript{622} For fifteen/sixteen year-olds, a wage of 30\% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20\%.\textsuperscript{623}

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.\textsuperscript{624}

**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 allowance should be gradually increased throughout the contract period,\textsuperscript{625} 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.\textsuperscript{626}

\textsuperscript{621}Conclusions XI-1 (1991), United-Kingdom
\textsuperscript{622}Conclusions II (1971), Statement of Interpretation on Article 7§5
\textsuperscript{623}Conclusions 2006, Albania
\textsuperscript{624}Conclusions XII-2 (1992), Malta
\textsuperscript{625}Conclusions II (1971), Statement of Interpretation on Article 7§5
\textsuperscript{626}Conclusions 2006, Portugal
7.6 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day.

In application of 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, 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.

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

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).

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 give 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.

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627 Conclusions XV-2 (2001), Netherlands
628 Conclusions V (1977), Statement of Interpretation on Article 7§6
629 General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants’ Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, Decision on the merits of 23 May 2012, §§ 30-32
630 See mutatis mutandis Conclusions XII-2 (1992), Article 2§3
631 Conclusions 2006, France
7.8 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations.

Appendix: It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law the great majority of persons under eighteen years of age shall not be employed in night work.

In application of Article 7§8, domestic law must provide that under-eighteen year olds are not employed in night work.

Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations, 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.632

It is up to domestic laws or regulations to define the period of time considered as being "night".633

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

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups634 for under-eighteen year olds employed in 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.635 They may, however, be carried out by the occupational health services, if these services have the specific training to do so.636

The obligation entails a full medical examination on recruitment and regular check-ups thereafter.637 The intervals between check-ups must not be too long.

In this regard, an interval of two years has been considered to be too long.638

The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.639

632 Conclusions XVII-2 (2005), Malta
633 Conclusions I (1969), Statement of Interpretation on Article 7§8
634 Conclusions IV (1975), Statement of Interpretation on Article 7§9
635 Conclusions 2006, Albania
636 Conclusions VIII (1984), Statement of Interpretation on Article 7§9
637 Conclusions XIII-1 (1993), Sweden
638 Conclusions 2011, Estonia
639 Conclusions XIII-2 (1994), Italy
7.10 With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

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 States Parties having accepted both provisions must respect under Article 7§10 the following issues: the protection of children against moral dangers at work and outside work and the involvement of children in the sex industry and in begging. The issues dealt with under Article 17 are in particular 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.  

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

The obligation of States Parties under Article 7§10 applies to all minors present on the territory of the State, whether he is a foreigner or not and whether he is a legal resident or not, according to the link between this protection and the right to life and to physical integrity.

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, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

640 Conclusions XV-2 (2001), Statement of Interpretation on Article 7§10
641 Association for the protection of All Children (APPROACH) Ltd. v. Cyprus, Complaint No.97/2013, decision on admissibility of July 2013.
642 Defence for Children International (DCI) v. Belgium, Complaint No 69/2011, Decision on the merits on 23 October 2012, §§ 85-86
643 Conclusions 2004, Bulgaria
644 Conclusions XVII-2 (2005), Portugal
645 Conclusions 2004, Bulgaria
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.\textsuperscript{646}

The following are minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised.\textsuperscript{647} In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States Parties must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.\textsuperscript{648} Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.\textsuperscript{649}
- a national action plan combating the sexual exploitation of children should be adopted.\textsuperscript{650} \textsuperscript{651}

**Protection against the misuse of information technologies**

New information technologies have made the sexual exploitation of children easier. The internet is becoming one of the most frequently used tolls for the spread of child pornography. Some States Parties have adopted the 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.\textsuperscript{652}

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.).\textsuperscript{653}

Internet services providers should be under an obligation to remove or prevent accessibility to illegal material to which they have knowledge and internet safety hotlines should be set up through which illegal material could be reported.\textsuperscript{654}

**Protection from other forms of exploitation**

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.\textsuperscript{655}

\textsuperscript{646} Conclusions 2004, Bulgaria
\textsuperscript{647} Conclusions XVII-2 (2005), Poland
\textsuperscript{648} Conclusions XVII-2 (2005), Czech Republic
\textsuperscript{649} Conclusions XVII-2 (2005), United Kingdom
\textsuperscript{650} Conclusions XVI-2 (2003), Poland
\textsuperscript{651} Conclusions 2006, Albania
\textsuperscript{652} Conclusions XIX-4 (2011), Poland
\textsuperscript{653} Conclusions 2004, Romania
\textsuperscript{654} Conclusions XIX-4 (2011), Croatia
\textsuperscript{655} Conclusions 2004, Bulgaria
States Parties must also take measures to prevent and assist street children.\textsuperscript{656} 657

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.\textsuperscript{658}

\textsuperscript{656} Conclusions XV-2 (2001), Statement of Interpretation on Article 7\S10
\textsuperscript{657} Conclusions 2004, Romania
\textsuperscript{658} Conclusions 2006, Bulgaria
Article 8 The right of employed women to protection of maternity

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

8.1 With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks.

Article 8§1 recognises the right of employed women to:

a. maternity leave
The right to maternity leave of at least 14 weeks must be guaranteed by law.659 This right is designed both to grant employed women protection in the case of maternity and to reflect a more general interest in public health.660 Consequently it must be guaranteed for all categories of employees661 and the leave must be maternity leave and not sick leave.

Domestic law may permit women to opt for a shorter period of maternity leave. However, in all cases there must be a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned.662 663

b. maternity benefits
Maternity leave must be accompanied by the continued payment of the individual’s remuneration or by the payment of social security benefits or benefits from public funds.

The modality of compensation is within the margin of appreciation of the States Parties and may be either a paid leave (continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of such compensations.

Regardless of the modality of payment, the level shall be adequate. 664

It should not be reduced substantially compared to the previous wage, and not be less than 70% of that wage.665

Moreover, the minimum rate of compensation shall not fall below the poverty threshold defined as 50% of median equivalised income, calculated on the basis of the Eurostat at-risk-of-poverty threshold value.666

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659 Conclusions III (1973), Statement of Interpretation on Article 8§1
660 Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1
661 Conclusions XV-2 (2001), Addendum, Malta
662 Conclusions VIII (1984), Statement of Interpretation on Article 8§1
663 Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1
664 Conclusions 2015, Statement of Interpretation on Article 8§1
665 Conclusions 2015, Statement of Interpretation on Article 8§1
666 Conclusions XVII-2 (2005), Latvia
For high salaries, a significant reduction in pay during maternity leave is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit.\textsuperscript{667}

Moreover, even if the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment, these conditions must be reasonable. The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.\textsuperscript{668}

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

Appendix: This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;

b. if the undertaking concerned ceases to operate;

c. if the period prescribed in the employment contract has expired.

Under Article 8§2, it must 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.\textsuperscript{669}

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.\textsuperscript{670} 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 is not contrary to this provision the dismissal of a pregnant woman when misconduct which justifies breaking off the employment relationship,\textsuperscript{671} the undertaking ceases to operate if the period prescribed in the employment contract expires.\textsuperscript{672} These exceptions are strictly interpreted.

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be entitled to take their case before the courts.

\textsuperscript{667} Conclusions XV-2 (2001), Belgium
\textsuperscript{668} Conclusions 2015, Statement of Interpretation on Article 8§1
\textsuperscript{669} Conclusions XIII-4 (1996), Austria
\textsuperscript{670} Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
\textsuperscript{671} Conclusions X-2 (1990), Spain
\textsuperscript{672} Conclusions 2005, Estonia
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. Domestic law must not prevent courts (or any other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal, hence any ceiling on the level of compensation that may be awarded is not in conformity with the Charter. A ceiling on the level of compensation which is too low to be sufficiently dissuasive and compensate the victim is contrary to the Charter. 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.

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

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 should 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 practical ways of implementing this Article are appreciated on a case-by-case basis: legislation providing for two daily breaks for a period of one year for breastfeeding, two half-hour breaks where the employer provides a nursery or room for breastfeeding, and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter.

8.4 With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants
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. It does not apply to all women.

The regulations must:
- only authorise night work where necessary, having due regard to working conditions and the organisation of work in the firm concerned;\(^{682}\)
- 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.\(^{683}\)

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

Article 8§5 applies to all pregnant women, women who have recently given birth or who are nursing their infant, in paid employment, including civil servants. Only self-employed women are excluded.

1- This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines. This applies to extraction work proper, but not to women who:
   - occupy managerial posts and do not perform manual work;
   - work in health and welfare services;
   - spend brief training periods in underground sections of mines.\(^{684}\)
This prohibition must be provided for in law.

2- Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. Domestic law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.\(^{685}\)

Domestic law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay, if this is not possible such women should be entitled to paid leave. Such women should retain the right to return to their previous employment.\(^{686}\)

\(^{682}\) Conclusions 2003, France
\(^{683}\) Conclusions X-2 (1990), Statement of Interpretation on Article 8§4
\(^{684}\) Conclusions X-2 (1990), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
\(^{685}\) Conclusions 2003, Bulgaria
\(^{686}\) Conclusions 2005, Lithuania
Article 9 The right to vocational guidance

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

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

Article 9 imposes on States Parties to set up and operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance.687

Vocational guidance is the service which assists all persons to solve problems related to occupational choice and with due regard to the individual's characteristics and their relation to occupational opportunity.688 During times of economic recession vocational guidance is of great importance.

The right to vocational guidance must be guaranteed:689

- within the school system (information on training and access to training);
- within the labour market (information on vocational training and retraining, career planning, etc). In this framework, it shall address in particular school-leavers and job-seekers.

Vocational guidance must be provided:

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons and by aiming at reaching as many people as possible;
- and with an adequate budget.

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.690

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687 Conclusions I (1969), Statement of Interpretation on Article 9
688 Conclusions IV (1975), Statement of Interpretation on Article 9
689 Conclusions XIV-2 (1998), Statement of Interpretation on Article 9
690 Conclusions XVI-2 (2003), Poland
This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training, and is not a right under Article 9.

Vocational guidance of persons with disabilities is dealt with under Article 15 of the Charter for States Parties having accepted both provisions.⁶⁹¹

⁶⁹¹ Conclusions 2003, France
Article 10 The right to vocational training

Everyone has the right to appropriate facilities for vocational training

10.1 With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers’ and workers’ organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.

The right to vocational training must be guaranteed to everyone.692

In view of the evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the notion of vocational training of Article 10§1 covers: initial training - i.e. general and vocational secondary education - university and non-university higher education, and vocational training organised by other public or private actors, including continuing training - which is dealt with under paragraph 3 of the Charter (see infra). University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.693

At a time of economic recession, the importance of vocational training should be emphasised, and priority should be given to young persons, who are particularly hit by unemployment.694

In order to provide for vocational training States Parties must:695

- ensure general and vocational secondary education, university and non-university higher education; and other forms of vocational training;696
- build bridges between secondary vocational education and university and non-university higher education;
- introduce mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introduce mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

692 Conclusions I (1969), Statement of Interpretation on Article 10§1
693 Conclusions 2003, France
694 Conclusions IV (1975), Statement of Interpretation on Article 10
695 Conclusions 2003, France
696 Conclusions 2007, Ireland
Facilities other than financial assistance to students (which is dealt with under paragraph 5, see infra) shall be granted to ease access to technical or university higher education based solely on individual aptitude.\(^{697}\) This obligation\(^{698, 699}\) can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators\(^{700}\) of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals.\(^{701}\) According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training.

This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.\(^{702}\)

Vocational training of persons with disabilities is dealt with under Article 15 of the Charter for States Parties having accepted Article 15.\(^{703}\)

**10.2 With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments**

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship can mean training based on a contract of employment between the employer and the apprentice and leading to vocational education;\(^{704}\) whereas other training

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697 Conclusions I (1969), Statement of Interpretation on Article 10§1  
698 Conclusions 2003, France  
699 Conclusions 2012, Ukraine  
700 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§1  
701 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§1  
702 Conclusions 2003, Slovenia  
703 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10,§1  
704 Conclusions XIX-1 (2008), Slovak Republic
arrangements may consist of school-based vocational training. They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; termination of the apprenticeship contract.

The main indicators of compliance are:
- the existence of apprenticeships or other training arrangements for young people;
- the quality of these trainings i.e. the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

10.3 With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary:

a. adequate and readily available training facilities for adult workers;

b. special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment.

The right to continuing vocational training must be guaranteed to employed and unemployed persons, including young unemployed people. Self-employed persons are also covered by this provision. Article 10§3 takes into consideration only those of the activation measures for unemployed people that strictly concern training, while Article 1§1 deals with general activation measures for unemployed people. The notion of continuing vocational training includes adult education.

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.

705 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2
706 Conclusions 2003, Sweden
707 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2
708 Conclusions XVI-2 (2003), Malta
709 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§2
710 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§5 (i.e. Article 10§4 of the 1961 Charter)
711 Conclusions 2003, Slovenia
712 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3
713 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§3
As regards employed persons, States Parties are obliged to provide facilities for training and retraining of adult workers. The existence of these preventive measures helps fighting against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development.

As regards unemployed people, vocational training must available to them. The activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures - is used to assess the impact of the States Parties’ policies.

In addition, the following aspects are taken into account:

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;
- the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

10.4 With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed.

In accordance with Article 10§4, States Parties must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed.

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

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714 Conclusions XIX-1 (2008), Spain
715 Conclusions 2003, Italy
716 Conclusions XIX-1 (2008), Hungary
717 Conclusions 2003, Slovenia
718 Conclusions IV (1975), Statement of Interpretation on Article 10§3
719 Conclusions XVI-2 (2003), Addendum, Ireland
720 Conclusions 2003, Italy
10.5 With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as:

Paragraph 5 provides for complementary measures which are fundamental to make access effective in practice.

a. reducing or abolishing any fees or charges;

States Parties must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are progressively reduced. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.721

b. granting financial assistance in appropriate cases;

Access to vocational training also implies the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it.722 All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy,723 are dealt with under paragraph 4.724 States Parties must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need725 and shall be adequate.726 It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.727

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.728

c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous

721 Conclusions XVI-2 (2003), United Kingdom
722 Conclusions VIII (1984), Statement of Interpretation on Article 10§5
723 Conclusions XVI-2 (2004), Slovak Republic
724 Conclusions XIV-2 (1998), Statement of Interpretation on Article 10§5
725 Conclusions XIII-1 (1993), Turkey
726 Conclusion XVI-2 (2004), Slovak Republic
727 Conclusions XIV-2 (1998), Ireland
728 Conclusions 2003, Slovenia
training. The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.

d. ensuring, through adequate supervision, in consultation with the employers’ and workers’ organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

States Parties must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers’ and workers’ organisations is required in the supervision process.\textsuperscript{729}
**Article 11 The right to protection of Health**

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

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise.\(^{730}\) The rights relating to health embodied in the two treaties are inextricably linked, since “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights - and health care is a prerequisite for the preservation of human dignity”.\(^{731}\)

Respect for physical and psychological integrity is an integral part of the rights to the protection of health guaranteed by Article 11.\(^{732}\)

**11.1 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 organisations, to take appropriate measures designed inter alia to remove as far as possible the causes of ill health**

**Right to the highest possible standard of health**

Article 11 enshrines the right to the highest possible standard of health and the right of access to health care. Under Article 11, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all Parties to the Charter.\(^{733}\)

Article 11 imposes a range of positive and negative obligations. The title of the article – ‘the right to protection of health’ – makes clear that States’ obligations under that provision are not solely limited to ensuring enjoyment of the right to benefit from any positive, proactive State measures enabling enjoyment of the highest possible standard of health attainable (such as ensuring equal access to quality health care). Nor are States’ duties limited to the taking of those measures highlighted in Article 11 of the Charter. Rather, the notion of the protection of health incorporates an obligation that the State refrain from interfering directly or indirectly with the enjoyment of the right to health. In this context it refers to the definition of health cited above.

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\(^{730}\) Conclusions 2005, Statement of Interpretation on Article 11

\(^{731}\) International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31

\(^{732}\) Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §74

\(^{733}\) Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §71

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This interpretation of Article 11 is consistent with the legal protection afforded by other important international human rights provisions related to health.\textsuperscript{734}

Under Article 11, health means physical and mental well-being, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all to Parties to the Charter.\textsuperscript{735}

States Parties must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action.\textsuperscript{736} The main indicators are life expectancy and the principal causes of death. These indicators must show an improvement and not be too far behind the European average.\textsuperscript{737}

Avoidable risks include those which result from environmental threats. Article 11§1 guarantees the right to a healthy environment.\textsuperscript{738} 739

Any kind of medical treatment which is not necessary can be considered as contrary to Article 11, if obtaining access to another right is contingent upon undergoing it.\textsuperscript{740}

Infant and maternal mortality are good indicators of how well a particular country’s overall health system is operating.\textsuperscript{741} These are avoidable risks and every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close to zero as possible.\textsuperscript{742} A recurring problem of non-conformity under this provision are the high infant and maternal mortality rates in several countries, which when examined together with other basic health indicators, point to weaknesses in the health system.\textsuperscript{743}

Right of access to health care

The health care system must be accessible to everyone. States Parties enjoy a wide margin of appreciation in deciding when life begins. It is therefore for each State Party to determine, within this margin of appreciation, the extent to which the foetus has the right to health.\textsuperscript{744}

Restrictions on the application of Article 11 may not result in impeding disadvantaged groups' exercise of their right to health. This approach calls for a strict interpretation of the way the personal scope of the Charter is applied in

\textsuperscript{734} Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §79
\textsuperscript{735} Conclusions 2005, Statement of Interpretation on Article 11
\textsuperscript{736} Conclusions XV-2 (2001), Denmark
\textsuperscript{737} Conclusions 2005, Lithuania.
\textsuperscript{738} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, § 202
\textsuperscript{739} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 194-195
\textsuperscript{740} Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §80
\textsuperscript{741} Conclusions 2003, Romania
\textsuperscript{742} Conclusions 2003, France
\textsuperscript{743} Conclusions 2013, Ukraine
\textsuperscript{744} Federation of Catholic Families Associations in Europe (FAFCE)v. Sweden, Complaint No 99/2013, decision on the merits of 17 March 2015, §73
conjunction with Article 11 on the right to protection of health, particularly with its first paragraph on access to health care.\textsuperscript{745}

Pursuant to paragraph 1 of the Appendix, the persons covered by Articles 1 to 17 and 20 to 31 of the Charter include foreigners only insofar as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned.

The restriction of the personal scope should not be read in such a way as to deprive migrants in an irregular situation of the protection of their most basic rights enshrined in the Charter, nor to impair their fundamental rights, such as the right to life or to physical integrity or human dignity.\textsuperscript{746}

Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.\textsuperscript{747}

Legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter. \textsuperscript{748}

The right of access to care requires that:

- the cost of health care should be borne, at least in part, by the community as a whole;\textsuperscript{749, 750}
- the cost of health care must not represent an excessively heavy burden for the individual. Out-of-pocket payments should not be the main source of funding of the health system.\textsuperscript{751} Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community;\textsuperscript{752}
- The conditions governing access to care should take into consideration Parliamentary Assembly Recommendation 1626 (2003) on “the reform of health care systems in Europe: reconciling equity, quality and efficiency”, which invites member States to take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right.\textsuperscript{753}
- arrangements for access to care must not lead to unnecessary delays in its provision. The management of waiting lists and waiting times in health care are considered in the light of Committee of Ministers Recommendation (99)21 on criteria for such management. Access to treatment must be based on

\textsuperscript{745} Conclusions 2005, Statement of Interpretation on Article 11
\textsuperscript{747} International Federation of Human Rights Leagues (FIDH)v France, Complaint No.14/2003, §31, 8 December 2004
\textsuperscript{748} Conclusions I (1969), Statement of Interpretation on Article 11
\textsuperscript{749} Conclusions XV-2 (2001), Addendum, Cyprus
\textsuperscript{750} Conclusions 2013, Georgia
\textsuperscript{751} Conclusions XVII-2 (2005), Portugal
\textsuperscript{752} Conclusions 2005, Statement of Interpretation on Article 11
– transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life;\textsuperscript{754} \textsuperscript{755}

– the number of health care professionals and equipment must be adequate. In the case of hospitals, the objective laid down by WHO for developing countries of 3 beds per thousand population should be strived at.\textsuperscript{756} A very low density of hospital beds, combined with waiting lists, could be an obstacle to access to health care for the largest possible number of people.\textsuperscript{757} Conditions of stay in hospital, including psychiatric hospitals, must be satisfactory and compatible with human dignity.\textsuperscript{758} \textsuperscript{759}

As part of the positive obligations that arise by virtue of the right to the protection of health, States Parties must provide appropriate and timely care on a non-discriminatory basis, including services relating to sexual and reproductive health. As a result, a health care system which does not provide for the specific health needs of women will not be in conformity with Article 11, or with Article E of the Charter taken together with Article 11.\textsuperscript{760} \textsuperscript{761}

In addition the Committee considers that any medical treatment without informed consent necessarily raises issues under Article 11 of the 1961 Charter. Informed consent has been defined by the UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental health (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, report 2009, 1 August 2009, A/64/272) as follows: “informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.” \textsuperscript{762}

The Committee considers, (noting in particular the Council of Europe’s Convention on Human Rights and Biomedicine (Oviedo Convention) 1997, and the well-established position of other human rights bodies) that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity and necessarily with the right to protection of health. Medical treatment without free informed consent breaches physical and psychological integrity, and may in certain cases be injurious to health both physical and psychological. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health. \textsuperscript{763}

\textsuperscript{754} Conclusions XV-2 (2001), United Kingdom
\textsuperscript{755} Conclusions 2013, Poland
\textsuperscript{756} Conclusions XV-2 (2001), Addendum, Turkey
\textsuperscript{757} Conclusions XV-2 (2001), Denmark
\textsuperscript{758} Conclusions 2005, Statement of Interpretation on Article 11
\textsuperscript{759} Conclusions 2005, Romania
\textsuperscript{760} International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, complaint No. 87/2012, decision on the merits of 10 September 2013. § 66
\textsuperscript{761} Confederazione Generale Italiana de Lavoro (CGIL) v. Italy, Complaint No 91/2013, Decision on the merits of 12 October 2015 §162 and 190
\textsuperscript{762} Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §81
\textsuperscript{763} Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, Decision on the merits of 15 May 2018 §82
In respect of abortion, once States Parties introduce statutory provisions allowing abortion in some situations, they are obliged to organise their health service system in such a way as to ensure that the effective exercise of freedom of conscience by health professionals in a professional context does not prevent patients from obtaining access to services to which they are legally entitled under the applicable legislation.\textsuperscript{764} \textsuperscript{765}

Furthermore, Article 11 does not impose on States a positive obligation to provide a right to conscientious objection for healthcare workers. \textsuperscript{766}

11.2 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 organisations, to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health.

There are two obligations under this provision:

\textit{Education and awareness raising}

Public health policy must pursue the promotion of public health in conformity with the objectives fixed by the WHO. National rules must provide for informing the public, education and participation. States Parties must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems.\textsuperscript{767}

Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned.\textsuperscript{768} Measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment.\textsuperscript{769}

Health education must be carried out throughout school life and form part of school curricula. After the family, school is the most appropriate setting for health education because the general purpose of education is to impart the knowledge and skills necessary for life. In this respect, the Committee of Ministers’ Recommendation No R(88)7 on school health education and the role and training of teachers is taken into account.

\textsuperscript{764} International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, complaint No. 87/2012, decision on the merits of 10 September 2013, § 69
\textsuperscript{765} Confederazione Generale Italiana de Lavoro (CGIL) v. Italy, Complaint No 91/2013, Decision on the merits of 12 October 2015, §166-167
\textsuperscript{766} Federation of Catholic Families’ Associations in Europe (FAFCE) v. Sweden, Complaint No 99/2013, decisions on the merits of 17 March 2015, §71
\textsuperscript{767} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6 December 2006, §§ 216 and 219
\textsuperscript{768} Conclusions 2007, Albania
\textsuperscript{769} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §43
Health education in school must be provided throughout the entire period of schooling and that it cover the following subjects: prevention of smoking and alcohol abuse, sexual and reproductive health education, in particular with regard to prevention of sexually transmitted diseases and AIDS, road safety and promotion of healthy eating habits.

Sexual and reproductive health education is regarded as a process aimed at developing the capacity of children and young people to understand their sexuality in its biological, psychological, socio-cultural and reproductive dimensions which will enable them to make responsible decisions with regard to sexual and reproductive health behaviour.\textsuperscript{770}

It is acknowledged that cultural norms and religion, social structures, school environments and economic factors vary across Europe and affect the content and delivery of sexual and reproductive health education. However, relying on the basic and widely accepted assumption that school-based education can be effective in reducing sexually risky behaviour, States Parties must ensure:

- that sexual and reproductive health education forms part of the ordinary school curriculum;
- that the education provided is adequate in quantitative terms, i.e. in respect of the time and other resources devoted to it (teachers, teacher training, teaching materials, etc.);
- that the form and substance of the education, including curricula and teaching methods, are relevant, culturally appropriate and of sufficient quality, in particular that it is objective, based on contemporary scientific evidence and does not involve censoring, withholding or intentionally misrepresenting information, for example as regards contraception and different means of maintaining sexual and reproductive health;
- that a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements.\textsuperscript{771}

The obligations under Article 11§2 as defined above do not affect the rights of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents own religious or philosophical convictions (see European Court of Human Rights, Case of Kjeldsen, Busk Madsen and Pedersen v. Denmark, Judgment of 7 December 1976).\textsuperscript{772}

**Doctor’s consultations and screening**

There must be free and regular doctor’s consultation and screening for pregnant women and children throughout the country.\textsuperscript{773}

Free medical checks must be carried out throughout the period of schooling. The assessment of compliance takes into account the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing.\textsuperscript{774}

\textsuperscript{770} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §46
\textsuperscript{771} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §47
\textsuperscript{772} International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia, complaint No. 45/2007, decision on the merits of 30 March 2009, §50
\textsuperscript{773} Conclusions 2005, Moldova
\textsuperscript{774} Conclusions XV-2 (2001), France
There should be screening, preferably systematic, for all the diseases that constitute the principal causes of death.\textsuperscript{775} Where it has proved to be an effective means of prevention, screening must be used to the full.\textsuperscript{776}

11.3 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 organisations, to take appropriate measures designed \textit{inter alia} to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

\textbf{Precautionary principle}

In terms of preventive measures, States Parties must apply the precautionary principle: when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection provided for in Article 11, to prevent those potentially dangerous effects.\textsuperscript{777}

\textbf{Healthy environment}

Under the Charter overcoming pollution is an objective that can only be achieved gradually. Nevertheless, States Parties must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.\textsuperscript{778} The measures taken by States Parties are assessed with reference to their national legislation and regulations and undertakings entered into with regard to the European Union and the United Nations\textsuperscript{779} and in terms of how the relevant law is applied in practice.

\textbf{Air pollution}

In this respect the guarantee of a healthy environment requires that States Parties:

\begin{itemize}
  \item develop and regularly update sufficiently comprehensive environmental legislation and regulations;\textsuperscript{780}
  \item take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level\textsuperscript{781} and to help to reduce it on a global scale. In the case of global pollution, emission control is assessed with reference to the objectives set for implementation of the United Nations Framework Convention on Climate Change (UNFCC) of 9 May 1992, and of the Kyoto Protocol to the UNFCC of 11 December 1997;\textsuperscript{782}
\end{itemize}

\textsuperscript{775} Conclusions 2005, Moldova
\textsuperscript{776} Conclusions XV-2 (2001), Belgium
\textsuperscript{778} Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 205.
\textsuperscript{779} Conclusions XV-2 (2001), Italy
\textsuperscript{780} Conclusions XV-2 (2001), Addendum, Slovak Republic
\textsuperscript{781} Conclusions 2005, Moldova
\textsuperscript{782} Conclusions XV-2 (2001), Italy
– ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery, effective and efficient, that is comprising measures which have been established to be sufficiently dissuasive and have a direct effect on polluting emission levels;783
– assess health risks through epidemiological monitoring of the groups concerned.784

**Water management**

In order to comply with this provision States Parties have to take preventive and protective measures concerned with water. A situation where availability of drinking water is still a problem for a significant proportion of the population is in breach of the Charter.785

**Nuclear hazards for communities living in the vicinity of nuclear power plants**

The dose limits should be in accordance with the 1990 recommendations of the International Commission for Radiation Protection. The assessment will vary depending on the extent to which energy production is based on nuclear power.786 All countries are required to protect their population against the consequences of nuclear accidents taking place abroad and having an effect on the country concerned.787

**Risks relating to asbestos**

Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it.788 There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal.789

**Food safety**

States Parties must establish national food hygiene standards with legal force that take account of relevant scientific data, establish and maintain machinery for monitoring compliance with these standards throughout the food chain, develop, implement and regularly update systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases.790

Preventive and protective measures concerned with noise pollution are also required under this provision and - in the case of States Parties that have not accepted Article 31 (right to housing) – the enforcement of public health standards in housing.791

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784 Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 220
785 Conclusions 2013, Georgia
786 Conclusions XV-2 (2001), France
787 Conclusions XV-2 (2001), Denmark
788 Conclusions XVII-2 (2005), Portugal
789 Conclusions XVII-2 (2005), Latvia
790 Conclusions XV-2 (2001), Addendum, Cyprus
791 Conclusions XVII-2 (2005), Portugal
Tobacco, alcohol and drugs

Anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries. The WHO has set a target for European countries of raising the proportion of non-smokers in the population to at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke.\textsuperscript{792} WHO indicators and the Framework Convention on Tobacco Control are taken into consideration for the assessment.\textsuperscript{793}

To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing.\textsuperscript{794} In particular, the sale of tobacco to young persons must be banned,\textsuperscript{795} as must smoking in public places,\textsuperscript{796} including transport, and advertising on posters and in the press.\textsuperscript{797}

The effectiveness of such policies on the basis of statistics on tobacco consumption is assessed.\textsuperscript{798}

This approach also applies \textit{mutatis mutandis} to anti-alcoholism and drug addiction measures.\textsuperscript{799}

Immunisation and epidemiological monitoring

States Parties must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases.\textsuperscript{800}

Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics.\textsuperscript{801}

Accidents

States Parties must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals,\textsuperscript{802} and accidents at work. Trends in accidents at work are considered from the standpoint of health and safety at work (Article 3).
Article 12 The right to social security

All workers and their dependants have the right to social security

12.1 With a view to ensuring the effective exercise of the right to social security, the Parties undertake to establish or maintain a system of social security

Definitions

Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed. States Parties must ensure this right through the existence of a social security system established by law and functioning in practice.

It is complex to distinguish between social security benefits and other benefits, notably social assistance benefits. In making the distinction between social security benefits and social assistance benefits under Article 12 and Article 13 respectively the Committee pays attention to the purpose of and the conditions attached to the benefit in question. As far as social security benefits are concerned, these are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.

Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined allowances related to certain risks. These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.

Material and personal scope

A social security system exists within the meaning of Article 12§1 when it complies with the following criteria:

- **number of risks covered**: the social security system should cover the traditional risks and therefore provide the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, and maternity benefit.

- **personal scope**: the social security system must cover a significant percentage of the population for the health insurance and family benefit. Health coverage should extend beyond employment relationships. The system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and

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803 Conclusions XIV-1 (1998), Ireland
804 Statement of interpretation on Articles 12 and 13, Conclusions XIII-4
806 Conclusions XIII-4 (1996), Statement of interpretation on Article 12
807 Conclusions XVI-1 (2002), Statement of Interpretation on Article 12
808 Conclusions 2006, Bulgaria
809 Conclusions 2013, Georgia
810 Conclusions 2013, Bulgaria
unemployment benefits, pensions, and work accidents or occupational diseases benefits.

**Funding:** the social security system must be collectively financed, which means funded by contributions of employers and employees and/or by the state budget. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.).

The principle of collective funding is a fundamental feature of a social security system as foreseen by Article 12 as it ensures that the burden of risks are spread among the members of the community, including employers, in an equitable and economically appropriate manner and contributes to avoiding discrimination of vulnerable categories of workers.811

**Social security benefits and their adequacy**

A social security system must also guarantee an effective right to social security with respect to the benefits provided under each branch.812 Under Article 12§1, when they are income-replacement benefits, the level of benefits should be such as to stand in reasonable proportion to the previous income and should not fall below the poverty threshold defined as 50% of the median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. However, where an income-replacement benefit stands between 40% and 50% of the median equivalised income, other benefits, where applicable, will also be taken into account.813 Where the minimum level of an income-replacement benefit falls below 40% of the median equivalised income (or the poverty threshold indicator), it is not considered that its aggregation with other benefits can bring the situation into conformity.814 815 816 Unemployment benefits must also meet specific conditions to be in conformity with Article 12§1: their payment must be for a reasonable duration.817 There must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits.818 However, in certain cases and under certain circumstances the loss of unemployment benefits on grounds of refusal to accept offered employment could amount, indirectly, to a restriction on the freedom to work and as such the situation would be assessed under Article 1§2.819 However, Article 1§2 covers the situations *beyond* the reasonable initial period while Article 12§1 concerns situations *within* such a period.

Linking entitlement to sickness benefit to the nature and origin of sickness is a punitive measure and cannot be justified. It amounts to discrimination in the meaning of Article E (health status).820

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811 Conclusions 2006, the Netherlands
812 Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
813 Conclusions 2013, Hungary
814 Conclusions 2013, Austria
815 Conclusions 2013, Finland
817 Conclusions 2006, Malta
818 Conclusions XVIII-1 (2006), Germany
819 Conclusions 2012, Statement of Interpretation on Article 1§2
820 Conclusions 2013, Slovak Republic
Under Article 12§1, the existence of maternity and family branches is taken into consideration, but the scope and level of the benefits are assessed under, Articles 8 and 16 respectively.

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

Article 12§2 obliges States Parties to establish and maintain a social security system which is least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102; six of the nine parts must be accepted although certain branches count for more than one part medical care counts as two parts, and old age counts as three. Each contingency sets minimum levels of personal coverage and minimum levels of benefits.

Where a state has ratified the European Code of Social Security, the conclusions under this paragraph are based on the Committee of Minister’s Resolutions under the Code (which are in turn based on the assessment of the ILO Committee of Experts and the Governmental Committee of the European Social Charter and the European Code of Social Security). Failure to comply with the European Code of Social Security will lead to a conclusion of non-conformity with Article 12§2, where the state is not in compliance with at least the minimum parts for ratification.\textsuperscript{821}

When the State concerned has not ratified the European Code of Social Security, the social security system is assessed in order to decide on the conformity with Article 12§2.\textsuperscript{822} In order to examine whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, it has to be provided with thorough information regarding the branches covered, the personal scope and the level of benefits offered. Findings under Article 12§1 are also taken into account.

12.3 With a view to ensuring the effective exercise of the right to social security, the Parties undertake to endeavour to raise progressively the system of social security to a higher level

Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Articles 12§1 and 2 have not been met or if these provisions have not been accepted.\textsuperscript{823}

The expansion of schemes, protection against new risks or increase in the level of benefits are all examples of improvement.\textsuperscript{824} 825

\textsuperscript{821} Conclusions 2006, Italy
\textsuperscript{822} Conclusions XIV-1 (1998), Finland
\textsuperscript{823} Conclusions 2009, Statement of Interpretation on Article 12§3
\textsuperscript{824} Conclusions 2013, Georgia
\textsuperscript{825} Finnish Society of Social Rights c. Finlande, réclamation n° 88/2012, décision sur le bien-fondé du 9 septembre 2014, §84
A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The assessment of the situation is based on the following criteria:

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the reasons given for the changes and the framework of social and economic policy in which they arise;
- the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);
- the necessity of the reform;
- the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

Even if specific restrictive measures are, as such, in conformity with the Charter, their cumulative effect could amount to a violation of Article 12§3 of the Charter.

Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. In view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12.

However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system.

Therefore any changes to a social security system must ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.

12.4 With a view to ensuring the effective exercise of the right to social security, the Parties undertake to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

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826 Conclusions XVI-1 (2002), Statement of Interpretation on Article 12§3
827 Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece Complaint No. 76/2012 (decision on the merits of 7 December 2012, §§ 78-83)
828 Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §71
829 Conclusions XIV-1 (1998), Statement of Interpretation on Article 12
830 Finnish Society of Social Rights v. Finland, Complaint No.88/2013, decision on the merits of 9 September 2014, §85-86
831 Conclusions XIV-1 (1998), Statement of Interpretation on Article 12
832 Conclusions 2013, Lithuania
Appendix: The words “and subject to the conditions laid down in such agreements” in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Personal scope of Article 12§4

In defining the personal scope of Article 12§4, reference must be made to paragraph 1 of the Appendix to the Charter, which reads “Without prejudice to Article 12§4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned”. It follows from the Appendix to the Charter that Article 12§4 applies to nationals of other States Parties who no longer reside on the territory concerned but who did reside or worked regularly there in the past and acquired social security rights.

The scope of Article 12§4 extends to refugees and stateless persons. Self-employed workers are also covered. 833

Finally, the principle of reciprocity does not apply to Article 12§4. 834

Material scope of Article 12§4a

In order to ensure the right to social security of persons moving between States the following principles must be guaranteed with respect to all existing branches of the social security system:

Right to equal treatment

The guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination from their social security legislation against foreigners in so far as they are nationals of other States.

Both direct and indirect discrimination are covered. National legislation cannot reserve a social security benefit to nationals only, or impose extra or more restrictive conditions on foreigners 835, neither may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree. 836 However, legislation may require a completion of a period of residence for non-contributory benefits. In this respect, Article 12§4 requires that any period of residence is reasonable. 837

As regards child benefit, a condition that the child concerned resides on the territory of the paying state is compatible with Article 12§4. 838 This means that any child resident in a defined country is entitled to the payment of family benefits on an equal footing with nationals of the country concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state Parties are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. However, since not all countries apply such a system, States Parties applying the ‘child residence requirement’ are under the obligation, in order to secure equal

833 Conclusions XIV-1 (1998), Turkey
834 Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
835 Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
836 Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
837 Conclusions 2004, Lithuania
838 Conclusions 2006, Statement of Interpretation on Article 12 §4
treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those States which apply a different entitlement principle.\textsuperscript{839}

Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient. The level of benefit may in this case be reduced where the cost of living in the child’s country of residence is significantly lower, but the reduction must be proportional to the differences of the cost of living in the countries concerned.\textsuperscript{840} \textsuperscript{841}

Right to retention of accrued rights

Invalidity benefit, old age benefit, survivor’s benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained irrespective of whether the beneficiary moves between the territories.\textsuperscript{842} \textsuperscript{843} Due to the particular nature of unemployment benefit, which is a short-term benefit closely linked to trends in the labour market, Article 12§4 does not require it to be exported.\textsuperscript{844}

With respect to the retention of benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable.\textsuperscript{845} In order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means\textsuperscript{846} such as unilateral, legislative or administrative measures.

b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties

Material scope of Article 12§4b

Right to maintenance of accruing rights

There should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit.\textsuperscript{846}

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.\textsuperscript{849} States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

\textsuperscript{839} Conclusions 2006, Cyprus
\textsuperscript{840} Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
\textsuperscript{841} Conclusions XIV-1 (1998), Germany
\textsuperscript{842} Conclusions XIV-1 (1998), Finland
\textsuperscript{843} Conclusions XIV-1(1998) Norway
\textsuperscript{844} Conclusions XVI-1 (2002), Belgium
\textsuperscript{845} Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
\textsuperscript{846} Conclusions XIII-2 (1994), Norway
\textsuperscript{847} Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
\textsuperscript{848} Conclusions XIV-1, Portugal
\textsuperscript{849} Conclusions 2006, Italy
Article 13 The right to social and medical assistance

Anyone without adequate resources has the right to social and medical assistance

13.1 With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition

The Social Charter breaks with the traditional concept of assistance, which was bound up with the moral duty of charity: “the Contracting Parties are not merely empowered to grant assistance as they think fit; they are under an obligation which they may be called on in court to honour”.850

The Charter provides for social security and social assistance in two separate Articles (Articles 12 and 13) carrying different undertakings. The wording of the Charter itself contains no specific indications as to the scope of each of these two notions. The main criteria to decide whether a particular benefit belongs to social security or to social assistance, is the purpose of and the conditions attached to the benefit in question.

The Committee thus considers as social assistance benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, as Article 13§1 demonstrates, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health.851

Therefore Article 13§1 provides for the right to benefits, for which individual need is the main criterion for eligibility and which are payable to any person on the sole ground that he or she is in need.852

Conditions for granting assistance

The system of assistance must be universal in the sense that benefits must be payable to “any person” on the sole ground that he/she is in need.853 This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories are entitled to appropriate assistance.854 855 Similarly, a minimum age limit may be set on the grant of benefits on condition that the rule ensures that young

850 Conclusions I (1969), Statement of Interpretation on Article 13
851 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13
853 European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 48/2008, Decision on the merits of 18 February 2009, §38
854 Conclusions X-2 (1990), Spain
855 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
people below that age limit receive appropriate subsistence assistance, not limited to supplementary or conditional assistance. A condition in respect of length of residence in the country or part of its territory (as distinct from a condition in respect of stay or presence, see infra) or excluding from social assistance people dismissed for serious misconduct is not in keeping with Article 13§1.

The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner”. Conversely, appropriate assistance is that which enables any person to meet his/her basic needs (see infra). The level of resources below which a person is entitled to assistance is assessed by reference to the poverty threshold in the sense defined infra.

The entitlement to the right to social assistance arises when the person is unable to obtain resources “either by his own efforts or from other sources, in particular by benefits under a social security scheme”.

The establishment of a link between social assistance and a willingness to seek employment or to receive vocational training is in conformity with the Charter, in so far as such conditions are reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual’s difficulties. Reducing or suspending social assistance benefits can only be in conformity with the Charter if it does not deprive the person concerned of his/her means of subsistence (at least emergency assistance should remain available). Furthermore, it must be possible to appeal against a decision to suspend or reduce assistance (see infra).

The reference to social security does not prejudge the link between social security and social assistance which exists within each state, whether the assistance machinery has evolved on the fringe of social security or is an intrinsic part of the system of social protection.

Family solidarity is not regarded as an “other source” of income where it appears as “a moral value not legally defined”.

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856 Conclusions XV-1 (2000), France
857 Conclusions 2009, France
858 Conclusions XIX-2 (2009), Luxembourg
859 Conclusions XVI-1 (2003), Spain
860 Conclusions XVIII-1 (2006), Czech Republic
861 Conclusions 2013, Bosnia and Herzegovina
862 Conclusions 2013, Bulgaria
863 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§1
864 Conclusions XIV-1 (1998), Portugal
865 Finnish Society for Social Rights v. Finland, Complaint No 88/2012, decision on the merits of 9 September 2014, §111
866 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§1
867 Conclusions 2006, Estonia
868 Conclusions 2009, Estonia
869 Conclusions XIII-2 (1994), Greece
870 Conclusions 2009, France
Form of assistance

Social assistance

Article 13§1 does not indicate what form social assistance should take. It may therefore take the form of benefits in cash or in kind. The Committee has observed that “an income guarantee has been established in most Contracting Parties”\(^{871}\) but has not in theory made the introduction of an income guarantee system a condition of conformity with Article 13§1. However, the situation of all States Parties which have not introduced a general income guarantee system has been judged not to conform on the ground that their system of assistance does not cover the whole population.\(^{872}\)

Furthermore, even if, under domestic law, local or regional authorities are responsible in the field of social assistance, States party to the Charter are still responsible, under their international obligations, to ensure that their responsibilities are properly exercised. Thus ultimate responsibility for implementation of official policy lies with the state. Accordingly, where social welfare services are decentralised, compliance with the Charter taking into account the effective application also by the local bodies is assessed. In this respect, although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment. Based on their strategic choices and priorities, the local entities (regions, provinces and/or municipalities) must nevertheless comply with Article 13 of the Charter.\(^{873}\)

Insofar as the income guarantee for elderly people is relevant both to Article 13§1 and Article 23, the level of non-contributory pension paid to a single elderly person without resources is examined from the standpoint of Article 23 of the Charter (the right of elderly people to social protection) for the States having accepted this provision, and under Article 13§1 as regards States Parties that have not accepted Article 23.\(^{874}\)

Medical assistance

Everyone who lacks adequate resources must be able to obtain free of charge “in the event of sickness the care necessitated by his condition”. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition.\(^{875}\)\(^{876}\)

The Committee has not determined what care must cover, nor whether it is limited to treating illness. It has stated that “it is not within its competence to define the nature of the care required, or the place where it is given”.\(^{877}\) It has however considered that the right to medical assistance should not be confined to emergency situations\(^{878}\) and that a system covering expenses for a limited time or not including primary or specialised outpatient medical care, which a person without resources might require, did not sufficiently ensure health care for

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\(^{871}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§1
\(^{872}\) Conclusions 2006, Moldova
\(^{873}\) Conclusions 2013, Italy
\(^{874}\) Conclusions 2009, Armenia.
\(^{875}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13.
\(^{876}\) European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 46/2007, Decision on the merits of 3 December 2008, §44
\(^{877}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
\(^{878}\) Conclusions 2009, Armenia
poor or socially vulnerable persons who become sick. Furthermore, the seriousness of the illness cannot be a factor in refusing to grant medical assistance.

**Level and duration of assistance**

Assistance must be “appropriate”, i.e. make it possible to live a decent life and to cover the individual’s basic needs. In order to assess the level of assistance, basic benefits, additional benefits and the poverty threshold in the country are taken into account, which is set at 50% of the median equivalent disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold. The equivalent disposable income is calculated by Eurostat on the basis of the income of a household, established by summing all monetary income received from any source by each member of the household and deducting taxes and social contributions paid. In order to reflect differences in household size and composition, this total is divided by the number of “equivalent adults” using a standard scale, the so-called ‘modified OECD scale’. The resulting figure is attributed to each member of the household (Source: Eurostat).

In the absence of this indicator, the national poverty threshold is taken into account, i.e. the monetary cost of the household basket containing the minimum quantity of food and non-food items which is necessary for the individual to maintain a decent living standard and be in good health.

Assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold in the above sense.

In conducting this assessment, the level of medical assistance is also taken into account.

Social assistance must be provided for as long as the situation of need persists and cannot therefore be subject to time-limits. Subject to participating in training or accepting employment (see supra), the right to social assistance must be conditional only on the criterion of necessity, and the availability of adequate resources must be the sole criterion according to which assistance may be denied, suspended or reduced.

**Individual right supported by a right of appeal**

The right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal. In particular, making certain

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879 European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 46/2007, Decision on the merits of 3 December 2008, §44
880 Conclusions XIII-4 (1996), Greece
881 Conclusions XIX-2 (2009), Latvia
882 Finnish Society for Social Rights v. Finland, Complaint No. 88/2013, decision on the merits of 9 September 2014, §112
883 Conclusions 2009, Armenia
884 Conclusions 2004, Lithuania
885 Finnish Society for Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §113
886 European Roma Rights Centre (ERRC) v. Bulgaria, complaint No. 48/2008, Decision on the merits of 18 February 2009, §39
887 Conclusions XVIII-1 (2006), Spain
888 Conclusions I (1969), Statement of Interpretation on Article 13§1
forms of social assistance conditional on budgetary resources is not compatible with the Charter.  

Statutory right

The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority, the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs. In the absence of a precise legal threshold below which a person is considered in need or of a common core of criteria underlying the granting of benefits, a one-off allowance cannot be deemed to be a sufficient income guarantee for persons without resources.

Effective appeal

The right secured by Article 13§1 places an obligation on states “which they may be called on in court to honour”. This does not have to be a court within the country’s judicial system, or a judicial body in the institutional sense. The Committee focuses on the judicial role of the review body, which is to rule on cases within its jurisdiction and hand down binding decisions based on the law. The body may therefore be an ordinary court or an administrative body, provided that it offers the guarantees mentioned below:

- It must be a body independent of the executive and of the parties. In deciding whether a body may be considered independent, the manner of appointment of its members is examined, the duration of their term of office and existing safeguards against outside pressures (rules governing removal from office, dismissal, instructions, qualifications required, etc.).

- All unfavourable decisions concerning the granting and maintenance of assistance must be subject to appeal, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an offer of employment or training.

- The review body must have the power to judge the case on its merits, not merely on points of law. If this requirement concerning the scope of the appeal is not satisfied in the first instance, it must be satisfied at the subsequent level of review.

In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.

Personal scope

1) Nationals of States parties legally residing or regularly working
In accordance with the Appendix to the Charter, foreigners who are nationals of Contracting Parties and are lawfully resident or working regularly in the territory of another Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals, without the need for reciprocity. The appendix to the 1961 Charter requires States to grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees. The Charter extends that requirement to stateless persons within the meaning of the New York Convention of 1954 on the status of stateless persons, as well as to persons de facto stateless because of the lack of documents.

Equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully or to work regularly in the territory of a Contracting Party. The Charter does not regulate procedures for admitting foreigners to the territory of Parties, and the rules governing “resident” status are left to national legislation. This stems in particular from the appendix to the Charter in respect of Article 18§1: “It is understood that these provisions [Article 18§1 and paragraph 18 of Part I] are not concerned with the question of entry into the territories of [States which have ratified the Charter] and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.”

As a result, that status may be made subject to a condition of length of residence or presence in the territory in order to enjoy equality of treatment, always provided that it is not manifestly excessive.

The guarantee of equal treatment must be enshrined in legislation. The Committee has however accepted that this condition is fulfilled when equality of treatment is provided by an administrative circular.

Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality. Equality of treatment also implies that additional conditions such as length of residence, or conditions which are harder for foreigners to meet, may not be imposed on them.

**Repatriation**

Foreigners lawfully resident in the territory of a Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their lawful residence or regular work continues, they enjoy equal treatment as well as (where such persons are migrant workers) the protection afforded by

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900 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
901 Conclusions VII (1981), Statement of Interpretation on Article 13§4
902 Conclusions 2013, Serbia
903 Conclusions XVIII-1 (2006), Czech Republic
904 Conclusions XIV-1 (1998), Greece
905 Conclusions XVIII-1 (2006), Belgium
906 Conclusions XVIII-1 (2006), Germany
907 Conclusions XVIII-1 (2005), Denmark
Article 19§8, which does not permit expulsion on the ground of needing assistance.909 910

Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need. However, this does not mean that a country’s authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family.911

2) Foreigners in an irregular situation

Article 13§1 also provides for the right to emergency social and medical assistance to foreigners in an irregular situation.912 913 914 915 It is the same type of emergency social and medical assistance applicable, under Article 13§4, to foreigners who are not resident.

13.2 With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights

Under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights.

Any discrimination against persons receiving assistance that might result - directly or indirectly916 - from an express provision must be eradicated.917 918

Furthermore, provisions enshrining the principle of equality and prohibiting discrimination should be interpreted in practice in such a way as to prevent the use of material living conditions, social status or any other personal circumstances (for example, state of health) as justification for restriction with regard to civic or social rights.919

The social rights concerned must at least include those embodied in the Charter, starting with the right to assistance itself. For example, confining eligibility for social services in general and assistance in particular to holders of identity documents or certificates of residence in a particular municipality could be incompatible with Article 13§2 as persons without the resources necessary to establish a fixed place of residence might be deprived of assistance.920

909 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§1
910 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13
911 Conclusions XIV-1 (1998), Norway
912 International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32
913 Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§66, 73-75.
914 European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §141
915 Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4
916 Conclusions XVIII-1 (2006), Croatia
917 Conclusions I (1969), Statement of Interpretation on Article 13§2
918 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§2
919 Conclusions 2002, Slovenia
920 Conclusions 2006, Bulgaria
The political rights concerned go beyond those embodied in the European Convention on Human Rights.\(^\text{921}\) They include, for example, access to civil service posts and the right to vote.

Beneficiaries of social or medical assistance must enjoy an effective protection against discriminatory measures, particularly with regard to their access to employment and public services.\(^\text{922}\)

Since political rights such as the right to vote are in principle restricted to nationals, on the grounds that they imply a role in the exercise of public authority, "[any] assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that foreigners with a certain length of residence may enjoy more extensive rights."\(^\text{923}\)

13.3 With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.

Article 13§3 concerns free of charge services offering advice and personal assistance specifically addressed at persons without adequate resources or at risk of becoming so.\(^\text{924}\)

Article 14§1 concerns social welfare services in general, whereas Article 13§3 is a more specific provision.\(^\text{925}\)\(^\text{926}\) Measures to co-ordinate services concerned with poverty and social exclusion are considered under Article 30 of the Charter and those concerned with social housing and measures to deal with homelessness are covered by Article 31.\(^\text{927}\)

Benefits and services

The social services covered by Article 13§3 must play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights.\(^\text{928}\)

In particular, the social welfare system should embrace an integrated strategy of alleviation of poverty and empowerment of individuals to regain their place as full members of society, through the means most appropriate to their personal circumstances, wishes and ability, and customary in the society where they live. In most cases, employment opportunities, together with vocational training or retraining, constitute the core element in any such strategy.\(^\text{929}\)

Article 13§3 does not require specific services separate from the social welfare services of Article 14, so long as persons without adequate resources receive

\(^{921}\) Conclusions XVIII-1 (2006), Malta
\(^{922}\) Conclusions XVI-2 (2004), Hungary
\(^{923}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§2
\(^{924}\) Conclusions 2013, Bosnia and Herzegovina.
\(^{925}\) Conclusions I (1969), Statement of Interpretation on Article 13
\(^{926}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
\(^{927}\) Conclusions 2005, Statement of Interpretation on Article 14§1
\(^{928}\) Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
\(^{929}\) Conclusions XIV-1 (1998), Statement of Interpretation on Article 13
benefits and services adapted to their needs. What distinguish Article 13§3 from Article 14 therefore are the types of benefits and services under consideration.

Criteria for equal and effective access

In order to comply with the Charter, the main relevant social welfare services must ensure their users an equal and effective access, through the way they operate and are organised, including their geographical distribution; the number, qualifications and duties of the staff employed, including voluntary staff; funding provided for those services and the adequacy of the material and staff resources on the one hand and the number of users on the other hand.

The criteria selected to determine whether those concerned have equal and effective access to services and to assess the quality of those services and other issues relating to users’ rights and participation are the same as those used to assess general social services (see Article 14). In particular:

- The eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope;
- An individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it;
- The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies must be available for those who wish to complain about social welfare services and there must be a right to appeal to an independent body where allegations of discrimination and violation of human dignity are made.

In countries where the general social services are responsible for the application of Article 13§3, assessment of the situation under Article 14§1 is referred to, taking however into account the fact that, under Article 13§3, the services concerned must be provided free of charge.

Personal scope

Nationals of Contracting Parties working regularly or residing legally within the territory of another Contracting Party must have access to advice and personal help offered by social services on the same conditions as nationals.
13.4 With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.

Appendix: Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 13§4 grants non-resident foreign nationals entitlement to emergency social and medical assistance.

Beneficiaries of Article 13§4

The personal scope of Article 13§4 differs from that of other Charter provisions. In fact, Paragraph 1§1 of the Appendix, concerning its personal scope, states that Articles 1 to 17 and 20 to 31 apply to foreigners “only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”, but adds that this rule is “without prejudice to Article 12§4, and Article 13§4”. Article 13§4 therefore refers to “nationals of other Contracting Parties lawfully within their territories”. Accordingly, the beneficiaries of this right to emergency social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status.936 937

By definition, no condition of length of presence can be set on the right to emergency assistance.938 939

Content of emergency assistance

States Parties are required to provide non-resident foreigners without resources – whether legally present or in an irregular situation - emergency social and medical assistance (accommodation, food, emergency care and clothing) to cope with an urgent and serious state of need (without interpreting too narrowly the “urgency” and “seriousness” criteria).940 941 942 943 944 They are not required to apply the guaranteed income arrangements under their social protection systems.945

936 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4
937 Conclusions VII (1981), Statement of Interpretation on Article 13§4
938 Conclusions XIV-1 (1998), United Kingdom
939 European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171
940 Conclusions XIV-1 (1998), Netherlands
941 Conclusions XX-2 (2013), Czech Republic
943 Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §105
944 European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §171
945 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
The provision of free emergency medical care must be governed by the individual’s particular state of health. Migrant minors in an irregular situation in a country are entitled to receive health care extending beyond urgent medical assistance and including primary and secondary care, as well as psychological assistance.

Right of Appeal

Emergency social assistance should be supported by a right to appeal to an independent body. There must functioning appeal mechanism before an independent judicial body in order to determine the proper administration of shelter distribution. This right must also be effective in practice.

Conditions governing repatriation – links with the 1953 Convention

The personal and material scope of Article 13§4 is defined by the text of the appendix and that of Article 13§4 itself. Accordingly, such scope is not affected by the reference to the 1953 Convention. The only link between Article 13§4 and the 1953 Convention concerns the conditions under which States Parties can repatriate non-resident foreigners without resources on the ground that they are in need of assistance, namely that the persons are in a fit state of health to be transported (Article 7.a.ii of the 1953 Convention). This option may only be applied in the greatest moderation and then only where there is no objection on humanitarian grounds (Article 7.b of the 1953 Convention, see also Articles 8 to 10).

The abovementioned conditions for repatriation of non-resident nationals of other contracting parties in state of need apply also in respect of States Parties that have not ratified the 1953 Convention.

The other conditions set in Article 7 of the 1953 Convention do not apply, insofar as nationals of other Contracting Parties who work regularly or reside legally within the territory of another Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their legal residence or regular work continues, they enjoy equal treatment laid down in the Appendix. Where such persons are migrant workers, they are also protected by Article 19§8, which would not permit expulsion on the ground of needing assistance.

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946 Conclusions XX-2 (2013), Czech Republic
947 Conclusions 2013, Sweden
948 Conclusions XIV-1 (1998), Iceland
949 Défense des enfants international v. Belgium (DEI), complaint No. 69/2011, decision on the merits of 23 October 2012, §128
950 Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §106.
951 European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §187
952 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13
953 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4
954 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4
955 Conclusions VII (1981), Statement of Interpretation on Article 13§4
956 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

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Article 14 The right to benefit from social welfare services

Everyone has the right to benefit from social welfare services

14.1 With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment.

The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment.  

Article 14 provides for an individual right subject to an effective right of appeal.

1. **Persons concerned**

Article 14§1 guarantees the right to general social welfare services. The right to benefit from social welfare services must potentially apply to the whole population, which distinguishes the right guaranteed by Article 14 from “the various articles of the Charter which require States Parties to provide social welfare services with a narrowly specialised objective”.

The provision of social welfare services concerns everybody who find themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem. Social services must therefore be available to all categories of the population who are likely to need them. It has identified the following groups: children, the elderly, people with disabilities, young people in difficulty and young offenders, minorities (migrants, Roma, refugees, etc.), the homeless, alcoholics and drug addicts, female victims of violence and former detainees.

The list is not exhaustive as the right to social welfare services must be open to all individuals and groups in the community.

The other provisions of the Charter dealing with social services for specific target groups, including those falling within the scope of Article 13§3, concern – as noted above – services “with a narrowly specialised objective”. When these various provisions have not been accepted by a State Party the situation with regard to social services for the specific target groups concerned is examined under Article 14.

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957 Conclusions 2005, Bulgaria
958 International Federation for Human Rights (FIDH) v. Belgium, complaint No. 75/2011, decision on the merits of 18 March 2013
959 Conclusions 2009, Statement of Interpretation on Article 14§1
2. **Types of services**

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters).

Issues such as childcare, child minding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Measures to fight poverty and social exclusion are dealt with under Article 30 of the Charter, while social housing services and measures to combat homelessness are dealt with under Article 31.

3. **Quality of social services**

Under Article 14§1 the Committee reviews rules governing the eligibility conditions to benefit from the right to social welfare services (effective and equal access) and the quality and supervision of the social services as well as issues of rights of beneficiaries and their participation in the establishment and maintenance of social welfare services (Article 14§2). Persons applying for social welfare services should receive any necessary advice and counselling enabling them to benefit from the available services in accordance with their needs.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- An individual right of access to counselling and advice from social services shall be guaranteed to everyone. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restrictive and at any event ensure care in case of urgent need;
- Access to social services should be guaranteed to those who lack personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment of the individual and groups to the social environment;
- The rights of the beneficiary shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in cases of discrimination and violation against human dignity;
- Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- The geographical distribution of these services shall be sufficiently wide;
- Recourse to these services must not interfere with people’s right to privacy, including protection of personal data.

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960 Conclusions 2005, Bulgaria
961 Conclusions 2005, Bulgaria
962 Conclusions 2009, Statement of Interpretation on Article 14§1
Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;
- there must be mechanisms for supervising the adequacy of services, public as well as private.

14.2 With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services

Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States Parties may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The “individuals and voluntary or other organisations” referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. States Parties must ensure that private services are accessible on an equal footing to all and are effective, in conformity with the criteria mentioned in Article 14§1. Specifically, States Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States Parties to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user–groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.

963 Conclusions 2005, Statement of Interpretation on Article 14§2
964 Conclusions 2005, Bulgaria
**Article 15** The right of persons with disabilities to independence, social integration and participation in the life of the community

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

Article 15 reflects and advances the change in disability policy away from treating disabled persons as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”.\(^{965}\)

In light of this, the non-discrimination norm has a very important role in the disability context.\(^{966}\)

Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.\(^{967}\) An equality of treatment should exist, not only by law but also in practice, between persons with disability who are Nationals of a State Party and legally residing and persons with disability who are nationals of the State.\(^{968}\)

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

According to Article 15§1, all persons with disabilities have a right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training. As under Article 10 of the Charter, vocational training, under Article 15, encompasses all types of higher education, including university education.\(^{969}\)

Securing a right to education for children and others with disabilities plays an important role in advancing their citizenship rights and guaranteeing their fundamental rights.\(^{970}\)

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965 *Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48*

966 Conclusions 2003, Statement of Interpretation on article 15

967 *Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48*

968 Conclusions XIV-2 (1998), Statement of Interpretation on article 15

969 Conclusions 2012, Ireland

970 *Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48*
Article 15§1 of the Charter makes it an obligation for States Parties to provide education for persons with disabilities, together with vocational guidance and training, in one or other of the pillars of the education system, in other words mainstream or special schools. The priority to be given to education in mainstream establishments, which is referred to explicitly in the article, is subject to a conditionality clause, which if interpreted as it ordinarily would be and with due regard for the context and purpose of the provision, indicates to the public authorities that in order to secure the independence, social integration and participation in the life of the community of persons with disabilities through their education, they must take account of the type of disability concerned, how serious it is and a variety of individual circumstances to be examined on a case-by-case basis. Consequently, Article 15§1 of the Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school.971

Priority should thus be given to mainstream schools for the education of disabled children and adolescents. States Parties are required to provide the human assistance needed for the school career of the persons concerned. The margin of appreciation applies only to the means that States Parties deem most appropriate to ensure that this assistance is provided, bearing in mind the cultural, political or financial circumstances in which their education system operates. However, this is subject to the provision that, at all events, the choices made and the means adopted are not of a nature or are not applied in a way that deprives the established right of its effectiveness and turns it into a purely theoretical right.972

‘Integration’ and ‘inclusion’ are two different notions and one does not necessarily lead to the other. The right to an inclusive education is about the child’s right to participate in mainstream school and the school’s obligation to accept the child taking account of the best interests of the child as well as their abilities and educational needs as a primary consideration.973

Education and training are the essential foundation to obtain a position in the open labour market and to be able to lead a self-determined life. Young persons with disabilities with an education below the upper secondary level are per se subject to various disadvantages on the employment market. States Parties must take measures in order to enable integration and guarantee that both mainstream and special schools ensure adequate teaching. Furthermore, States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.974

Specialised institutions shall ensure, through their internal organisation and/or their working methods, the predominance of guidance, education and vocational training over the other functions and duties that they may be required to perform under domestic law.975

971 European Action of the Disabled (AEH) v. France, complaint No. 81/2012, Decision on the merits of 11 September 2013, §78
972 European Action of the Disabled (AEH) v. France, complaint No. 81/2012, Decision on the merits of 11 September 2013, §§ 80-81
974 Conclusions XX-1 (2012), Austria
975 European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §111
To assess the effective equal access of children and adults with disabilities to education and vocational training, the following key figures are taken into consideration:

- total number of persons with disabilities, including the number of children;
- number of students with disabilities following respectively mainstream and special education and vocational facilities;
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training;\(^{976}\)
- the number of persons with disabilities (children and adults) living in institutions;\(^{977}\)
- any relevant case law and complaints brought to the appropriate bodies with respect to discrimination on the ground of disability in relation to education and training.\(^{978}\)

Under Article 15§1, the existence of non-discrimination legislation is therefore necessary as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.\(^{979}\)

Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools. States Parties do not have a wide margin of appreciation\(^{980}\) and shall provide evidence that this is the case or at least that substantial efforts are being made to achieve this.\(^{981}\)

Lessons provided in mainstream schools and, if need be, in special schools must be adequate.\(^{982}\) This means that in order to guarantee an equal and non-discriminatory treatment of persons with disabilities, mainstream and special schools must ensure adapted teaching.

Assistance at school is a particularly important means of being able to keep children and adolescents with autism in mainstream schools.\(^{983}\)

States Parties must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made in setting up education systems which exclude nobody.\(^{984}\)

\(^{976}\) Conclusions 2012, Russian Federation
\(^{977}\) Conclusions 2008, Lithuania
\(^{978}\) Conclusions 2008, Lithuania
\(^{979}\) Conclusions 2007, Statement of Interpretation on Article 15 § 1
\(^{980}\) European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §78
\(^{981}\) Conclusions 2008, Andorra
\(^{983}\) European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, Decision on the merits of 11 September 2013, §85
\(^{984}\) Conclusions 2005, Cyprus
Article 15§1 is one of the rights protected by the Charter which is exceptionally complex and particularly expensive to resolve. Therefore, the measures taken by a State to achieve the Charter’s objectives must meet the following three criteria: “(i) a reasonable timeframe, (ii) measurable progress and (iii) financing consistent with the maximum use of available resources”. 985

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

Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities. 986 It applies to persons with physical and/or intellectual disabilities. 987

States Parties need to systematically provide updated figures concerning the total number of persons with disabilities, including those in age of working; those employed (on the open market and in sheltered employment); those benefiting from employment promotion measures; those seeking employment; those that are unemployed as well as the general transfer rate of people with disabilities from sheltered to open market employment. 988

To this end, legislation must prohibit discrimination on the basis of disability to create genuine equality of opportunities on the open labour market, the dismissal on the basis of disability and confer an effective remedy on those who are found to have been unlawfully discriminated. 991 In addition, regarding work conditions there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational illness. 992

States Parties enjoy a margin of discretion concerning the other measures they take in order to promote access to employment of persons with disabilities. Article 15§2 does not require the introduction of quotas but, when such a system

985 Autism-Europe v. France, cited above, §53
986 Conclusions XX-1 (2012), Czech Republic
987 Conclusions I (1969), Statement of Interpretation on article 15§2
988 Conclusions 2012, Cyprus
989 Conclusions 2003, Slovenia
990 Conclusions 2012, Russian Federation
991 Conclusions XIX-1 (2008), Czech Republic
992 Conclusions 2007, Statement of Interpretation on Article 15§2
is applied, its effectiveness is taken into consideration when assessing conformity with Article 15§2. 993

Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market.

Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights. 994

15.3 With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities). 995 To this purpose, Article 15§3 requires:

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated. Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two; 996
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.

People with disabilities should have a voice in the design, implementation and review of such a policy. 998

To give meaningful effect to this undertaking: 999

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers;

993 Conclusions XIV-2 (1998), Belgium
994 Conclusions XVII-2 (2005), Czech Republic
995 Conclusions 2005, Norway
996 Conclusions 2007, Slovenia
997 Conclusions 2012, Estonia
998 Conclusions 2003, Italy
999 Conclusions 2008, Statement of interpretation on Article 15§3
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary’s means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements;
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary’s means.

Telecommunications and new information technology must be accessible\(^{1000}\) and sign language must have an official status\(^{1001}\).

Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible\(^{1002}\).

The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing\(^{1003}\).

\(^{1000}\) Conclusions 2005, Estonia
\(^{1001}\) Conclusions 2003, Slovenia
\(^{1002}\) Conclusions 2003, Italy
\(^{1003}\) Conclusions 2003, Italy
Article 16 The right of the family to social, legal and economic protection

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

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

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

Since “family” can mean different things in different places and at different times, the Charter refers to the definitions used in domestic law of each State Party. Consequently, every constellation defined as “family” by domestic law is covered by Article 16. However domestic law must not provide for an unduly restrictive definition.

The scope of Article 16 is, in any case, not restricted to family based on marriage. In addition, single parent families enjoy the rights provided in Article 16.

States Parties enjoy discretion to choose the means in their endeavour to ensure the social, legal and economic protection of the various types of families that can be found in the population.

1. Social protection

Housing for families

Article 16 guarantees a right to decent housing for families. Indeed, the fact that the right to housing is stipulated under Article 31 of the Charter, does not preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection.

The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural. It is also of central importance to the family. In order satisfy Article 16, States Parties must promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). Adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but

1004 Conclusions 2011 Azerbaijan
1005 Conclusions 2006, Statement of Interpretation on Article 16
1006 European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9
also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.\textsuperscript{1007} In order to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition to carry out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation in case of illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out under conditions respecting the dignity of the persons concerned;
- governed by rules sufficiently protective of the rights of the persons;
- accompanied by proposals for alternative accommodation.\textsuperscript{1008} \textsuperscript{1009}

The notions of adequate housing and forced eviction are identical under Articles 16 and 31.\textsuperscript{1010} \textsuperscript{1011}

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned.\textsuperscript{1012}

The destruction of housing or forced evacuation of villages is contrary to Article 16. In that situation, States Parties must provide effective remedies to the victims, and must take measures in order to rehouse families in decent accommodation or to provide financial assistance.\textsuperscript{1013}

As a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They therefore require special protection. Special consideration should be given to their housing needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve cultural diversity of value to the whole community.\textsuperscript{1014} In this respect, suitable temporary and permanent accommodation must exist.

\textsuperscript{1007} European Roma Right Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §24
\textsuperscript{1008} European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §41
\textsuperscript{1009} Conclusions 2011, Turkey, Article 31§2.
\textsuperscript{1010} Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, § 115
\textsuperscript{1011} Conclusions 2011, Azerbaijan
\textsuperscript{1012} European Roma Right Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 51
\textsuperscript{1013} Conclusions XIII-3 (1995), Turkey
\textsuperscript{1014} Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, Decision on the merits of 25 June 2010, §§ 39-40
The implementation of Article 16 as regards nomadic groups including itinerant Roma, implies that adequate stopping places be provided, in this respect Article 16 contains similar obligations to Article 8 of the European Convention of Human Rights.\textsuperscript{1015}

For the situation to be compatible with the treaty, States parties must:

a. adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;

b. maintain meaningful statistics on needs, resources and results;

c. undertake regular reviews of the impact of the strategies adopted;

d. establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e. pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable (European Federation of National Organisations Working with the Homeless).\textsuperscript{1016}

\textit{Childcare facilities}

Where a State Party has accepted Article 27 of the Charter child care facilities and arrangements are examined under this provision.\textsuperscript{1017}

States Parties are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.).\textsuperscript{1018}

\textit{Family counselling services}

Families should have access to appropriate social services, in particular in times of difficulty. States Parties should provide \textit{inter alia} family counselling and psychological guidance advice on childrearing.

\textit{Participation of associations representing families}

In order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities.\textsuperscript{1019}

\textsuperscript{1015} European Roma Right Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 19-25

\textsuperscript{1016} European Roma Right Centre (ERRC) v. Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, § 53-59

\textsuperscript{1017} Conclusions 2011, Azerbaijan

\textsuperscript{1018} Conclusions XVII-1 (2004), Turkey

\textsuperscript{1019} Conclusions 2006, Statement of Interpretation on Article 16
2. **Legal Protection**

*Rights and obligations of spouses*

Spouses must be equal in respect of rights and duties within the couple in particular on issues linked to ownership, administration and use of property, etc. and children in particular on issues linked to parental authority, management of children’s property.

In cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

*Parental rights*

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

Placement of children outside the home must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. On the other hand, the financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.

When placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained. The child’s re-integration within the family should be aimed at, and contacts with the family during the placement should be provided for, unless contrary to the best interest of the child. Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.

*Mediation services*

States Parties are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are.

Under Article 16 of the Charter, the legal protection of the family includes the availability of mediation services whose object should be to avoid the deterioration of family conflicts. To be in conformity with Article 16, these services must be easily accessible to all families. In particular families must not be dissuaded from availing of such services for financial reasons. If these services are free of charge, this constitutes an adequate measure to this end. Otherwise a possibility of access for families when needed should be provided.

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1020 Conclusions XVI-1 (2002), United Kingdom  
1021 Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1  
1022 Conclusions 2011, Statement of Interpretation on Article 16 and 17§1  
1023 Conclusions 2006, Statement of Interpretation on Article 16  
1024 Conclusions 2015, Austria
Domestic violence against women

Article 16 applies to all forms of domestic violence. Since violence against children is more specifically addressed by Article 17, the issue is examined under this provision.

Article 16 does not only prevent the State from interfering but it implies also positive obligations in order to ensure effective respect for the rights it guarantees.

States Parties are required to ensure an adequate protection with respect to women, both in law (appropriate measures—including restraining orders and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims and associations acting on their behalf to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). These issues are assessed in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.

3. Economic protection

Overview of family benefits

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

Family benefits of a sufficient amount

These benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of “equivalent adults” using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.). The level of benefit should be adjusted as necessary to keep pace with inflation. Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children, are also relevant to the implementation of this provision.

1025 Conclusions 2006, Statement of Interpretation on Article 16
1026 Conclusions 2006, Statement of Interpretation on Article 16
1027 Conclusions 2006, Statement of Interpretation on Article 16
1028 Conclusions 2006, Estonia
**Vulnerable families**

States Parties are required to ensure the protection of vulnerable families, single-parent families, Roma families, in accordance with the principle of equality of treatment.

**Equal treatment**

States Parties must ensure equal treatment of foreign nationals of other States Parties who are lawfully resident or regularly working in their territory with respect to family benefits.

However, by analogy with Article 12§4 and based on the Appendix, Article 16 precludes length of residence requirements as far as contributory benefits are concerned, but States may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive.\(^{1029}\)

The proportionality of such length of residence requirements is examined on a case-by-case basis having regard to the nature and purpose of the benefit: a period of 6 months is reasonable and therefore in conformity with Article 16.\(^{1030}\) On the other hand periods of 1 year, and a fortiori, 3-5 years are manifestly excessive and therefore in violation of Article 16.\(^{1031}\)

The question of whether the residence of a child in the territory is required before child benefits will be paid is examined exclusively under Article 12§4.\(^{1032}\)

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\(^{1029}\) Conclusions XIV-1 (1998), Sweden

\(^{1030}\) Conclusions XIV-1 (1998), Sweden

\(^{1031}\) Conclusions XVIII-1 (2006), Denmark.

\(^{1032}\) Conclusions XVI-1 (2002), Statement of Interpretation on Article 16
**Article 17 The right of children and young persons to social, legal and economic protection**

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

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

a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b) to protect children and young persons against negligence, violence or exploitation;

c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support;

Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 17§1 integrates into the Charter rights which are guaranteed by the UN Convention on the Rights of the Child, and Article 17 is interpreted in light of the UN Convention on the Rights of the Child.\(^\text{1033}\) \(^\text{1034}\)

It covers the following issues:

– The legal status of the child;
– Rights of children in public care;
– Protection of children from violence, ill-treatment and abuse;
– Children in conflict with the law;
– The right to assistance.

\(^\text{1033}\) Conclusions XV-2, Statement of Interpretation on Article 17
\(^\text{1034}\) World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63
The legal status of the child

Article 17 of the Charter permits no discrimination between children born outside of marriage, and children born within marriage, e.g. in respect of maintenance obligations and inheritance rights.\(^{1035}\)

Article 17 guarantees the right of a child to know in principle, his or her origins. The Committee examines the procedures available for the establishment of maternity and paternity and, in particular, the situations where the establishment of maternity or paternity is not possible and where the right of a child to know his or her origins is restricted.\(^{1036}\)

As regards minimum age for marriage, questions have been raised where there is a difference in the minimum age for marriage for males and females, on the grounds that this may be discriminatory and where the age is low for females this may not adequately protect them.\(^{1037}\) \(^{1038}\)

Right to education

Article 17, in its both paragraphs guarantees the right of all children to education.\(^{1039}\) However, where States have accepted both paragraphs of Article 17, the issue is examined under Article 17 para 2.

Children in public care

Any restriction or limitation of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.\(^{1040}\)

The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions.\(^{1041}\)

Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well-being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children’s growth. 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.\(^{1042}\)

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.\(^{1043}\)

\(^{1035}\) Conclusions XVII-2, Malte
\(^{1036}\) Conclusions 2003, France
\(^{1037}\) Conclusions 2003, France
\(^{1038}\) Conclusions 2011, Ukraine
\(^{1039}\) Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on the merits of 3 June 2008, §34
\(^{1040}\) Conclusions XV-2, Statement of Interpretation on Article 17§1
\(^{1041}\) Conclusions XV-2, Statement of Interpretation on Article 17§1
\(^{1042}\) Conclusions 2005, Republic of Moldova
\(^{1043}\) Conclusions XV-2, Statement of Interpretation on Article 17§1
Domestic law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child’s closest family.\textsuperscript{1044}

Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.\textsuperscript{1045}

Placement must be an exceptional measure, and is only justified when it is based on the needs of the child, namely if remaining in the family environment represents a danger for the child. The financial conditions or material circumstances of the family should not be the sole reason for placement. In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, his or her parents and other members of the family.\textsuperscript{1046}

**Protection of children from violence, ill–treatment and abuse**

States Parties’ domestic law must prohibit and penalise all forms of violence against children, including all forms of corporal punishment, in the home, as well as in all educational settings, public and private and in all alternative care settings. These are acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, States Parties must act with due diligence to ensure that such violence is eliminated in practice.\textsuperscript{1047}

**Children in conflict with the law**

The age of criminal responsibility must not be too low.\textsuperscript{1048} 1049 The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short periods of time\textsuperscript{1050} 1051 and should in such cases be separated from adults.

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration\textsuperscript{1052} and the length of sentence must be laid down by a court. Moreover, young offenders should not serve their sentence together with adult prisoners.\textsuperscript{1053} 1054

\begin{footnotes}
\textsuperscript{1044} Conclusions XV-2, Statement of Interpretation on Article 17§1  
\textsuperscript{1045} Conclusions 2005, Lithuania  
\textsuperscript{1046} Conclusions 2011 (XIX-4), Statement of Interpretation on Articles 16 and 17  
\textsuperscript{1047} Association for the protection of all children (APPROACH) Ltd v. Belgium, Complaint No 98/2013, decision on the merits of 20 January 2015  
\textsuperscript{1048} Conclusions 2011, Ireland  
\textsuperscript{1049} Conclusions 2011, United Kingdom  
\textsuperscript{1050} Conclusions 2005, France  
\textsuperscript{1051} Conclusions 2011, Denmark  
\textsuperscript{1052} Conclusions 2011, Norway  
\textsuperscript{1053} Conclusions 2011, Belgium  
\textsuperscript{1054} Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1
\end{footnotes}
Right to assistance

Article 17 guarantees the right of children, including children in an irregular situation and non-accompanied minors to care and assistance, including medical assistance and appropriate accommodation.\textsuperscript{1055} \textsuperscript{1056} \textsuperscript{1057} Article 17 concerns the assistance to be provided by the State where the minor is unaccompanied or if the parents are unable to provide such assistance. Application of paragraph 1 (b) of Article 17 is of particular importance, because failure to apply it will obviously expose a number of children and young persons to serious risks to their lives or physical integrity.\textsuperscript{1058}

States Parties must take the necessary and appropriate measures to guarantee the minors in question the care and assistance they need and to protect them from negligence, violence or exploitation, thereby posing a serious threat to the enjoyment of their most basic rights, such as the rights to life, to psychological and physical integrity and to respect for human dignity.\textsuperscript{1059}

The system for the reception of unaccompanied foreign minors must respect the dignity of the children and the detention of a minor in waiting areas, together with adults, and/or accommodated in hotels, deprived by the assistance of a guardian cannot be in the best interest of the child.\textsuperscript{1060}

Medical age assessments can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable. The use of such testing therefore violates Article 17§1 of the Charter\textsuperscript{1061}

Immediate assistance is essential since it allows assessing material needs of young people, the need for medical or psychological care in order to set up a child support plan.

\textsuperscript{1055} International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, § 36
\textsuperscript{1056} *Defence for Children International (DCI)* c. Pays-Bas, réclamation n° 47/2008, décision sur le bien-fondé du 20 octobre 2009, §§70-71
\textsuperscript{1057} European Federation of National Organisations working with the Homeless (FEANSA) v, Netherlands, Complaint No.86/2012, Decision on the merits of 2 July 2014, §50.
\textsuperscript{1058} *Defence for Children International (DCI)* v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §73
\textsuperscript{1059} *Defence for Children International (DCI)* v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82
\textsuperscript{1060} European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2014, decision on the merits of 24 January 2018
\textsuperscript{1061} European Committee for Home Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2014, decision on the merits of 24 January 2018
17.2 With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 17 requires States Parties to establish and maintain an education system that is both accessible and effective. In order for there to be an accessible and effective system of education there must be inter alia a functioning system of primary and secondary education; which includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas). The number of children enrolled in school should reach 100% of those of the relevant age. Class sizes and the teacher pupil ratio must be reasonable. There must be a mechanism to control the quality of teaching and the methods used. Education must be compulsory until the minimum age for admission to employment.\textsuperscript{1062}

Equal access to education must be ensured for all children. In this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage months, children deprived of their liberty, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary, special measures should be taken to ensure equal access to education for these children.\textsuperscript{1063} However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.\textsuperscript{1064}

As regards children with disabilities, their right to education is guaranteed both by paragraphs 1 and 2 of Article 17 as well as by Article 15\textsuperscript{11065} and Article 10. However, in view of the particularities of these different provisions, Article 15 will apply as a priority. The Charter does not leave States Parties a wide margin of appreciation when it comes to choosing the type of school in which they will promote the independence, integration and participation of persons with disabilities, as this must clearly be a mainstream school. The margin of

\textsuperscript{1062} Conclusions 2003, Statement of interpretation on Article 17
\textsuperscript{1063} Conclusions 2011, Slovakia
\textsuperscript{1064} Conclusions 2003, Bulgaria
\textsuperscript{11065} Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Collective Complaint No. 41/2007, decision on the merits of 3 June 2008, §34
appreciation applies only to the means that states deem most appropriate to ensure that this assistance is provided.\textsuperscript{1066}

Access to education is crucial for every child’s life and development. The denial of access to education will exacerbate the vulnerability of an irregularly present child. Therefore, children, whatever their residence status, come within the personal scope of Article 17§2.\textsuperscript{1067} Furthermore, States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child, even for those over the age of compulsory education.\textsuperscript{1068}

**Quality of teaching**\textsuperscript{1069}

States Parties must establish and maintain a well-functioning education system. In order for there to be an accessible and effective system of education there must be \textit{inter alia} a functioning system of primary and secondary education; which includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas). Class sizes and the teacher pupil ratio must be reasonable.

There must be a mechanism to control the quality of teaching and the methods used in public as well as private educational institutions.

**Cost of education**\textsuperscript{1070}

According to Article 17§2, primary and secondary education must be free of charge. This covers the basic education system. In addition, hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups.

**School attendance**\textsuperscript{1071}

Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.\textsuperscript{1072}

States Parties have a margin of appreciation when devising and implementing measures to combat truancy.

Article 17§2 implies that all hidden costs such as books or uniforms must be reasonable, and assistance must be available to limit their impact on the most vulnerable population groups so as not to undermine the goal being pursued.\textsuperscript{1073}

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\textsuperscript{1066} European Action of the Disabled (AEH) v. France Complaint No. 81/2012, decision on the merits of 11 September 2013, §§24-30

\textsuperscript{1067} Statement of interpretation on Article 17§2 , 2011

\textsuperscript{1068} Médecins du Monde - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128

\textsuperscript{1069} Conclusions 2003, Bulgaria

\textsuperscript{1070} Conclusions 2003, Bulgaria

\textsuperscript{1071} Conclusions 2011, Republic of Moldova

\textsuperscript{1072} Conclusions 2003, Bulgaria

\textsuperscript{1073} European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 82/2012, decision on the merits of 19 March 2013, §31
Article 18 The right to engage in a gainful occupation in the territory of other Parties

The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons.

18.1 With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to apply existing regulations in a spirit of liberality.

Article 18 applies to employees and the self-employed who are nationals of States which are party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.1074

Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.1075

The assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications1076.

Economic or social reasons might justify limiting access of foreign workers to the national labour market. This may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers. However, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national labour market.1077

18.2 With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers.

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision.1078

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1074 Conclusions X-2 (1990), Austria
1075 Conclusions XIII-1 (1993), Sweden
1076 Conclusions XVII-2 (2005), Spain
1077 Conclusions 2012, Statement of Interpretation of Article 18§1 and 18§3
1078 Conclusions IX-1(1990), United Kingdom
With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin\textsuperscript{1079} and obtaining the residence and work permits at the same time and through a single application.\textsuperscript{1080} It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.\textsuperscript{1081}

States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers. In order to comply with such an obligation, States must, first of all, not set an excessively high level for the dues and charges in question that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

In addition, States have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers. States are required to demonstrate that they have taken measures towards achieving such a reduction. Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.\textsuperscript{1082}

18.3 With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to liberalise, individually or collectively, regulations governing the employment of foreign workers

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

*Access to the national labour market*

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements be met.\textsuperscript{1083}

States Parties may make foreign nationals’ access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

In order not to be in contradiction with Article 18 of the Charter, the implementation of such policies limiting access of third-country nationals to the national labour market, should neither lead to a complete exclusion of nationals of non-EU (or non-EEA) States parties to the Charter from the national labour market, nor substantially limit the possibility for them of acceding the national

\textsuperscript{1079} Conclusions XVII-2, Finland
\textsuperscript{1080} Conclusions XVII-2, Germany
\textsuperscript{1081} Conclusions XVII-2, Portugal
\textsuperscript{1082} Statement of Interpretation of Article 18§2, 2012
\textsuperscript{1083} Conclusions V, Germany
labour market. Such a situation, deriving from the implementation of “priority rules” of the kind just mentioned, would not be in conformity with Article 18§3, since the State in question would not comply with its obligation to progressively liberalise regulations governing the access to the national labour market with respect to foreign workers of a number of States Parties to the Charter.\textsuperscript{1084}

Right to engage in an occupation

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.\textsuperscript{1085}

Article 18§3 requires each State Party to liberalise regulations governing the employment of foreign workers, in order to ensure to the workers from other States parties the effective exercise of the right to engage in a gainful occupation. In view of ensuring the effective exercise of this right, the States Parties’ engagement in liberalisation shall include regulations governing the recognition of foreign certificates, professional qualifications and diplomas, to the extent that such qualifications and certifications are necessary to engage in a gainful occupation as employees or self-employed workers.

A requirement that foreign worker be in possession of certificates, professional qualifications or diplomas issued only by national authorities, schools, universities, or other training institutions, without opening the possibility of recognising as valid and appropriate substantially equivalent certificates, qualifications or diplomas issued by authorities, schools, universities or other training institutions of other States parties, which have been obtained as a result of training courses or professional careers carried out within other States Parties, would represent a serious obstacle for foreign workers to access the national labour market, and an actual discrimination against non-nationals. For this reason, States Parties must make efforts to liberalise regulations governing the recognition of foreign certificates, professional qualifications and diplomas, progressively reducing the disadvantages for foreign workers to engage in a gainful occupation due to lack of recognition of foreign diplomas or professional qualifications substantially equivalent to those issued by national authorities, schools, universities or other training institutions.\textsuperscript{1086}

Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible.\textsuperscript{1087}

A worker whose work permit has been revoked before the date of expiry, either because the employment contract is prematurely terminated, or because the worker no longer meets the conditions under which the work permit was granted, it would be contrary to the Charter to automatically deprive such worker of the possibility to continue to reside in the State concerned and to seek another job and a new work permit.\textsuperscript{1088}

\begin{flushleft}
\textsuperscript{1084} Statement of Interpretation of Article 18§1 and §3
\textsuperscript{1085} Conclusions II, Statement of Interpretation on Article 18§3
\textsuperscript{1086} Conclusions 2012, Statement of interpretation on Article 18§3
\textsuperscript{1087} Conclusions XI-1, Netherlands
\textsuperscript{1088} Statement of Interpretation of Article 18§3, 2012
\end{flushleft}
In view of ensuring the effective exercise of this right, States Parties’ engagement in liberalisation shall include regulations governing the recognition of foreign certifications, professional qualifications and diplomas, to the extent that such qualifications and certifications are necessary to engage in a gainful occupation as employees or self-employed workers.\(^{1089}\)

**18.4** With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties recognise the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties.

According to Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter.

The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are “prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.”\(^{1090} 1091\)

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\(^{1089}\) Statement of Interpretation of Article 18§3, 2012

\(^{1090}\) Conclusions XI-1, Netherlands

\(^{1091}\) Conclusions 2005, Cyprus
Article 19 The right of migrant workers and their families to protection and assistance

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

19.1 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration.

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 objective 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).

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.

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

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1092 Conclusions I (1969), Statement of Interpretation on Article 19 § 1
1093 Conclusions III (1973), Cyprus
1094 Conclusions XIV-1 (1998), Greece
1096 Conclusion XV-1 (2000), Austria
19.2 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey.

This provision obliges States Parties to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception.\textsuperscript{1097}

‘Reception’ means the period of weeks which follows immediately from their arrival, during which migrant workers and their families most often find themselves in situations of particular difficulty\textsuperscript{1098}, and the measures at issue must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.\textsuperscript{1099}

The obligation to “provide within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey” relates to migrant workers and their families travelling either collectively or under the public or private arrangements for collective recruitment. The Committee considers that this aspect of Article 19§2 does not apply to forms of individual migration for which the State is not responsible. However, in that case, the need for reception facilities is all the greater.\textsuperscript{1100}

19.3 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries.

The scope of this provision extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin.\textsuperscript{1101} Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed.\textsuperscript{1102}

\textsuperscript{1097} Conclusions III (1973), Cyprus
\textsuperscript{1098} Conclusions IV (1975), Statement of interpretation on Article 19§2
\textsuperscript{1099} Conclusions IV (1975), Germany
\textsuperscript{1100} Conclusions IV (1975), Statement of interpretation on Article 19§2
\textsuperscript{1101} Conclusions XIV-1 (1998), Belgium
\textsuperscript{1102} Conclusions XV-1 (2000), Finland
19.4 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

This provision guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (i) remuneration and other employment and working conditions, (ii) trade union membership and the enjoyment of benefits of collective bargaining, and (iii) accommodation.

States Parties are required to prove the absence of discrimination, direct or indirect, in terms of law and practice, and should inform of any practical measures taken to remedy cases of discrimination.

Article 19§4 applies to posted workers whose situation, often distinct from that of other migrant workers, has clearly in some circumstances the same characteristics. States must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction. Accordingly, in order to conform with the requirements of the Charter, any restrictions on the right to equal treatment for posted workers, which are imposed due to the nature of their sojourn, must be objectively justified by reference to the specific situations and status of posted workers, having regard to the principles of Article G of the Revised Charter (Article 31 of the 1961 Charter).

a. remuneration and other employment and working conditions:

Under this sub-heading, States Parties are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies also to vocational training.

b. membership of trade unions and enjoyment of the benefits of collective bargaining:

This sub-heading requires States Parties to eliminate all legal and de facto discrimination concerning trade union membership and as regards the enjoyment of the benefits of collective bargaining, including the right to be founding member and access to administrative and managerial posts in trade unions.

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1103 Conclusions III (1973), Italy
1104 European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands, decision on the merits of 2 July 2014, §§ 202-203.
1105 Conclusions 2015, Statement of interpretation on Article 19§4
1106 Conclusions VII (1981), United Kingdom
1107 Conclusions XIII-3 (1995), Turkey
1108 Conclusions 2011, Statement of interpretation on Article 19§4b
1109 Conclusions XIX-4 (2011), Luxembourg
Applying the principle of non-discrimination, as set out in Article 19§4 b of the Charter, to the context of collective bargaining, requires that States Parties have to take action to ensure that migrant workers enjoy equal treatment when it comes to benefiting from collective agreements aimed at implementing the principle of equal pay for equal work for all workers in the workplace, or from legitimate collective action in support of such an agreement, in accordance with domestic laws or practice.

For the period of stay and work in the territory of the host State, posted workers are workers coming from another State and lawfully within the territory of the host State. In this sense, they fall within the scope of application of Article 19 of the Charter and they have the right, for the period of their stay and work in the host State to receive treatment not less favourable than that of the national workers of the host State in respect of remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining (Article 19§4, a and b).

States are responsible for the regulation in national law of the conditions and rights of workers in cross-border postings.

c. accommodation;

The undertaking of States Parties under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing.\textsuperscript{1110}

There must be no legal or de facto restrictions on home buying,\textsuperscript{1112} access to subsidised housing or housing aids, such as loans or other allowances.\textsuperscript{1113}

The right to equal treatment provided in Article 19§4(c) can only be effective if there is a right of appeal before an independent body against the relevant administrative decisions.\textsuperscript{1114}

The economic obstacles to achieving full provision of social housing to those eligible do not provide a valid reason to discriminate against nationals of non-EU States.\textsuperscript{1115}

\textsuperscript{1110} European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§111-113
\textsuperscript{1111} Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§145-147 (finding of violation of Article E taken in conjunction with Article 19§4c).
\textsuperscript{1112} Conclusions IV (1975), Norway
\textsuperscript{1113} Conclusions III (1973), Italy
\textsuperscript{1114} European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands , decision on the merits of 2 July 2014, §204.
\textsuperscript{1115} Conclusions 2015, Slovenia
19.5 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons.

This provision recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.1116

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

Appendix: For the purpose of applying this provision, the term “family of a foreign worker” is understood to mean at least the worker’s spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

This provision obliges States Parties to allow the families of migrants legally established in their territory to join them. The worker’s children entitled to family reunion are those who are dependent and 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.1118

Conditions and restrictions of family reunion:

a) Refusal on health grounds

A state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health.1119 These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security.1120

1116 Conclusions II (1971), Norway.
1117 Conclusions XIX-4 (2011), Greece
1118 Conclusions VIII (1984) Statement of Interpretation on Article 19§6
1119 Conclusions XVI-1 (2002), Greece
1120 Conclusions XV-1 (2000), Finland
b) **Length of residence**

States Parties may require a certain length of residence of migrant workers before their family can join them. A period of one year is acceptable under the Charter, but a longer period is considered excessive.\(^{1121}\) Thus, for example, a period of eighteen months is not in conformity with this provision of the Charter.\(^{1122}\)\(^{1123}\)\(^{1124}\)

c) **Housing condition**

The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion.\(^{1125}\)

States are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family. Nevertheless, taking into account the obligation to facilitate family reunion as far as possible under Article 19§6, States Parties should not apply such requirements in a blanket manner which precludes the possibility for exemptions to be made in respect of particular categories of cases, or for consideration of individual circumstances.\(^{1126}\)

d) **Means requirement**

The level of means required by States Parties to bring in the family or certain family members should not be so restrictive as to prevent any family reunion.\(^{1127}\) Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.\(^{1128}\)

e) **Language and/or integration tests**

States may take measures to encourage the integration of migrant workers and their family members, such measures being important in promoting economic and social cohesion.

However, requirements that family members pass language and/or integration tests or complete compulsory courses, whether imposed prior to or after entry to the State, may impede rather than facilitate family reunion and therefore are contrary to Article 19§6 of the Charter where they:

- a) have the potential effect of denying entry or the right to remain to family members of a migrant worker, or
- b) otherwise deprive the right guaranteed under Article 19§6 of its substance, for example by imposing prohibitive fees, or by failing to consider specific individual circumstances such as age, level of education or family or work commitments.\(^{1129}\)

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1121 Conclusion 2011, Statement of Interpretation on Article 19§6
1122 Conclusions I (1969), Germany
1123 Conclusions 2011, France
1124 Conclusions 2011, Cyprus
1125 Conclusions IV (1975), Norway
1126 Conclusions 2015, Statement of Interpretation on Article 19§6 - housing requirements
1127 Conclusions XVII-1 (2004), the Netherlands
1128 Conclusions 2011, Statement of Interpretation on Article 19§6
1129 Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests
f) Independent right to stay

Migrant worker’s family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory.\footnote{Conclusions XVI-1 (2002), Netherlands, Article 19§8}

Moreover, for as long as a migrant workers’ family members hold a right of residence it must not be possible to remove them, even if the migrant worker has personally lost this right, except where they endanger national security or offend against public interest or morality\footnote{Conclusions 2015, Statement of interpretation on Articles 19§6 and 19§8}.

g) Effective remedy

Restrictions on the exercise of the right to family reunion should be subject to an effective mechanism of appeal or review, which provides an opportunity for consideration of the individual merits of the case consistent with the principles of proportionality and reasonableness\footnote{Conclusions 2015, Statement of interpretation on Article 19§6}.

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

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.\footnote{Conclusions I (1969), Italy, Norway, United-Kingdom} This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).\footnote{Conclusions I (1969), Germany}

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 his or her own choosing should be advised that he/she may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if he or she does 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 he or she 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.\footnote{Conclusions 2011, Statement of Interpretation on Article 19§7}
19.8 With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

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.\(^{1136}\)

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, taking into account all aspects of the non-nationals' behaviour as well as the circumstances and the length of time of his/her 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 he/she may have formed during this period, must also be considered to determine whether expulsion is proportionate\(^{1137}\).

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.\(^{1138}\)

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.\(^{1139}\)

If a decision of expulsion from the territory of a State Party, which is also a member of the European Union, may be taken against citizens of the European Union (as well as nationals of another State party to the Charter), in the situation where through lack of resources these persons are likely to become a burden on the social assistance system, it is necessary – in application of the principle of proportionality – that the burden of coverage of the persons concerned by the system of social assistance be excessive, even unreasonable, such that it could render expulsion necessary so as to relieve the State of this burden.\(^{1140}\)

States Parties must ensure that foreign nationals served with expulsion orders have a right of appeal\(^{1141}\) to a court or other independent body, even in cases where national security, public order or morality are at stake.

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\(^{1136}\) Conclusions VI (1979), Cyprus

\(^{1137}\) Conclusions 2015, Statement of interpretation on Article 19§8

\(^{1138}\) Conclusions V (1977), Germany

\(^{1139}\) Conclusions V (1977), Italy

\(^{1140}\) European Roma and Travellers Forum v. France, complaint No. 64/2011, decision on the merits of 24 January 2012, paras 55 to 66

\(^{1141}\) Conclusions V (1977), United Kingdom
Finally, the impossibility of expelling or removing a migrant worker which follows either from a State Party's undertakings pursuant to the Charter or from choices specific to that State and enshrined in its legislation, presupposes that the migrant worker is not placed in a situation of non-law as regards residence.\textsuperscript{1142}

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.\textsuperscript{1143}

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.\textsuperscript{1144-1147}

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

This provision obliges States Parties not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.\textsuperscript{1148}

Migrants must be allowed to transfer money to their own country or any other country. The right to transfer earnings and savings includes the right to transfer movable property.\textsuperscript{1149}

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

Under this provision, States Parties must extend the rights provided for in paragraphs 1 to 9, 11 and 12 to self-employed migrant workers and their families.\textsuperscript{1150}

\textsuperscript{1142} Conclusions 2015, Statement of Interpretation on Article 19§6 and 8
\textsuperscript{1143} Conclusions 2011, Statement of Interpretation on Article 19§8
\textsuperscript{1144} Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§155-158.
\textsuperscript{1145} Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 24 January 2012, §§51-67
\textsuperscript{1146} European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decisions on the merits of 28 June 2011, §§68-79
\textsuperscript{1148} Conclusions XIII-1 (1993), Greece
\textsuperscript{1149} Conclusions 2011, Statement of Interpretation on Article 19§9
\textsuperscript{1150} Conclusions I (1969), Norway
States Parties must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants; in addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.

A finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a finding of non-conformity under paragraph 10.

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

Under this provision, States Parties should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age. The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large.

A requirement to pay substantial fees is not in conformity with the Charter. States Parties are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible.

The language of the host country is automatically taught to primary and secondary school students throughout the school curriculum but this is not enough to satisfy the obligations laid down by Article 19§11. States Parties must make special effort to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country.

States Parties shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities. Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market.

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

Under this provision States Parties undertake to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory.

1154 Conclusions 2002, France
1155 Conclusions 2011, Armenia
most represented among the migrants present on their territories within their
school systems or in other contexts such as voluntary associations or non-
governmental organisations. 1156

1156 Conclusions 2011, Statement of Interpretation on Article 19§12
Article 20 The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

a. access to employment, protection against dismissal and occupational reintegration;

b. vocational guidance, training, retraining and rehabilitation;

c. terms of employment and working conditions, including remuneration;

d. career development, including promotion.

Appendix 1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.

2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.

3. This article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.

4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Equality at work and in social security matters

Definitions and scope

Article 20 guarantees the right to equality at all stages of working life – access to employment, remuneration and other working conditions, vocational training and guidance and promotion, prohibits dismissal and other forms of detriment on grounds of sex, Article 20 is the lex specialis in relation to Article 1§2 of the Charter, which prohibits all discrimination at work\textsuperscript{1157}. This means that in practice where a state has accepted Article 20 issues concerning gender equality will be dealt with under this provision.

\textsuperscript{1157} Conclusions 2002 Statement of Interpretation on Article 20
Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, Article 20 requires that it be possible to make pay comparisons across companies. At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.\(^{1158}\)

The right to equal pay without discrimination on the grounds of sex is also guaranteed by Article 4§3 and the issue is therefore also examined under this provision.

Article 20 guarantees equal treatment with regard to social security. However, the Appendix authorises States, when they ratify the Charter or accept Article 20, to make a declaration excluding some or all of the aspects relating to social security.\(^{1159}\) Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned.

The principle of equal treatment of women and men is understood to mean the absence of any discrimination on grounds of sex. Equal treatment precludes any discrimination, whether direct or indirect.\(^{1160}\)

Discrimination in breach of the Charter is constituted by a difference in treatment between people in comparable situations which does not pursue a legitimate aim and is not based on objective and reasonable grounds.\(^{1161}\) In determining whether a legitimate aim is being pursued and the measures taken are reasonably proportionate, the Committee applies Article G.\(^{1162}\)

**Means of enforcement**

**Legal framework**

The right of women and men to equality must be guaranteed by a law. The Charter requires "States not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects."\(^{1163} \)\(^{1164} \)\(^{1165}\) It is not sufficient merely to state the principle in the Constitution.

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\(^{1158}\) Conclusions 2012 Statement of Interpretation on Article 20

\(^{1159}\) Conclusions 2002. Italy

\(^{1160}\) Conclusions XIII-5. Sweden, Article 1 of the Additional Protocol


\(^{1162}\) Conclusions XVI-1, Greece, Article 1§2

\(^{1163}\) Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

\(^{1164}\) Conclusions XV-2 (2001) Addendum, Slovak Republic, Article 1 of the Additional Protocol

\(^{1165}\) Conclusions XVII-2 (2005), Netherlands (Aruba), Article 1 of the Additional Protocol
Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked. The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.\textsuperscript{1166}

It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, employment contracts or firms' internal regulations that is incompatible with the principle of equal treatment.\textsuperscript{1167}

Right of appeal

Domestic law must provide for appropriate and effective remedies in the event of alleged discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body.\textsuperscript{1168}

The burden of proof must be shifted.\textsuperscript{1169} The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment.\textsuperscript{1170} The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice and hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.\textsuperscript{1171}

By analogy with the case-law in relation to Article 1§2, a number of other legal steps should be taken to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals\textsuperscript{1172} or setting up an independent body to promote equal treatment and provide legal assistance to victims.

Adequate compensation

Anyone who suffers discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers\textsuperscript{1173}.

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible.\textsuperscript{1174}

\textsuperscript{1166} Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1167} Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1168} Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1169} Conclusions 2004, Romania, article 20
\textsuperscript{1170} Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1171} Syndicat SUD Travail et Affaires Sociales v. France, Complaint No. 24/2004, Decision on the merits of 8 November 2005, §34.
\textsuperscript{1172} Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1173} Conclusions 2012 (Article 1§2) Albania
\textsuperscript{1174} Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol
in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.\textsuperscript{1175}

Any ceiling on compensation that may preclude damages from making good the loss suffered and from being sufficiently dissuasive is proscribed.\textsuperscript{1176}

**Protection against reprisals**

Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers,\textsuperscript{1177} including not only dismissal, but also downgrading, changes to working conditions and so on. National legislation must provide for the same consequences where an employee is a victim of reprisal measures as those described above in the sections on appeal procedures and compensation.

**Access to certain occupations**

Exceptionally and subject to strict interpretation certain jobs and occupational activities may be limited to persons of one sex, if this is due to the nature of such jobs and activities or the context and conditions in which they are carried out. Such a limitation can only be in conformity in respect of jobs /activities where gender constitutes a genuine occupational requirement.— (Appendix to Article 20, §4).

In determining whether, because of the conditions in which police activities are conducted, sex constitutes a decisive factor in the police force, the army, etc., States Parties may take account of public order or national security-related requirements provided that they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society (Article G). Like any measure that derogates from the rights guaranteed by the Charter, the exception must be interpreted restrictively and not exceed the legitimately pursued aim.\textsuperscript{1178}

**Particular rights of women**

**Specific protection measures**

According to the Appendix to Article 20 (§1), provisions concerning the protection of women are not deemed to be discrimination. Such provisions must be objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the post-natal period). These particular rights are also guaranteed by Article 8 of the Charter (right of employed women to protection of maternity).

On the other hand, prohibiting women from performing night work or underground mining while authorising men to do so is contrary to the principle of equal treatment for, while night work is harmful, it is just as detrimental to men as to women.\textsuperscript{1179, 1180}

\textsuperscript{1175} Conclusions XVII-2, Finland, Article 1 of the Additional Protocol
\textsuperscript{1176} Conclusions 2012 (Article 1§2) Albania
\textsuperscript{1177} Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol
\textsuperscript{1178} Conclusions XVI-2, Greece, Article 1 of the Additional Protocol
\textsuperscript{1179} Conclusions XVII-2, Netherlands (Aruba), Article 1 of the Additional Protocol
\textsuperscript{1180} Conclusions 2012 Bosnia Herzegovina, Article 20
**Equal opportunities and positive measures**

Since “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” and conformity with the Charter cannot be ensured solely by the operation of legislation,¹¹⁸¹ States Parties must take practical steps to promote equal opportunities.¹¹⁸²

Appropriate measures include:

- adopting and implementing national equal opportunities action plans;
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.¹¹⁸³

Action taken must be based on a comprehensive strategy for incorporating the gender perspective into all labour market policies.

The Appendix to Article 20 (§3) makes it clear that specific measures designed to remove *de facto* inequalities are permitted. As this provision simply upholds the very purpose of Article 20 in that it guarantees the right to equal opportunities, the Committee has interpreted it as placing a positive obligation on the States Parties. Besides the fact that legislation may not prevent the adoption of positive measures or positive action,¹¹⁸⁴ the States Parties are required to take specific steps aimed at removing *de facto* inequalities affecting women’s training or employment opportunities.¹¹⁸⁵

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¹¹⁸² Conclusions XVII-2, Netherlands (Antilles and Aruba), Article 1 of the Additional Protocol
¹¹⁸³ Conclusions XVII-2, Greece, Article 1 of the Additional Protocol
¹¹⁸⁴ Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol
¹¹⁸⁵ Conclusions 2002, Romania
Article 21 The right to information and consultation

Workers have the right to be informed and to be consulted within the undertaking.

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Appendix (Articles 21 and 22): 1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.

2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.
This provision applies to all undertakings, whether private or public. States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. However it is not applicable to public servants.\footnote{Conclusions XIII-3 (1995), Finland} \footnote{European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 40/2007, decision on the merits of 23 September 2008, § 42} All categories of employee (in other words all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.\footnote{Conclusions XIX-3 (2010), Croatia}

States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. For example, the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002: undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state are in conformity with this provision.\footnote{Conclusions XIX-3 (2010), Croatia} Workers and/or their representatives (trade unions, worker’s delegates, health and safety representatives, works’ councils) must be informed on all matters relevant to their working environment\footnote{Conclusions 2010, Belgium} except where the conduct of the business requires that some confidential information not be disclosed.

Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers’ interests, in particular those which may have an impact on their employment status.

These rights must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected.\footnote{Conclusions 2003, Romania} There must also be sanctions for employers which fail to fulfil their obligations under this Article.\footnote{Conclusions 2005, Lithuania}
Article 22 The right to take part in the determination and improvement of the working conditions and working environment

Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organisation and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organisation of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

Appendix (Articles 21 and 22): 1. For the purpose of the application of these articles, the term “workers' representatives” means persons who are recognised as such under national legislation or practice.

2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.

3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy.

4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.
Appendix [Article 22]. 1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application.

2. The terms «social and socio-cultural services and facilities» are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc.

This provision applies to all undertakings, whether private or public. States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice\textsuperscript{1193} and tendency undertakings.

Workers and/or their representatives (trade unions, worker’s delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision, such as:

- the determination and improvement of the working conditions, work organisation and working environment;
- the protection of health and safety within the undertaking. The right of workers’ representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 (right to safe and healthy working conditions, see supra). For the States Parties who have accepted Articles 3 and 22, this issue is examined only under Article 22;
- the organisation of social and socio-cultural services within the undertaking. The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established. Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established\textsuperscript{1194 1195}.

Workers must have legal remedies when these rights are not respected\textsuperscript{1196}. There must also be sanctions for employers which fail to fulfil their obligations under this Article\textsuperscript{1197}.

\textsuperscript{1193} Conclusions 2005, Estonia
\textsuperscript{1194} Conclusions 2007, Italia
\textsuperscript{1195} Conclusions 2007, Armenia
\textsuperscript{1196} Conclusions 2003, Bulgaria
\textsuperscript{1197} Conclusions 2003, Slovenia
Article 23 The rights of elderly persons to social protection

Every elderly person has the right to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

– to enable elderly persons to remain full members of society for as long as possible, by means of:
  a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  b) the health care and the services necessitated by their state;
– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Appendix: For the purpose of the application of this paragraph, the term «for as long as possible» refers to the elderly person’s physical, psychological and intellectual capacities.

Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of the elderly. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for elderly persons, obliging the Parties to devise and carry out coherent actions in the different areas covered.\textsuperscript{1198}

One of the primary objectives of Article 23 is to enable elderly persons to remain full members of society. The expression “full members” means that elderly persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be granted to everyone active or retired, living in an institution or not.

Article 23 overlaps with other provisions of the Charter which protect elderly persons as members of the general population, such as Article 11 (Right to protection of health), Article 12 (Right to social security), Article 13 (Right to social and medical assistance) and Article 30 (Right to protection against poverty and social exclusion). Article 23 requires States Parties to make focused and planned provision in accordance with the specific needs of elderly persons.

Non-discrimination legislation should exist at least in certain domains protecting persons against discrimination on grounds of age. The focus of Article 23 is on

\textsuperscript{1198} Conclusions XIII-3, Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)
social protection of elderly persons outside the employment field. Questions of age discrimination in employment are primarily examined under Articles 1§2 (non-discrimination in employment) and 24 (right to protection in cases of termination of employment).

As regards the protection of elderly persons from discrimination outside employment, Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, healthcare, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities. Therefore an adequate legal framework is a fundamental measure to combat age discrimination in these areas.1199

Elderly persons at times may have reduced capacity making powers or no such powers or capacity at all. Therefore, there should be a national legal framework related to assisted decision making for the elderly guaranteeing their right to make decisions for themselves unless it is shown that they are unable to make them. This means that elderly persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity.

An elderly person’s capacity to make a particular decision should be established in relation to the nature of the decision, its purpose and the state of health of the elderly person at the time of making it. Elderly persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by elderly persons, also in case of reduced decision making capacity. It must be ensured that the person acting on behalf of elderly persons interferes to the least possible degree with their wishes and rights1200.

Article 23 also requires States Parties to take appropriate measures against elder abuse. States Parties must therefore take measures to evaluate the extent of the problem, to raise awareness on the need to eradicate elder abuse and neglect, and adopt legislative or other measures.1201

- to enable elderly persons to remain full members of society for as long as possible, by means of:

  a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a ‘decent life’ and play an active part in public, social and cultural life.

1199 Conclusions 2009, Andorra Article 23
1200 Conclusions 2013, Statement of Interpretation Article 23.
1201 Conclusions 2009 Andorra Article 23
However when assessing adequacy of resources of elderly persons under Article 23, all social protection measures guaranteed to elderly persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life are taken into account. In particular, pensions, contributory or non-contributory, and other complementary cash benefits available to elderly persons are examined. These resources are then compared with the median equivalised income.\textsuperscript{1202}

\textbf{b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;}

Although Article 23 only refers to the provision of information about services and facilities, Article 23 presupposes the existence of services and facilities and that elderly persons have the right to certain services and facilities. Therefore, not only information relating to the provision of information about these services and facilities is examined but also the services and facilities themselves. In particular; the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.\textsuperscript{1203}

Additionally States Parties must have a system for monitoring the quality of services and a procedure for complaining about the standard of services.\textsuperscript{1204}

Insufficient regulation of fees for services may amount to a violation of Article 23.\textsuperscript{1205}

- to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

\textbf{a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;}

The needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.\textsuperscript{1206, 1207}

\textsuperscript{1202} Conclusions 2013, Statement of Interpretation Article 23
\textsuperscript{1203} Conclusions 2003, France (Article 23)
\textsuperscript{1204} Conclusions 2009 Andorra (Article 23)
\textsuperscript{1205} The Central Association of Carers in Finland v. Finland Complaint No 71/2011 decision on the merits of 4 December 2012.
\textsuperscript{1206} Conclusions 2005, Slovenia
\textsuperscript{1207} Conclusions 2013, Andorra (Article 23)
b the health care and the services necessitated by their state;

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for any psychological problems in respect of the elderly, and adequate palliative care services.\textsuperscript{1208}

- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

The final part of Article 23 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.\textsuperscript{1209, 1210}

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions should be licensed, and subject to an independent inspection regime. Emphasis is put on the importance of a truly independent inspection body.\textsuperscript{1211}

Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.
Article 24 The right to protection in cases of termination of employment

All workers have 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 recognise:

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.

Appendix

1. It is understood that for the purposes of this article the terms “termination of employment” and “terminated” mean termination of employment at the initiative of the employer.

2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:
   a workers engaged under a contract of employment for a specified period of time or a specified task;
   b workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;
   c workers engaged on a casual basis for a short period.

3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:
   a trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;
   b seeking office as, acting or having acted in the capacity of a workers’ representative;
   c the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

maternity or parental leave;

temporary absence from work due to illness or injury.

4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Scope of protection

Article 24 relates to termination of employment at the initiative of the employer (paragraph 1 of the appendix to Article 24).

Definition of an “employee”

All workers who have signed an employment contract are entitled to protection in the event of termination of employment. However, according to the appendix, the States Party may exclude one or more of the following categories:

i. workers engaged under a contract of employment for a specified period of time or a specified task;

ii. workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration. Exclusion of employees from protection against dismissal for six months or 26 weeks is not considered reasonable if it is applied indiscriminately, regardless of the employee’s qualifications;  

iii. workers engaged on a casual basis for a short period.

This list is exhaustive. Exclusion of any other category of employee is not in conformity with the Charter.

Definition of valid reasons

Under Article 24, the following are regarded as valid reasons for termination of an employment contract:

i. reasons connected with the capacity or conduct of the employee

A prison sentence delivered in court for employment-related offences can be considered a valid reason for dismissal. This is not the case with prison sentences for offences unrelated with the person’s employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work.

ii. certain economic reasons

Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service. The assessment relies on the domestic courts’ interpretation of the law. The courts must have the

1212 Conclusions 2003, Statement of Interpretation on Article 24
1213 Conclusions 2003, Italy
1214 Conclusions 2012, Cyprus
1215 Conclusions 2012, Ireland
competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law\textsuperscript{1216,1217}.

Employers must notify employees of their dismissal in writing.

Prohibition of termination of employment for certain reasons

The appendix to Article 24 lists reasons for which it is prohibited to terminate employment.

Prohibition to terminate employment for most of these reasons is also a requirement for conformity with other Articles of the Charter:

- discrimination (Articles 1§2, 4§3, 15 and 20);
- trade union activities (Article 5);
- participation in strikes (Article 6§4);
- maternity (Article 8§2);
- family responsibilities (Article 27);
- worker representation (Article 28).

Two reasons are examined only under Article 24, namely:

i. **the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities**;

National legislation or case-law must contain express safeguards against retaliatory dismissal. Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law. In the absence of any explicit statutory ban, States Parties must be able to show how national legislation conforms to the requirement of the Charter\textsuperscript{1218}.

ii. **temporary absence from work due to illness or injury**.

A time limit can be placed on protection against dismissal in such cases\textsuperscript{1219}. Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.

As regards dismissal without notice in the event of permanent invalidity, the following factors are taken into consideration for the assessment:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
- are employers required to pay compensation for termination in such cases?
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?

\textsuperscript{1216} Conclusions 2012, Turkey
\textsuperscript{1217} Conclusions 2003, France
\textsuperscript{1218} Conclusions 2003, Statement of Interpretation on Article 24
\textsuperscript{1219} Conclusions 2012, Ukraine
iii. Dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age

(age when an individual becomes entitled to a pension) will be contrary to the Charter, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the Charter\textsuperscript{1220} 1221. The legislation which enables dismissal directly on grounds of age and does not, therefore, effectively guarantee the right to protection in cases of termination of employment, is contrary to the Charter\textsuperscript{1222}.

The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.

\textit{Adequate compensation}

\textit{Right of appeal}

Any employee who considers him- or herself to have been dismissed without valid reason must have the right to appeal to an impartial body. The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer\textsuperscript{1223}.

\textit{Damages}

Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate if they include the following provisions:

- reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body\textsuperscript{1224} 1225;
- the possibility of reinstatement\textsuperscript{1226}; and/or
- compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee\textsuperscript{1227}.

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time\textsuperscript{1228} 1229.

\textsuperscript{1220} Conclusions 2012, Statement of Interpretation on Article 24
\textsuperscript{1221} Conclusions 2012, the Netherlands
\textsuperscript{1222} Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, Decision on the merits of 2 July 2013, §§ 86, 89, 97, 99
\textsuperscript{1223} Conclusions 2008, Statement of Interpretation on Article 24
\textsuperscript{1224} Conclusions 2012, Slovak Republic
\textsuperscript{1225} Conclusions 2003, Bulgaria
\textsuperscript{1226} Conclusions 2012, Finland
\textsuperscript{1227} Conclusions 2012, Turkey
\textsuperscript{1228} Conclusions 2012, Slovenia
\textsuperscript{1229} Conclusions 2012, Finland
Article 25 The right of workers to the protection of their claims in the event of the insolvency of their employer

All workers have the right to 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

Appendix: 1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided by reason of the special nature of their employment relationship.

2. It is understood that the definition of the term “insolvency” must be determined by national law and practice.

3. The workers’ claims covered by this provision shall include at least:

   a) the workers’ claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

   b) the workers’ claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

   c) the workers’ claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

4. National laws or regulations may limit the protection of workers’ claims to a prescribed amount, which shall be of a socially acceptable level.

Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States Parties having accepted this provision benefit from a margin of discretion as to the form of protection of workers’ claims and so Article 25 does not require the existence of a specific guarantee institution.

However, the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Guarantees must exist for workers that their claims will be satisfied in such cases. The protection should also apply in situations where the employer’s assets are recognised as insufficient to justify the opening of formal insolvency proceedings.

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1230 Conclusions 2003, France
1231 Conclusion 2012, Ireland
1232 Conclusions 2008, Slovenia
A privilege system, on its own cannot be regarded as an effective form of protection in situations where there is no alternative to it and alone it cannot provide effective guarantee of protection, due to the fact that the employer has no assets.\textsuperscript{1233, 1234}

The Committee has found that a privilege system where workers’ claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs did not amount to an effective protection under the Charter.\textsuperscript{1235}

In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, inter alia, on the average duration of the period from a claim is lodged until the worker is paid\textsuperscript{1236, 1237} and on the overall proportion of workers’ claims which are satisfied by the guarantee institution and/or the privilege system.\textsuperscript{1238}

States Parties may limit the protection of workers’ claims to a prescribed amount. Domestic laws or regulations may limit the protection of workers’ claims to a prescribed amount which shall be of a socially acceptable level, namely not less than three months wage under a privilege system and eight weeks under a guarantee system. The workers’ claims covered should also include holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred.\textsuperscript{1239}

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship. The assessment of the conformity of such exclusion is done on a case-by-case basis.

Exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter\textsuperscript{1240}.

Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.\textsuperscript{1241}

\textsuperscript{1233} Conclusions 2012, Statement of Interpretation Article 25
\textsuperscript{1234} Conclusions 2012, Albania
\textsuperscript{1235} Conclusions 2012, Albania
\textsuperscript{1236} Conclusions 2003, Bulgaria
\textsuperscript{1237} Conclusions 2003, Sweden
\textsuperscript{1238} Conclusions 2012, Lithuania
\textsuperscript{1239} Conclusions 2012, Serbia
\textsuperscript{1240} Conclusions 2012, Slovakia
\textsuperscript{1241} Conclusions 2008, Statement of Interpretation on Article 25
Article 26 The right to dignity at work

All workers have the right to dignity at work

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’ organisations 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.

Appendix: It is understood that this article does not require that legislation be enacted by the Parties.

Sexual harassment is defined as a breach of equal treatment characterised by the adoption, towards one or more persons, of preferential or retaliatory conduct, or other forms of insistent behaviour, which may undermine their dignity or harm their career.\textsuperscript{1242, 1243}

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment shall be prohibited and repressed in the same way as acts of discrimination, independently from the fact that not all harassment behaviours are acts of discrimination, except when this is explicitly presumed by law.\textsuperscript{1244}

The Appendix to Article 26§1 specifies that States Parties have no obligation to enact legislation relating specifically to harassment, provided that the legal framework, as interpreted by the relevant national authorities ensures an effective protection in law and in practice against harassment in the workplace or in relation to work.\textsuperscript{1245}

Prevention

Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat sexual harassment. In particular, in consultation with social partners,\textsuperscript{1246} they should inform workers about the nature of the behaviour in question and the available remedies.\textsuperscript{1247}

Liability of employers and remedies

Workers must be afforded an effective protection against harassment\textsuperscript{1248, 1249} by domestic law, irrespective of whether this is a general anti-discrimination act or a specific law against harassment.

\textsuperscript{1242} Conclusions 2003, Bulgaria
\textsuperscript{1243} Conclusions 2005, Moldova
\textsuperscript{1244} Conclusions 2007, Statement of Interpretation on Article 26
\textsuperscript{1245} Conclusions 2005, Moldova
\textsuperscript{1246} Conclusions 2005, Lithuania
\textsuperscript{1247} Conclusions 2003, Italy
\textsuperscript{1248} Conclusions 2003, Bulgaria
\textsuperscript{1249} Conclusions 2005, Moldova
This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.\textsuperscript{1250}

It must be possible for employers to be held liable when sexual harassment occurs in relation to work, or on premises under their responsibility, but it is suffered or perpetrated by a third person, not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.\textsuperscript{1251}

**Burden of proof**

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.\textsuperscript{1252,1253}

**Damages**

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.\textsuperscript{1254} These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim’s pecuniary and non-pecuniary damage and act as a deterrent to the employer.\textsuperscript{1255,1256}

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign for reasons related to sexual harassment.\textsuperscript{1257}

**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’ organisations 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

*Appendix: It is understood that this article does not require that legislation be enacted by the Parties. It is understood that paragraph 2 does not cover sexual harassment.*

Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed
against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.\textsuperscript{1258} \textsuperscript{1259}

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination. And this independently from the fact that not all harassment behaviours are acts of discrimination, except when this is presumed by law.\textsuperscript{1260}

The Appendix to Article 26§2 specifies that States Parties have no obligation to enact legislation relating specifically to harassment, provided that the legal framework, as interpreted by the relevant national authorities ensures an effective protection in law and in practice against harassment in the workplace or in relation to work.\textsuperscript{1261}

Prevention

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.\textsuperscript{1262} Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment., in particular in situations where harassment is likely to occur. A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2.\textsuperscript{1263} In particular, in consultation with social partners, they should inform workers about the nature of the behaviour in question and the available remedies.

Liability of employers and remedies

Workers must be afforded effective protection against harassment. This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.\textsuperscript{1264} \textsuperscript{1265}

It must be possible for employers to be held liable when harassment occurs in relation to work, or on premises under their responsibility, even when it involves, as a perpetrator or a victim, a third person not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.\textsuperscript{1266} \textsuperscript{1267}

Burden of proof

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient \textit{prima facie} evidence and the personal conviction of the judge or judges.\textsuperscript{1268} \textsuperscript{1269}

\begin{footnotes}
\footnote{1258}{Conclusions 2003, Bulgaria}
\footnote{1259}{Conclusions 2007, Statement of Interpretation on Article 26}
\footnote{1260}{Conclusions 2007, Statement of Interpretation on Article 26}
\footnote{1261}{Conclusions 2005, Moldova}
\footnote{1262}{Conclusions 2007, Statement of Interpretation on Article 26}
\footnote{1263}{Conclusions 2003, Slovenia}
\footnote{1264}{Conclusions 2007, Statement of Interpretation on Article 26}
\footnote{1265}{Conclusions 2005, Moldova}
\footnote{1266}{Conclusions 2003, Sweden}
\footnote{1267}{Conclusions 2014, Finland}
\footnote{1268}{Conclusions 2007, Statement of Interpretation on Article 26}
\footnote{1269}{Conclusions 2014, Azerbaijan}
\end{footnotes}
Damages

Victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage. These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to harassment.\textsuperscript{1270}

\textsuperscript{1270} Conclusions 2014, Azerbaijan
Article 27 The right of workers with family responsibilities to equal opportunities and treatment

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

Appendix: It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms “dependent children” and “other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.

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

- to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;

Under Article 27§1a of the Charter, States Parties should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities.

Therefore, measures need to be taken by States Parties to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training.\footnote{Conclusions 2005, Estonia}

Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities.\footnote{Conclusions 2003, Sweden}

States Parties should pay particular attention to the problem of unemployment of part-time workers.
b to take account of their needs in terms of conditions of employment and social security;

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security.

Measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment. There measures should apply equally to men and women.1273

The type of measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights.

c to develop or promote services, public or private, in particular child day care services and other childcare arrangements.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.1275

Where a State has accepted Article 16, childcare arrangements are dealt with under that provision.

In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.1276

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

Article 27§2 provide for the right to parental leave which is distinct from maternity leave.1277

Article 27§2 requires States Parties to provide the possibility for either parent to obtain parental leave, as an important element for the reconciliation of professional, private and family life. The duration of parental leave should be determined by States Parties.1278

All categories of employees are entitled to parental leave.1279

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1273 Conclusions 2005, Statement of Interpretation on Article 27§1b; see for example Estonia
1274 Conclusions 2005, Lithuania.
1275 Conclusions 2005, Statement of Interpretation on Article 27§1c; see for example Estonia
1276 Conclusions 2005, Italy
1277 Conclusions 2011, Armenia
1278 Conclusions 2011, Armenia
1279 Conclusions 2011, Armenia
Domestic law should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child. With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.  

The States Parties are under a positive obligation to encourage the use of parental leave by either parent.

States shall ensure that an employed parent is adequately compensated for his/her loss of earnings during the period of parental leave. The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations.

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

Family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement.

Workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. In particular, courts or other competent bodies should be able to order reinstatement of an employee unlawfully dismissed and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. 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 (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.  

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1280 Conclusions 2011, Armenia
1281 Conclusions 2015, Statement of interpretation on Article 27§2
1282 Conclusions 2015, Statement of interpretation on Article 27§2
1283 Conclusions 2003, Statement of Interpretation on Article 27§3; see for example Bulgaria
1284 Conclusions 2007, Finland
1285 Conclusions 2005, Estonia
1286 Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3.
Article 28 The right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

Workers’ representatives in undertakings have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions

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 relation system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix: For the purpose of the application of this article, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice

This provision guarantees the right of workers’ representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.1287

According to the Appendix of Article 28, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice. States Parties may therefore establish different kinds of workers’ representatives either trade union representatives or other types of representatives or both. Representation may be exercised, for example, through workers’ commissioners, workers’ council or workers’ representatives on the enterprise’s supervisory board.1288

Protection should cover the prohibition of dismissal on the ground of being a workers’ representative and the protection against detriment in employment other than dismissal.1289

The protection afforded to worker representatives should extend for a period beyond the mandate. To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.1290 The extension of the protection granted to workers’ representatives to at least six months1291 after the end of their mandate is considered reasonable.

1287 Conclusions 2003, Bulgaria
1288 Conclusions 2003, Bulgaria
1289 Conclusions 2003, France
1290 Conclusions 2010, Statement of Interpretation on Article 28
1291 Conclusions 2010, Bulgaria
Remedies must be available to worker representatives to allow them to contest their dismissal.\textsuperscript{1292}

Where a dismissal based on trade union membership has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. The compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.\textsuperscript{1293}

The facilities may include for example those mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions, access for workers representatives or other elected representatives to all premises, where necessary, the access without any delay to the undertaking's management board if necessary, the authorisation to regularly collect subscriptions in the undertaking, the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities), as well as other facilities such as financial contribution to the workers' council and the use of premises and materials for the operation of the workers' council;\textsuperscript{1294}

Moreover, the participation in training courses on economic, social and union issues should not result on a loss of pay. Training costs should not be borne by the workers' representatives.\textsuperscript{1295}

\textsuperscript{1292} Conclusions 2010, Norway
\textsuperscript{1293} Conclusions 2007, Bulgaria
\textsuperscript{1294} Conclusions 2010, Statement of Interpretation on Article 28
\textsuperscript{1295} Conclusions 2010, Statement of Interpretation on Article 28
Article 29 The right to information and consultation in collective redundancy procedures

All workers have the right to be informed and consulted 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 accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix: For the purpose of the application of this article, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.

Under Article 29, workers’ representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.

Redundancies concerned

Under Article 29 the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm’s activity.\textsuperscript{1296}

The definition of redundancies in domestic law, however, must not be too restrictive.\textsuperscript{1297}

Notion of workers’ representatives

The appendix to the Charter defines workers’ representatives as persons who are recognised as such under national legislation or practice, in accordance with ILO Convention No. 135 on workers’ representatives. In other words, trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. This wording means that States Parties are free to decide how the workers’ representatives who have to be informed and consulted are to be appointed (general or ad hoc system).\textsuperscript{1298}

\textsuperscript{1296} Conclusions 2003, Statement of Interpretation on Article 29
\textsuperscript{1297} Conclusions 2014, Azerbaijan
\textsuperscript{1298} Conclusions 2003 Sweden
Domestic law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular workplace by a trade union or other representative body. Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.1299

Consultation procedure

Prior consultation in good time

Under Article 29, consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies.

Purpose of the consultation

Article 29 requires that the States Parties establish an information and consultation procedure which should precede the process of collective redundancies. Its provisions are directed – on the one hand – towards ensuring that workers are made aware of reasons and scale of planned redundancies, and – on the other hand – towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.1300

Article 29 provides for the employer’s duty to consult with workers’ representatives and the purpose of such consultation. The Committee has stated that “this obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers’ representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached”.1301 Simple notification of redundancies to workers or their representatives is not sufficient.1302

As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant or providing them with other forms of assistance with a view to obtaining a new job.1303

1299 Conclusions 2014, Statement of Interpretation on Article 29
1300 Conclusions 2014, Statement of Interpretation on Article 29
1301 Conclusions 2003, Statement of Interpretation on Article 29
1302 Conclusions 2014, Georgia
1303 Conclusions 2014, Statement of Interpretation on Article 29
Content of prior information

With a view to fostering dialogue, the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.¹³⁰⁴

Sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.¹³⁰⁵

Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.¹³⁰⁶

¹³⁰⁴ Conclusions 2005, Lithuania
¹³⁰⁵ Conclusions 2007, Sweden
¹³⁰⁶ Conclusions 2003 and 2005, Statement of Interpretation on Article 29
Article 30 The right to protection against poverty and social exclusion

Everyone has 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.

Living in a situation of poverty and social exclusion violates the dignity of human beings. 1307

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 1308 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. 1309

The overall and coordinated approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach. Normally, some sort of coordinating mechanisms, including at the level of delivery of assistance and services to those living in or at risk of poverty, should be provided.

At the very least, States Parties should demonstrate that poverty and social exclusion reduction is an embedded aspect of all the relevant strands of public policy.

Moreover, adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy. 1310 The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

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1307 Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France
1308 Statement of interpretation of Article 30, Conclusions 2013
1309 Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France
1310 Conclusions 2005, Slovenia.
The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.  

Monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach. 

The Committee takes into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach. One of the key indicators in this respect is the level of resources (including any increase in this level) that have been allocated to attain the objectives of the strategy, in so far as "adequate resources are an essential element to enable people to become self-sufficient".

In addition, the main indicator used to measure poverty is the relative poverty rate (this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income). The at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations, without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the ‘feminization’ of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of ‘inherited’ poverty, etc.).

Concerning the repercussions of the economic crisis on social rights, the Committee held that, by acceding to the Charter, the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised. Accordingly, it has concluded that “the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most.”

This applies equally to labour law: while it may be reasonable for the crisis to prompt changes in current legislation and practices in one or other of these areas to restrict certain items of public spending or relieve constraints on businesses, these changes should not excessively destabilise the situation of those who enjoy the rights enshrined in the Charter.

The human rights approach of poverty has been reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012) and which the Committee takes into consideration.

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1311 Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France
1312 ERRC v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009 §93
1313 Statement of Interpretation of Article 30, Conclusions 2005
1314 Statement of Interpretation of Article 30, Conclusions 2003
1315 General Introduction to Conclusions XIX-2 (2009)
1317 Complaint No. 58/2009, decision on the merits of 25 June 2010, para. 107
1318 Defence for Children International v. The Netherlands, Complaint No. 69/2011, decision on the merits of 23 October 2013, para. 81

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In particular, the Committee has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter:

Concerning poverty defined as deprivation due to a lack of resources, it can arise inter alia - from the failure of States Parties to fulfil the obligation “to ensure that all individuals have the right of access to health care and that the health system must be accessible to the entire population” - from the failure to provide a minimum income to persons in need, -or to adopt a co-ordinated approach to promoting effective access to housing for persons who live or risk living in a situation of social exclusion.

Concerning social exclusion, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation in particular of Roma and Sinti in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation. The reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance. In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by article 30.

These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of political or social rights, Article 13).

In this context, by reaffirming this human rights approach, the Committee emphasizes the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.

Consequently, together with the indicators mentioned above, when assessing the respect of Article 30, the Committee also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure). This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article

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1319 DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, par. 100;
but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.

Indeed, the conclusion reached by the Committee on the existence of one or several violations of these provisions should not be conceived as an exception which confirms the existence of a generally satisfactory overall and co-ordinated approach, but rather as a substantial weakness affecting an essential pillar (or several) of the fundamental obligations of States Parties contained in Article 30 in relation to protection against poverty and social exclusion.

1323 EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, para. 59
Article 31 The right to housing

Everyone has the right to housing

Article 31 imposes to State positive obligations.\textsuperscript{1324} State must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. They enjoy a margin of discretion in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources.\textsuperscript{1325}

Article 31 cannot be interpreted as imposing on States Parties an obligation of “results”. However, the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form. This implies that, for the situation to be in conformity, States Party must\textsuperscript{1326}:

a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;

b) maintain meaningful statistics on needs, resources and results;

c) undertake regular reviews of the impact of the strategies adopted;

d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;

e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

As concerns the means of ensuring steady progress towards achieving the goals laid down by the Charter, implementation of the Charter requires State Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.\textsuperscript{1327}

When one of the rights in question is exceptionally complex and particularly expensive to implement, States Party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.

The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity.\textsuperscript{1328}

However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.

\textsuperscript{1324} European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §35

\textsuperscript{1325} European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, § 35

\textsuperscript{1326} International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

\textsuperscript{1327} International Movement ATD Fourth World (ATD) v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §61

\textsuperscript{1328} International Movement ATD Fourth World (ATD) v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §63
The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty.

Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied: the European Convention on Human Rights and the United Nations Covenant on Economic, Social and Cultural Rights.

31.1 With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard.

Definition and Material scope

States Parties must guarantee to everyone the right to adequate housing. They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.

The notion of adequate housing must be defined in law. “Adequate housing” means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.

Positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers. As a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority. They, therefore, require special protection. Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.

1329 Conclusions 2003, France
1330 Conclusions 2003, Italy
1331 Conclusions 2003, France
1332 Conclusions 2003, France
1333 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39 and 40
A problem of non-conformity under this provision in several countries has resulted from the failure to provide a sufficient number of halting sites for Travellers as well as the poor living conditions on such sites.\textsuperscript{1334}

Likewise, housing policies which have resulted in the spatial and social segregation of Roma (poorly built housing, on the outskirts of towns, segregated from the rest of the population), have also led to breaches of the Charter.\textsuperscript{1335}

**Effectiveness**

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.\textsuperscript{1336}

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.\textsuperscript{1337, 1338}

**Legal protection**

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies.\textsuperscript{1339} Any appeal procedure must be effective.\textsuperscript{1340}

\textsuperscript{1334} European Roma Rights Center (ERRC) v. France, Complaint No. 51/2008, Decision on the merits of 19 October 2009, §§ 38, 39, 49
\textsuperscript{1335} European Roma Rights Center (ERRC) v. Portugal, Complaint No. 61/2010, Decision on the merits of 30 June 2011, § 48
\textsuperscript{1336} Conclusions 2003, France
\textsuperscript{1337} European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, Decision on the merits of 7 December 2005, § 26
\textsuperscript{1338} European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 79
\textsuperscript{1339} Conclusions 2003, France.
31.2 With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.

Definition

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1. Preventing homelessness

States Parties must take action to prevent categories of vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3),

Though State authorities enjoy a wide margin of discretion in measures to be taken concerning town planning, they must strike a balance between the general interest and the fundamental rights of the individuals, in particular the right to housing and its corollary of ensuring individuals do not become homeless.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. States Parties must set up procedures to limit the risk of eviction.

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide.

The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by

1341 Conclusions 2003, Italy.
1342 Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §135.
1343 European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands Complaint No. 86/2012, decision on the merits of 2 July 2014, §106
1344 Conclusions 2005, Lithuania
1345 Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §136.
1346 European Roma Rights Center (ERRC) v.Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §54
1347 Conclusions 2003, Sweden
1348 European Roma Rights Center (ERRC) v.Greece, Complaint No. 15/2003, Decision on the merits of 8 December 2004, §51
the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.\textsuperscript{1349}

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

\textit{Right to shelter}

According to Article 31§2, homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings.\textsuperscript{1350}\textsuperscript{1351}

States Parties shall foresee sufficient places in emergency shelters\textsuperscript{1352} and the conditions in the shelters should be such as to enable living in keeping with human dignity.\textsuperscript{1353}

The Committee considers that eviction from shelters without the provision of alternative accommodation must be prohibited.\textsuperscript{1354}

The temporary supply of shelter, however adequate, cannot be considered satisfactory; Individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.\textsuperscript{1355}\textsuperscript{1356}

Since the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity, under Article 31§2 of the Charter, States Parties are required to provide adequate shelter also to children and adults unlawfully present in their territory for as long as they are in their jurisdiction.\textsuperscript{1357}\textsuperscript{1358}\textsuperscript{1359}

Eviction from shelter of persons present within the territory of a State Party in an irregular manner should be prohibited as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity. States Parties are not obliged to provide

\textsuperscript{1349} European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, §52
\textsuperscript{1350} Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§138.
\textsuperscript{1351} Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 62
\textsuperscript{1352} European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107
\textsuperscript{1354} Conclusions 2015, Statement of Interpretation on Article 31§2
\textsuperscript{1355} Conclusions 2003, Italy,
\textsuperscript{1356} Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §140.
\textsuperscript{1357} Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 47
\textsuperscript{1358} Conference of European Churches (CEC) v. the Netherlands Complaint No. 90/2013, decision on the merits of 1 July 2014, §§128-129.
\textsuperscript{1359} European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §61.
alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation.\textsuperscript{1360}

\subsection*{31.3 With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to make the price of housing accessible to those without adequate resources.}

An adequate supply of affordable housing must be ensured for persons with limited resources.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.\textsuperscript{1361} In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show not the average affordability ratio required of all those applying for housing, but rather that the affordability ratio of the poorest applicants for housing is compatible with their level of income.\textsuperscript{1362}

States Parties must:

\begin{itemize}
\item adopt appropriate measures for the provision of housing, in particular social housing;\textsuperscript{1363} social housing should target, in particular, the most disadvantaged;\textsuperscript{1364}
\item adopt measures to ensure that waiting periods for the allocation of housing are not excessive; judicial or other remedies must be available when waiting periods are excessive;\textsuperscript{1365}
\item introduce housing benefits at least for low-income and disadvantaged sections of the population.\textsuperscript{1366} Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.\textsuperscript{1367}
\end{itemize}

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.\textsuperscript{1368}

\begin{flushleft}
\textsuperscript{1360} European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands Complaint No. 86/2012, decision on the merits of 2 July 2014, §60,110
\textsuperscript{1361} Conclusions 2003, Sweden
\textsuperscript{1362} FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, § 72.
\textsuperscript{1363} Conclusions 2003, Sweden
\textsuperscript{1364} International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100
\textsuperscript{1365} International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, § 131
\textsuperscript{1366} Conclusions 2003, Sweden
\textsuperscript{1367} Conclusions 2003, Sweden
\textsuperscript{1368} International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155
\end{flushleft}
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

Background to Article E

Article E draws its inspiration from Article 14 of the European Convention on Human Rights.\textsuperscript{1369} It takes up the principle of non-discrimination which was set forth in the Preamble of the Social Charter of 1961 and incorporates it into the main body of the revised Charter.

Purpose of Article E

Article E prohibits all forms of discrimination. It confirms the right to non-discrimination which is established implicitly or explicitly by a large number of Charter provisions. 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. Its function is to help secure the equal effective enjoyment of all the rights concerned regardless of the specific characteristics of certain persons or groups of persons.\textsuperscript{1370}

It does not constitute an autonomous right which could in itself provide independent grounds for a complaint.\textsuperscript{1371} However, a violation of Article E (combined with a substantive provision of the Charter) may exist even in the absence of a breach of the relevant substantive provision.

Article E cannot, however, be combined with the provisions of the Charter which are intrinsically anti-discriminatory provisions, in particular in particular the part of Article 1§2 on the prohibition of discrimination in employment.

Prohibited grounds for discrimination

The prohibited grounds for discrimination are a combination of those listed in Article 14 of the European Convention on Human Rights and those in the Preamble to the 1961 Charter.

The expression "or other status" means that this is not an exhaustive list.

Thus, disability is also a prohibited ground for discrimination although it is not listed as such in the article.\textsuperscript{1372} The same applies to the health status\textsuperscript{1373}, the socio-economic status\textsuperscript{1374}, and the territorial status\textsuperscript{1375}.

\textsuperscript{1369} Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52.
\textsuperscript{1370} Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.
\textsuperscript{1371} Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.
\textsuperscript{1373} IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194.
\textsuperscript{1374} IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194.
\textsuperscript{1375} IPFEN v. Italy, Complaint No, 87/2012, decision on the merits of 10 September 2013, §190-194.
In general, all the grounds of discrimination prohibited by Article 1§2 are also to be prohibited by Article E, for example age\textsuperscript{1376}.

**Scope of Article E**

The principle of equality underlying article E implies not only that all people in the same situation must be treated equally but also that people in different situations must be treated differently. The Parties fail to respect the Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are different. In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that 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.\textsuperscript{1377, 1378}

**Comparability, justification, proportionality**

Groups must be in a comparable situation.\textsuperscript{1379} States Parties enjoy a certain margin of appreciation in assessing whether, and to what extent, differences in otherwise similar situations justify a different treatment in law. But it is ultimately for the Committee to decide whether the distinction lies within this margin of appreciation.\textsuperscript{1380}

A difference of treatment is not discriminatory only if it is based on an objective and reasonable justification\textsuperscript{1381, 1382} and is proportionate to the objective pursued.\textsuperscript{1383}

In the case of discrimination, the burden of proof must not rest entirely on the requesting party and must be the subject of an appropriate adjustment.\textsuperscript{1384}

\textsuperscript{1376} Fellesforbundet for Sjøfolk (FFFS) v. Norway, complaint No 74/2011, decision on the merits of 2 July 2013, §§ 116-117
\textsuperscript{1377} Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52.
\textsuperscript{1378} European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36.
\textsuperscript{1379} Associazione Nazionale Giudici di Pace v. Italy, Complaint No 102/2013, decision on the merits of 5 July 2016, § 74-76.
\textsuperscript{1380} Confédération française démocratique du travail (CFDT) v. France, Complaint No 50/2008, decision on the merits of 9 September 2009, §39.
\textsuperscript{1381} European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §41
\textsuperscript{1382} Associazione Nazionale Giudici di Pace v. Italie, Complaint No 102/2013, decision on the merits of 5 July 2016, § 82.
\textsuperscript{1383} Associazione sindacale « La Voce dei Giusti » v. Italie, Complaint No 105/2014, decision on the merits of 18 October 2016, §74
\textsuperscript{1384} Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52.
Article F – Derogations in time of war or public emergency

1 In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefore. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed.

So far, no Party has implemented Article F.
Article G – Restrictions

1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article G provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted. This provision corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights. It cannot lead to a violation as such, but this provision can nevertheless be taken into account when assessing the merits of the complaint with regard to a substantive article of the Charter.

Article G is applicable to all provisions of Articles 1 to 31 of the Charter.

Any restriction to a right is only in conformity with the Charter if it satisfies the conditions laid down in Article G.

Given the severity of the consequences of a restriction of these rights, especially for society's most vulnerable members, Article G lays down specific preconditions for applying such restrictions. Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article 31 must be interpreted narrowly.

Thus, any restriction has to be

(i) prescribed by law,

Prescribed by law means by statutory law or any other text or case-law provided that the text is sufficiently clear i.e. that satisfy the requirements of precision and foreseeability implied by the concept of “prescribed by law”

(ii) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals.

In a democratic society, it is in principle for the legislature to legitimise and define the public interest by striking a fair balance between the needs of all members of society. From the point of view of the Charter,

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1386 Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, decision on the merits of 15 June 2005 § 33
1387 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 83.
the legislature has a margin of appreciation in doing so. However, the legislature is not totally free of any constraints in its decision-making: obligations undertaken under the Charter cannot be abandoned without appropriate guarantees of a level of protection which is still adequate to meeting basic social needs. It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights.\textsuperscript{1388}

States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions.\textsuperscript{1389}

\textit{(iii) necessary in a democratic society for the pursuance of these purposes,} i.e. the restriction has to be proportionate to the legitimate aim pursued: There must be a reasonable relationship of proportionality between the restriction on the right and the legitimate aim(s) pursued.\textsuperscript{1390, 1391}

In transposing restrictive measures into national law, legal acts must ensure proportionality between the goals pursued and their negative consequences for the enjoyment of social rights. Consequently, even under extreme circumstances the restrictive measures put in place must be appropriate for reaching the goal pursued, they may not go beyond what is necessary to reach such goal, they may only be applied for the purpose for which they were intended, and they must maintain a level of protection which is adequate.\textsuperscript{1392}

Moreover, a thorough balancing analysis of the effects of the legislative measures should be conducted by the authorities, notably of their possible impact on the most vulnerable groups in the labour market as well as a genuine consultation with those most affected by the measures.\textsuperscript{1393}

\textsuperscript{1388} Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 85.
\textsuperscript{1389} Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 87.
\textsuperscript{1390} Conclusions XIII-1, The Netherlands, Article 6§4.
\textsuperscript{1391} European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §§ 207 -214
\textsuperscript{1392} Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 87
\textsuperscript{1393} Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, § 90
Article H – Relations between the Charter and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

The Charter is in as far as possible to be interpreted in harmony with other rules of international law of which it forms part.

According to Article H, the Charter shall not prejudice the provisions of any multilateral treaties, under which more favourable treatment would be accorded to the persons protected.

In addition, when member states of the European Union agree on binding measures in the form of directives which relate to matters within the remit of the European Social Charter, they should – both when preparing the text in question and when transposing it into national law – take full account of the commitments they have taken upon ratifying the European Social Charter. It is ultimately for the Committee to assess compliance of a national situation with the Charter, including when the transposition of a European Union directive into domestic law may affect the proper implementation of the Charter.

Article I – Implementation of the undertakings given

1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:
   a laws or regulations;
   b agreements between employers or employers’ organisations and workers’ organisations;
   c a combination of those two methods;
   d other appropriate means.

The means of fulfilling Charter obligations is left to the discretion of the Parties, who are free to use all the methods referred to above.

However,

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1394 DCI v. the Netherlands, cited above, §35
1396 Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, 1st July 2014 §§ 68-69
1398 Syndicat de défense des fonctionnaires v. France, Complaint No. 73/2011, Decision on the merits of 12 September 2012, §29
it is not enough for a law to exist and comply with principles of the Charter for the situation to be in conformity; the law also has to be applied in practice; it is not enough for a law to exist and comply with principles of the Charter for the situation to be in conformity; the law also has to be applied in practice; in the event of fulfilment through collective agreements or by the national authorities, it is for the state to ensure that the rights enshrined in the Charter are respected: States Parties should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation. Lastly, in cases of complex circumstances entailing a substantial financial cost, the enforcement of Charter rights may require a certain length of time. In such cases, a State party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings. Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned. The expression "great majority" means 80%. For the provisions listed above, the situation is considered to be in conformity when the right enshrined is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 2, even if it affects less than 20% of workers in practice.

2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

The appendix to Article 7§8 contains a similar provision:

“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 that the great majority of persons under eighteen years of age shall not be employed in night work.”

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1402 Conclusions I.
1403 Conclusions XIV-2, Norway
Annex: the personal scope of the charter

The primary reference is the Appendix to the Charter on its scope in terms of persons protected. Paragraph 1, sub-paragraph 1 states that Articles 1 to 17 and 20 to 31 apply to foreigners "only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned". This rule is "without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4", and must be interpreted "in the light of the provisions of Articles 18 and 19". Sub-paragraph 2 states that "this interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties".

Rights for nationals of other parties lawfully present

i. General

When they ratify the Charter, States Parties undertake to apply the provisions they have accepted to their nationals and "nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned" (Appendix). Foreign nationals must therefore satisfy three conditions for entitlement to the rights in the Charter on the same basis as nationals:

1. be a national of one of the parties to the Charter or the Revised Charter;
2. be lawfully resident, in other words be authorised to enter and reside in the state's territory;
3. and/or be working regularly, in other words be authorised to enter and work in the state's territory.

The Charter does not grant foreign nationals any right of entry to, let alone freedom of circulation in, the territory of other parties. However it does require States Parties to operate a flexible immigration policy towards nationals of other parties by liberalising the regulations governing the employment of foreign workers (article 18§§1-3) and facilitating family reunion (article 19§6).

ii. Specific cases

Certain Charter rights are not included in the appended list of those that States Parties must apply without discrimination based on nationality, not only for the simple reason that foreigners are the sole beneficiaries of these rights but also because in certain respects the relevant provisions extend the circle of beneficiaries beyond nationals and foreigners as defined in the Appendix:

- Article 12§4 concerns the social security of "nationals of other Parties". This requires States Parties to ensure not only that foreign nationals covered by the Appendix are entitled to equal treatment and the export of social security benefits but also that foreigners who are no longer resident in the country but were previously lawfully resident or working there regularly retain their social security rights acquired under that country's legislation;
- Article 13§4 offers specific entitlement to assistance to foreigners with the nationality of a party to the Charter or Charter who are lawfully present in the territory of another state, but not resident or working there. This may apply to students or tourists, and grants such persons a right to temporary social assistance and emergency medical care; 

- Article 18 grants a right to engage in a gainful occupation in the territory of other parties. It follows from the very purpose of this provision – see above – that those concerned are applicants for residence and/or work permits and are not yet in the country in question; 

- Article 19 contains several rights that apply specifically to migrant workers and their families, such as the rights to family reunion and procedural safeguards in the event of expulsion and the right to teaching of the language of the host country and the mother tongue.

Exclusion of foreign nationals of other countries and/or those unlawfully present

One consequence of the positive definition of protected persons in the Appendix is that certain persons are, in theory, excluded from the scope of the Charter:

i. Foreigners without the nationality of a party to the Charter

In principle, they are not covered by the Charter.

In 2004, the Committee recalled the possibility of extending Charter protection to foreign nationals of non-party States\(^{1405}\). The Committee based its argument on the Appendix itself, which stipulates that parties can extend the Charter's application to persons other than those covered by the Appendix. Specifically, the Committee stated that "the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations."

However, after stating the principle, the Committee added that these obligations did "not in principle fall within the ambit of its supervisory functions". The Committee made it clear that it did not exclude "that the implementation of certain provisions of the Charter could in certain specific situations require complete equality of treatment between nationals and foreigners, whether or not they are nationals of member States, Party to the Charter".

A significant exception to the first group of excluded persons is specifically provided for in paragraph 2 of the Appendix, namely:

- refugees: States Parties must grant refugees as defined in the 1951 Geneva Convention on the Status of Refugees and lawfully staying in their territory, treatment as favourable as possible, and in any case not less favourable than required under the Convention.\(^{1406}\)
stateless persons as defined in the 1954 New York Convention on the Status of Stateless Persons.\textsuperscript{1407}

This exception does not simply confirm parties' obligations under these conventions regarding equal treatment for refugees and stateless persons but also invites States Parties to go further by offering them treatment as favourable as possible

ii. Foreigners in an irregular situation\textsuperscript{1408}

The restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity.\textsuperscript{1409} \textsuperscript{1410}

Beyond the letter of paragraph 1 of the Appendix, the restriction on personal scope should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose and in harmony with other relevant and applicable rules of international law (Vienna Convention on the Law of Treaties, 23 May 1969, Article 31, paragraphs 1 and 3), including first and foremost the peremptory norms of general international law (\textit{jus cogens}), which take precedence over all other international norms and from which no derogation is permitted (Vienna Convention on the Law of Treaties, 23 May 1969, Article 53).

The Charter is a human rights treaty which aims to implement at a European level, as a complement to the European Convention on Human Rights, the rights guaranteed to all human beings by the Universal Declaration of Human Rights of 1948. The purpose of the Charter, as a living instrument dedicated to the values of dignity, equality and solidarity, is to give life and meaning in Europe to the fundamental social rights of all human beings.\textsuperscript{1411} It is precisely in the light of that finding that a teleological approach should be adopted when interpreting the Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of this treaty, not that which would restrict the Parties' obligations to the greatest possible degree.\textsuperscript{1412} This teleological approach leads the Committee not to interpret paragraph 1 of the Appendix in such a way as to deny foreign minors unlawfully present in a country (whether accompanied or unaccompanied) the guarantee of their fundamental rights, including the right to preservation of their human dignity.

In addition, a strict interpretation of the Appendix, which would deprive foreign minors unlawfully present in a country of the guarantee of their fundamental rights, would not be in harmony with the United Nations Convention on the Rights of the Child, which all member states of the Council of Europe have ratified. It is therefore justified for the Committee to have regard to this convention, adopting the interpretation given to it by

\textsuperscript{1407} Conclusions 2013, Statement of interpretation on the rights of stateless persons under Charter
\textsuperscript{1408} Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-39
\textsuperscript{1409} International Federation of Human Rights Leagues v. France, ibid, §§ 30 and 31.
\textsuperscript{1410} Defence for Children International v. the Netherlands, Complaint No. 47/2008, ibid, §19
\textsuperscript{1411} International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27 and 29
\textsuperscript{1412} World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 60
the United Nations Committee on the Rights of the Child, when it rules on an alleged violation of any right conferred on children by the Charter.\footnote{World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 61.}

Furthermore, this choice in applying the Charter follows from the legal need to comply with the peremptory norms of general international law (\textit{jus cogens}) such as the rules requiring each state to respect and safeguard each individual's right to life and physical integrity. A strict interpretation of paragraph 1 of the Appendix, which would result in the non-recognition of the States Parties' obligation to guarantee foreign minors unlawfully present in their territory the enjoyment of these fundamental rights, would be incompatible with international \textit{jus cogens}.

In addition, paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors unlawfully present in a country to serious impairments of their fundamental rights on account of a failure to give guarantee to the social rights enshrined in the revised Charter.

However, although the restriction of personal scope contained in the Appendix does not prevent the application of the Charter's provisions to unlawfully present foreign migrants (including accompanied or unaccompanied minors) in certain cases and under certain circumstances, an application of this kind is entirely exceptional and is not applicable to all the provisions of the Charter. It is justified solely in the event that excluding unlawfully present foreigners from the protection afforded by the Charter would have seriously detrimental consequences for their fundamental rights (such as the right to life, to the preservation of human dignity, to psychological and physical integrity and to health) and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners.

Moreover, the risk of impairing fundamental rights is all the more likely where children – a fortiori migrant children unlawfully present in a country – are at stake. This is due to their condition as "children" and to their specific situation as "unlawful" migrants, combining vulnerability and limited autonomy. As a result, in particular, of their lack of autonomy children cannot be held genuinely responsible for their place of residence. Children are not able to decide themselves whether to stay or to leave. Furthermore, if they are unaccompanied, their situation becomes even more vulnerable and the State should be managed entirely by the State, which has a duty to care for children living within its territory and not to deprive them of the most basic protection on account of their "unlawful" migration status.

\textit{Examples}

- Health: A legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.\footnote{International Federation of Human Rights Leagues \textit{v.} France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32;}

- Children: Article 17 of the Charter,\footnote{International Federation of Human Rights Leagues \textit{v.} France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32;} in particular paragraph 1 thereof, requires States Parties to fulfil positive obligations relating to the accommodation, basic care

\footnote{Defence for Children International \textit{v.} the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38),}
and protection of children and young persons. Not considering that States Parties are bound to comply with these obligations in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious threats to their rights to life, health and psychological and physical integrity and to the preservation of their human dignity.  

- Children: Article 31§2 (prevention and reduction of homelessness)\(^{1418}\) : the right to shelter is closely connected to the right to life and is crucial for the respect of every person’s human dignity. If all children are vulnerable, growing up in the streets leaves a child in a situation of outright helplessness. Children would therefore adversely be affected by a denial of the right to shelter. On the contrary, children unlawfully present on the territory of a State Party do not come within the personal scope of Article 31§1\(^ {1419}\) (the right to adequate housing) since States have the right under international law to control the entry, residence and expulsion of aliens from their territories and are thus justified in treating children lawfully residing and children unlawfully present in its territory differently. The denial of adequate housing, which includes a legal guarantee of security of tenancy, to children unlawfully present on its territory, does not automatically entail a denial of the basic care needed to avoid persons living in intolerable conditions. Moreover, to require that a Party provide such lasting housing would run counter the State’s aliens policy objective of encouraging persons unlawfully on its territory to return to their country of origin.

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