

DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS



European
Social
Charter

Charte
sociale
européenne



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FORWARD

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.

This version of the Digest is up to date as of 31 December 2021. It has been prepared with the assistance of the University of Nottingham Human Rights Law Centre.

INTRODUCTION

The European Social Charter is a Council of Europe treaty adopted in 1961 and 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 April 2022 according to Rule 1 of the Committee’s Rules)

	End of term of office
Karin LUKAS, President (Austrian)	31/12/2022
Eliane CHEMLA, Vice-President (French)	31/12/2024
Aoife NOLAN, Vice-President (Irish)	31/12/2022
Giuseppe PALMISANO, General Rapporteur (Italian)	31/12/2022
Jozsef HAJDU (Hungarian)	31/12/2024
Barbara KRESAL (Slovenian)	31/12/2022
Kristine DUPATE (Latvian)	31/12/2022
Karin Møhl LARSEN (Danish)	31/12/2026
Yusuf BALCI (Turkish)	31/12/2024
Tatiana PUIU (Moldovan)	31/12/2024
Paul RIETJENS (Belgian)	31/12/2026
George N. THEODOSIS (Greek)	31/12/2026
Mario VINKOVIĆ (Croatian)	31/12/2026
Miriam KULLMANN (German)	31/12/2026
<i>One seat vacant</i>	

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:

- “1. The Committee rules on the conformity of the situation in States with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter.
2. It adopts conclusions in the framework of the reporting procedure and decisions under the complaints procedure.”

3. Status of Committee members

The Committee’s fifteen members are independent and impartial.

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.”

4. Working methods of the Committee

The Committee holds seven sessions per year at the Council of Europe premises in Strasbourg (or when necessary online or in hybrid form).

Each Committee member acts as *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-Committees prepare the work of the plenary Committee.

Collective complains are examined and deliberated on by the Committee in plenary.

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

5. Rules of the Committee

The Committee’s Rules regulate the internal workings of the Committee as well as the operation of the two procedures for the monitoring 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 most recently revised on 19 May 2021, see <https://rm.coe.int/rules-rev-320-en/1680a2c899>.

6. The Committee’s case law

The Committee’s “case law” is laid down in all the sources in which it sets out its interpretation of the Charter’s provisions.

These include:

▶ *Decisions* in 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 yearly compilations are numbered I, II, III, IV..., XX-1, XX-2, XX-3, XXII-2, etc.;

– for the Revised Charter, they are numbered 2002 ..., 2019, 2020, 2021 etc.

▶ *Statements of interpretation*.

In order to clarify its interpretation of a Charter provision, the Committee may issue a statement of interpretation which is usually published in the general introduction to the yearly conclusions.

7. 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.

8. Separate 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 to express a separate opinion, dissenting or concurrent, which is published at the same time as the conclusion or decision.

9. Publication of the Committee’s conclusions and decisions

The Council of Europe publishes the Committee’s conclusions and decisions. These documents are also available on the HUDOC database, which is accessible on the Council of Europe website, www.coe.int/socialcharter.

10. References to the Committee’s conclusions and decisions

Conclusions are cited as follows:

- ▶ Reference to 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, number of complaint/year of registration, decision on admissibility of [date]/ decision on the merits of [date], §

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

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 employment;
 - Removal of obstacles to the engagement of workers in gainful occupation in other States Parties.
- ▶ Equal opportunities and equal treatment for women and men
- ▶ 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 older 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 (Article E).

Signature and ratification of the Charter

Member states		Signatures	Ratifications	Acceptance of the collective complaints procedure	
Albania		21/09/1998	14/11/2002		
Andorra		04/11/2000	12/11/2004		
Armenia		18/10/2001	21/01/2004		
Austria		07/05/1999	20/05/2011		
Azerbaijan		18/10/2001	02/09/2004		
Belgium		03/05/1996	02/03/2004	23/06/2003	
Bosnia and Herzegovina		11/05/2004	07/10/2008		
Bulgaria		21/09/1998	07/06/2000	07/06/2000	
Croatia		06/11/2009	26/02/2003	26/02/2003	
Cyprus		03/05/1996	27/09/2000	06/08/1996	
Czech Republic		04/11/2000	03/11/1999	04/04/2012	
Denmark	*	03/05/1996	03/03/1965		
Estonia		04/05/1998	11/09/2000		
Finland		03/05/1996	21/06/2002	17/07/1998	X
France		03/05/1996	07/05/1999	07/05/1999	
Georgia		30/06/2000	22/08/2005		
Germany	*	29/06/2007	29/03/2021		
Greece		03/05/1996	18/03/2016	18/06/1998	
Hungary		07/10/2004	20/04/2009		
Iceland		04/11/1998	15/01/1976		
Ireland		04/11/2000	04/11/2000	04/11/2000	
Italy		03/05/1996	05/07/1999	03/11/1997	
Latvia		29/05/2007	26/03/2013		
Liechtenstein		09/10/1991			
Lithuania		08/09/1997	29/06/2001		
Luxembourg	*	11/02/1998	10/10/1991		
Malta		27/07/2005	27/07/2005		
Republic of Moldova		03/11/1998	08/11/2001		
Monaco		05/10/2004			

Member states		Signatures	Ratifications	Acceptance of the collective complaints procedure	
Montenegro		22/03/2005	03/03/2010		
The Netherlands		23/01/2004	03/05/2006	03/05/2006	
Norway		07/05/2001	07/05/2001	20/03/1997	
North Macedonia		27/05/2009	06/01/2012		
Poland		25/10/2005	25/06/1997		
Portugal		03/05/1996	30/05/2002	20/03/1998	
Romania		14/05/1997	07/05/1999		
San Marino		18/10/2001			
Serbia		22/03/2005	14/09/2009		
Slovak Republic		18/11/1999	23/04/2009		
Slovenia		11/10/1997	07/05/1999	07/05/1999	
Spain		23/10/2000	17/05/2021	17/05/2021	
Sweden		03/05/1996	29/05/1998	29/05/1998	
Switzerland		06/05/1976			
Turkey		06/10/2004	27/06/2007		
Ukraine		07/05/1999	21/12/2006		
United Kingdom	*	07/11/1997	11/07/1962		
Number of States	46	2 + 44 = 46	7 + 35 = 42	16	

Legend:

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 on 11 December 1991, this Protocol is already applied.

X State having recognised the right of national NGOs to lodge collective complaints against it. This table is regularly updated on the Charter's website: www.coe.int/socialcharter

"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:

- ▶ 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;
- ▶ 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;
- ▶ 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 website: www.coe.int/socialcharter.

The Committee has made the following statement 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 Centre (MDAC) v. Bulgaria, complaint No. 41/2007, decision on admissibility of 26 June 2007, §9)

PART I:

REPORTING PROCEDURE

Following a decision adopted by the Committee of Ministers in 2006,¹ the provisions of the Charter have been divided into four thematic groups. States Parties present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently, each accepted provision of the Charter is reported on once every four years. The four groups of provisions are as follows:

- ▶ **Group 1:** *Employment, training and equal opportunities* (Articles 1, 9, 10, 15, 18, 20, 24, 25);
- ▶ **Group 2:** *Health, social security and social protection* (Articles 3, 11, 12, 13, 14, 23, 30);
- ▶ **Group 3:** *Labour rights* (Articles 2, 4, 5, 6, 21, 22, 26, 28, 29);
- ▶ **Group 4:** *Children, families, migrants* (Articles 7, 8, 16, 17, 19, 27, 31).

In accordance with the Form for Reports,² States Parties should provide for each accepted provision concerned any pertinent information on measures adopted to ensure its application, in particular the legal framework (laws, regulations, collective agreements, pertinent domestic case law, etc.) and the measures taken (administrative and/or funding arrangements, funding, programmes, action plans, etc.) to implement the legal framework and any pertinent statistics or other relevant information enabling an evaluation of the extent to which the legal framework is applied in practice.

Since 2019, the Committee has addressed *targeted questions* to States Parties when requesting the ordinary annual reports in order to focus the monitoring on critical/emerging issues and to help States Parties in their drafting of the reports.

In April 2014, the Committee of Ministers adopted new changes to the Charter's reporting procedure.³ The main aim of the changes was to simplify the reporting procedure for States Parties also having accepted the collective complaints procedure. Following these modifications, States Parties having accepted the complaints procedure have to submit a so-called "simplified report" every two years *exclusively* on the follow-up to the decisions of the Committee on collective complaints.

In order to prevent excessive fluctuations in the workload of the ECSR from year to year, the States Parties which have accepted the complaints procedure have been divided into two groups. The groups were composed by distributing the States Parties according to the number of complaints registered against them as of 2014 (from the highest to the lowest), as follows:

- ▶ **Group A:** Belgium, Bulgaria, Finland, France, Greece, Ireland, Italy, Portugal.
- ▶ **Group B:** Croatia, Cyprus, Czech Republic, the Netherlands, Norway, Slovenia, Spain, Sweden.

Simplified reports should contain detailed indications of what follow-up action has been taken in response to the decisions of the Committee in collective complaints (legislative changes, new administrative and/or funding measures, changes to practice, etc.).

As the States Parties bound by the complaints procedure submit a simplified report every two years and ordinary reports on the thematic groups of provisions in the other years, this means that they effectively report on each accepted provision only every eight years (and not every four years as is the case for States Parties not bound by the complaints procedure). In order for these States Parties to report on all four thematic groups of provisions within the eight-year period, they sometimes have to submit simplified reports in two successive years (see reporting calendar below).

¹ [2006 decision \(coe.int\)](#)

² [Form for Reports \(coe.int\)](#)

³ [2014 decision \(coe.int\)](#)

Pursuant to the Committee of Ministers' decisions from 2006 and 2014, States Parties are currently required to present their reports on the basis of the following calendar:

Reference period	Thematic group/ Articles	Deadline submission of reports	Ordinary report	Simplified report	Adoption of Conclusions/ Findings
01/01/2015-31/12/2018	Group 1 Employment, training, equal opportunities	31/12/2019	All states except Group A	States from Group A	January 2021
01/01/2016-31/12/2019	Group 2 Health, social security, social protection	31/12/2020	All states except Group A	States from Group A	January 2022
01/01/2017-31/12/2020	Group 3 Labour rights	31/12/2021	All states except Group B	States from Group B	January 2023
01/01/2018-31/12/2021	Group 4 Children, family and migrants	31/12/2022	All states except Group A	States from Group A	January 2024
01/01/2019-31/12/2022	Group 1 Employment, training, equal opportunities	31/12/2023	All states except Group B	States from Group B	January 2025
01/01/2020-31/12/2023	Group 2 Health, social security, social protection	31/12/2024	All states except Group B	States from Group B	January 2026
01/01/2021-31/12/2024	Group 3 Labour rights	31/12/2025	All states except Group A	States from Group A	January 2027
01/01/2022-31/12/2025	Group 4 Children, family and migrants	31/12/2026	All states except Group B	States from Group B	January 2028
Etc.					

FULFILMENT OF THE REPORTING OBLIGATIONS BY THE STATES PARTIES

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. As noted above since 2019 the Committee had addressed targeted questions to States Parties. Under this system States Parties are only obliged to provide information in response to the specific question. However, in addition they must provide information in response to previous conclusions of non-conformity, previous deferrals as well as in response to previous conclusions of conformity pending receipt of information requested.

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 in general 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 Party 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 FINDINGS AND FOLLOW-UP

The Committee's conclusions are published annually. They are available on the Council of Europe's website: 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 and the International Organisation of Employers (IOE)).

PART II:

COLLECTIVE COMPLAINTS PROCEDURE

The collective complaints procedure was established under the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and the Committee Rules of Procedure. It has also been further clarified by successive Committee decisions on the admissibility and merits of complaints submitted.

As of October 2021, sixteen States Parties had ratified the 1995 Additional Protocol: (France, Greece, Portugal, Italy, Belgium, Bulgaria, Ireland, Finland, the Netherlands, Sweden, Croatia, Norway, Slovenia, Cyprus, Czech Republic and Spain).⁴

Types of decisions

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

The typical scenario in a complaint is to have two separate decisions – one on admissibility and one on the merits. In some exceptional cases, however, there will be a single decision on the admissibility and merits.⁵ In some instances, the Committee has also granted immediate measures – whether in a free-standing decision⁶ or at the same time as its decision on admissibility.

ADMISSIBILITY

1. The form of the complaint

As per Article 4 of the 1995 Additional Protocol, the complaint shall: (i) be lodged in writing, (ii) relate to a provision of the Charter accepted by the State Party concerned and (iii) indicate in what respect the latter has not ensured the satisfactory application of this provision.⁷

Lodged in writing

Article 5 of the 1995 Additional Protocol states that any complaint shall be addressed to the Secretary General who shall acknowledge receipt of it, notify it to the State Party concerned and immediately transmit it to the Committee of Independent Experts.⁸ Collective complaints may also be addressed to the Executive Secretary acting on behalf of the Secretary General of the Council of Europe.⁹

Signatures

The complaint must be signed by a person entitled to represent the complainant NGO or trade union. This criterion was initially set out in Rule 20 of the Rules of the European Committee of Social Rights but has now been transferred to Rule 23.¹⁰

⁴ See [Chart of Signatures and Ratifications of ETS - No. 158](#)

⁵ [Mental Disability Advocacy Center \(MDAC\) v. Belgium](#), Complaint No. 109/2014, decision on admissibility and the merits of 10 October 2017

⁶ See e.g. [Association for the Protection of all Children \(APPROACH\) Ltd v. Belgium](#), Complaint No. 98/2013, decision on immediate measures of 2 December 2013; see also [Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on immediate measures of 25 October 2013

⁷ [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS - No. 158](#), Article 4, see also [University Women of Europe v Belgium](#), complaint No. 124/2016, decision on the admissibility of 4 July 2017, §§ 6-9, and [Confédération française démocratique du travail \(CFDT\) v. France](#), Complaint No. 50/2008, decision on the merits of 9 September 2009, §18

⁸ [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS - No. 158](#), Article 5

⁹ [Rules of the European Committee of Social Rights](#), Rule 23 ; see also [World Organisation against Torture \(OMCT\) v. Greece](#), Complaint No. 17/2003, decision on admissibility of 9 December 2003, §5

¹⁰ [Rules](#), *op. cit.*, Rule 23

The complainant organisation must prove that the signatory has been duly empowered to submit a complaint, otherwise the complaint will be inadmissible.¹¹

The complaint may be signed, for example by a Chair or a Director of the complainant organisation provided that this person is entitled to do so under the organisation's Statutes.¹² This is the case if the Statutes give the signatory of the complaint *locus standi* or entitle them to defend the organisation's interest or to conduct all the acts necessary for achieving the organisation's statutory goals.¹³ 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.¹⁴

Where the signatory has not been permanently authorised by the Statutes, they can be granted a power of attorney or a mandate by the association's or trade union's governing body.¹⁵

The delegation can be effected sequentially if the requisite conditions are fulfilled at every stage.¹⁶

Where the signatory leaves the complainant organisation during the procedure their successor can be delegated to represent the organisation.¹⁷

Where the complaint is submitted on behalf of several organisations, the signatory must be officially authorised by each of the organisations.¹⁸

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.¹⁹

Relate to a provision of the Charter accepted by the State in question

The complaint must indicate the provisions the violation of which is alleged, including, if appropriate, Article E of the Charter. 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.²⁰ This provision may, however, provide a reference for the interpretation of the substantive rights provisions of the Charter.²¹ These rules apply *mutatis mutandis* also to Article F of the Charter.²²

Consequences of 'à la carte' acceptance of the Charter

A complaint shall relate to a provision of the Charter accepted by the State Party concerned.²³ However, the Charter was conceived as a whole and all its provisions complement each other and overlap in part.²⁴

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- 11 [Frente Comum de Sindicatos da Administração Pública v. Portugal](#), Complaint No. 36/2006, decision on admissibility of 5 December 2006, §4
 - 12 [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on admissibility of 7 December 2004, §5
 - 13 [World Organisation against Torture \(OMCT\) v. Greece](#), Complaint No. 17/2003, decision on admissibility of 9 December 2003, §5
 - 14 [Syndicat national des professions du tourisme v. France](#), Complaint No. 6/1999, decision on admissibility of 10 February 2000, §§ 9 and 10; see also [Syndicat occitan de l'éducation v. France](#), Complaint No. 23/2003, decision on admissibility of 13 February 2004, §8
 - 15 [European Roma Rights Center \(ERRC\) v. Bulgaria](#), Complaint No. 31/2005, decision on admissibility of 10 October 2005, §7, see also [Centrale générale des services publics v. Belgium](#), Complaint No. 25/2004, decision on admissibility of 6 September 2004, §§ 2 and 8
 - 16 [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 4 and 5
 - 17 [Centre on Housing Rights and Evictions \(COHRE\) v. Croatia](#), Complaint No. 52/2008, decision on admissibility of 30 March 2009, §14
 - 18 [Syndicat SUD Travail Affaires Sociales v. France](#), Complaint No. 24/2004, decision on admissibility of 7 December 2004, §§ 3 and 7, see also [Transgender Europe and ILGA-Europe v. Czech Republic](#), Complaint No. 117/2015, decision on admissibility of 9 September 2015, §8.
 - 19 [World Organisation against Torture \(OMCT\) v. Greece](#), Complaint No. 17/2003, decision on admissibility of 9 December 2003, §5
 - 20 [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on the merits of 15 June 2005, §31, see also [Equal Rights Trust \(ERT\) v. Bulgaria](#), Complaint No. 121/2016, decision on admissibility of 5 July 2016 §11; see also [Federation of employed pensioners of Greece \(IKA-ETAM\) v. Greece](#), Complaint No. 76/2012, decision on admissibility of 23 May 2012, §§ 5-7
 - 21 [Federation of employed pensioners of Greece \(IKA-ETAM\) v. Greece](#), Complaint No. 76/2012, decision on the merits of 7 December 2012, §48, see also [Equal Rights Trust \(ERT\) v. Bulgaria](#), Complaint No. 121/2016, decision on admissibility of 5 July 2016 §11
 - 22 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on admissibility of 19 May 2015, §10.
 - 23 [European Federation of Employees in Public Services \(EUROFEDOP\) v. Greece](#), Complaint No. 3/1999, decision on admissibility of 13 October 1999
 - 24 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on admissibility of 26 June 2007, §§ 8-10

It is impossible to draw watertight divisions between the material scope of each article or paragraph.²⁵ It therefore falls on the Committee to ensure that obligations are not imposed on States 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 that it may contain obligations which may also result from unaccepted provisions.²⁶

Jurisdiction *ratione temporis*

In accordance with the principle of non-retroactivity of treaties as codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the starting point for application is the date on which a treaty came into force in a country and not the date of its signature.²⁷ However there is an exception to this rule: specifically, when events occurring before the entry into force of a treaty continue to occur after this date, thus potentially constituting a continuing violation.²⁸

2. Eligible complainant organisations

As per Article 15a of the 1995 Additional Protocol, the following organisations may submit complaints alleging unsatisfactory application of the Charter:

A. international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the 1961 Charter, which reads as follows:

“The sub-committee (i.e., the Governmental Committee) shall be composed of one representative of each of the States 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.

As per Article 15b of the Additional Protocol, the following organisations may submit complaints alleging unsatisfactory application of the Charter:

B. other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

International non-governmental organisations (INGOs) holding participatory²⁹ status with the Council of Europe are included on the corresponding list drawn up by the Governmental Committee of the Charter for a period of four years renewable.³⁰

25 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on admissibility of 26 June 2007, §§ 8-10

26 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on admissibility of 26 June 2007, §§ 8-10, see also [European Roma and Travellers Forum \(ERTF\) v. the Czech Republic](#), Complaint No. 104/2014, decision on admissibility of 30 June 2014, §10

27 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §15

28 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §15, see also [European Federation of National Organisations working with the Homeless \(FEANTSA\) v. Slovenia](#), Complaint No. 53/2008, decision on admissibility of 2 December 2008, §8, and [Centre on Housing Rights and Evictions \(COHRE\) v. Croatia](#), Complaint No. 52/2008, decision on admissibility of 30 March 2009, §18

29 Previously the term “consultation” was used.

30 See the list of INGOs entitled to lodge collective complaints: <https://rm.coe.int/gc-2020-1-rev2-bil-list-ingos-01-10-2020/1680a01607>

The fact that an INGO entitled to present complaints is (i) assisted by a national NGO, (ii) is acting as spokesperson for such an organisation, or (iii) is submitting a complaint mainly drawn up by a national NGO, is not as such a ground for inadmissibility.³¹

As per Article 3 of the 1995 Additional Protocol, the international non-governmental organisations referred to in Article 1§b may submit complaints only in respect of those matters regarding which they have been recognised as having particular competence.³²

The Committee assesses such competence by examining:

- ▶ the INGO's Statutes³³ and/or;
- ▶ its purpose or goals;³⁴
- ▶ its activities demonstrating the complainant's particular long-standing involvement and interest in the fields covered by the complaint³⁵ or illustrating general competence in the human rights field³⁶ and a very broad mandate;³⁷
- ▶ its recognised qualification in other areas, particularly within the Council of Europe Conference of INGOs;³⁸
- ▶ the area of competences of the national organisation in the respondent state affiliated to the complainant INGO is irrelevant;³⁹
- ▶ the failure of the INGO to demonstrate that it has conducted activities in the respondent state does not prevent it from lodging a complaint when it conducts activities at the European level;⁴⁰
- ▶ the INGO does not necessarily have to demonstrate its competence in the complaint itself, but can do so in a subsequent document submitted as part of the proceedings.⁴¹

As per Article 1§c of the 1995 Additional Protocol, the following organisations may submit complaints alleging unsatisfactory application of the Charter:

C. representative national organisations of employers and trade unions within the jurisdiction of the State Party against which they have lodged a complaint.

a) Notion of a trade union

The Committee considers whether in accordance with Article 1§c of the Protocol, the complainant organisation is a national trade union or an organisation of employers and, if so, whether it is representative for the purposes of the complaint.⁴²

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- 31 [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, see also [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Sweden](#), Complaint No. 99/2013, decision on admissibility of 10 September 2013, and [Defence for Children International v. The Netherlands](#), Complaint No. 47/2008, decision on admissibility of 23 September 2008, §§ 6-11
- 32 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS - No. 158](#), Article 3
- 33 [International Centre for the Legal Protection of Human Rights \(INTERIGHTS\) v. Croatia](#), Complaint No. 45/2007, decision on admissibility of 1 April 2008, §5, see also [European Council of Police Trade Unions v. Portugal](#), Complaint No. 11/2001, decision on admissibility of 17 October 2001, §5, see also [International Association Autism-Europe \(IAAE\) v. France](#), Complaint No. 13/2002, decision on admissibility of 12 December 2002, §7
- 34 [Quaker Council for European Affairs \(QCEA\) v. Greece](#), Complaint No. 8/2000, decision on admissibility of 28 June 2000, §8, see also [International Federation of Human Rights Leagues \(FIDH\) v. France](#), Complaint No. 14/2003, decision on admissibility of 16 May 2003, §5, see also [World Organisation against Torture \(OMCT\) v. Greece](#), Complaint No. 17/2003, decision on admissibility of 9 December 2003, §6
- 35 [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on admissibility of 16 June 2003, §5, see also, [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §§ 3, 7 and 12
- 36 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on admissibility of 26 June 2007, §6
- 37 [International Federation of Human Rights \(FIDH\) v. Ireland](#), Complaint No. 42/2007, decision on admissibility of 16 October 2007, §§ 7-9
- 38 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Sweden](#), Complaint No. 99/2013, decision on admissibility of 10 September 2010, §8
- 39 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §14
- 40 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §11
- 41 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §13
- 42 [Associazione Nazionale Giudici di Pace v. Italy](#), Complaint No. 102/2013, decision on admissibility of 2 December 2014, §§ 5-10, see also [Bedriftsforbundet v. Norway](#), Complaint No. 103/2013, decision on admissibility of 14 May 2014, §§ 7-17.

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 or activities, such as participating in collective bargaining, calling strikes, bringing legal proceedings against employers and/or on behalf of its members, taking action in order to support or improve its members' working terms and conditions, etc. The name or the form of the organisation is not decisive in this respect.⁴³ The mere fact that a trade union lodged a complaint before the Committee cannot be construed as evidence of a trade union activity.⁴⁴

The fact that for example bar associations have initiated certain activities with a view to protecting the interests of their members does not as such suffice to justify a conclusion that they are trade unions in the meaning of the Charter generally and in the meaning of the 1995 Additional Protocol more particularly.⁴⁵

b) Representativeness of trade unions and employers' organisations

The representativeness of national trade unions, for the purpose of the collective complaints procedure, is an autonomous concept which is not necessarily identical to the national notion of representativity.⁴⁶ 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.⁴⁷ Being representative in accordance with domestic law at the level of single enterprise does not guarantee representativeness for the purposes of the collective complaints procedure.⁴⁸

The Committee examines representativeness in particular with regard to the field covered by the complaint, the aim of the trade union and the activities which it carries out.⁴⁹ It also considers that in order to qualify as representative, a trade union must be real, active and independent.⁵⁰

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;⁵¹
- ▶ whether the trade union represents the great majority of professionals working in the relevant sector of activity;⁵²
- ▶ whether the trade union is a representative at the national level and therefore able to negotiate collective agreements;⁵³
- ▶ the number of members a trade union represents and the role it plays in collective bargaining;⁵⁴
- ▶ whether the trade union exercises, in the geographical area where it is established, activities in defence of the material 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.⁵⁵

43 *Associazione sindacale « La Voce dei Giusti » v. Italy*, Complaint No. 105/2014, decision on admissibility of 17 March 2015 §§ 8-11, see also *Movimento per la Libertà' della psicanalisi-Associazione Culturale Italiana v. Italy*, complaint No. 122/2016, decision on admissibility of 24 March 2017, §§ 8-12

44 *Greek Bar Associations v. Greece*, Complaint No. 196/2020, decision on admissibility and immediate measures of 23 March 2021, §§ 16-20; see also *Associazione Medici Liberi v. Italy*, Complaint No. 177/2019, decision on admissibility of 6 December 2019, § 11

45 *Greek Bar Associations v. Greece*, Complaint No. 196/2020, decision on admissibility and on immediate measures of 23 March 2021, § 21

46 *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, decision on admissibility of 10 February 2000, §§ 6 and 7, see also *Syndicat occitan de l'éducation v. France*, Complaint No. 23/2003, decision on admissibility of 13 February 2004, §§ 3 and 4.

47 *Bedriftsforbundet v. Norway*, Complaint No. 103/2013, decision on admissibility of 14 May 2014, § 13, see also *Associazione Professionale e Sindacale (ANIEF) v. Italy*, Complaint No. 146/2017, decision on admissibility of 12 September 2017, § 6

48 *CGT YTO France v. France*, Complaint No. 174/2019, decision on admissibility of 28 January 2020, § 17, see also *CGT YTO France v. France*, Complaint No. 183/2019, decision on admissibility of 13 May 2020, § 8

49 *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*, Complaint No. 166/2018, decision on the admissibility of 18 March 2019, § 7, citing *Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, decision on admissibility of 7 December 2011, § 6

50 *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*, Complaint No. 166/2018, decision on the admissibility of 18 March 2019, § 7

51 *Confédération Française de l'Encadrement (CFE-CGC) v. France*, Complaint No. 9/2000, decision on admissibility of 7 November 2000, § 7; *Associazione Nazionale Giudici di Pace v. Italy*, Complaint No. 102/2013, decision on admissibility of 2 December 2014, § 12.

52 *Tehy ry and STTK ry v. Finland*, Complaint No. 10/2000, decision on admissibility of 12 February 2001, § 6.

53 *Confédération Française de l'Encadrement (CFE-CGC) v. France*, Complaint No. 9/2000, decision on admissibility of 7 November 2000, § 7, see also *Tehy ry and STTK ry v. Finland*, Complaint No. 10/2000, decision on admissibility of 12 February 2001, § 6

54 *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*, Complaint No. 166/2018, decision on the admissibility of 18 March 2019, § 8

55 *Associazione Professionale e Sindacale (ANIEF) v. Italy*, Complaint No. 159/2018, decision on admissibility of 3 July 2018, § 6; citing *Syndicat occitan de l'Education v. France*, Complaint No. 23/2003, decision on admissibility of 13 February 2004, § 5

However, the Committee has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions.⁵⁶

The same criteria are taken into account for organisations of employers.⁵⁷

A trade union whose activity is limited to a single enterprise while being affiliated with a higher-level trade union will generally not be deemed to be representative within the meaning of Article 15c of the 1995 Additional Protocol.⁵⁸

A lack of information regarding the specific number of members the trade union organisation represents and whether it has bargained collectively on behalf of such members has led the Committee to conclude that it was unable to assess whether the organisation was representative (and hence it found the claim inadmissible).⁵⁹

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 with regard to which it represents workers at the national level.⁶⁰

D. Representative national non-governmental organisations

As per Article 2 of the 1995 Additional Protocol, any State Party may also declare that it recognises the right of any other representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter, to lodge complaints against it.⁶¹ Such declarations may be made for a specific period.⁶² The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the States Parties and publish them.⁶³ For the time being, only Finland has made such a declaration.⁶⁴

The concept of 'representativeness' for national non-governmental organisations is the same, *mutatis mutandis*, as for national trade unions.⁶⁵ For the purposes of the collective complaints procedure, the representativeness of trade unions and associations is an autonomous concept which has a different scope than the national representativeness concept.⁶⁶ It is therefore up to the Committee to progressively define a range of criteria allowing it to determine the representativity of national organisations, taking into consideration, inter alia, their social purpose, as well as the scope of their activities.⁶⁷ However, the Committee considers that the concept of representativity of a national non-governmental organisation is different from that of the representativity of trade unions in the sense that quantitative criteria such as membership, organisation and financial capacity are not necessarily relevant to determine the representativity of the former within the context of the collective complaints procedure.⁶⁸

As per Article 3 of the 1995 Additional Protocol, the national non-governmental organisations referred to in Article 2 may submit complaints only in respect of those matters regarding which they have been recognised as having particular competence.⁶⁹

56 [Sindacato Autonomo Europeo Scuola ed Ecologia \(SAESE\) v. Italy](#), Complaint No. 166/2018, decision on the admissibility of 18 March 2019, §8, citing [Fellesforbundet for Sjøfolk \(FFFS\) v. Norway](#), Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§ 20-21

57 [Confederation of Swedish Enterprise v. Sweden](#), Complaint No. 12/2002, decision on admissibility of 19 June 2002, §5.

58 [CGT YTO France v. France](#), Complaint No.174/2019, decision on admissibility of 28 January 2020, §16

59 [Sindacato Autonomo Europeo Scuola ed Ecologia \(SAESE\) v. Italy](#), Complaint No. 166/2018, decision on the admissibility of 18 March 2019, §§ 10-13, see also [Sindacato Autonomo Europeo Scuola ed Ecologia \(SAESE\) v. Italy](#), Complaint No. 194/2020, decision on the admissibility of 11 December 2020, §§ 10-12; see also [Sindacato Autonomo Europeo Scuola ed Ecologia \(SAESE\) v. Italy](#), Complaint No. 194/2020, decision on the admissibility of 11 December 2020, §10

60 [Syndicat SUD Travail Affaires Sociales v. France](#), Complaint No. 24/2004, decision on admissibility of 7 December 2004, §§ 10 and 11.

61 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#), ETS - No. 158, Article 2§1

62 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#), ETS - No. 158, Article 2§2

63 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#), ETS - No. 158, Article 2§3

64 [ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland](#), Complaint No.163/2018, decision on admissibility and on immediate measures of 22 January 2019, §8

65 [The Central Association of Carers in Finland v. Finland](#), Complaint No. 70/2011, decision on admissibility of 7 December 2011, §6

66 [The Central Association of Carers in Finland v. Finland](#), Complaint No. 70/2011, decision on admissibility of 7 December 2011, §6

67 [The Central Association of Carers in Finland v. Finland](#), Complaint No. 70/2011, decision on admissibility of 7 December 2011, §6, see also [Finnish Society of Social Rights v Finland](#), Complaint No 107/2014, decision on admissibility and on the merits of 6 September 2016, §§ 28-30

68 [ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland](#), Complaint No.163/2018, decision on admissibility and on immediate measures of 22 January 2019, §10

69 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#), ETS - No. 158, Article 3

The Committee assesses such competence by examining:

- ▶ the NGO's Statutes⁷⁰ and/or;
- ▶ its purpose or goals;⁷¹
- ▶ its activities demonstrating the complainant's particular long-standing involvement and interest in the fields covered by the complaint⁷² or illustrating general competence in the human rights field⁷³ and a very broad mandate;⁷⁴
- ▶ the NGO does not necessarily have to demonstrate its competence in the complaint itself, but can do so in a subsequent document submitted as part of the collective complaints process.⁷⁵

3. Process

Rule 26 states that complaints are registered with the Secretariat in the order in which they are received.⁷⁶ The Committee deals with complaints in the order in which they become ready for examination.⁷⁷

As per Article 6 of the 1995 Additional Protocol, the Committee may request the State Party concerned and the organisation which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe.⁷⁸

The complaint may be admissible vis-à-vis some of the provisions invoked and not be sufficiently grounded for the others: in such a case, the complaint is only admissible the former and the remainder of the complaint is inadmissible.⁷⁹

The parties to a complaint are bound by the Committee's decision on admissibility in respect of the provisions of the Charter to which the complaint relates.⁸⁰

The Committee may, however, with a view to ensuring full compliance with the substantive provisions of the treaty, reserve the right to examine a complaint which it has previously declared admissible under certain articles, under other provisions of the Charter.⁸¹ In such cases, the Committee invites the respondent Government to submit its observations on the said provision(s).⁸²

4. Other key information on admissibility

Exhaustion of domestic remedies

The collective complaints procedure does not require exhaustion of domestic remedies, even where such remedies exist.⁸³

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- 70 [International Centre for the Legal Protection of Human Rights \(INTERIGHTS\) v. Croatia](#), Complaint No. 45/2007, decision on admissibility of 1 April 2008, §5, see also [European Council of Police Trade Unions v. Portugal](#), Complaint No. 11/2001, decision on admissibility of 17 October 2001, §5, see also [International Association Autism-Europe \(IAAE\) v. France](#), Complaint No. 13/2002, decision on admissibility of 12 December 2002, §7
- 71 [Quaker Council for European Affairs \(QCEA\) v. Greece](#), Complaint No. 8/2000, decision on admissibility of 28 June 2000, §8, see also [International Federation of Human Rights Leagues \(FIDH\) v. France](#), Complaint No. 14/2003, decision on admissibility of 16 May 2003, §5, see also [World Organisation against Torture \(OMCT\) v. Greece](#), Complaint No. 17/2003, decision on admissibility of 9 December 2003, §6
- 72 [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on admissibility of 16 June 2003, §5, see also, [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §§ 3, 7 and 12
- 73 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on admissibility of 26 June 2007, §6
- 74 [International Federation of Human Rights \(FIDH\) v. Ireland](#), Complaint No. 42/2007, decision on admissibility of 16 October 2007, §§ 7-9
- 75 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §13
- 76 [Rules](#), op. cit., Rule 26
- 77 [Rules](#), op. cit., Rule 26
- 78 [Additional Protocol to the European Social Charter Providing for a System of Collective Complaints](#), ETS - No. 158, Article 6
- 79 [Confédération Générale du Travail \(CGT\) v. France](#), Complaint No. 55/2009, decision on admissibility of 30 March 2009, §§ 4 and 8
- 80 [Confédération française démocratique du travail \(CFDT\) v. France](#), Complaint No. 50/2008, decision on the merits of 9 September 2009, §18
- 81 [Confédération française démocratique du travail \(CFDT\) v. France](#), Complaint No. 50/2008, decision on the merits of 9 September 2009, §19
- 82 [Confédération française démocratique du travail \(CFDT\) v. France](#), Complaint No. 50/2008, decision on the merits of 9 September 2009, §19.
- 83 [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 11 and 12, see also [European Roma Rights Center \(ERRC\) v. Bulgaria](#), Complaint No. 31/2005, decision on admissibility of 10 October 2005, §10

Repetition of the action

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.⁸⁴

The fact that a provision of the Charter has already been the subject of a previous complaint does not lead *per se* to the inadmissibility of another complaint relating to this provision.⁸⁵

Link with the reporting procedure

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 that the Committee has already examined a given situation in the framework of the reporting procedure, 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 State Party.⁸⁶ The submission of new elements during the examination of a complaint may lead the Committee to make a new assessment of a situation already examined in previous complaints and, where appropriate, to take a decision that may differ from conclusions already adopted.⁸⁷

The allegation that the complaint mentions no new fact relating to the matter at issue is immaterial to admissibility if the complaint contains allegations concerning the situation in law and in fact which continues to produce effects at the time of submission of the complaint.⁸⁸

Collective nature of the complaint

The collective complaint system does not prevent complainants from exemplifying issues at stake by way of individual cases.⁸⁹

Alleged manifest ill-foundedness of the complaint

The alleged manifest ill-foundedness of the complaint concerns the merits of the complaint and is not considered at the admissibility stage.⁹⁰

Similarly, consideration of any alleged lack of substance in the complaint is a matter for the examination of the merits of the complaint, not the admissibility stage.⁹¹

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.⁹²

The same applies to allegations that the complaint falls outside the scope of a provision of the Charter,⁹³ that the persons targeted by the complaint fall outside the personal scope of the Charter as laid down in the Appendix,⁹⁴ or that the complaint mistakenly relied on one provision of the Charter rather than another.⁹⁵

84 [Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on the merits of 1 July 2013, §13

85 [International Centre for the Legal Protection of Human Rights \(INTERIGHTS\) v. Greece](#), Complaint No. 49/2008, decision on admissibility of 23 September 2008, §7

86 [International Commission of Jurists \(ICJ\) v. Portugal](#), Complaint No. 1/1998, decision on admissibility of 10 March 1999, §§ 10-13, see also [Association for the Protection of All Children \(APPROACH\) Ltd v. France](#), Complaint No. 92/2013, decision on admissibility of 2 July 2013, §10, and [European Roma and Travellers Forum \(ERTF\) v. the Czech Republic](#), Complaint No. 104/2014, decision on admissibility of 30 June 2014, §9.

87 [The European Council of Police Trade Unions \(CESP\) v. France](#), Complaint No 68/2011, decision on the merits of 23 October 2012, §30.

88 [Association for the Protection of All Children \(APPROACH\) Ltd v. France](#), Complaint No. 92/2013, decision on admissibility of 2 July 2013, §11

89 [International Federation of Human Rights \(FIDH\) v. Ireland](#), Complaint No. 42/2007, decision on admissibility of 16 October 2007, §11

90 [European Federation of Employees in Public Services \(EUROFEDOP\) v. Italy](#), Complaint No. 4/1999, decision on admissibility of 10 February 2000, §12

91 [University Women of Europe v Belgium](#), Complaint No. 124/2016, decision on the admissibility of 4 July 2017 §§ 6-9

92 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §15

93 [Quaker Council for European Affairs \(QCEA\) v. Greece](#), Complaint No. 8/2000, decision on admissibility of 28 June 2000, §10, see also [European Roma Rights Center \(ERRC\) v. Bulgaria](#), Complaint No. 31/2005, decision on admissibility of 10 October 2005, §§ 8 and 9 and [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Sweden](#), Complaint No. 99/2013, decision on admissibility of 10 September 2013, §§ 2 and 10

94 [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on admissibility of 6 December 2004, §§ 2 and 7, see also [Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on admissibility of 1 July 2013, §§ 10 and 12

95 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on admissibility of 2 July 2013, §15

Interpretation of domestic law

The interpretation of domestic law pertains to the examination of the merits of the complaint and is not addressed at the admissibility stage.⁹⁶

As concerns the on-going revision of the impugned legislation, the Committee addresses the issue of whether the national legislation on the subject-matter of the complaint fulfils the requirements of the Charter when examining the merits of the complaint.⁹⁷ When doing so, it will take into account any relevant legislation that has entered into force at the time of the Committee's decision.⁹⁸

Contentions that the complaint is intended to influence the constitutional or legislative process have no effect on the admissibility of a complaint.⁹⁹

Nor can contentions that the situation has changed since the registration of the complaint affect admissibility, as this is considered to be a matter for the examination of the merits.¹⁰⁰

Responsibility of the State

The State is responsible for enforcing the rights embodied in the Charter within its jurisdiction.¹⁰¹ The Committee is competent to consider the complainant's allegations of violations in cases where the State has not acted as an operator but has simply failed to put an end to the alleged violations in its capacity as regulator.¹⁰² The extent of the Government's responsibilities, whether in the capacity of operator or in that of regulator will, if necessary, be examined in the proceedings on the merits of the complaint.¹⁰³

IMMEDIATE MEASURES

Rule 36§1 of the Rules provides that at any stage of the proceedings, the Committee 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.

The Committee has underlined the exceptional character of immediate measures.¹⁰⁴ Any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm.¹⁰⁵ Immediate measures can be ordered 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.¹⁰⁶

⁹⁶ [European Council of Police Trade Unions v. Portugal](#), Complaint No. 11/2001, decision on admissibility of 17 October 2001, §§ 3 and 7

⁹⁷ [International Federation of Human Rights Leagues \(FIDH\) v. Greece](#), Complaint No. 7/2000, decision on admissibility of 28 June 2000, §9, see also [Association for the Protection of All Children \(APPROACH\) Ltd v. Cyprus](#), Complaint No. 97/2013, decision on admissibility of 2 July 2013, §11

⁹⁸ [Association for the Protection of All Children \(APPROACH\) Ltd v. Cyprus](#), Complaint No. 97/2013, decision on admissibility of 2 July 2013, §11

⁹⁹ [European Council of Police Trade Unions v. Portugal](#), Complaint No. 11/2001, decision on admissibility of 17 October 2001, §§ 3 and 8

¹⁰⁰ [International Centre for the Legal Protection of Human Rights \(INTERIGHTS\) v. Croatia](#), Complaint No. 45/2007, decision on admissibility of 1 April 2008, §7

¹⁰¹ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §14

¹⁰² [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §14

¹⁰³ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on admissibility of 10 October 2005, §14

¹⁰⁴ [European Roma Rights Centre v. Belgium](#), Complaint No. 185/2019, decision on the admissibility and on immediate measures of 14 May 2020 §12

¹⁰⁵ [European Roma Rights Centre v. Belgium](#), Complaint No. 185/2019, decision on the admissibility and on immediate measures of 14 May 2020, §13, citing [Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on immediate measures of 25 October 2013 §2; and [Association for the Protection of all Children \(APPROACH\) Ltd v. Belgium](#), Complaint No. 98/2013, decision on immediate measures of 2 December 2013, §2)

¹⁰⁶ [Association for the Protection of all Children \(APPROACH\) Ltd v. Ireland](#), Complaint No. 93/2013, decision on immediate measures of 2 December 2013; [Association for the Protection of all Children \(APPROACH\) Ltd v. Belgium](#), Complaint No. 98/2013 decision on immediate measures of 2 December 2013; and [Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy](#), Complaint No.113/2014, decision on admissibility and on immediate measures of 9 September 2015

Rule 36§2 of the Rules indicates that 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 measures requested.¹⁰⁷ A copy of the request is immediately transmitted to the State concerned.¹⁰⁸ The President fixes for the State concerned a date for submissions on the request for immediate measures.¹⁰⁹

As per Rule 36§3 of the Rules, the decision of the Committee 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 their Deputy).¹¹⁰ It is notified to the Parties. The Committee may invite the parties to provide information on any question relating to the implementation of immediate measures.¹¹¹

The Committee has received numerous requests for immediate measures to be indicated to the respondent States Parties and has indicated immediate measures on the basis of some of these requests.¹¹² The Committee has requested the State Party to adopt immediate measures on its own initiative once.¹¹³

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 IV of the Digest.

A. The merits procedure

Written procedure

In most cases, as per Rule 31§1 of the Rules, once a complaint has been declared admissible the Committee asks the respondent State Party to submit in writing, within a deadline which it fixes, submissions on the merits of the complaint.¹¹⁴

Under certain circumstances, as per Rule 29§2 and 29§3 of the Rules, if the President of the Committee considers it appropriate to ensure that complaints are processed within a reasonable time, they may ask the respondent State to make written submissions on the merits of the case on the assumption that the complaint will be declared admissible, at the same time as its observations on the admissibility of the complaint.¹¹⁵ The President may also ask the organisation that lodged the complaint to respond, on the same conditions, to the observations made by the respondent State.¹¹⁶

Rule 31§2 of the Rules states that the President of the Committee then invites the organisation that lodged the complaint to submit, under the same conditions, a response to these submissions.¹¹⁷

According to Article 7§1 and 7§2 of the Additional Protocol, the State Party concerned and the organisation which lodged the complaint must submit, within the prescribed time-limit, all relevant written explanations or information.¹¹⁸

As per Article 7§3 of the Additional Protocol, on the basis of the explanations, information or observations submitted under Article 7§1 and 7§2, the State Party concerned and the organisation which lodged the complaint may submit any additional written information or observations within such time-limit as the Committee prescribes.¹¹⁹

107 Rules, *op. cit.*, Rule 36§2

108 Rules, *op. cit.*, Rule 36§2

109 Rules, *op. cit.*, Rule 36§2

110 Rules, *op. cit.*, Rule 36§3

111 Rules, *op. cit.*, Rule 36§3

112 See e.g: *Conference of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, decision on immediate measures of 25 October 2013; *Association for the Protection of all Children (APPROACH) Ltd v. Belgium*, Complaint No. 98/2013, decision on immediate measures of 2 December 2013; *Unione Italiana del Lavoro U.I.L. Scuola – Sicilia v. Italy*, Complaint No.113/2014, decision on admissibility and on immediate measures of 9 September 2015

113 *Amnesty International v. Italy*, Complaint No.178/2019, decision on admissibility and on immediate measures of 4 July 2019, §10

114 Rules, *op. cit.*, Rule 31§1

115 Rules, *op. cit.*, Rule 29§2

116 Rules, *op. cit.*, Rule 29§3

117 Rules, *op. cit.*, Rule 31§2

118 *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, ETS - No. 158, Article 7§1

119 *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, ETS - No. 158, Article 7§3

Under Rule 31§4 of the Rules, when they consider it appropriate, the President, after consultation with the Rapporteur, shall decide that the written procedure is closed. The Parties must be notified of such decision. After this decision, further documents may only be submitted exceptionally and based on a reasoned request.¹²⁰

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).

As per Rule 37 of the Rules, 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.¹²¹

Third-party Interventions

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

a) Other States having accepted the complaints procedure

Under Article 7§1 of the 1995 Additional Protocol and Rule 32§1 of the Rules, other States Parties to the Protocol as well as the States having ratified the Revised Charter and having made a declaration under Article D paragraph 2 may submit comments on a complaint within the same time-limit as the complainant organisation and State Party.¹²²

In practice, it is rare that States Parties avail themselves of this option. The following examples may be noted:

- ▶ *Syndicat occitan de l'éducation v. Belgique*, 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);
- ▶ *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No.158/2017 (Observations by France).

b) International trade unions and employers' organisations

As per Rule 32§2 of the Rules, international organisations of employers and workers (i.e. the European Trade Union Confederation (ETUC), Business Europe and the International Organisation of Employers (IOE)) are invited to submit observations on complaints lodged by national employers' organisations and workers or by non-governmental organisations.¹²³ The observations presented in this context are communicated to the organisation that lodged the complaint and the respondent State.¹²⁴

The European Trade Union Confederation (ETUC) submitted observations in relation to a significant number of complaints.¹²⁵

IOE submitted observations on a number of complaints.

Business Europe submitted observations in only one complaint so far.¹²⁶

¹²⁰ Rules, *op. cit.*, Rule 31§4

¹²¹ Rules, *op. cit.*, Rule 37

¹²² *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, ETS - No. 158, Article 7§1; Rules, *op. cit.*, Rule 32§1

¹²³ Rules, *op. cit.*, Rule 32§2

¹²⁴ Rules, *op. cit.*, Rule 32§3

¹²⁵ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014; see also, *Matica hrvatskih sindikata v. Croatia*, Complaint No. 116/2015; see also *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; see also *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016; see also *European Youth Forum (YFJ) v. Belgium*, Complaint No. 150/2017.

¹²⁶ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012

Observations from organisations, institutions or persons

As per Rule 32A§1 of the Rules, upon proposal by the Rapporteur, the President of the Committee may invite any organisation, institution or person to submit observations.¹²⁷ Any observations received by the Committee shall be communicated to the respondent state and the organization which lodged the complaint.¹²⁸

To date, a wide range of organisations have been invited to submit observations. It should be noted that in some instances these invitations followed from organisations contacting the Committee asking to be allowed to be submit observations. Organisations that have been invited to submit observations include:

- ▶ UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017;
- ▶ The Office of the United Nations High Commissioner for Refugees (UNHCR) on Defence for Children 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 Centre (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;
- ▶ Alliance Defending Freedom (ADF) on Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden, Complaint No. 99/2013 and Transgender-Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015;
- ▶ Swedish Association for Sexuality Education (RFSU), Centre 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 Commission on Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014 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 Finanziari Cittadini e Solidarietà (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.

Questions asked to the parties by the Committee

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

¹²⁷ Rules, op. cit., Rule 32A§1

¹²⁸ Rules, op. cit., Rule 32A§1

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 (EUROCCOP) 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;
- ▶ *Confederazione Generale Sindacale* (CGS) v. Italy, Complaint No. 144/2017.

Public hearings

The procedure is in most cases written only. However, pursuant to Article 7§4 of the Additional Protocol, in the course of the examination of the complaint, the Committee may organise a hearing with the representatives of the parties.¹²⁹ Under Rule 33§1 of the Rules, such hearing may be held at the request of one of the parties or on the Committee's initiative.¹³⁰ The Committee shall decide whether or not to act upon a request made by one of the parties.¹³¹ A hearing may be requested at any time during the written procedure, but no later than two weeks after the closing of the written procedure pursuant to Rule 31§4.¹³² Both parties should be invited and unless the President decides otherwise the hearing should be public.¹³³

Under Rule 33§4 of the Rules, in addition to the parties to the complaint, States and organisations that have expressed their wish to intervene in support of a complaint or for its rejection, are invited to participate in the hearing.¹³⁴

Public hearings, however, are exceptional since to date the Committee has held only 9 hearings, 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 June 2001: *Confédération Française de l'Encadrement «CFE-CGC»* v. France, Complaint No. 9/2000;
- ▶ 31 March 2003: Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002;
- ▶ 29 September 2003: Autism Europe v. France, Complaint No. 13/2002;
- ▶ 11 October 2004: European Roma Rights Centre v. Greece, Complaint No. 15/2003;
- ▶ 27 June 2007: ATD Fourth World v. France, complaint No. 33/2006 and European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006;
- ▶ 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.

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.¹³⁵

¹²⁹ *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints*, ETS - No. 158, Article 7§4

¹³⁰ *Rules, op. cit.*, Rule 33§1

¹³¹ *Rules, op. cit.*, Rule 33§1

¹³² *Rules, op. cit.*, Rule 31§4

¹³³ *Rules, op. cit.*, Rule 33§§ 2-3

¹³⁴ *Rules, op. cit.*, Rule 33§4

¹³⁵ *Rules, op. cit.*, Rule 27§1

All Committee documents relating to the deliberation are secret and are not intended to be made public.¹³⁶

Decisions are adopted by a majority of the members present.¹³⁷ Pursuant to Rule 34§2 of the Rules, only members of the Committee who participated in the essential parts of the deliberations may vote on a decision on the merits.¹³⁸ As per Rule 34§1 of the Rules, where a hearing is held, any member who is not present at the hearing cannot participate in the deliberations on the merits.¹³⁹

Pursuant to Rule 16§2, in case of an equal number of votes, the President has the deciding vote.

As per Rule 35§1 of the Rules, once adopted and finalised, the decision is signed by the Rapporteur, the President and the Executive Secretary (or their Deputy) and any separate opinions shall be appended to the Committee's decision.¹⁴⁰

Under Rule 35§2 of the Rules, the decision is then included in a report which is transmitted to the parties to the procedure, who may not publish it before the expiry of the time limit provided in Article 8 of the Additional Protocol.¹⁴¹

B. The merits assessment

1) Reorganisation of allegations according to their importance

If appropriate the Committee may decide to reorganise allegations according to their relevance for the purposes of the complaint.¹⁴²

2) Reclassification

The Committee may form the view that issues raised by the complainants are better addressed under provisions different to those cited by the complainants in the complaint.¹⁴³ When the Committee considers that the issue raised by the complainants falls within the scope of provisions of the Charter which have not been accepted by the State Party, it cannot examine the claim.¹⁴⁴

3) Non-consideration of allegations with regard to specific provisions due to their being considered under other Charter provisions

Where the Committee feels that an issue has already been addressed under another provision of the Charter, it will not deem it necessary to examine that issue separately from the standpoint of another Charter provision.¹⁴⁵

4) Relevant information for the purposes of the Committee's decision-making

The Committee may consider all information submitted to it by the parties, irrespective of the period to which they relate.¹⁴⁶

5) Evidence

Claims must be accompanied by evidence.¹⁴⁷

¹³⁶ Rules, *op. cit.*, Rule 38

¹³⁷ Rules, *op. cit.*, Rule 16§1

¹³⁸ Rules, *op. cit.*, Rule 34§2

¹³⁹ Rules, *op. cit.*, Rule 34§1

¹⁴⁰ Rules, *op. cit.*, Rule 35§1

¹⁴¹ Rules, *op. cit.*, Rule 35§2

¹⁴² See, e.g., *The Central Association of Carers in Finland v. Finland*, Complaint No. 71/2011, decision on the merits of 4 December 2012, §18.

¹⁴³ *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, §40; *Syndicat de défense des fonctionnaires v. France*, Complaint No. 73/2011, decision on the merits of 12 September 2012, §46

¹⁴⁴ *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, §40

¹⁴⁵ *International Commission of Jurists and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on admissibility and on immediate measures of 23 May 2019, §264.

¹⁴⁶ *International Commission of Jurists against Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, §34

¹⁴⁷ *International Commission of Jurists against Portugal*, Complaint No 1/1998, decision on the merits of 9 September 1999, §42: labor inspection

C. The decision on the merits

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.

Rule 35§1 of the Rules states that the Committee's decision on the merits of the complaint contained in the report provided for in Article 8 of the 1995 Additional Protocol shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. Any separate opinions shall be appended to the Committee's decision.¹⁴⁸

Aggravated 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;¹⁴⁹
- ▶ 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.¹⁵⁰

These aggravated violations do not simply concern their victims or their relationship with the respondent State.¹⁵¹ 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.¹⁵² The situation therefore requires urgent attention from all the Council of Europe member States.¹⁵³

Where the Committee makes a finding of aggravated violation it invites the Committee of Ministers to ensure immediate publication of the decision.¹⁵⁴

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.¹⁵⁵

Notification and publication of the decision

As per Article 8§2 of the 1995 Additional Protocol, the report is communicated to the parties to the complaint and the Committee of Ministers of the Council of Europe, which should not publish it.¹⁵⁶ The report cannot be published within 4 months of the decision unless the Committee of Ministers adopts a resolution before the expiry of that period.¹⁵⁷

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

D. Decision to strike out

Under Rule 39 of the Rules, if the conditions for upholding a complaint are no longer met, the Committee may take a decision to strike it out the list of pending complaints.¹⁵⁸ 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.¹⁵⁹

148 Rules, *op. cit.*, Rule 35§1

149 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §76

150 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §76

151 Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §54

152 Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §54

153 Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §54

154 Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §54.

155 Centre on Housing Rights and Evictions (COHRE) v. France, Complaint No. 63/2010, decision on the merits of 28 June 2011, §54.

156 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS - No. 158, Article 8§2

157 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, ETS - No. 158, Article 8§2

158 Rules, *op. cit.*, Rule 39

159 International Helsinki Federation for Human Rights (IHF) v. Bulgaria, Complaint No. 44/2007, decision to strike out of 5 March 2008

- ▶ 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.¹⁶⁰

Prior to striking out a complaint, the Committee verifies that there are no compelling reasons of general interest to continue consideration of the complaint in the absence of one party.¹⁶¹

160 [Association for the Protection of all Children \(APPROACH\) Ltd v. Cyprus](#), Complaint No. 97/2013, decision to strike out of 2 July 2013

161 [Association for the Protection of all Children \(APPROACH\) Ltd v. Cyprus](#), Complaint No. 97/2013, decision to strike out of 2 July 2013, §§ 2, 3

PART III:

FUNDAMENTAL PRINCIPLES OF INTERPRETATION OF THE CHARTER

NATURE AND AIM OF THE CHARTER

The European Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a complement 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 and common European social values which should be upheld by the Charter, it is important to:

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

The primary responsibility for implementing the European Social Charter naturally rests with the national authorities. Having regard to their constitutional arrangements and their social welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, such implementation strategies must be accompanied by appropriate safeguards, so as not to put at risk the actual implementation of the undertakings under the Charter.¹⁶²

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 of Digest on the Appendix to the Charter.

CONCRETE AND EFFECTIVE RIGHTS

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

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.¹⁶³¹⁶⁴

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 supervision.

The implementation of the Charter requires the States Parties to take not only legal action but also practical action to give full effect to the rights recognised in the Charter.¹⁶⁵

More specifically, with respect ensuring steady progress towards achieving the goals laid down by the Charter, the Committee emphasises that implementation of the Charter requires the States Parties not merely to take

¹⁶² Conclusions 2006, General Introduction

¹⁶³ International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32

¹⁶⁴ 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

¹⁶⁵ International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53

legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.¹⁶⁶

THE CHARTER AS A LIVING INSTRUMENT

The Committee interprets the rights and freedoms set out in the Charter in the light of current conditions¹⁶⁷ and in the light of relevant international instruments¹⁶⁸, as well as in light of new emerging issues and situations, in other words, the Charter is a living instrument.¹⁶⁹

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 respect of 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 given a clear indication of 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 other persons affected, including especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.¹⁷⁰

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.¹⁷¹

The Committee assesses the reasonable character of the delay in the implementation taking into account the margin of discretion enjoyed by States Parties.¹⁷²

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.¹⁷³ But usually 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.¹⁷⁴

However, in the framework of the collective complaints' procedure, the Committee rules on the situation as it exists on the time of its decision on the merits (having regard to the information at the Committee's disposal at that time).¹⁷⁵

¹⁶⁶ International Movement ATD Fourth World v. France, Complaint No.33/2006, decision on the merits of 5 December 2007, §61

¹⁶⁷ Marangopoulos Foundation for Human Rights v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194

¹⁶⁸ European Federation of National Organisations working with the Homeless (FEANTSA), Complaint No. 39/2006, decision on the merits of 5 December 2007, §64

¹⁶⁹ Transgender-Europe and ILGA-Europe v. Czech Republic, Complaint No. 117/2015, decision on the merits of 15 May 2018, §75

¹⁷⁰ International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53

¹⁷¹ International Movement ATD Fourth World v. France, Complaint No.33/2006, decision on the merits of 5 December 2007, §§ 65-66

¹⁷² Action Européenne des Handicapés (AEH) c. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §§ 95-100

¹⁷³ Addendum to Conclusions VI (1982), Iceland

¹⁷⁴ Conclusions XV-1 (2000), Denmark

¹⁷⁵ European Council of Police Trade Unions (CESP), v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, §52

INTERPRETATION OF THE CHARTER IN LIGHT OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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

1) 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.¹⁷⁶ 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 *Blečić v. Croatia of 2006* and *Šilih 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.¹⁷⁷ The Committee considers that this principle should also apply to the interpretation of the 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 accepted by the Grand Chamber of the European Court of Human Rights in the *Šilih* case cited above.

2) Non-discrimination: Article E of the Charter

The 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 linguistic 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.¹⁷⁸

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 1984.¹⁷⁹

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 State Party did not apply a different treatment to persons in a different situation.^{180 181}

Referring to this case law, the Committee considers 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.

It further 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.¹⁸²

176 *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No.30/2005, decision on admissibility of 10 October 2005, §15

177 *Centre on Housing Rights and Evictions (COHRE) v. Croatia*, Complaint No.52/2008, decision on the merits of 22 June 2010, §§ 22-26

178 *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No.26/2004, decision on the merits of 15 June 2005, §34

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

180 *International Association Autism-Europe v. France*, Complaint No.13/2002, decision on the merits of 4 November 2003, §52

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

182 *Confédération française démocratique du travail (CFDT) v. France*, Complaint No. 50/2008, decision on the merits of 9 September 2009, §§ 39 and 41

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 “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.^{183 184}

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 from 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.¹⁸⁵

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 from 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.¹⁸⁶

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.

3) 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* (1996), *Chapman* (2001) and *Connors* (2004), in which it held that special consideration should be given to the different needs and lifestyle of the Roma community in law and in practice.¹⁸⁷

The Committee draws on this case law, to hold that the States Parties must take both legal and practical action as required to give full effect to the rights recognised in the Charter in respect of Roma.

De facto recognition of Roma communities

Basing itself on the Court’s finding in its *Oneryildiz v. Turkey* judgment from 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.¹⁸⁸

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

184 *European Roma Rights Centre (ERRC) v. France*, Complaint No.51/2008, decision on the merits of 19 October 2009, §82

185 *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No.58/2009, decision on the merits of 25 June 2010, §§ 37-40, 106, 117, 120-121, 129, 131, 138 and 155-156

186 *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

187 *European Roma Rights Centre (ERRC) v. Greece*, Complaint No.15/2003, decision on the merits of 8 December 2004, §§ 19-21 and 25

188 *European Roma Rights Centre v. Bulgaria*, Complaint No.31/2005, decision on the merits of 18 October 2006, §§ 35, 37 and 54

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* (2001), *Muñoz Díaz v. Spain* (2009) and *Orsus v. Croatia* (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.¹⁸⁹

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 (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.¹⁹⁰

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 (2004) and the *Evans v. the United Kingdom* judgment (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.¹⁹¹

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* (1984) and *Rotaru v. Romania and Amann v. Switzerland* (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.

4) 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 (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.¹⁹²

5) 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".¹⁹³

It also extends to the Charter the interpretation made by the Court in its *Conka v. Belgium* judgment (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.

189 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No.58/2009, decision on the merits of 25 June 2010, §§ 37 to 40, 106, 117, 120-121, 129, 131, 138 and 155-156

190 European Roma Rights Centre v. Bulgaria, Complaint No.31/2005, decision on the merits of 18 October 2006, §§ 35, 37 and 54

191 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No.58/2009, decision on the merits of 25 June 2010, §§ 37 to 40, 106, 117, 120-121, 129, 131, 138 and 155-156

192 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

193 Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 155-156

Compliance with procedural safeguards relating to expulsion

On the subject of procedural safeguards relating to expulsion, the Committee refers to the Court's *Connors* judgment (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".¹⁹⁴

6) The non-equivalence of Community law and the European Social Charter

Referring to the Court's *Cantoni v. France* judgment (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.^{195 196197}

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.

7) Criteria to be fulfilled by the States Parties to achieve the objectives set by the Charter

Referring to the Court's *Ilascu and Others v. Moldova and Russia* judgment (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 achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.¹⁹⁸

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

8) 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.^{199 200 201}

9) 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.^{202 203 204 205 206}

194 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

195 *Confédération Française de l'Encadrement (CFE-CGC) v. France*, Complaint No.16/2003, decision on the merits of 12 October 2014, §30

196 *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

197 *Confédération générale du travail (CGT) v. France*, Complaint No.55/2009, decision on the merits of 23 June 2010, §§ 32, 34-35

198 *European Roma Rights Centre v. Bulgaria*, Complaint No.31/2005, decision on the merits of 18 October 2006, §§ 35, 37 and 54

199 *International Movement ATD Fourth World v. France*, Complaint No.33/2006, decision on the merits of 5 December 2007, §§ 68-69

200 *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

201 *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

202 *World Organisation against Torture (OMCT) v. Greece*, Complaint No.17/2003, decision on the merits of 7 December 2004, §31

203 *World Organisation against Torture (OMCT) v. Ireland*, Complaint No.18/2003, decision on the merits of 7 December 2004, §§ 60 and 63

204 *World Organisation against Torture (OMCT) v. Italy*, Complaint No.19/2003, decision on the merits of 7 December 2004, §41

205 *World Organisation against Torture (OMCT) v. Portugal*, Complaint No.20/2003, decision on the merits of 7 December 2004, §34

206 *World Organisation against Torture (OMCT) v. Belgium*, Complaint No.17/2003, decision on the merits of 7 December 2004, §38

10) 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 1976 judgment in the case *Kjeldsen, Busk Madsen and Pedersen v. Denmark*.

11) 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.²⁰⁷

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

Drawing on the Court's *Gustafsson v. Sweden* judgment (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.²⁰⁸

13) Right of foreign minors to protection

Like the Court in its judgments in the cases of *Moustaquim v. Belgium* (1991) and *Beldjoudi v. France* (1992), the Committee recognises that States Parties have the right to control the entry, residence and expulsion of aliens from their territories.²⁰⁹

However, in accordance with the findings of the Court in the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (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.

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:

1) 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)²¹⁰ and in respect of forced evictions.²¹¹

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.²¹² The Committee also refers to Article 8 of the Covenant in respect of the right to organise.

2) 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.²¹³

The Committee also refers to Article 22 of the Covenant in respect of the right to form and join trade unions.²¹⁴

²⁰⁷ *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No.30/2005, decision on the merits of 6 December 2006, §§ 196 and 202

²⁰⁸ *Federation of Finnish Enterprises v. Finland*, Complaint No.35/2006, decision on the merits of 16 October 2007, §§ 28-29

²⁰⁹ *Defense for Children International v. the Netherlands*, Complaint No.47/2008, decision on the merits of 20 October 2009, §§ 41-42

²¹⁰ *Mouvement international ATD Quart Monde v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 68-71

²¹¹ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 20-21

²¹² *Mental Disability Advocacy Center (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, §37

²¹³ *European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, decision on the merits of

²¹⁴ *European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016, §30

3) The United Nations Convention on the Rights of the Child

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.”²¹⁵

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.²¹⁶

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.

4) The International Convention on the Elimination of all forms of Racial Discrimination

5) Judgments of the Inter-American Court of Human Rights²¹⁷

6) Decisions of the African Commission on Human and Peoples Rights²¹⁸

7) 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)²¹⁹

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.

8) 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/64/272²²⁰

9) Interpretation of the Charter in light of the law of the European Union

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 the States 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.

215 Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §29

216 World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §61

217 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 196 et 202

218 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §196

219 Centre on Housing Rights and Evictions (COHRE), v. Croatia, Complaint No. 52/2008, decision on the merits of 22 June 2010, §§ 17-18

220 Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2014, decision on the merits of 15 May 2018 §81

- ▶ 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 has duly transposed and implemented a Directive, even where it relates 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.”²²¹

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 as to mean that national situations implementing the Directive would be in conformity with the Charter.

As regards *health and safety 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.²²²

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 and Council of 27 March 2003 as well as ILO Convention No 162 of 1986 on asbestos.²²³

²²¹ *Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 31-38

²²² Conclusions 2005, Cyprus

²²³ Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§1 of the 1961 Charter

As regards *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 ICPR 103 are reflected in it.²²⁴

As regards *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.²²⁵ 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 *right to health*, the Committee in its interpretation of the right to a healthy environment has taken into account several judgments of the European Court of Justice.²²⁶

As regards *the 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.²²⁷

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,²²⁸ taking account of the provisions of the European Convention on the Legal Status of Migrant Workers (ETS 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 having regard to the relevant case law of the European Court of Human Rights (ECtHR) - see *Gül v. Switzerland*, No. 23218/94, judgment of 19 February 1996, - 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.

224 Conclusions 2005, Cyprus

225 *Confédération Générale du Travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 39-42

226 *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006, §196

227 Conclusions 2011, Statement of Interpretation on Article 19§6

228 Conclusions I (1969), Germany

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.

IMPLEMENTATION OF THE CHARTER IN TIME OF ECONOMIC CRISIS

In Conclusions 2009, the Committee made a statement 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.²²⁹

In *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, the Committee indicated that this principle also applies to labour rights guaranteed under the Charter.²³⁰

Moreover, in *Federation of employed pensioners of Greece ((IKA-ETAM) v. Greece*, Complaint No. 76/2012, decision on the merits of 7 December 2012, the Committee indicated that this principle also applies to social security rights guaranteed under the Charter.²³¹

229 Conclusions 2009, General Introduction

230 *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

231 *Federation of employed pensioners of Greece ((IKA-ETAM) v. Greece*, complaint No. 76/2012, decision on the merits of 7 December 2012, §75

PART IV:

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, with a view to the attainment of full employment.

By accepting Article 1§1 of the Charter, States Parties undertake to pursue a policy of full employment.²³² For this purpose, States must adopt and follow an economic policy which is conducive to creating and preserving jobs and they must take adequate measures to assist the unemployed in finding and/or qualifying for a job.²³³ The efforts made by States to reach the goal of full employment must be adequate in light of the national economic situation and levels of unemployment.²³⁴

Article 1§1 as interpreted by the Committee is not concerned with collective bargaining frameworks, arbitration, information and consultation in the enterprise, working time regimes, remuneration levels and other forms of protection afforded by labour and/or social security law.²³⁵ Unless they have a direct and demonstrable impact on the attainment of full employment, such forms of protection are more appropriately examined and assessed under other specific provisions of the Charter.²³⁶

The provision imposes an obligation of means rather than an obligation of results.²³⁷ In order to decide whether a country is really fulfilling this obligation, the Committee adopts a dynamic standpoint and assesses the situation existing at a given moment, having regard to the continuous action pursued.²³⁸ If a State Party, at any time, abandoned the objective of full employment in favour of an economic system providing for a permanent pool of unemployed, it would be infringing the Social Charter.²³⁹

The decline of unemployment alone is not a sufficient indication of efforts towards the achievement of full employment, when, for example, unemployment still affects 5% of the active population.²⁴⁰ 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 has been made to improve the labour market situation.²⁴¹

Long-term unemployment is a phenomenon that entails a higher risk of marginalisation and social exclusion as the workers affected are usually the least qualified and with least experience.²⁴² The Committee closely monitors active measures implemented in order to reduce this kind of unemployment.²⁴³

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 active assistance to unemployed persons.²⁴⁴

232 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §125

233 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §125

234 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §125

235 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §126

236 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §126

237 Conclusions I (1969), Statement of Interpretation on Article 1§1

238 Conclusions I (1969), Statement of Interpretation on Article 1§1

239 Conclusions I (1969), Statement of Interpretation on Article 1§1

240 Conclusions III (1973), Statement of Interpretation on Article 1§1

241 Conclusions III (1973), Statement of Interpretation on Article 1§1

242 Conclusions 2004, Bulgaria

243 Conclusions 2004, Bulgaria

244 Conclusions 2002, Statement of Interpretation on Article 1§1

States Parties enjoy a wide margin of appreciation when it comes to the design and implementation of national employment policies.²⁴⁵

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, and persons belonging to minorities.²⁴⁶

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 amount of resources devoted to the various measures (e.g. total expenditure as a share of GDP, balance between active and passive measures).²⁴⁷

Labour market measures should be targeted, effective and regularly monitored.²⁴⁸ Such measures should also be designed to support migrants, refugees and internally displaced persons entering the labour market, as well as minorities with distinct levels of under-employment or unemployment (especially Roma).²⁴⁹ The situation is not in conformity with Article 1§1 of the Charter where the number of persons which have access to active labour market measures is too low.²⁵⁰

Certain national situations have been found to be in 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;²⁵¹
- ▶ 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, *inter alia*, by a low number of participants in active measures and a low level of expenditure);²⁵²
- ▶ 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.²⁵³
- ▶ where too few job seekers had access to training.²⁵⁴
- ▶ where public expenditure on active labour market policies amounted to a very low % of GDP and it has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.²⁵⁵

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.

Appendix: This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.²⁵⁶

Article 1§2 covers three different issues:

1. the eradication of all forms of discrimination in employment. (Most of the requirements for compliance with Article 1§2 as regards the prohibition of discrimination on the ground of sex apply to any ground of discrimination);²⁵⁷

245 [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, §20

246 Conclusions (2002), Statement of Interpretation on Article 1§1

247 [Conclusions 2020, Turkey](#)

248 [Conclusions 2012, Albania](#)

249 [Conclusions, 2020, Azerbaijan](#); [Conclusions 2020, Lithuania](#)

250 [Conclusions 2012, Albania](#)

251 [Conclusions XVI-1 \(2002\), The Netherlands \(Antilles and Aruba\)](#)

252 [Conclusions 2004, Bulgaria](#)

253 [Conclusions XVI-1 \(2002\), Poland](#)

254 [Conclusions 2012, Albania](#)

255 [Conclusions 2012, Armenia](#)

256 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

257 [Conclusions I \(1969\), Statement of Interpretation on Article 1§2](#); [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 1§2](#)

2. the prohibition of forced labour;²⁵⁸
3. the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.²⁵⁹

This right does not imply however that the worker's occupation, freely entered upon, shall be preserved in all circumstances from any changes, including those resulting from a reorganization of activities in the public sector.²⁶⁰

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),²⁶¹ Article 8§2 (the right of employed women to the protection of maternity), Article 15§2 (the right of persons with disabilities to employment),²⁶² Article 23 (the 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 more specific provisions the situation is examined under them rather than Article 1§2.

Prohibition of all forms of discrimination in employment

Article 1§2 of the Revised Charter requires those States which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon.²⁶³ This obligation requires *inter alia* the elimination of all forms of discrimination (direct or indirect) in employment, whatever the legal nature of the professional relationship.²⁶⁴

Discrimination may arise either by treating people in the same situation differently or by treating people in different situations identically.²⁶⁵ A difference in treatment between people in comparable situations constitutes discrimination in breach of the revised Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.²⁶⁶

Indirect discrimination may also arise by 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 to all.²⁶⁷

i. Prohibited grounds of discrimination

The Committee considers that under Article 1§2, legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.²⁶⁸ Stronger protection may be provided in respect of certain grounds, such as gender or membership of a race or ethnic group.²⁶⁹

Where a State party has accepted Article 15§2 of the Charter, the Committee will examine legislation prohibiting discrimination on grounds of disability under this provision rather than under Article 1§2.²⁷⁰

Restrictions on Article 1§2 are permitted only if they 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.²⁷¹

²⁵⁸ Conclusions I (1969), Statement of Interpretation on Article 1§2

²⁵⁹ *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato (UGL-CFS) and Sindacato autonomo polizia ambientale forestale (SAPAF) v. Italy*, Complaint No. 143/2017, decision on the merits of 3 July 2019, §76

²⁶⁰ *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato (UGL-CFS) and Sindacato autonomo polizia ambientale forestale (SAPAF) v. Italy*, Complaint No. 143/2017, decision on the merits of 3 July 2019, §77

²⁶¹ Conclusions 2020, Albania

²⁶² Conclusions 2020, Albania

²⁶³ *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §24

²⁶⁴ *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §24; Conclusions XVI-1 (2002), Iceland

²⁶⁵ *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, decision on the merits of 21 March 2012, §49

²⁶⁶ *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §25

²⁶⁷ *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 91/2013, decision on the merits of 12 October 2015, §237

²⁶⁸ Conclusions 2006, Albania

²⁶⁹ Conclusions XVI-1 (2003), Iceland

²⁷⁰ Conclusions XVIII-1 (2006), Austria

²⁷¹ Conclusions 2006, Albania

Gender discrimination

Appropriate national legislation, in conformity with the Charter, is a necessary albeit insufficient condition for the effective application of the Charter's principles.²⁷² It is not enough to legally prohibit discrimination between women and men in access to employment; it also has to be eliminated in practice.²⁷³

The restrictions on the admission of women to the police college and the corresponding exclusion of women from 85% of police duties constitute direct discrimination based on sex that has not been shown to be necessary in a democratic society to protect the public interest or national security or to be justified by the nature of the activities in question.²⁷⁴

Age discrimination

The reduction of the minimum wage of workers under 25 may give rise to an issue of discrimination on grounds of age.²⁷⁵

While the less favourable treatment of younger workers may be designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market in a time of serious economic crisis, the extent of the reduction in the minimum wage, and the manner in which it is applied to all workers under the age of 25, must not be disproportionate, even when taking into account particular economic circumstances.²⁷⁶

Discrimination on the basis of nationality

Article 1§2 also requires that nationals of States Parties which do not belong to the European Union or in the European Economic Area enjoy the same rights as European Union citizens in respect of jobs not affected by the exercise of State prerogatives.²⁷⁷

States Parties to the Charter may make foreign nationals' access to employment on their territory subject to possession of a work permit, but they cannot ban nationals of other States Parties to the Charter, in general, from occupying jobs for reasons other than those set out in Article G of the Charter.²⁷⁸ 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.²⁷⁹

A national situation is not in conformity with Article 1§2 of the Charter, where domestic law requires an employer to dismiss foreign workers first when making staff cuts, since this is discriminatory.²⁸⁰

Discrimination in respect of working patterns

There must be adequate legal safeguards against discrimination in respect of part-time work.²⁸¹ 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.²⁸²

The recourse to fixed-term contracts may be necessary to ensure flexibility in adapting the workforce to the needs, particularly in the education sector, which can be subject to fluctuations related to the number of inscriptions in the different levels of schools throughout the country.²⁸³

It considers however that an adequate balance must be struck between a need for flexibility and the rights of workers to earn their living in an occupation freely entered upon.²⁸⁴ In particular, fixed-term employment contracts should not be used to elude more stringent rules applying to indefinite duration employment

272 [Conclusions XVI-1 \(2003\), Greece](#)

273 [Conclusions XVI-1 \(2003\), Greece](#)

274 [Conclusions XVI-1 \(2003\), Greece](#)

275 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §132

276 [Greek General Confederation of Labour \(GSEE\) v. Greece](#), Complaint No. 111/2014, decision on the merits of 23 March 2017, §135

277 [Conclusions XVI-1 \(2002\), Austria](#)

278 [Conclusions 2006, Albania](#)

279 [Conclusions 2006, 2012, Albania](#)

280 [Conclusions XVI-1 \(2002\), Austria](#)

281 [Conclusions 2008, Albania](#)

282 [Conclusions 2008, Albania](#)

283 [Confederazione Generale Sindacale \(CGS\) v. Italy](#), Complaint No. 144/2017, decision on the merits of 9 September 2020, §112

284 [Confederazione Generale Sindacale \(CGS\) v. Italy](#), Complaint No. 144/2017, decision on the merits of 9 September 2020, §113

contracts.²⁸⁵ To this effect, there must be adequate legal safeguards preventing abuse arising from the use of successive fixed-term employment contracts.²⁸⁶ Furthermore, where such abuse occurs, adequate, proportionate and dissuasive remedies must be effectively available in law and in practice.²⁸⁷

The mere length of service spent under fixed-term employment contracts does not necessarily imply an unconditional and automatic right of access to indefinite duration employment contracts, notably in the public sector.²⁸⁸ However, where the service provided under fixed-term contracts fulfils the quality standards required and is equivalent to that of staff recruited under indefinite duration contracts, the experience accrued through successive contracts, even with interruptions, should be taken into account as a relevant criteria for recruitment under public competitions.²⁸⁹

The fact that fixed-term contracts in the public sector cannot be automatically converted into indefinite duration contracts cannot in itself be regarded as contrary to the Charter, provided that effective measures exist to prevent abuses arising from the recourse to fixed-term contracts and to provide effective remedies in case of such abuse.²⁹⁰

ii. 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).²⁹¹

iii. Measures required to ensure the effectiveness of the prohibition of discrimination

Legislation should prohibit both direct and indirect discrimination.²⁹²

In order to comply with Article 152, States Parties should take legal measures to safeguard the effectiveness of the prohibition of discrimination.²⁹³ These measures must at least provide:

- ▶ that any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations may be declared null or be rescinded, abrogated or amended;²⁹⁴
- ▶ the notion of effective remedies encompasses judicial or administrative procedures available in cases of an allegation of discrimination, able to provide reinstatement and compensation, as well as adequate penalties effectively enforced by labour inspection.²⁹⁵
- ▶ in the event of a violation of the prohibition of discrimination, sanctions that are a sufficient deterrent to employers as well as adequate compensation proportionate to the damage suffered by the victim.²⁹⁶ Appropriate and effective remedies in the event of an allegation of discrimination must be adequate, proportionate and dissuasive.²⁹⁷ The imposition of pre defined upper limits to compensation that may be awarded are not in conformity with the Charter as in certain cases these may preclude damages from being awarded which are commensurate with the loss suffered and not sufficiently dissuasive to the employer.²⁹⁸
- ▶ protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action.²⁹⁹
- ▶ domestic law should provide for a shift in the burden of proof in favour of the employee in discrimination cases.³⁰⁰

285 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §113

286 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §113

287 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §113

288 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §114

289 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §114

290 *Confederazione Generale Sindacale (CGS) v. Italy*, Complaint No. 144/2017, decision on the merits of 9 September 2020, §102

291 Conclusions XVI-1 (2003), Iceland

292 Conclusions XVIII-I (2006), Austria

293 Conclusions XVI-1 (2003), Iceland

294 Conclusions XVI-1 (2003), Iceland

295 Conclusions 2020, Cyprus

296 Conclusions XVI-1 (2003), Iceland

297 Conclusions XVIII-I (2006), Austria

298 Conclusions XVIII-I (2006), Austria

299 Conclusions XVI-1 (2003), Iceland

300 *Syndicat de Défense des fonctionnaires v. France* Complaint No. 73/2011, decision on the merits 13 September 2012, §59

The Committee considers that the following measures foster the full effectiveness of the efforts to combat discrimination according to Article 1§2 of the Charter:

- ▶ recognising the right of trade unions to take action in cases of discrimination in employment, including on behalf of individuals;³⁰¹
- ▶ the possibility of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated;³⁰²
- ▶ the setting up of a specialised body to promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings.³⁰³

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.³⁰⁴

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.³⁰⁵ The definition of forced or compulsory labour is based on the interpretation given by the European Court of Human Rights of Article 4§2 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)³⁰⁶ The Committee also refers to the interpretation by the European Court of Human Rights of the concept of «servitude», also prohibited under Article 4§2 of the Convention.³⁰⁷

The coercion of any worker to carry out work against their wishes and without their freely expressed consent is contrary to the Charter.³⁰⁸ This also applies to the coercion of any worker to carry out work they had previously freely agreed to do, but which they subsequently no longer want to carry out.³⁰⁹

The prohibition of forced labour implies that disobedience to orders or the interruption or abandonment of service by certain categories of staff (as in the merchant navy or aviation) cannot be subjected to penal measures unless the act giving rise to the charge endangered, or was capable of endangering, the safety of the ship or aircraft or the life or health of those on board.³¹⁰

The non-application in practice of legislation which is contrary to the prohibition of forced labour is not sufficient to bring a situation into conformity with Article 1§2 of the Charter.³¹¹ Consequently such legislation would have to be amended.³¹²

States Parties to the Charter are required to fulfil their positive obligations to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation.³¹³

The Committee will therefore examine under Article 1§2 of the Charter whether States Parties have fulfilled their positive obligations to:

- ▶ Criminalise and effectively investigate, prosecute and punish instances of forced labour and other forms of severe labour exploitation;³¹⁴

301 [Conclusions XVI-1 \(2003\), Iceland](#)

302 [Conclusions XVI-1 \(2003\), Iceland](#)

303 [Conclusions XVI-1 \(2003\), Iceland](#)

304 [Conclusions 2006, Lithuania](#)

305 [Conclusions 2020, Albania](#)

306 [Conclusions 2020, Albania](#)

307 [Conclusions 2020, Albania](#)

308 [Conclusions III \(1971\), Statement of Interpretation on Article 1§2](#)

309 [Conclusions III \(1971\), Statement of Interpretation on Article 1§2](#)

310 [Conclusions V \(1975\), Statement of Interpretation on Article 1§2](#)

311 [Conclusions V \(1975\), Statement of Interpretation on Article 1§2](#); [Conclusions XIII-3 \(1995\), Ireland](#)

312 [Conclusions V \(1975\), Statement of Interpretation on Article 1§2](#)

313 [Conclusions 2020, Albania](#)

314 [Conclusions 2020, Albania](#)

- ▶ Prevent forced labour and other forms of labour exploitation;³¹⁵
- ▶ Protect the victims of forced labour and other forms of labour exploitation and provide them with accessible remedies, including compensation.³¹⁶

Criminalisation and effective prosecution

States Parties must not only adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation but must also take measures to enforce them.³¹⁷ The Committee considers, as the European Court of Human Rights did (*Chowdury and Others*, §116), that the authorities must act of their own motion once the matter has come to their attention; the obligation to investigate will not depend on a formal complaint by the victim or a close relative.³¹⁸ This obligation is binding on the law-enforcement and judicial authorities.³¹⁹

Prevention

States Parties should take preventive measures such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups.³²⁰ States Parties should also, strengthen the role and the capacities/mandate of labour inspection services to enforce relevant labour law on all workers and all sectors of the economy with a view to preventing forced labour and labour exploitation.³²¹ States Parties should also encourage due diligence by both the public and private sectors to identify and prevent forced labour and exploitation in their supply chains.³²²

Domestic legislation should include measures designed to force companies to report on action taken to investigate forced labour and exploitation of workers among their supply chains.³²³ It should also require that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.³²⁴

Protection of victims and access to remedies, including compensation

Protection measures in the context of human trafficking should include the identification of victims by qualified persons and assistance to victims in their physical, psychological and social recovery and rehabilitation (such as protection from retaliation, safe accommodation, health care, material assistance, social and economic assistance, legal advice, translation and interpretation, voluntary repatriation, provision of residence permits for migrants).³²⁵ The existing legal framework must provide the victims of forced labour and labour exploitation, including irregular migrants, with access to effective remedies (before criminal, civil or labour courts or other mechanisms) designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions.³²⁶

The Committee refers to the 2014 Protocol to the 1930 ILO Forced Labour Convention, which requires States Parties to provide access to appropriate and effective remedies to victims, such as compensation, irrespective of their presence or legal status on the national territory.³²⁷

The prohibition of forced or compulsory labour may be infringed in situations including where:

- ▶ Provisions authorising 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.³²⁸

315 [Conclusions 2020, Albania](#)

316 [Conclusions 2020, Albania](#)

317 [Conclusions 2020, Albania](#)

318 [Conclusions 2020, Albania](#)

319 [Conclusions 2020, Albania](#)

320 [Conclusions 2020, Albania](#)

321 [Conclusions 2020, Albania](#)

322 [Conclusions 2020, Albania](#)

323 [Conclusions 2020, Albania](#)

324 [Conclusions 2020, Albania](#)

325 [Conclusions 2020, Albania; Armenia](#)

326 [Conclusions 2020, Armenia](#)

327 [Conclusions XXII-1 \(2020\), Germany](#)

328 [International Federation of Human Rights Leagues \(FIDH\) v. Greece](#), Complaint No. 7/2000, decision on the merits of 5 December 2000, §22; see also [Conclusions 2012, Portugal](#)

- ▶ 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 years³²⁹ 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.³³⁰
- ▶ Powers of requisition in exceptional circumstances which are too broadly defined.³³¹ Any such powers must be defined with sufficient clarity.³³²

“Gig economy” or “platform economy” workers

The Committee also assesses the measures taken to combat forced labour and exploitation within two particular sectors: domestic work and the “gig economy” or “platform economy”.³³³

Concrete measures must be taken or envisaged to protect workers in the “gig economy” or “platform economy” against all forms of exploitation and abuse.³³⁴

ii. Forced labour in the domestic environment

In the light of the judgment of the European Court of Human Rights in the *Siliadin v. France* case (26 July 2005), the Committee considers that the ban on forced labour in Article 1§2 of the Charter also includes domestic slavery.³³⁵ Domestic work and work in family enterprises may give rise to forced labour and exploitation, Such work often involves abusive, degrading and inhuman living and working conditions for the domestic workers concerned.³³⁶ States Parties should adopt legal provisions to combat forced labour in domestic environment and protect domestic workers as well as take measures to implement them.³³⁷

iii. 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).³³⁸

iv. Requirement to accept the offer of a job or training or otherwise lose entitlement to 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§1.³³⁹ 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;³⁴⁰
- ▶ which pays well below the individual’s previous salary;³⁴¹
- ▶ which requires a particular level of physical or mental health or ability, which the person does not possess at the relevant time;³⁴²

329 [International Federation of Human Rights Leagues \(FIDH\) v. Greece](#), Complaint No. 7/2000, decision on the merits of 5 December 2000, §21

330 [Conclusions 2004, Ireland](#); [Conclusions 2012, Ireland](#)

331 [Conclusions XVI-1 \(2002\), Greece](#)

332 [Conclusions XVI-1 \(2002\), Greece](#)

333 [Conclusions 2020, Albania](#)

334 [Conclusions 2020, Albania](#)

335 [Conclusions 2012, France](#)

336 [Conclusions 2020, Albania](#)

337 [Conclusions 2008, Statement of Interpretation on Article 1§2](#)

338 [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

339 [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

340 [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

341 [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

342 [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

- ▶ 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;³⁴³
- ▶ for which the pay offered is lower than the national or regional minimum wage or, the norm or wage scale agreed on for the sector or occupation concerned;³⁴⁴
- ▶ for which the pay 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 their family;³⁴⁵
- ▶ which is proposed as the result of a current labour dispute;³⁴⁶
- ▶ 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 obligations³⁴⁷
- ▶ 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.³⁴⁸

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.³⁴⁹

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.³⁵⁰ The length of such replacement must be proportionate to the length of military service and not excessive overall.³⁵¹

Alternative service which is not more than 1.5 times the length of military service is in principle in conformity with the Charter.³⁵² Where the length of military service is short, the Committee will not necessarily insist on alternative service being not more than 1.5 times the length of military service.³⁵³ Nevertheless, the longer the period of military service is, the stricter the Committee will be in evaluating the reasonableness of any additional length of the alternative service.³⁵⁴

However, the right to conscientious objection is not as such guaranteed by the Charter under Article 1§2.³⁵⁵ Moreover, the Charter does not entail a requirement for domestic law to explicitly provide for discharge from the military on this ground unless the absence of such requirement effectively prevents any discharge from the military.³⁵⁶

³⁴³ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁴ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁵ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁶ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁷ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁸ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁴⁹ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵⁰ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵¹ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵² Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵³ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵⁴ Conclusions 2012, Statement of Interpretation on Article 1§2

³⁵⁵ *European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland*, Complaint No. 164/2018, decision on the merits of 21 October 2020, §53

³⁵⁶ *European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland*, Complaint No. 164/2018, decision on the merits of 21 October 2020, §53

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.³⁵⁷ Likewise any fees/costs to be repaid on early termination of service must be proportionate.³⁵⁸

iii. Minimum periods of service in the medical sector

The Committee considers that the requirement for medical officers, to complete a minimum period of service after the end of their training is a legitimate requirement, as is making their departure before the end of the compulsory period dependent on the payment of a fee, in order to ensure that the state recoups the cost of the training of medical officers and to ensure that the army has a sufficient number of doctors available in accordance with its needs.³⁵⁹

States Parties have a margin of appreciation in calculating the length of any compulsory period of service following training and the conditions for early resignation.³⁶⁰ The Committee has repeatedly held that any minimum period of service due to education or training that an individual has benefitted from, the length must be proportionate to the duration of the education and training.³⁶¹ Likewise any fees/costs to be repaid on early termination of service must be proportionate.³⁶²

A period of 10 years compulsory service following training is compatible with Article 1§2 of the Charter.³⁶³

The Committee also held that a period of compulsory service of double the length of the initial training period (between 12 years and 17 years where a period of specialist training is undertaken, with the specialist training period counting towards the compulsory service period) is not disproportionate to the length of the education and training period.³⁶⁴

iv. 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.³⁶⁵ The right to undertake work freely includes the right to be protected against interferences with the right to privacy.³⁶⁶

Since the term "private life" may be defined with varying degrees of strictness it may be preferable to speak of "infringements of private or personal life".³⁶⁷ 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.³⁶⁸

Article 1§2 only refers explicitly to the moment when workers start employment.³⁶⁹ Logically, though, the fundamental principle of freedom which the Charter refers to with respect to this particular occasion must continue to apply thereafter in the non-work sphere.³⁷⁰

³⁵⁷ [Conclusions 2012, France](#)

³⁵⁸ [Conclusions 2012, France](#)

³⁵⁹ [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §38

³⁶⁰ [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §39

³⁶¹ [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §39

³⁶² [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §9

³⁶³ [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §40

³⁶⁴ [European Federation of Public Service Employees \(EUROFEDOP\) v. Greece](#), Complaint No. 115/2015, decision on the merits of 13 September 2017, §46

³⁶⁵ [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

³⁶⁶ [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

³⁶⁷ [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

³⁶⁸ [Conclusions 2006, Statement of Interpretation on Article 1§2](#); [Conclusions 2012, Statement of Interpretation on Article 1§2](#)

³⁶⁹ [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

³⁷⁰ [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

Infringements of the right to privacy and dignity take many diverse forms.³⁷¹ They may arise from questions to employees or job seekers about their family situation or background, their associates, their opinions, their sexual orientation or behaviour and their health or that of members of their family and about how they spend their time away from work.³⁷² They may also arise from the storage, temporarily or permanently, and processing of such data by the employer, from their being shared with third parties and from their use for purposes of taking measures regarding the employees.³⁷³

Under Articles 1§2 and 26, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms.³⁷⁴ However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the Revised Social Charter.³⁷⁵ This applies in particular to Article 3 (one of whose aims is to counter threats to workers' health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of harassment).³⁷⁶

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.³⁷⁷ The main function of such services is to place unemployed jobseekers in employment as well as employed workers looking for another job.³⁷⁸ Basic placement services such as registration of jobseekers and notification of vacancies must be provided free of charge for both employees and employers.³⁷⁹

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.³⁸⁰ 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.³⁸¹

In order to assess whether employment services operate in an efficient manner, the Committee uses the following quantitative indicators:

- ▶ the total number of jobseekers and unemployed persons registered with employment services;³⁸²
- ▶ the number of vacancies notified to employment services;³⁸³
- ▶ the number of persons placed via employment services;³⁸⁴
- ▶ the placement rate (i.e. placements made by the employment services as a percentage of notified vacancies);³⁸⁵
- ▶ the average time taken by employment services to fill a vacancy;³⁸⁶
- ▶ the number of placements by employment services as a percentage of total recruitments on the labour market;³⁸⁷
- ▶ the respective market shares of public and private services. Market share is defined as the number of placements made as a proportion of total recruitments on the labour market.³⁸⁸

371 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

372 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

373 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

374 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

375 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

376 [Conclusions 2006, Statement of Interpretation on Article 1§2](#)

377 [Conclusions 2016, Slovak Republic](#)

378 [Conclusions 2016, Slovak Republic](#)

379 [Conclusions 2016, Bosnia and Herzegovina](#)

380 [Conclusions XIV-1 \(1998\), Turkey](#)

381 [Conclusions 2020, Azerbaijan](#); [Conclusions 2016, Bosnia and Herzegovina](#)

382 [Conclusions 2020, Albania](#)

383 [Conclusions 2020, Albania](#)

384 [Conclusions 2020, Albania](#)

385 [Conclusions 2020, Albania](#)

386 [Conclusions 2020, Albania](#)

387 [Conclusions 2020, Albania](#)

388 [Conclusions 2020, Albania](#)

- ▶ the measures taken to ensure effectiveness of public employment services to provide personalised services, in particular to the long-term unemployed, the low-skilled, young people and Roma;³⁸⁹
- ▶ the number of persons working in employment services (at central and local level);³⁹⁰
- ▶ the number of counsellors involved in placement services;³⁹¹
- ▶ the ratio of placement staff to registered jobseekers;³⁹²
- ▶ how private employment agencies are licensed, operate and co-ordinate their work with employment services;³⁹³
- ▶ the participation of trade union and employers' organisations in the organisation and running of the employment services.³⁹⁴

Trade union and employers' organisations must have the possibility of participating in the organisation and running of the employment services.³⁹⁵

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.³⁹⁶

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.³⁹⁷

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.³⁹⁸

The indicators allowing an assessment of the effectiveness of vocational guidance services are: funding, staffing and the number of beneficiaries.³⁹⁹

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.⁴⁰⁰ If such a length of residence requirement exists for foreigners wishing to receive vocational guidance, training or rehabilitation this situation constitutes unequal treatment contrary to the Charter.⁴⁰¹

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.⁴⁰²

Where a State Party has accepted the above-mentioned provisions (Articles 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§1.⁴⁰³ Since these provisions set out a broader range of rights than Article 1§4,

³⁸⁹ [Conclusions 2020, Slovak Republic](#)

³⁹⁰ [Conclusions 2020, Slovak Republic](#)

³⁹¹ [Conclusions 2020, Slovak Republic](#)

³⁹² [Conclusions 2020, Slovak Republic](#)

³⁹³ [Conclusions 2020, Slovak Republic](#)

³⁹⁴ [Conclusions 2020, Slovak Republic](#)

³⁹⁵ [Conclusions XV-1 \(2000\), Addendum, Poland](#)

³⁹⁶ [Conclusions 2003, Bulgaria](#)

³⁹⁷ [Conclusions 2012, Georgia](#) ; [Conclusions XII-1 \(1991\), Statement of Interpretation on Article 1§4](#)

³⁹⁸ [Conclusions 2008, Albania](#)

³⁹⁹ [Conclusions XX-1 \(2012\), Iceland](#)

⁴⁰⁰ [Conclusions 2008, Bulgaria](#)

⁴⁰¹ [Conclusions 2008, Bulgaria](#)

⁴⁰² [Conclusions 2007, Bulgaria](#)

⁴⁰³ [Conclusions I \(1969\), Statement of Interpretation on 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§4.⁴⁰⁴ 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.⁴⁰⁵

Where a State Party has not ratified Article 15§1, a situation will not be in conformity with Article 1§4 where there is no legislation explicitly protecting persons with disabilities from discrimination in training.⁴⁰⁶ Nor is it in conformity with Article 1§4 of the Charter where it has not been established that the legislation provides for individual leave for training of employed persons.⁴⁰⁷ The right of persons with disabilities to mainstream training must be effectively guaranteed.⁴⁰⁸

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.⁴⁰⁹ The aim is to protect worker's safety and health.⁴¹⁰ The Committee examines the situation of workers "on call" or working discontinuous hours under this provision.⁴¹¹ Adequate protection must also be afforded to part-time workers in terms of this Article.⁴¹²

A reasonable period of work, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means.⁴¹³ In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected.⁴¹⁴ These limits should apply to all categories of workers and can only be exceeded under exceptional circumstances (i.e. natural disasters, situations of *force majeure*).⁴¹⁵

The Charter does not expressly define what constitutes reasonable working hours.⁴¹⁶ Situations are therefore assessed on a case-by-case basis: the Committee found that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time.⁴¹⁷

In assessing States Parties' compliance with their obligations under Article 2§1, the Committee considers that in addition to the number of working hours laid down by law in that State, it also has to take into account the effect of collective agreements and the nature and extent of an employer's right to require overtime to be worked.⁴¹⁸

Working overtime must not simply be left to the discretion of the employer or the employee.⁴¹⁹ The reasons for overtime work and its duration must be subject to regulation.⁴²⁰ States Parties must set up an appropriate authority to supervise that daily and weekly working time limits are respected in practice.⁴²¹

404 [Conclusions 2008, Statement of Interpretation on Article 1§4](#)

405 [Conclusions 2003, Bulgaria](#)

406 [Conclusions 2020, Azerbaijan](#)

407 [Conclusions 2020, Malta](#)

408 [Conclusions 2020, Montenegro](#)

409 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

410 [Confédération Générale du Travail \(CGT\) v. France](#), Complaint No. 22/2003, decision on the merits of 7 December 2004, §34

411 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

412 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

413 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

414 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

415 [Conclusions \(2014\), The Netherlands](#)

416 [Conclusions I \(1969\), Statement of Interpretation on Article 2§1](#)

417 [Conclusions XIV-2 \(1998\), Norway](#); [Conclusions \(2014\), Armenia](#)

418 [Conclusions I \(1969\), Statement of Interpretation on Article 2§1](#)

419 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

420 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 2§1](#)

421 [Conclusions 2018, Georgia](#)

Article 2§1 provides for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These “other factors” may be the nature of the work and the safety and health risks to which workers are exposed.⁴²² The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.⁴²³

For the purpose of protecting the private and family life of workers, the Committee attaches importance to the fact that they must be clearly and duly informed about any changes to their working hours.⁴²⁴

Statutory provisions introducing or authorising the flexibility of working time have been adopted in many States Parties.⁴²⁵ Working hours are calculated as an average over given reference periods.⁴²⁶ The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period.⁴²⁷ The Committee considers that these measures are not as such in breach of the Charter.⁴²⁸ Flexibility measures regarding working time are not as such in breach of the Charter.⁴²⁹

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.⁴³⁰
- (ii) they must operate within a legal framework providing adequate guarantees.⁴³¹
- (iii) they must provide for reasonable reference periods for the calculation of average working time.⁴³² Periods that do not exceed four to six months are acceptable in terms of Article 2§1, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances.⁴³³ Objective or technical reasons or reasons concerning the organisation of work must justify such an extension of the reference period.⁴³⁴

A total working week (usual hours plus overtime) which, within the framework of “flexibility regulations”, may attain up to sixty hours per week or exceed sixty hours per week is unreasonable.⁴³⁵ The exclusion of certain categories of workers from statutory protection against unreasonable working hours is a ground of non-conformity.⁴³⁶ Seafarers’ right to reasonable weekly hours must be guaranteed by law.⁴³⁷

The Committee requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level.⁴³⁸

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.⁴³⁹

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.⁴⁴⁰ The assimilation of “*périodes d’astreinte*” to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1.⁴⁴¹ The absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at their disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer’s premises as well as for the on-call time spent at home.⁴⁴²

422 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

423 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

424 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

425 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

426 Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2

427 Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2

428 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

429 Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2

430 *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29

431 *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29

432 *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29

433 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

434 Conclusions XIX-3 (2010), Spain

435 Conclusions XIV-2 (1998), The Netherlands; Conclusions 2018, Turkey

436 Conclusions 2018, The Netherlands

437 Conclusions 2018, Estonia

438 Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

439 Conclusions XX-3 (2014), Germany

440 *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2010, §64

441 *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 16/2003, decision on the merits of 12 October 2004, §53

442 *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 50-53

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.⁴⁴³ Public holidays may be specified in law or in collective agreements.⁴⁴⁴

The Charter does not stipulate the number of public holidays. The number of public holidays varies, depending on the States Parties. There has been no finding of non-conformity with this provision because of States Parties granting too few public holidays. However, the right of all workers to public holidays with pay must be guaranteed.⁴⁴⁵

As a rule, work should be prohibited during public holidays.⁴⁴⁶ However, work can be carried out on public holidays under specific circumstances set by law or collective agreements.⁴⁴⁷

Work performed on a public holiday entails a constraint on the part of the worker, who should be compensated.⁴⁴⁸ 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.⁴⁴⁹

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.⁴⁵⁰

Work performed on a public holiday should be compensated with a higher remuneration than that usually paid: in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage.⁴⁵¹ The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked.⁴⁵²

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.⁴⁵³

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave.⁴⁵⁴ This principle does not prevent however the payment of a lump sum to an employee at the end of their employment in compensation for the paid holiday to which they were entitled but which they had not taken.⁴⁵⁵

At least two weeks uninterrupted annual holidays must be used during the year the holidays were due.⁴⁵⁶ The fact that not all employees have the right to take at least two weeks of uninterrupted holiday during the year is a ground for non-conformity.⁴⁵⁷ Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.⁴⁵⁸

Allowing all annual leave to be carried over to the following year is not in conformity with Article 2§3 of the Charter.⁴⁵⁹

443 [Conclusions 2018, Latvia](#)

444 [Conclusions 2018, Latvia](#)

445 [Conclusions XXI-3 \(2019\), United Kingdom](#)

446 [Conclusions 2018, Latvia](#)

447 [Conclusions 2014, The Netherlands](#)

448 [Conclusions 2014, The Netherlands](#)

449 [Conclusions 2014, Andorra](#)

450 [Conclusions 2014, France](#)

451 [Conclusions 2010, Statement of Interpretation on Article 2§2](#)

452 [Conclusions 2010, Statement of Interpretation on Article 2§2](#)

453 [Conclusions I \(1969\) Statement of interpretation on Article 2§3](#)

454 [Conclusions I \(1969\), Ireland](#)

455 [Conclusions I \(1969\) Statement of interpretation on Article 2§3](#)

456 [Conclusions 2007, Statement of interpretation on Article 2§3](#)

457 [Conclusions XXI-3 \(2018\), Spain](#)

458 [Conclusions 2007, Statement of interpretation on Article 2§3](#)

459 [Conclusions 2018, Russian Federation](#)

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.⁴⁶⁰ This requirement applies in all cases, whether the incapacity commences before or during the holiday period, as well as in cases of employment in which there is a fixed holiday period for all workers in an enterprise.⁴⁶¹ Imposing a condition requiring the employee to notify their employer immediately and provide a medical certificate is compatible with Article 2§3 of the Charter.⁴⁶²

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.

States Parties to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations.⁴⁶³ The Committee leaves the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy.⁴⁶⁴ However some sectors and occupations must be deemed dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation, extreme temperatures and noise.⁴⁶⁵

Whilst the elimination of dangerous and unhealthy occupations is an ideal to strive for, Article 2§4 requires that specific measures should be taken so long as these occupations still exist.⁴⁶⁶

If, on the one hand, a constant improvement of the technical conditions in which certain dangerous or unhealthy occupations are carried out represents a major factor for the reduction of the risk of accidents or disease, on the other hand, a decrease in working hours and the granting of additional holidays are equally necessary, as they allow for a reduced accumulation of physical and mental fatigue and a reduction in the exposure to risk, whilst at the same time granting workers longer periods of rest.⁴⁶⁷

In assessing States Parties' compliance with Article 2§4, the Committee examines firstly what measures have been taken to progressively eliminate the inherent risks in dangerous or unhealthy occupations.⁴⁶⁸ Secondly, it examines what compensatory measures are applied to workers who are exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures or because they have not yet been applied.⁴⁶⁹

Elimination or reduction of risks

The first part of Article 2§4 requires States Parties to eliminate risks in inherently dangerous or unhealthy occupations.⁴⁷⁰ This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see below), under which States Parties undertake to pursue policies and take measures to improve occupational health and safety.⁴⁷¹ Where appropriate, the Committee will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter.⁴⁷²

For example, a legislative provision to the effect that the employees' exposure to such agents as radiation that causes hazards or risks to safety or health must be reduced to such a level that no hazard or risk is caused to the employees' safety, health or reproductive health has been found in conformity with Article 2§4.⁴⁷³

Self-employed workers must be sufficiently covered by occupational health and safety regulations.⁴⁷⁴

460 [Conclusions XII-2 \(1992\), Statement of Interpretation on Article 2§3](#)

461 [Conclusions XII-2 \(1992\), Statement of Interpretation on Article 2§3](#)

462 [Conclusions 2014, Austria](#)

463 [Conclusions XX-3 \(2014\) Germany](#)

464 [Conclusions II \(1971\), Statement of Interpretation on Article 2§4](#)

465 [Conclusions XIV-2 \(1998\), Norway; *STTK ry and Tehy ry v. Finland*, Complaint No. 10/2000, decision on the merits of 17 October 2001, §27; \[Conclusions 2018, Bosnia and Herzegovina\]\(#\)](#)

466 [Conclusions V \(1977\), Statement of Interpretation on Article 2§4](#)

467 [Conclusions V \(1977\), Statement of Interpretation on Article 2§4](#)

468 [Conclusions XX-3 \(2014\) Germany](#)

469 [Conclusions XX-3 \(2014\) Germany](#)

470 [Conclusions 2018, Latvia](#)

471 [Conclusions 2018, Latvia](#)

472 [Conclusions XVIII-2 \(2007\), Statement of Interpretation on Article 2§4](#)

473 [Conclusions 2014, Finland](#)

474 [Conclusions XX-3 \(2014\), Greece](#)

Measures in response to residual risks

Where risk elimination is not possible or where risks have not been reduced or eliminated, Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays.⁴⁷⁵ The Committee stressed the importance of reducing working hours and providing additional holidays both because of the need for workers in hazardous situations to be alert and in order to limit the period of exposure to safety and health risks.⁴⁷⁶

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.⁴⁷⁷ Alternative approaches will be assessed on a case-by-case basis.⁴⁷⁸

Under no circumstances can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4.⁴⁷⁹ Early retirement, wage increases or food supplements are not relevant or appropriate measures to achieve the aims of Article 2§4 of the Revised Charter.⁴⁸⁰

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.⁴⁸¹

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.⁴⁸²

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.⁴⁸³ However, Article 2§5 allows for the rest to be taken on a day other than Sunday, where the type of activity so requires or for reasons of an economic nature.⁴⁸⁴ In addition, another day of rest during the week must be provided for.⁴⁸⁵

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.⁴⁸⁶ However, twelve consecutive working days before a rest period is a maximum.⁴⁸⁷

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).⁴⁸⁸

The right to weekly rest periods may not be replaced by compensation and workers may not be permitted to give it up.⁴⁸⁹

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.⁴⁹⁰

475 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §236

476 [Conclusions III \(1973\)](#), Ireland

477 [Conclusions \(XVIII-2\) 2007](#), Statement of Interpretation on Article 2§4

478 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §236

479 [Conclusions XIII-3 \(1995\)](#) Greece

480 [Conclusions 2003](#), Bulgaria ; [Conclusions 2007](#), Romania

481 [Conclusions XX-3 \(2014\)](#), Greece

482 [Conclusions 2014](#), The Netherlands

483 [Conclusions XIV-2 \(1998\)](#), Statement of Interpretation on Article 2§5

484 [Conclusions XIV-2 \(1998\)](#), Statement of Interpretation on Article 2§5

485 [Conclusions XIV-2 \(1998\)](#), Statement of Interpretation on Article 2§5

486 [Conclusions XIV-2 \(1998\)](#), Statement of Interpretation on Article 2§5

487 [Conclusions XIV-2 \(1998\)](#), Statement of Interpretation on Article 2§5

488 [Conclusions 2010](#), Romania; [Conclusions 2014](#), Sweden; [Conclusions XX-3 \(2014\)](#) Denmark

489 [Conclusions 2016](#), Armenia

490 [Confédération Générale du Travail \(CGT\) v. France](#), Complaint No. 22/2003, decision on the merits of 7 December 2004, §39

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.*⁴⁹¹

Article 2§6 guarantees the right of workers to written information when starting employment. This information can be included in the employment contract or any other mandatory documents given to workers upon recruitment (employers' and employees' rights and obligations, collective contracts or company regulations; official appointment orders, pay statement, collective agreement, post descriptions, etc.).⁴⁹²

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.⁴⁹³

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".⁴⁹⁴

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,⁴⁹⁵
- ▶ the provision of possibilities for transfer to daytime work;⁴⁹⁶
- ▶ 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.⁴⁹⁷

Lack of provision in legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter is a ground of non-conformity with Article 2§7.⁴⁹⁸ Such medical examination should be provided free of charge.⁴⁹⁹

Failure to regularly consult employee representatives on the conditions relating to night work and on measures taken to reconcile employees' needs and the special nature of night work is a ground of non-conformity under Article 2§7.⁵⁰⁰

491 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

492 [Conclusions 2014, Republic of Moldova](#); [Conclusions 2018, Ukraine](#)

493 [Conclusions 2003, Bulgaria](#)

494 [Conclusions 2014, Bulgaria](#); [Conclusions 2018, Georgia](#)

495 [Conclusions 2003, Romania](#)

496 [Conclusions 2003, Romania](#)

497 [Conclusions 2003, Romania](#)

498 [Conclusions 2018, Andorra](#)

499 [Conclusions 2018, Bosnia and Herzegovina](#)

500 [Conclusions 2018, North Macedonia](#)

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.⁵⁰¹ The purpose of Article 3 is directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life.⁵⁰² It applies to the whole economy, covering both the public and private sectors, employees and the self-employed.⁵⁰³

In relation to the application of the right to safe and healthy working conditions set out in Article 3, there has been a variety of 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.⁵⁰⁴ These produce constant change in the work environment and new forms of employment, which generate, an increase and shift in terms of factors of risk posed to the workers' health and safety.⁵⁰⁵ 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.⁵⁰⁶ These may in turn cause mental health problems for the persons concerned, with serious consequences in terms of work performance, illness rates, absenteeism, accidents, and staff turnover.⁵⁰⁷ These factors of risk 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.⁵⁰⁸

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 psychosocial risks are compliance with legal obligations and requests by workers.⁵⁰⁹ Studies 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.⁵¹⁰ Such complex and multidimensional factors place significant 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.⁵¹¹

In times of pandemic, all possible measures must be taken to ensure that healthcare professionals' working conditions are healthy and safe.⁵¹² This involves the introduction of immediate health and safety measures at the workplace such as adequate physical distancing, the use of personal protective equipment, reinforced hygiene and disinfection and also closer medical supervision, where appropriate.⁵¹³ In this respect, due account should be taken of the fact that certain categories of workers are exposed to heightened risks, such as frontline health care workers, social workers, teachers, transport and delivery workers, garbage collection workers, agro-food processing workers.⁵¹⁴

States Parties must conduct a thorough review of occupational risk prevention at national policy level as well as at company level in close consultation with the social partners as stipulated by Article 3§1 of the Charter.⁵¹⁵ The national legal framework may require amendment and risk assessments at company level must be adapted to the new circumstances.⁵¹⁶

501 Conclusions I (1969), Statement of Interpretation on Article 3

502 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3

503 Conclusions II (1971), Statement of Interpretation on Article 3; Conclusions 2013, Statement of Interpretation on Article 3§3

504 Conclusions II (1971), Statement of Interpretation on Article 3; Conclusions 2013, Statement of Interpretation on Article 3§3

505 Conclusions 2013, Statement of Interpretation on Article 3

506 Conclusions 2013, Statement of Interpretation on Article 3

507 Conclusions 2013, Statement of Interpretation on Article 3

508 Conclusions 2013, Statement of Interpretation on Article 3

509 Conclusions 2013, Statement of Interpretation on Article 3

510 Conclusions 2013, Statement of Interpretation on Article 3

511 Conclusions 2013, Statement of Interpretation on Article 3

512 Statement of Interpretation on the right to protection of health in times of pandemic, 20 April 2020

513 Statement on Covid-19 and social rights adopted on 24 March 2021

514 Statement on Covid-19 and social rights adopted on 24 March 2021

515 Statement on Covid-19 and social rights adopted on 24 March 2021

516 Statement on Covid-19 and social rights adopted on 24 March 2021

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.⁵¹⁷

Under Article 3§1 such a policy must include strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels.⁵¹⁸ To comply with this provision States must ensure the following:

- ▶ the assessment of work-related risks and introduction of a range of preventive measures taking account of the particular risks concerned. The effectiveness of those measures must be monitored, and information and training for employees must be provided. Within individual firms, occupational risk prevention means more than simply applying regulations and remedying situations that have led to occupational injuries;⁵¹⁹
- ▶ the development of an appropriate public monitoring system - often a responsibility for the labour inspectorate - to maintain standards and ensure they apply in the workplace;⁵²⁰
- ▶ the establishment and further development of programmes in areas such as: training (qualified staff); information (statistical systems and dissemination of knowledge); quality assurance (professional qualifications, certification systems for facilities and equipment); and, where appropriate, research (scientific and technical expertise).⁵²¹

General objective of national policy

The main policy objective must be to foster and preserve a culture of prevention in respect of occupational health and safety at national level.⁵²²

Occupational risk prevention must be a priority. It must be incorporated into the public authorities' activities at all levels and in all areas, for example in respect of employment, disability, equal opportunities and gender.⁵²³ In order to assess the proper implementation of Article 3§1, the Committee takes into account the following indicators:

- ▶ The implementation of the ILO Occupational Health and Safety Convention No. 155 (1981);⁵²⁴
- ▶ The implementation of the ILO Convention No. 187 on the Promotional Framework for Safety and Health at Work (2006)⁵²⁵
- ▶ The transposition of Directive 89/391/EEC of the European Parliament and of the Council of 12 June 1989 on the implementation of measures to promote improvements in the safety and health of workers at work, amended by Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007,⁵²⁶
- ▶ and the implementation, where appropriate, of the European Union's strategic framework for health and safety at work 2014-2020 (COM(2014)0332).

The policies and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.⁵²⁷

517 Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular [Conclusions 2003, Bulgaria](#)

518 Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular [Conclusions 2003, Bulgaria](#)

519 Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular [Conclusions 2003, Bulgaria](#)

520 Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular [Conclusions 2003, Bulgaria](#)

521 Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular [Conclusions 2003, Bulgaria](#)

522 [Conclusions 2009, Armenia](#)

523 [Conclusions 2005, Lithuania](#); [Conclusions 2009, Armenia](#)

524 [Conclusions 2013, Albania](#)

525 [Conclusions 2013, Austria](#)

526 [Conclusions 2013, Albania](#)

527 [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.⁵²⁸ 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.⁵²⁹
- ▶ the principal aspect of labour inspection covered by Article 3§1 is the duty of inspectors, as part of information, training and prevention activities, to share the knowledge about risks and risk prevention acquired during inspections and investigations.⁵³⁰

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:⁵³¹

- ▶ 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).

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 the national, sectoral and company levels.⁵³²

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.⁵³³ It also requires consultation for the co-ordination of activities of authorities, employers and workers, and co-operation on key safety and prevention issues.⁵³⁴

Mechanisms and procedures of consultation with employers' and workers' organisations must be set up at national and sectoral level.⁵³⁵ 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.⁵³⁶ These consultations may take place on either a permanent or *ad hoc* basis but they must in either case be efficient with regard to promoting social dialogue on occupational safety and health matters.⁵³⁷

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.⁵³⁸

528 [Conclusions 2009, Armenia](#)

529 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3](#)

530 [Conclusions 2009, Malta](#)

531 [Conclusions 2003, Statement of Interpretation on Article 3§1](#); see in particular [Conclusions 2003, Bulgaria](#)

532 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3](#)

533 [Conclusions 2017, Ukraine](#)

534 [Conclusions 2017, Ukraine](#)

535 [Conclusions 2017, Albania](#)

536 [Conclusions 2017, Ukraine](#)

537 [Conclusions 2009, Lithuania](#); [Conclusions 2017, Ukraine](#)

538 Article 3§2 of the 1996 Revised Charter corresponds to Article 3§1 of the 1961 Charter

Risks that must be covered by the legal framework

States Parties' primary obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level.⁵³⁹ Under Article 3§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 international regulations and standards.⁵⁴⁰

The Charter does not 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.⁵⁴¹

Domestic law must include framework legislation setting out employers' responsibilities and the workers' rights and duties as well as specific regulations. In the event of technical developments rendering their regulations on health and safety at work seemingly out of tune with the new situation, States Parties must prove that the existing regulations were still adequate and, if appropriate, to adapt them continuously to these developments.⁵⁴²

The risks areas currently addressed by the Committee are:

1. Psychosocial risks, work-related stress, aggression, violence and harassment in the workplace.⁵⁴³
2. 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.⁵⁴⁴
3. Hazardous agents and substances, such as 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, and the control of major accident hazards involving dangerous substances.⁵⁴⁵
4. Sectoral risks, including: the indication of weight on packages to be transported by boat; the 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; the prevention of major industrial accidents; agriculture, and transport.⁵⁴⁶

Levels of prevention and protection

The regulations should provide for preventive and protective measures against most of the risks provided in the international technical reference standards.⁵⁴⁷ In terms of exposure to dangerous substances, the Committee refers to the limits of exposure set forth in international technical norms when assessing States Parties' compliance with Article 3.⁵⁴⁸

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.⁵⁴⁹

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.⁵⁵⁰

539 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §224

540 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §224

541 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

542 Conclusions II (1971), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

543 Conclusions 2013, Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

544 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

545 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

546 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

547 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

548 [Conclusions XIV-2 \(1998\), Italy](#)

549 [Conclusions 2005, Cyprus](#)

550 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3](#)

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.⁵⁵¹ 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.⁵⁵² The exposure limit values must be reviewed and updated in light of technological progress and development in technical and scientific knowledge.⁵⁵³ The total prohibition of asbestos is a measure which will ensure that the right provided under Article 3§1 of the Charter is more effectively guaranteed.⁵⁵⁴ However, the Committee considers that the lack of legal provisions banning asbestos does not pose any problems under Article 3§1 which, in accordance with current international standards, requires a ban on the use of asbestos in the forms considered to be most dangerous (amphibole fibres), but not a total ban on asbestos.⁵⁵⁵ States must draw up an inventory of all contaminated buildings and materials, and asbestos must be eliminated where technical knowledge allows.⁵⁵⁶ Use in the workplace of asbestos in what are recognised as its most harmful forms (amphiboles) must be prohibited.⁵⁵⁷ Since Council Directive 83/477/EC was repealed, reference must be made to a single limit value for all fibres, reduced to 0.1 fibres/cm³ 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.⁵⁵⁸

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).⁵⁵⁹ National standards must also take into account the recommendations of the International Commission on Radiological Protection 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 (ICRP, publication No. 60).⁵⁶⁰

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 Member States have until 6 February 2018 to transpose it) is sufficient for the purposes of States Parties' assessment under Article 3 in respect of protection against radiation as this Directive takes up the ICRP's recommendations.⁵⁶¹

Personal scope of the framework legislation and specific regulations

All workers, all workplaces and all sectors of activity must be covered by occupational safety and health regulations.⁵⁶²

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.⁵⁶³ The aim is to ensure that the working environment is safe and healthy for all operators.⁵⁶⁴

551 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

552 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

553 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3](#)

554 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

555 [Conclusions XIV-2 \(1998\), Belgium](#)

556 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

557 Conclusions XIV-2 (1998), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

558 [Conclusions 2013, Portugal](#)

559 [Conclusions 2009, Andorra](#)

560 [Conclusions 2007, Romania](#)

561 [Conclusions 2005, Cyprus](#); [Conclusions 2017, Portugal](#)

562 Conclusions II (1971), Statement of Interpretation on Article 3§2 (i.e. on Article 3§1 of the 1961 Charter)

563 [Conclusions 2005, Estonia](#)

564 [Conclusions III \(1973\), Statement of Interpretation on Article 3§2](#) (i.e. on Article 3§1 of the 1961 Charter); [Conclusions IV \(1975\), Statement of Interpretation on Article 3§2](#) (i.e. on Article 3§1 of the 1961 Charter); [Conclusions XIII-4 \(1996\), Belgium](#)

Interim, temporary, seasonal workers and those on fixed-term contracts must be afforded adequate protection (including against risks resulting from a succession of accumulated periods spent working for a variety of employers and exposed to dangerous substances), in order to avoid any discrimination in respect of occupational safety and health with permanent workers.⁵⁶⁵ If necessary, regulations must prohibit the hiring of temporary workers for some particularly dangerous activities.⁵⁶⁶ 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);⁵⁶⁷ ILO Convention No. 155 on the safety and health of workers (1981),⁵⁶⁸ and 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 2007.⁵⁶⁹ The Committee 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,⁵⁷⁰ as well as the representation of these workers in occupational safety and health matters,⁵⁷¹ 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 legislation and the regulations.⁵⁷² 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.⁵⁷³

Workers employed on residential premises, i.e. domestic workers 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.⁵⁷⁴

Consultation with employers' and workers' organisations

Regulations must be drawn up in consultation with employers' and workers' organisations.⁵⁷⁵

As with Article 3§1, 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.⁵⁷⁶

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.⁵⁷⁷

⁵⁶⁵ General question in the General Introduction 2012: Article 1§2: existence of forced labour in the domestic environment; see also [Conclusions 2009, Andorra](#)

⁵⁶⁶ [Conclusions 2013, Bulgaria](#)

⁵⁶⁷ [Conclusions 2017, France](#)

⁵⁶⁸ [Conclusions 2017, Ukraine](#)

⁵⁶⁹ [Conclusions 2009, Romania](#)

⁵⁷⁰ [Conclusions 2009, Lithuania](#)

⁵⁷¹ [Conclusions 2009, Belgium](#)

⁵⁷² [Conclusions I \(1969\), Statement of Interpretation on Article 3§2](#) (i.e. on Article 3§1 of the 1961 Charter)

⁵⁷³ [Conclusions XIII-1 \(1993\), Greece](#)

⁵⁷⁴ [Conclusions XIV-2 \(1998\), Belgium](#); [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§2](#) (i.e. on Article 3§1 of the 1961 Charter)

⁵⁷⁵ [Conclusions 2017, Latvia](#)

⁵⁷⁶ [Conclusions 2017, Ukraine](#)

⁵⁷⁷ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No 30/2005, decision on the merits of 6 December 2006, §231; [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter)

Occupational injuries and diseases

The frequency of and trends in occupational injuries are decisive in assessing the effective implementation of the rights set out in Article 3§3.⁵⁷⁸ In this regard, the number of all occupational accidents is monitored (defined as 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 (i.e. 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).⁵⁷⁹

The Committee monitors the total number of work-related accidents in all sectors of activity and in respect of all types of workers, including temporary workers and immigrant workers.⁵⁸⁰ The situation is considered incompatible with the Charter where the frequency of industrial accidents and fatalities is clearly too high for the Committee to conclude that the effective exercise of the right to health and safety at work is being effectively secured.⁵⁸¹ This assessment can be made on the basis of absolute figures⁵⁸² or in relation to average figures in European Union member states.⁵⁸³

The same approach applies to the number of fatal occupational accidents and to their number in relation to the workforce.⁵⁸⁴ 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.⁵⁸⁵

States Parties must provide: the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases (broken down by sector of activity and year), including cases of fatal occupational diseases, as well as the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.⁵⁸⁶ No criteria have been developed as of yet for assessing the conformity of different levels of incidence rates for these diseases with the Charter.⁵⁸⁷

States Parties have a duty to provide precise information on developments in respect of occupational accidents and, in assessing respect for the right enshrined in Article 3§3, the number and frequency of occupational accidents and trends therein are a decisive factor.⁵⁸⁸ States Parties must take measures to combat possible non-reporting and/or concealment of accidents and diseases.⁵⁸⁹ An ineffective or failing system of reporting of accidents and diseases may lead to a finding of non-conformity.⁵⁹⁰

Enforcement of laws and regulations by the labour inspectorate

The enforcement of safety and health regulations by means of measures of supervision is carried out in light of Part III Article A§4 of the Charter, according to which States Parties shall maintain a system of labour inspection appropriate to national conditions.⁵⁹¹ 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;⁵⁹²
- ▶ implement measures to focus labour inspection on small and medium-sized enterprises (SMEs).⁵⁹³

578 [Conclusions 2017, France](#)

579 [Conclusions XIV-2 \(1998\) Italy](#)

580 [Conclusions 2009, Italy](#)

581 [Conclusions XIV-2 \(1998\), Portugal](#)

582 [Conclusions 2003, Slovenia](#)

583 [Conclusions XIV-2 \(1998\), Portugal](#)

584 [Conclusions 2013, Lithuania](#)

585 [Conclusions 2013, Lithuania](#)

586 [Conclusions XXI-2 \(2017\), Spain](#)

587 [Conclusions 2013, Lithuania](#)

588 [Conclusions 2013, Russia](#)

589 [Conclusions 2013, Albania](#)

590 [Conclusions 2013, Albania](#)

591 [Conclusions 2013, Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter)

592 [Conclusions 2013, Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter)

593 [Conclusions 2013, Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter); [Conclusions 2017, Latvia](#)

The proper application of the Charter “cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.”⁵⁹⁴ Monitoring of compliance with laws and regulations on occupational safety and health, is a prerequisite for the right guaranteed by Article 3 to be effective.⁵⁹⁵

i. Organisation

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”.⁵⁹⁶ Labour inspection services may be divided between several bodies having specialised jurisdiction.⁵⁹⁷ The excessive divide of services between several monitoring bodies that work under a lack of resources and imperfect co-operation may, however, deprive labour inspection of its efficiency.⁵⁹⁸

ii. Activities and means

States Parties must allocate enough resources to labour inspectors 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 risk of accidents is reduced to a minimum.⁵⁹⁹

In examining the resources allocated, the Committee takes account of:

- ▶ the number and frequency of inspection visits on occupational safety and health conducted by labour inspection services;⁶⁰⁰
- ▶ the number of enterprises subject to inspection visits by sector of activity;⁶⁰¹
- ▶ 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;⁶⁰²
- ▶ 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;⁶⁰³
- ▶ the measures taken with a view to maintaining the professional capability of inspectors, taking account of technological and legal developments;⁶⁰⁴
- ▶ where applicable, general reports from the central inspection authorities, including those they periodically communicate to the ILO.⁶⁰⁵

Inspectors must be entitled to inspect all workplaces, including residential premises, in all economic sectors, private and public.⁶⁰⁶ 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.⁶⁰⁷ In assessing the scope of inspectors’ powers of scrutiny, the Committee takes into consideration:

594 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §228, citing [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §32

595 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §228

596 [Conclusions 2013, Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter)

597 [Conclusions 2013, Austria](#)

598 [Conclusions 2013, Ukraine](#)

599 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §229, citing [Conclusions XIV-2 \(1998\), Belgium](#)

600 [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§3](#) (i.e. Article 3§2 of the 1961 Charter)

601 [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§3](#) (i.e. Article 3§2 of the 1961 Charter)

602 [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§3](#) (i.e. Article 3§2 of the 1961 Charter)

603 [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §229; [Conclusions 2017, Belgium, Turkey](#)

604 [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§3](#) (i.e. Article 3§2 of the 1961 Charter)

605 [Conclusions XIII-1 \(1993\), Statement of Interpretation on Article 3§3](#) (i.e. Article 3§2 of the 1961 Charter)

606 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter); [Conclusions 2013, Statement of interpretation on Article 3§3](#) (i.e. of Article 3§2 of the 1961 Charter); [Conclusions XX-2 \(2013\), Statement of interpretation on Article 3§2](#)

607 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 3§3](#) (i.e. on Article 3§2 of the 1961 Charter); [Conclusions 2009, Republic of Moldova](#)

- ▶ whether inspectors can gain entry to any workplace without prior notice and whether they are authorised to make all the checks they deem necessary, including the taking and removal of samples for analysis;⁶⁰⁸
- ▶ the labour inspectorate's administrative capacity;⁶⁰⁹
- ▶ the initial and ongoing training which inspectors receive;⁶¹⁰
- ▶ the number of enterprises subject to labour inspection;⁶¹¹
- ▶ the administrative and judicial procedures followed when the labour inspectors identify breaches of the safety and health regulations;⁶¹²
- ▶ whether criminal sanctions are imposed and under what circumstances.⁶¹³

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:

- ▶ the number of offences recorded in relation to the number of penalties imposed;⁶¹⁴
- ▶ the frequency of offences in relation to the severity of penalties;
- ▶ the types of penalty imposed and their administrative or criminal nature;
- ▶ the number and total value of administrative fines levied, and whether the value of these fines is proportionate to the number of workers concerned;⁶¹⁵
- ▶ the number of fines imposed, the amounts involved and their dissuasive effect;⁶¹⁶
- ▶ 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.⁶¹⁷

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.⁶¹⁸

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.*⁶¹⁹

Article 3§4 requires States Parties 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.⁶²⁰ 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.⁶²¹

608 [Conclusions 2005, Lithuania](#)

609 [Conclusions 2005, Lithuania](#)

610 [Conclusions 2005, Lithuania](#)

611 [Conclusions 2005, Lithuania](#)

612 [Conclusions 2005, Lithuania](#)

613 [Conclusions 2005, Lithuania](#)

614 [Conclusions 2017, Estonia](#)

615 [Conclusions 2005, Lithuania](#)

616 [Conclusions 2017, Estonia](#)

617 [Conclusions 2013, Romania](#)

618 [Conclusions 2005, Norway](#)

619 Appendix to the European Social Charter, European Treaty Series - No. 163

620 [Conclusions 2003, Bulgaria](#)

621 [Conclusions 2003, Bulgaria](#)

In terms of Article 3§4, States Parties are required to promote the progressive development of occupational services.⁶²² This means that 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.⁶²³ Therefore, if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.⁶²⁴ 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.⁶²⁵

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 State Party 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 measures to encourage improvements in the safety and health of workers at work.⁶²⁶

Occupational health services, which are specialised in occupational medicine, have preventive and advisory functions, beyond mere safety at work.⁶²⁷ They contribute to conducting workplace-related risk assessment and prevention, worker health supervision, training in matters of occupational safety and health, as well as to assessing working conditions impact on worker health.⁶²⁸ Occupational health services must be trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.⁶²⁹

ARTICLE 4 THE RIGHT TO FAIR REMUNERATION

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

Article 4 may be implemented through collective agreements, statutory regulations or other means appropriate to national conditions so long as it applies to all employees.

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,⁶³⁰ regional and local public sectors, to branches or jobs not covered by collective agreement, to atypical jobs (assisted employment),⁶³¹ and to special regimes or statuses (e.g. migrant workers).⁶³²

The concept of a "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.⁶³³

"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.

622 [Conclusions 2009, Albania](#)

623 [Conclusions 2009, Albania](#), citing [International Association Autism Europe v. France](#), Complaint No. 13/2002, decision on the merits of 4 November 2003, §53.

624 [Conclusions 2009, Albania](#)

625 [Conclusions 2013, Ukraine](#)

626 [Conclusions 2009, France](#); [Albania, Slovenia](#); [Conclusions 2017, Bulgaria](#)

627 [Conclusions 2009, Andorra](#)

628 [Conclusions 2003, Bulgaria](#)

629 [Conclusions 2013, Statement of Interpretation on Article 3](#)

630 [Conclusions XX-3 \(2014\), Greece](#)

631 [Conclusions 2014, France](#)

632 [Conclusions 2014, Andorra](#)

633 [Conclusions 2010, Statement of Interpretation on Article 4§1](#)

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.⁶³⁴ The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions.⁶³⁵ For this purposes, taxes are all taxes on earned income. Indirect taxes are thus not taken into account.⁶³⁶ Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of this amount.⁶³⁷

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 (if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as a manufacturing industry or for several sectors).⁶³⁸ Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.⁶³⁹ This may be the lowest wage in a representative sector, for example, the manufacturing industry.⁶⁴⁰

Where the net minimum wage is between 50% and 60% of the net average wage, it is for the State Party to establish that this wage permits a decent standard of living.⁶⁴¹ Where the minimum wage is low, the Committee may, when assessing compliance with Article 4§1, take into consideration other elements, such as whether workers are exempt from the co-payment in respect of health care or have the right to increased family allowances.⁶⁴²

A wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker, i.e. it must be clearly above the poverty line for a given country.⁶⁴³

In extreme cases, for instance where the lowest wage is less than half the average wage the situation will be held to be in breach of Charter independently of such evidence.⁶⁴⁴

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 (e.g. when the younger workers are taking part in an apprenticeship scheme or otherwise engaged in a form of vocational training).⁶⁴⁵ Such a reduction in the minimum wage may enhance the access of younger workers to the labour market and may also be justified on the basis that it reflects a statistical tendency for them to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs.⁶⁴⁶ However, any such reduction in the minimum wage should not fall below the poverty level of the country concerned.⁶⁴⁷ 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.⁶⁴⁸

In the context of the Covid-19 pandemic, States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay.⁶⁴⁹ The right to fair remuneration includes the right to an increased pay for workers most exposed to Covid-19-related risks.⁶⁵⁰ More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to Covid-19 should be adequately compensated.⁶⁵¹

634 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

635 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

636 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

637 [Conclusions XVI-2 \(2003\), Denmark](#)

638 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

639 [Conclusions XVI-2 \(2003\), Denmark](#)

640 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

641 [Conclusions XXI-3 \(2019\), Denmark](#)

642 [Conclusions XVI-2 \(2004\), Portugal](#)

643 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

644 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§1](#)

645 [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, §§ 60 and 68](#)

646 [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, §60](#)

647 [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, §60](#)

648 [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, §§ 68 and 70](#)

649 [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

650 [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

651 [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

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.⁶⁵² Overtime is work performed in addition to normal working hours.⁶⁵³

The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who should be paid at a rate higher than the normal wage.⁶⁵⁴

The Committee considers that it is not responsible for ruling on the level of flat-rate overtime payments and on its effects on purchasing power.⁶⁵⁵ The Committee is only required to determine, in accordance with Article 4§2 of the revised Charter, whether those concerned receive remuneration for overtime worked and, above all, whether this is at a higher rate than their normal pay.⁶⁵⁶

Where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked.⁶⁵⁷ It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.⁶⁵⁸

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§2.⁶⁵⁹

In a number of countries, working time is calculated on the basis of average weekly hours over a period of several months.⁶⁶⁰ Over such periods, weekly working hours may vary between specified maximum and minimum figures without any of those hours counting as overtime, and thus qualifying for a higher rate of pay.⁶⁶¹ 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 [right to just conditions of work], which provides for reasonable daily and weekly working hours, are respected, including:

- (i) maximum weekly (more than 60) and daily (up to 16) working hours are respected;⁶⁶²
- (ii) flexibility measures operate within a legal framework providing adequate guarantees which clearly circumscribe the discretion left to employers and employees to vary, by means of collective agreement, working time.⁶⁶³
- (iii) flexible working time arrangements provide for a reasonable reference period for the calculation of average working time.⁶⁶⁴

It is possible to have exceptions to the right of workers to an increased rate of remuneration for overtime work in certain specific cases. These “special cases” have been defined as “state employees, and management executives of the private sector”.⁶⁶⁵

State employees: The only acceptable exception is the category of “senior officials”.⁶⁶⁶ That concerns, for example, police commissioners⁶⁶⁷ or administrative court judges.⁶⁶⁸ Exceptions to a higher rate of overtime pay for

652 [Conclusions XIV-2 \(1998\), Statement of interpretation on Article 2§1 and 4§2](#)

653 [Conclusions I \(1969\), Statement of Interpretation on Article 4§2](#)

654 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§2](#); [Conclusions I \(1969\), Statement of Interpretation on Article 4§2](#)

655 [European Council of Police Trade Unions \(CESP\) v. France](#), Complaint No. 57/2009, decision on the merits of 1st December 2010, §35

656 [European Council of Police Trade Unions \(CESP\) v. France](#), Complaint No. 57/2009, decision on the merits of 1st December 2010, §35

657 [Conclusions XIV-2 \(1998\), Belgium](#)

658 [Conclusions XIV-2 \(1998\), Belgium](#)

659 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 60/2010, decision on the merits of 17 October 2011, §21; see also [Conclusions 2014, Slovenia](#)

660 [Conclusions XIV-2 \(1998\), Statement of Interpretation on Article 4§2](#)

661 [Conclusions 2014, Portugal](#)

662 [Conclusions 2014, Portugal](#)

663 [Conclusions 2014, Portugal](#)

664 [Conclusions 2014, Portugal](#)

665 [Conclusions IX-2 \(1986\), Ireland](#); [Conclusions X-2 \(1990\), Ireland](#)

666 [Conseil Européen des Syndicats de Police \(CESP\) v. France](#), Complaint No 57/2009, decision on the merits of 1 December 2010, §42

667 [Conseil Européen des Syndicats de Police \(CESP\) v. France](#), Complaint No 57/2009, decision on the merits of 1 December 2010, §§ 42-44

668 [Union syndicale des magistrats administratifs \(USMA\) v. France](#), Complaint No. 84/2012, decision on the merits of 2 December 2013, §§ 67 and 69

all police members irrespective of their rank and their responsibilities,⁶⁶⁹ or for all state employees or public officials, irrespective of their level of responsibility are not in conformity with Article 4§2.⁶⁷⁰

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.⁶⁷¹ In this regard, the Committee has found that the introduction of a 'solidarity day' to fund measures to enable elderly or disabled persons to live independently in the form of an unpaid additional day's work (seven hours additional work, compared with 1600 worked annually) was a permissible restriction on Article 4§2.

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.⁶⁷² 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 below) applies *mutatis mutandis* to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today.⁶⁷³ The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.⁶⁷⁴

The obligations of States Parties as regards the recognition and the enforcement of the right to equal pay under Article 4§3 include the following:

- ▶ recognition in legislation of the right to equal pay for equal work or work of equal value;⁶⁷⁵
- ▶ ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;⁶⁷⁶
- ▶ ensuring pay transparency and enabling job comparisons;⁶⁷⁷
- ▶ maintaining effective equality bodies and other relevant institutions.⁶⁷⁸

The principle of equal pay

States must ensure that there is no direct or indirect discrimination between men and women with regard to remuneration.⁶⁷⁹ Equal pay for men and women workers is required not only for equal work but also for work of equal value.⁶⁸⁰

In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken into account.⁶⁸¹ The notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty.⁶⁸² States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law.⁶⁸³

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.⁶⁸⁴

669 [Conseil Européen des Syndicats de Police \(CESP\) v. France](#), Complaint No 38/2006, decision on the merits of 3 December 2007, §22

670 [Conclusions XV-2 \(2001\)](#), Poland

671 [Confédération générale du travail \(CGT\) v. France](#), Complaint No. 55/2009, decision on the merits of 23 June 2010, §§ 87-89

672 [Conclusions XII-5 \(1997\)](#), [Statement of Interpretation on Article 1 of Additional Protocol](#)

673 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §110

674 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §110

675 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §115

676 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §115

677 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §115

678 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §115

679 [University Women of Europe \(UWE\) v. France](#), Complaint No. 130/2016, decision on the merits of 5 December 2019, §164

680 [Conclusions I \(1969\)](#), [Statement of Interpretation on Article 4§3](#); see also [Conclusions VIII \(1982\)](#), [Statement of Interpretation on Article 4§3](#)

681 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §156

682 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §156

683 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §156

684 [Conclusions XVIII-2 \(2007\)](#), Malta

The principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed.⁶⁸⁵ Failure to respect this principle could give rise to indirect discrimination since most part-time workers are women.⁶⁸⁶

Guarantees of enforcement and judicial safeguards

Article 4§3 obliges the States Parties who have accepted it to recognise the principle of equal pay for work of equal value, not only in law but also in fact.⁶⁸⁷

Legislative means

Under the Charter, the right of women and men to equal pay for work of equal value must be expressly provided for in domestic legislation.⁶⁸⁸ It is not sufficient to merely state the principle in the constitution.⁶⁸⁹ The guarantee of equal pay must apply to workers in the public service and private sector.⁶⁹⁰

The principle of equal pay precludes unequal pay irrespective of the mechanism that produces such inequality.⁶⁹¹ The source of discriminatory pay may be the law, collective agreements, individual employment contracts, internal laws of an employer.⁶⁹²

Any legislation, regulation or other administrative measure that fails to comply with the principle of equal pay must be repealed or revoked.⁶⁹³ The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.⁶⁹⁴ It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, individual employment contracts or internal company regulations that is incompatible with the principle of equal pay.⁶⁹⁵

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.⁶⁹⁶ Workers who claim that they have suffered discrimination must be able to take their case to court.⁶⁹⁷ Effective access to courts must be guaranteed for victims of pay discrimination.⁶⁹⁸ Therefore, proceedings should be affordable and timely.⁶⁹⁹

Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.⁷⁰⁰ The shift in the burden of proof consists in ensuring that where a person believes they have 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 non-discrimination.⁷⁰¹

685 [Conclusions XVI-2 \(2003\), Portugal](#)

686 [Conclusions XVI-2 \(2003\), Portugal](#)

687 [Conclusions I \(1969\), Statement of Interpretation on Article 4§3](#)

688 [Conclusions XV-2 \(2001\), Slovak Republic](#); [Conclusions 2014, Georgia](#)

689 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §115

690 [Conclusions 2018, Georgia](#)

691 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §141

692 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §141

693 [University Women of Europe \(UWE\) v. France](#), Complaint No. 130/2016, decision on the merits of 5 December 2019, §166

694 [University Women of Europe \(UWE\) v. France](#), Complaint No. 130/2016, decision on the merits of 5 December 2019, §166

695 [University Women of Europe \(UWE\) v. France](#), Complaint No. 130/2016, decision on the merits of 5 December 2019, §166

696 [Conclusions VIII \(1982\), Statement of Interpretation on Article 4§3](#)

697 [Conclusions I \(1969\), Statement of Interpretation on Article 4§3](#)

698 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §145

699 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §145

700 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §147

701 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §147, citing [Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol](#)

General statistical data on pay levels may not be sufficient to prove discrimination.⁷⁰² Therefore, in the context of judicial proceedings it should be possible to request and obtain information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.⁷⁰³

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.⁷⁰⁴ In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.⁷⁰⁵ Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and from being sufficiently dissuasive is contrary to the Charter.⁷⁰⁶ This principle applies both to litigation involving equal pay and reprisal dismissals.⁷⁰⁷

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).⁷⁰⁸

Article 4§3 of the Charter also requires that all clauses in employment contracts or collective agreements which violate the principle of equal pay must be held to be null and void.⁷⁰⁹ Further, a court must have the power to waive the application of the offending clauses.⁷¹⁰

Pay transparency

The Committee considers that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value.⁷¹¹ Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities.⁷¹²

States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the *European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency*, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender.⁷¹³ The Committee regards such measures as indicators of compliance with the Charter in this respect.⁷¹⁴

Failure to comply with the obligation to recognise and respect pay transparency in practice can lead to a violation of Article 4§3 and Article 20.⁷¹⁵

Methods of comparison

The possibility of making job comparisons is essential to ensuring equal pay.⁷¹⁶ Lack of information on comparable jobs and pay levels could render it extremely difficult for a potential victim of pay discrimination to bring a case to court.⁷¹⁷ Workers should be entitled to request and receive information on pay levels broken down by gender, including on complementary and/or variable components of the pay package.⁷¹⁸ States Parties should collect reliable and standardised statistics on women's and men's wages.⁷¹⁹

Usually, pay comparisons are made between persons within the same undertaking/company.⁷²⁰ However, there may be situations where, in order to be meaningful this comparison can only be made across companies/

702 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

703 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

704 [Conclusions XIII-5 \(1997\)](#), [Statement of Interpretation on Article 1 of the Additional Protocol](#)

705 [Conclusions XVI-2 \(2003\)](#), Malta

706 [Conclusions XIX-3 \(2010\)](#), Germany; [Conclusions 2018, Armenia](#); see also [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §146

707 [Conclusions XX-3 \(2014\)](#), Germany

708 [Conclusions 2018](#), Turkey

709 [Conclusions XV-2 \(2001\)](#), Slovak Republic

710 [Conclusions XV-2 \(2001\)](#), Slovak Republic

711 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §154

712 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §154

713 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §155

714 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §155

715 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §182

716 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

717 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

718 [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

719 [Conclusions 2018](#), Andorra

720 [Conclusions 2014](#), Georgia

undertakings.⁷²¹ Therefore, the Committee requires that it be possible to make pay comparisons across companies.⁷²² It also considers that national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company.⁷²³ 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;⁷²⁴
- ▶ cases in which several companies are covered by a collective work agreement or regulations governing the terms and conditions of employment;⁷²⁵
- ▶ cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.⁷²⁶

Pay/job comparisons across companies is important in order to ensure that job appraisal systems are effective, particularly in companies where the workforce is largely, or even exclusively, female.⁷²⁷

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

- ▶ measures to improve job classifications and job evaluation as a means of reducing inequalities in pay;⁷²⁸
- ▶ measures to improve the quality and coverage of wage statistics;⁷²⁹
- ▶ steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment;⁷³⁰
- ▶ measures combating occupational sex segregation in employment.⁷³¹

Retaliatory action

Employees who claim their right to equal pay must be legally protected from all forms of retaliatory action.⁷³² Where an employee is the victim of retaliatory action, there must be an adequate remedy, which will both compensate the employee and serve as a deterrent to the employer.⁷³³

When the dismissal is the consequence of a worker's claim for equal wages, the employee must be able to file a complaint for unfair dismissal.⁷³⁴ In this case, the employer must reintegrate them in the same or a similar post.⁷³⁵ If this reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.⁷³⁶ Courts should be free to decide upon the amount aimed at compensating the damage caused by the termination of the working relationship.⁷³⁷

454 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.⁷³⁸

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

⁷²¹ Conclusions 2014, Georgia

⁷²² Conclusions 2014, Georgia

⁷²³ *University Women of Europe (UWE) v. Belgium*, Complaint No. 124/2016, decision on the merits of 6 December 2019, §158

⁷²⁴ Conclusions 2014, Georgia

⁷²⁵ Conclusions 2014, Georgia

⁷²⁶ Conclusions 2014, Georgia

⁷²⁷ Conclusions XVI-2 (2003), Portugal

⁷²⁸ Conclusions XVII-2 (2005), Czech Republic

⁷²⁹ Conclusions XVII-2 (2005), Czech Republic

⁷³⁰ Conclusions XVII-2 (2005), Czech Republic

⁷³¹ Conclusions 2018, Latvia

⁷³² Conclusions XV-2 (2001), Slovak Republic

⁷³³ Conclusions XV-2 (2001), Slovak Republic

⁷³⁴ *University Women of Europe (UWE) v. Belgium*, Complaint No. 124/2016, decision on the merits of 6 December 2019, §148

⁷³⁵ Conclusions XIX-3 (2010), Iceland

⁷³⁶ Conclusions XIII-2 (1994), Malta

⁷³⁷ Conclusions XIX-3 (2010), Germany

⁷³⁸ Appendix to the European Social Charter - European Treaty Series - No. 35

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

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
 - a. according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;⁷³⁹
 - b. during any probationary periods, including those in the public service; the Committee wishes to see an explicit minimum period of notice even if the length of the probationary employment period is short or has recently been reduced by law;⁷⁴⁰
 - c. with regard to the treatment of employees in insecure jobs;⁷⁴¹
 - d. in the event of termination of employment for reasons outside the parties' control (including insolvency, death of the employer if they are a natural person); in principle such circumstances may not warrant failure to give notice;⁷⁴²
 - e. and any circumstances in which employees can be dismissed without notice or compensation.⁷⁴³
2. Acknowledgment, by law, collective agreement or individual contract, of length of service, whether with the same employer or in circumstances of successive precarious forms of employment relations;⁷⁴⁴
3. The components of the employee's remuneration during the notice period.⁷⁴⁵

Reasonable character of the period of notice

The Committee has refrained from defining in absolute terms the word "reasonable".⁷⁴⁶ In fact it followed the reverse procedure and examined on a case-by-case basis if the duration of certain periods of notice were clearly "unreasonable".⁷⁴⁷ A reasonable notice period is one which takes account of the employees' length of service, the need not to deprive them abruptly of their means of subsistence and the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration.⁷⁴⁸ It is for governments to prove that these elements have been taken into account when devising and applying the basic rules on notice periods.⁷⁴⁹ The Committee 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, even during the probationary period;⁷⁵⁰
- ▶ one week's notice after less than six months of service;⁷⁵¹
- ▶ two weeks' notice after more than six months of service;⁷⁵²
- ▶ less than one month' notice after one year of service;⁷⁵³
- ▶ one month' notice for workers with five or more years' service;⁷⁵⁴
- ▶ eight weeks' notice after at least ten years of service;⁷⁵⁵
- ▶ twelve weeks' notice for workers dismissed for long-term working incapacity who have five or more years of service.⁷⁵⁶

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.⁷⁵⁷ In order to ensure that the protection granted by Article 4§4 of the Charter is effective, the notice and/or compensation should not be left to

⁷³⁹ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴⁰ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴¹ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴² Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴³ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴⁴ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴⁵ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴⁶ Conclusions XIII-3 (1995), Portugal

⁷⁴⁷ Conclusions XIII-3 (1995), Portugal

⁷⁴⁸ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁴⁹ Conclusions 2018, Statement of Interpretation on Article 4§4

⁷⁵⁰ Conclusions 2007, Albania

⁷⁵¹ Conclusions XIII-3 (1995), Portugal

⁷⁵² Conclusions XVI-2 (2004), Poland

⁷⁵³ Conclusions XIV-2 (1998), Spain

⁷⁵⁴ Conclusions 2007, Albania

⁷⁵⁵ Conclusions 2010, Turkey

⁷⁵⁶ Conclusions 2010, Estonia

⁷⁵⁷ Conclusions 2010, Turkey

the discretion of the parties to the employment contract, but should be governed by legal instruments such as legislation, case law, regulations or collective agreements.⁷⁵⁸

Cases where the notice period should apply

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.⁷⁵⁹

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,⁷⁶⁰ temporary, part-time,⁷⁶¹ intermittent, seasonal or complementary⁷⁶² employment. It applies to civil servants and contractual staff in the civil service,⁷⁶³ to manual workers⁷⁶⁴ and in all sectors of activity.⁷⁶⁵ It also applies during the probationary period⁷⁶⁶ and upon early termination of fixed-term contracts.⁷⁶⁷ Domestic law must be broad enough to ensure that no workers are left unprotected.⁷⁶⁸

When a decision to terminate employment on grounds other than disciplinary ones is subject to certain procedures being followed, the period of notice starts only after the decision has been taken.⁷⁶⁹ 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.⁷⁷⁰ That of workers with consecutive fixed-term contracts is calculated on the basis of length of service accrued on all consecutive contracts.⁷⁷¹ Any reduction of the legal period of notice by collective agreement is allowed only insofar as a reasonable period of notice is maintained.⁷⁷² 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.⁷⁷³

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.⁷⁷⁴ It may be the result of the accumulation of several less serious breaches, if there have been prior written warnings from the employer.⁷⁷⁵

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

- ▶ disclosure of state, professional, commercial or technological secrets;⁷⁷⁶
- ▶ violation of equal opportunities policy or sexual harassment;⁷⁷⁷
- ▶ refusal to provide information as required by law, regulation or work regulations;⁷⁷⁸
- ▶ working under the influence of alcohol, narcotic or toxic substances;⁷⁷⁹
- ▶ abandonment of post;⁷⁸⁰

758 Conclusions 2014, Russian Federation

759 Conclusions XIV-2 (1998), Spain

760 Conclusions XIV-2 (1998), Spain

761 Conclusions XVIII-2 (2007), Slovak Republic, see also Conclusions 2007, Albania

762 Conclusions 2010, Bulgaria

763 Conclusions 2010, Georgia

764 Conclusions XVI-2 (2003), Greece

765 Conclusions I (1969), Italy

766 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

767 Conclusions XIV-2 (1998), Spain

768 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §199

769 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §200

770 Conclusions XVIII-2 (2007), Slovak Republic

771 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, §200

772 Conclusions XVIII-2 (2007), The Netherlands

773 Conclusions 2014, Estonia

774 Appendix to the European Social Charter - European Treaty Series - No. 35

775 Conclusions 2010, Albania

776 Conclusions 2014, Lithuania

777 Conclusions 2014, Lithuania

778 Conclusions 2014, Lithuania

779 Conclusions 2014, Lithuania

780 Conclusions 2014, Lithuania

- ▶ refusal to undergo mandatory medical checks;⁷⁸¹
- ▶ unjustified absences of more than five consecutive days or more than ten days per year;⁷⁸²
- ▶ abnormal decrease in productivity;⁷⁸³
- ▶ immoral acts making it impossible for workers to be kept in teaching positions.⁷⁸⁴

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.⁷⁸⁵ 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;⁷⁸⁶
- ▶ withdrawal of administrative licenses required to perform the job;⁷⁸⁷
- ▶ request by bodies or officials authorised by the law;⁷⁸⁸
- ▶ duly certified unfitness for work;⁷⁸⁹
- ▶ economic, technological or organisational circumstances requiring changes in the workforce;⁷⁹⁰
- ▶ insufficient qualification for the post;⁷⁹¹
- ▶ transfer of the employment contract to a successor employer;⁷⁹²
- ▶ force majeure;⁷⁹³
- ▶ arrest and custody.⁷⁹⁴

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.*⁷⁹⁵

The deductions envisaged in Article 4§5 can only be authorised in certain circumstances which are well-defined in a legal instrument (law, regulation, collective agreement or arbitration award).⁷⁹⁶ 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.⁷⁹⁷ Article 4§5 also applies to civil servants and contractual staff in the civil service.⁷⁹⁸

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.⁷⁹⁹

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.⁸⁰⁰

⁷⁸¹ Conclusions 2014, Lithuania

⁷⁸² Conclusions 2014, Portugal

⁷⁸³ Conclusions 2014, Portugal

⁷⁸⁴ Conclusions 2014, Russian Federation

⁷⁸⁵ Conclusions 2010, Armenia

⁷⁸⁶ Conclusions 2014, Georgia

⁷⁸⁷ Conclusions 2014, Lithuania

⁷⁸⁸ Conclusions 2014, Lithuania

⁷⁸⁹ Conclusions 2014, Lithuania

⁷⁹⁰ Conclusions 2014, Malta

⁷⁹¹ Conclusions 2014, Russian Federation

⁷⁹² Conclusions 2014, Slovenia

⁷⁹³ Conclusions 2014, Turkey

⁷⁹⁴ Conclusions 2014, Turkey

⁷⁹⁵ Appendix to the European Social Charter - European Treaty Series - No. 35

⁷⁹⁶ Conclusions V (1977), Statement of Interpretation on Article 4§5

⁷⁹⁷ Conclusions 2005, Norway; Conclusions 2018, The Netherlands

⁷⁹⁸ Conclusions 2014, Portugal

⁷⁹⁹ Conclusions 2014, Estonia

⁸⁰⁰ Conclusions 2014, Estonia

ARTICLE 5 THE RIGHT TO ORGANISE

Workers and employers have the right to organise 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 States 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.

This article sets out the principle that workers and employers have the right to form national or international organisation, for the protection of their economic and social interests.⁸⁰¹ Two obligations are embodied in this provision, having a negative and positive aspect respectively.⁸⁰²

The implementation of the first obligation requires the absence, in the law of each State Party, of any legislation or regulation or any administrative practice such as to impair the freedom of workers or employers to form or join their respective organisations.⁸⁰³ By virtue of the second obligation, the State Party is obliged to take adequate legislative or other measures to guarantee the exercise of the right to organise and, in particular, to protect workers' organisations from any interference on the part of employers.⁸⁰⁴

Personal scope

All classes of workers and employers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organise in accordance with the Charter.⁸⁰⁵ Certain restrictions to this right are, however, permissible under the terms of the two last sentences of Article 5 in respect of members of the police and armed forces.⁸⁰⁶

Unemployed and retired workers may join and remain in trade unions.⁸⁰⁷ However, States Parties are not required to allow them to form trade unions, as long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.⁸⁰⁸

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.⁸⁰⁹

Although the right guaranteed in Article 5 is the right of individuals to form and join trade unions, Article 5 provides that workers must be free to form local, national, or international organisations.⁸¹⁰ This implies for the organisations themselves the right to establish and join federations.⁸¹¹ A State Party cannot limit the level at which workers may organise and must allow organisations to affiliate with federations and confederations.⁸¹²

a) Restrictions with regard to the police

With regard to the police it is clear from the second sentence of Article 5 and from the 'travaux préparatoires', that while a State Party 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.⁸¹³ In other words, Article 5

801 Conclusions I (1969), Statement of interpretation on Article 5

802 Conclusions I (1969), Statement of interpretation on Article 5

803 Conclusions I (1969), Statement of interpretation on Article 5

804 Conclusions I (1969), Statement of interpretation on Article 5

805 Conclusions I (1969), Statement of interpretation on Article 5

806 Conclusions I (1969), Statement of interpretation on Article 5

807 Conclusions 2010, Statement of Interpretation on Article 5

808 Conclusions 2010, Statement of Interpretation on Article 5

809 Conclusions XIX-3 (2010) "the former Yugoslav Republic of Macedonia", Article 5

810 *European Organisation of Military Associations (EUROMIL) v. Ireland* Complaint No. 112/2014, decision on the merits of 12 September 2017, §48

811 *European Organisation of Military Associations (EUROMIL) v. Ireland* Complaint No. 112/2014, decision on the merits of 12 September 2017, §48

812 *European Organisation of Military Associations (EUROMIL) v. Ireland* Complaint No. 112/2014, decision on the merits of 12 September 2017, §48

813 Conclusions I (1969), Statement of interpretation on Article 5

permits States Parties to restrict but not to completely deny police officers' right to organise.⁸¹⁴ 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.⁸¹⁵

It follows, firstly, that police personnel must be able to form or join genuine organisations for the protection of their material and moral interests and secondly, that such organisations must be able to benefit from most trade union prerogatives.⁸¹⁶ Basic trade union prerogatives means the right to express demands with regard to working conditions and pay, the right of access to the working place as well as the right of assembly and speech.⁸¹⁷ Such definition applies to professional organisations of police officers as well as to other professional organisations.⁸¹⁸

The right of members of the police service to affiliate to national workers organisations shall not be restricted for the purpose of disallowing them to negotiate on pay, pensions and service conditions.⁸¹⁹

Moreover, when the restriction has the factual effect of depriving the representative associations of the most effective means of negotiating the conditions of employment on behalf of their members, it cannot be considered as a proportionate measure for achieving public safety and public interest purposes.⁸²⁰

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.⁸²¹ 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.⁸²²

Article 5 of the Charter allows national legislation to require that professional police associations be composed exclusively of members of the police force.⁸²³

The situation is in conformity with Article 5 where members of the police service do not have the right to form trade unions, but are given the right to establish professional associations having similar characteristics and competences as trade unions.⁸²⁴

b) 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.*"⁸²⁵ The Committee verifies, however, that bodies defined in domestic law as belonging to the armed forces do indeed perform military functions.⁸²⁶

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.⁸²⁷ 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.⁸²⁸

814 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 22 May 2002, §25

815 [European Council of Trade Unions \(CESP\) v. France](#), Complaint No. 101/2013, decision on the merits of 27 January 2016 §§ 61-63, see also [Conclusions XX-3 \(2014\)](#), United Kingdom

816 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 22 May 2002, §26

817 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 22 May 2002, §40

818 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 22 May 2002, §40

819 [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §§ 119 and 121

820 [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §121

821 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 27 January 2016, §27, see also [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §109

822 [European Confederation of Police \(EuroCOP\) v. Ireland](#), complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §79.

823 [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 11/2001, decision on the merits of 22 May 2002, §35

824 [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §77

825 [Article 5 of the European Social Charter](#)

826 [European Council of Trade Unions \(CESP\) v. France](#), Complaint No. 101/2013, decision on the merits of 27 January 2016, §59, see also [Conclusions XVIII-1 \(2006\)](#), Poland

827 [European Council of Trade Unions \(CESP\) v. France](#), Complaint No.101/2013, decision on the merits of 27 January 2016, §80

828 [European Council of Trade Unions \(CESP\) v. France](#), Complaint No.101/2013, decision on the merits of 27 January 2016, §84, see also [European Organisation of Military Associations \(EUROMIL\) v. Ireland](#) Complaint No. 112/2014, decision on the merits of 12 September 2017, §47

In considering whether the restriction is necessary in a democratic society within the meaning of Article G of the Charter, the Committee considers that the members of the armed forces who can be excluded from the right to freedom of association should be defined in a restrictive manner and that the complete suppression of the right to organise (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, *inter alia*, national security.⁸²⁹

In the case of military representative associations, a complete ban on affiliation to national workers organisations is not necessary or proportionate and therefore does not fulfill the requirements of Articles 5 and G of the Charter, in particular when the restriction has the factual effect of depriving the representative associations of an effective means of negotiating the conditions of employment on behalf of their members, in so far as national umbrella organisations of workers possess significant bargaining power in national negotiations.⁸³⁰

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 comply with.⁸³¹

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.⁸³²

Legislation setting a minimum number of members required to form a trade union which may be considered to be manifestly excessive could constitute an obstacle to founding trade unions and, as such, infringe the freedom of association.⁸³³ A minimum of at least one quarter of the workers of an undertaking required to form a trade union, and 50 founding members required to form a trade union outside an undertaking constitutes an excessive restriction on the right to organise.⁸³⁴

The right to form and join trade unions must be ensured in practice in multinational companies.⁸³⁵

There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld.⁸³⁶

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.⁸³⁷ Any form of compulsory unionism imposed by law must be considered incompatible with the obligation arising under this article of the Charter.⁸³⁸

Domestic law must guarantee the right of workers to join a trade union and include effective sanctions and remedies where this right is not respected.⁸³⁹ Trade union members must be protected from any harmful consequences 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.⁸⁴⁰ The forms of discrimination that are prohibited under Article 5 are all those that may occur in connection with recruitment and employment conditions in general (primarily remuneration, training, promotion, transfer, dismissal and other detrimental action).⁸⁴¹ Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.⁸⁴² In the particular cases of termination of employment on the ground of

829 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy](#), Complaint No. 140/2016, decision on the merits of 22 January 2019, §92

830 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy](#), Complaint No. 140/2016, decision on the merits of 22 January 2019, §90

831 [Conclusions 2010, Georgia](#)

832 [Conclusions XV-1 \(2000\), United Kingdom](#); [Conclusions XVI-1 \(2002\), United Kingdom](#)

833 [Conclusions XIII-5 \(1997\), Portugal](#)

834 [Conclusions 2018, Latvia](#)

835 [Conclusions 2018, Azerbaijan](#)

836 [Conclusions 2016, Malta](#)

837 [Conclusions I \(1969\), Statement of interpretation on Article 5](#)

838 [Conclusions I \(1969\), Statement of interpretation on Article 5](#)

839 [Conclusions 2016, Estonia](#)

840 [Conclusions 2010, Republic of Moldova](#)

841 [Conclusions 2004, Bulgaria](#)

842 [Conclusions 2004, Bulgaria](#)

trade union activities, the Committee considers – in accordance with its ruling under Article 24 of the Revised Charter, which prohibits termination of employment without valid reason – that 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.⁸⁴³

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.⁸⁴⁴ 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).⁸⁴⁵ 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 5.⁸⁴⁶ The existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment also infringes the right not to join trade unions.⁸⁴⁷

Trade union activities

Trade unions (and employers' organisations) must have broad autonomy regarding their internal structure or functioning.⁸⁴⁸ They must be entitled to perform their activities effectively and devise a work programme.⁸⁴⁹ Consequently, any excessive State interference constitutes a violation of Article 5.⁸⁵⁰ Such autonomy has different facets:

- ▶ trade unions are entitled to choose their own members and representatives,⁸⁵¹
- ▶ severely restricting the grounds on which a trade union can lawfully discipline members constitutes an unjustified incursion into the autonomy of trade unions inherent in Article 5;⁸⁵²
- ▶ union leaders must have the right to access the workplace and union members must be able to hold meetings there, within limits linked to the interests of the employer and business needs.⁸⁵³

The following examples constitute infringements 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.⁸⁵⁴

Representativeness

Domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone.⁸⁵⁵

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

- ▶ decisions on representativeness must not present a direct or indirect obstacle to the forming of trade unions,⁸⁵⁶
- ▶ areas of activity restricted to representative unions should not include key trade union prerogatives;⁸⁵⁷
- ▶ criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.⁸⁵⁸

843 [Conclusions 2004, Bulgaria](#)

844 [Confederation of Swedish Enterprise v. Sweden](#), Complaint No. 12/2002, decision on the merits of 15 May 2003, §29

845 [Conclusions VIII \(1984\)](#), Statement of Interpretation on Article 5, [Confederation of Swedish Enterprises v Sweden](#), Complaint No 12/2002, decision on the merits of 22 May 2003 §42

846 [Conclusions XIX-3 \(2010\)](#), Iceland

847 [Conclusions XXI-3 \(2018\)](#), Iceland

848 [Conclusions 2014](#), Serbia

849 [Conclusions XII-2 \(1992\)](#), Germany

850 [Conclusions 2014](#), Serbia, citing [Conclusions XII-2 \(1992\)](#), Germany

851 [Conclusions 2014](#), Serbia

852 [Conclusions 2014](#), Serbia, citing [Conclusions XVII-1 \(2005\)](#), United Kingdom

853 [Conclusions 2014](#), Serbia, citing [Conclusions XV-1 \(2000\)](#), France

854 [Conclusions 2010](#), Georgia, [Conclusions XX-3 \(2014\)](#) United Kingdom

855 [Conclusions 2014](#), Serbia

856 [Conclusions 2014](#), Andorra

857 [Conclusions XV-1 \(2000\)](#), Belgium

858 [Conclusions XV-1 \(2000\)](#), France

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, guaranteed by Article 6§2 and 6§4 of the Charter, 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).⁸⁵⁹

Nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular.⁸⁶⁰ Therefore, any restrictions must comply with the requirements set out in Article G of the Charter.⁸⁶¹

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 workers and employers or the organisations that represent them on terms of equality with a view to consultation on all questions of mutual interest at every level.⁸⁶² The expression "joint consultation" is to be interpreted as being applicable to all kinds of consultation between the two sides of industry – with or without any government representatives – on condition that both sides of industry have an equal say in the matter.⁸⁶³ In some States Parties, consultation takes place within the framework of joint bodies in which the government representative often acts as chairman.⁸⁶⁴ This form of joint consultation has been deemed to comply with the requirements of Article 6§1.⁸⁶⁵

The Committee interprets Article 6§1 to mean that States Parties must take positive steps to encourage consultation between trade unions and employers' organisations.⁸⁶⁶ If such consultation does not take place spontaneously, States Parties should establish permanent bodies and arrangements in which trade unions and employers' organisations are equally and jointly represented.⁸⁶⁷

Consultation must take place on several levels: national, regional/sectoral and enterprise.⁸⁶⁸ It should take place in the private and public sector (including the civil service).⁸⁶⁹

⁸⁵⁹ *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

⁸⁶⁰ *European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §159

⁸⁶¹ *European Council of Trade Unions (CESP) v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016, §118

⁸⁶² *Conclusions I (1969)*, *Statement of Interpretation on Article 6§1*, see also *Conclusions IV (1975)*, *Statement of Interpretation on Article 6§1*

⁸⁶³ *Conclusions V (1977)*, *Statement of Interpretation on Article 6§1*

⁸⁶⁴ *Conclusions V (1977)*, *Statement of Interpretation on Article 6§1*

⁸⁶⁵ *Conclusions V (1977)*, *Statement of Interpretation on Article 6§1*

⁸⁶⁶ *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41

⁸⁶⁷ *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41, citing *Conclusions XVI-2 (2004)*, Hungary

⁸⁶⁸ *Conclusions 2010*, Ukraine

⁸⁶⁹ *Conclusions III (1973)*, Denmark, Germany, Norway, Sweden; *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §107

Consultation at the enterprise level is dealt with under Article 6§1 and Article 21.⁸⁷⁰ For the States Parties which have ratified both provisions, consultation at enterprise level is examined solely under Article 21.⁸⁷¹

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 (organisation and management of the firm, working hours, production rates, structures and number of staff, etc), and social matters (social insurance, social welfare, etc.).⁸⁷²

In order to ensure that the participation of trade unions in the various procedures of consultation is efficient, States Parties may require trade unions to meet representativeness criteria subject to certain general conditions.⁸⁷³ Such a requirement must not excessively limit the possibility of trade unions to participate effectively in the consultation.⁸⁷⁴ In order to be in conformity with Article 6§1, the criteria of representativeness should be prescribed by law, be objective and reasonable and be subject to judicial review which offers appropriate protection against arbitrary refusal.⁸⁷⁵

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 workers and employers organisations may regulate their relations by collective agreement.⁸⁷⁶ If the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Where only 30% of the total number of employees are covered by collective agreements, voluntary negotiations are not sufficiently promoted in practice.⁸⁷⁷

Whatever the procedures put in place, collective bargaining should remain free and voluntary.⁸⁷⁸

States Parties should not interfere in the freedom of trade unions to decide themselves which subject matters they wish to regulate in collective agreements and which lawful methods should be used in their efforts to promote and defend the interest of the workers concerned.⁸⁷⁹ 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.⁸⁸⁰

The extent to which collective bargaining applies to public officials, including members of the police and armed forces, may be determined by law.⁸⁸¹ Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them.⁸⁸² A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6§2 of the Charter.⁸⁸³ 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.⁸⁸⁴ Especially in a situation where trade union rights have been restricted, a trade union must maintain its ability to argue on behalf of its members through at least one effective mechanism.⁸⁸⁵ Moreover, in order to satisfy this requirement, the

870 [Conclusions 2010, Ukraine](#)

871 [Conclusions 2010, Ukraine](#)

872 [Conclusions I \(1969\), Statement of Interpretation on Article 6§1; Conclusions V \(1977\), Ireland](#)

873 [Conclusions 2006, Albania](#)

874 [Conclusions 2006, Albania](#)

875 [Conclusions 2006, Albania](#)

876 [Conclusions I \(1969\), Statement of Interpretation on Article 6§2](#)

877 [Conclusions 2018, Slovak Republic](#)

878 [Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016, decision on the merits of 19 September 2018, §93](#)

879 [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](#)

880 [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](#)

881 [European Council of Police Trade Unions \(CESP\) v. Portugal, Complaint No. 11/2001, decision on the merits of 22 May 2002, §58](#)

882 [Conclusions III, \(1973\) Germany; European Council of Police Trade Unions \(CESP\) v. Portugal, Complaint No. 11/2001, decision on the merits of 22 May 2002, §58](#)

883 [EuroCOP v. Ireland, Complaint No. 83/2012, decision on admissibility and merits, 2 December 2013, §176](#)

884 [EuroCOP v. Ireland, Complaint No. 83/2012, decision on admissibility and merits, 2 December 2013, §176](#)

885 [EuroCOP v. Ireland, Complaint No. 83/2012, decision on admissibility and merits, 2 December 2013, §177; European Organisation of Military Associations \(EUROMIL\) v. Ireland Complaint No. 112/2014, Decision on the merits of 12 September 2017, §§ 87-88](#)

mechanism of collective bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side.⁸⁸⁶

The rapidly changing world of work and the 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 worker, including low-paid workers or service providers who are de facto "dependent" on one or more labour engagers.⁸⁸⁷ These developments must be taken into account when determining the scope of Article 6§2 in respect of self-employed workers.⁸⁸⁸

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.⁸⁸⁹ 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.⁸⁹⁰

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.⁸⁹¹

States Parties may require trade unions to meet an obligation of representativeness subject to certain general 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.⁸⁹² Restricting collective bargaining to trade unions representing at least 33% of the employees concerned by this bargaining, has been held to be in violation of Article 6§2.⁸⁹³

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.⁸⁹⁴

Situations where legislation permits employers unilaterally not to apply conditions agreed in collective agreements are incompatible with Article 6§2.⁸⁹⁵

Situations where workers and trade unions do not have the right to bring legal proceedings if employers offer financial incentives to induce workers to exclude themselves from collective bargaining are not in conformity with Article 6§2.⁸⁹⁶

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.

Under Article 6§3, conciliation, mediation and/or arbitration procedures must be introduced to facilitate the settlement of collective labour disputes.⁸⁹⁷ They may be instituted by law, collective agreement or industrial practice.⁸⁹⁸ Such procedures must also exist to settle disputes likely to arise between public administration and their officials.⁸⁹⁹

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.⁹⁰⁰ It does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, or to political disputes.⁹⁰¹

886 *EuroCOP v. Ireland*, Complaint No. 83/2012, decision on admissibility and merits, 2 December 2013, §177; see also *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato (UGL-CFS) and Sindacato autonomo polizia ambientale forestale (SAPAF) v. Italy*, Complaint No. 143/2017, decision on the merits of 3 July 2019, §118

887 *Irish Congress of Trade Unions v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §37

888 *Irish Congress of Trade Unions v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §37

889 *Irish Congress of Trade Unions v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §38

890 *Irish Congress of Trade Unions v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §38

891 *Irish Congress of Trade Unions v. Ireland*, Complaint No. 123/2016, decision on the merits of 12 September 2018, §40.

892 *Conclusions 2006, Albania*

893 *Conclusions XIX-3 (2010), "the former Yugoslav Republic of Macedonia"*

894 *Conclusions 2010, Statement of Interpretation on Article 6§2*, citing the Digest of the Freedom of Association Committee of the Governing Body of the ILO, 5th (revised edition), 2006, §1051

895 *Conclusions XXI-3 (2018), Spain*

896 *Conclusions XXI-3 (2018), United Kingdom*

897 *Conclusions 2014, Republic of Moldova*

898 *Conclusions I (1969), Statement of Interpretation on Article 6§3*

899 *Conclusions 2014, Republic of Moldova; Conclusions III (1973), Denmark, Germany, Norway, Sweden*

900 *Conclusions 2010, Georgia*

901 *Conclusions 2010, Georgia*

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.⁹⁰² The distinction is important as the result of a conciliation proceeding is not binding for the parties, and recourse to arbitration should be voluntary (subject to the agreement of the parties).⁹⁰³ However, once the parties have chosen to solve the dispute through arbitration, the result of the arbitration proceedings is binding on the parties.⁹⁰⁴

All arbitration systems must be independent, and the outcome of arbitration may not be predetermined by pre-established criteria.⁹⁰⁵

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.⁹⁰⁶ Such a restriction is only allowed within the limits prescribed by Article G.⁹⁰⁷

6§4 With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to recognise 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.*⁹⁰⁸

Protecting the right to collective action under the Charter pursues the objective of solving collective conflicts.⁹⁰⁹ As long as such objective is effectively ensured in practice, equivalent means to this end may be established.⁹¹⁰

Article 6§4 guarantees the right to strike and the right to call a lock-out.⁹¹¹

Under Article 6§4, the Charter recognises the right of workers and employers to collective action where conflicts of interest arise.⁹¹² It does not, however, raise any obstacle to the existence of legislation regulating the exercise of the right to strike, as well as the right to call a lock-out provided that neither legislation nor judicial decisions affect the very existence of the right thus recognised.⁹¹³

The right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining process.⁹¹⁴ It is therefore of specific relevance to trade unions.⁹¹⁵ The abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness.⁹¹⁶ Consequently, restrictions on this right may be acceptable only under specific conditions.⁹¹⁷

Where the limits within which the right to strike may be exercised have been determined in a State Party by the courts rather than by legislation, it is for the Committee to examine whether the case law thus established is in accordance with the requirements of the Charter.⁹¹⁸ 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 reduces the substance of the right to strike so as to render it ineffective.⁹¹⁹ In this regard, the fact that a national judge may determine whether recourse to strikes are “premature” is not in

902 [Conclusions 2014, Republic of Moldova](#)

903 [Conclusions 2014, Republic of Moldova](#)

904 [Conclusions 2014, Republic of Moldova](#)

905 [Conclusions 2010, Georgia](#); see also [Conclusions XIV-1 \(1998\), Iceland](#)

906 [Conclusions 2010, Georgia](#)

907 [Conclusions 2010, Georgia](#); see also [Conclusions 2006, Republic of Moldova, Article 6§3](#)

908 [Appendix to the European Social Charter \(Revised\) – European Treaty Series – No. 163](#)

909 [Conclusions XX-3 \(2014\), Germany](#)

910 [Conclusions XX-3 \(2014\), Germany](#)

911 [Conclusions I \(1969\), Statement of Interpretation on Article 6§4](#)

912 [Conclusions VIII \(1984\), Statement of Interpretation on Article 6§4](#)

913 [Conclusions VIII \(1984\), Statement of Interpretation on Article 6§4](#)

914 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §143](#)

915 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §143](#)

916 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §144](#)

917 [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §143](#)

918 [Conclusions I \(1969\), Statement of Interpretation on Article 6§4](#)

919 [Conclusions XVII-1 \(2005\), The Netherlands](#)

conformity with Article 6§4 as this allows the judge to exercise the trade unions' key prerogative of deciding whether and when a strike is necessary.⁹²⁰

Courts may not exclude collective action concerning a future employer and future terms and conditions of employment in the context of a transfer of part of a business.⁹²¹ Lawful collective action may not be limited to disputes between workers and their employer, thus preventing a union from taking action against a de facto employer which is not the immediate employer.⁹²² Article 6§4 also guarantees the right to participate in secondary action.⁹²³

The Charter does not necessarily imply that legislation and case law should establish full legal equality between the right to strike – which the Charter indeed mentions explicitly and which is recognised as a fundamental right by the Constitution of several member States – and the right to call a lock-out.⁹²⁴ Consequently, a State Party to the Charter cannot be found at fault for not having passed legislation regulating the exercise of lock-out.⁹²⁵ Further, the competent tribunals are also entitled to place certain restrictions on the exercise of lock-out in specific cases where it would in particular constitute an abuse of the right or be devoid of justification on the ground of “force majeure” or of the disorganisation of the enterprise caused by the workers' collective action.⁹²⁶

Groups entitled to call a collective action

Article 6§4 does not require States Parties to grant any group of workers authority to call a strike but leaves States Parties the option of deciding which groups shall have this right and thus of restricting the right to call solely to trade unions.⁹²⁷ However such restrictions are only compatible with Article 6§4 if there is complete freedom to form trade unions and the process is not subject to excessive formalities that would impede the rapid decisions that strike action sometimes requires.⁹²⁸

On the contrary, limiting the right to call a strike to the most representative trade unions at the national level, in the professional category or in the firm, organisation or department concerned constitutes a restriction which is not in conformity with Article 6§4.⁹²⁹ In addition, the situation is not in conformity with Article 6§4 where the right to call a strike is reserved to trade unions, and the time frame for registering a trade union may take up to thirty days.⁹³⁰

A rule of municipal law under which workers only have the right to strike if the union to which they belong has first acquired a “negotiating licence” from the public authorities and the granting of that licence is at the discretion of the authority and not subject to judicial review is incompatible with the provisions of Article 6§4 of the Charter.⁹³¹

The refusal to recognise the right to strike for paid workers in non-profit-making activities is also incompatible with the Charter.⁹³²

Once a strike has been called, any worker concerned, irrespective of whether they are a member of the trade union having called the strike or not, have the right to participate in the strike.⁹³³ Situations where trade unions have a monopoly on the taking of strike action are not in conformity with Article 6§4.⁹³⁴

Permitted objectives of collective action

Article 6§4 recognises the right to collective action only in cases of conflicts of interests.⁹³⁵ It does not concern conflicts of rights, i.e. related to the existence, validity or interpretation of a collective agreement and to

⁹²⁰ Conclusions 2018, The Netherlands

⁹²¹ Conclusions XXI-3 (2018), United Kingdom

⁹²² Conclusions XXI-3 (2018), United Kingdom

⁹²³ Conclusions XX-3 (2014), United Kingdom

⁹²⁴ Conclusions VIII (1984), Statement of Interpretation on Article 6§4

⁹²⁵ Conclusions VIII (1984), Statement of Interpretation on Article 6§4

⁹²⁶ Conclusions VIII (1984), Statement of Interpretation on Article 6§4

⁹²⁷ Conclusions 2004, Sweden

⁹²⁸ Conclusions 2004, Sweden

⁹²⁹ Conclusions XV-1 (2000), France

⁹³⁰ Conclusions XXI-3 (2018), Croatia

⁹³¹ Conclusions I (1969), Statement of Interpretation on Article 6§4

⁹³² Conclusions I (1969), Statement of Interpretation on Article 6§4

⁹³³ Conclusions XVI-1 (2003), Portugal

⁹³⁴ Conclusions XVI-1 (2003), Portugal

⁹³⁵ Conclusions I (1969), Statement of Interpretation on Article 6§4

the violation of a collective agreement.⁹³⁶ Political strikes are not covered by Article 6, which is designed to protect “the right to bargain collectively”, such strikes falling outside the purview of collective bargaining.⁹³⁷

Thus, the specific approach of leaving conflicts of rights to be determined by courts or arbitration bodies 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 employers to engage in collective action in respect of conflicts of interest.⁹³⁸

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 must be prescribed by law, serve a legitimate purpose and be 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.⁹³⁹ In providing that restrictions on the enjoyment of Charter rights must be “prescribed by law”, Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law.⁹⁴⁰ The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned.⁹⁴¹ Moreover the terms of Article 6 includes the respect of fair procedures.⁹⁴²

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.⁹⁴³ 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 other workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law.⁹⁴⁴

However, national legislation which prevents *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.⁹⁴⁵ In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.⁹⁴⁶

Employers should not have the power to unilaterally determine the minimum service required during a strike.⁹⁴⁷

936 [Conclusions I \(1969\), Statement of Interpretation on Article 6§4](#)

937 [Conclusions II \(1971\), Statement of Interpretation on Article 6§4](#)

938 [Conclusions XX-3 \(2014\), Germany](#)

939 [Conclusions 2014, Norway](#); see also [Conclusions X-1 \(1987\), Norway](#) (regarding Article 31 of the 1961 Charter to which Article G of the Revised Charter corresponds).

940 [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

941 [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

942 [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, §44

943 [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

944 [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

945 [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, §120

946 [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, §120

947 [Conclusions 2018, Serbia](#)

i. Restrictions related to essential services/sectors

Restricting strikes in sectors which are essential to the community may serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health.⁹⁴⁸ However, simply banning strikes 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.⁹⁴⁹ Simply prohibiting these workers from striking, without distinguishing between their particular functions, cannot be considered proportionate to the particular circumstances of each of the sectors concerned, and thus necessary in a democratic society.⁹⁵⁰ At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.⁹⁵¹ Where there is no provision for the introduction of a minimum service as regards the emergency and rescue services, nuclear facilities and the transport sector, and where strikes are simply prohibited for certain categories of workers, the situation is not in conformity with the Charter.⁹⁵²

ii. Restrictions related to public officials

As regards the right of public servants to strike, the Committee recognises that, under Article G of the Revised Charter, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants.⁹⁵³ Restrictions to the right to strike of certain categories of public servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G.⁹⁵⁴

On the other hand, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter.⁹⁵⁵ Allowing public servants only to declare symbolic strikes is not sufficient.⁹⁵⁶

The right to strike of certain categories of public officials, such as members of the armed forces, may be restricted.⁹⁵⁷

Concerning the armed forces, the need to be able to maintain the command operational in the most extreme situations of military exposure may not justify the absolute prohibition of the right to strike, because it is not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society.⁹⁵⁸ Minimum services may be imposed in the defence sector in the event of a strike.⁹⁵⁹ Other measures may be provided for by law, such as an effective and regular procedure of negotiation at the highest level between the members of the armed forces and the command authority regarding not only the material and salary conditions but also the work organisation, or conciliation or arbitration procedure.⁹⁶⁰ With such measures - minimum services and/or an effective procedure of negotiation or conciliation - the prohibition on the exercise of the right to strike would be proportionate.⁹⁶¹

The margin of appreciation accorded to States Parties in terms of the right to strike of the armed forces is greater than that afforded to States Parties in respect of the police.⁹⁶²

948 *Matica Hrvatskih Sindikata v. Croatia*, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114; [Conclusions I \(1969\)](#), [Statement of Interpretation on Article 6§4](#)

949 *Matica Hrvatskih Sindikata v. Croatia*, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114

950 [Conclusions XVII-1 \(2006\)](#), [Czech Republic](#)

951 *Matica Hrvatskih Sindikata v. Croatia*, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114; see also [Conclusions XVII-1 \(2006\)](#), [Czech Republic](#)

952 [Conclusions 2018](#), [Ukraine](#)

953 *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113, citing [Conclusions I \(1969\)](#), [Statement of Interpretation on Article 6§4](#)

954 *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, §45

955 *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113, citing [Conclusions I \(1969\)](#), [Statement of Interpretation on Article 6§4](#)

956 *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

957 *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §113

958 *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §152

959 *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §152

960 *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §152

961 *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §152

962 *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §116

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.⁹⁶³ 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.⁹⁶⁴

iii. Restrictions in the form of interference by Parliament or Government to end a strike

As regards situations in which arbitration has been imposed by the Parliament to end a strike, such restrictions can only be compatible with Article 6§4 within the limits set by Article G, namely if it is prescribed by law and is 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.⁹⁶⁵ 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. It is the responsibility of the national legislative, executive and judicial authorities to ensure that these conditions are strictly complied with.⁹⁶⁶ The authorities must demonstrate that these conditions are satisfied for each case and the Committee reserves the right to verify whether in its opinion the conditions of Article G are fulfilled.⁹⁶⁷

Balancing economic freedoms under EU and national law and the right to strike

Legal rules relating to the exercise of economic freedoms established by States 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 domestic laws, EU law, and other international binding standards.⁹⁶⁸ 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.⁹⁶⁹

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 *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.⁹⁷⁰ 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.⁹⁷¹

Procedural requirements

i. Peace obligation

The systems of industrial relations in which collective agreements are deemed to imply peace obligation during which strikes are prohibited are in conformity with Article 6§4.⁹⁷² However, a peace obligation must reflect with certainty the will of social partners and the parties to a dispute must have the possibility to have a recourse to a dispute settlement mechanism which fulfills the requirements of Article 6§3 (see above).⁹⁷³

963 [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §211

964 [European Confederation of Police \(EuroCOP\) v. Ireland](#), Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §211

965 [Conclusions 2004, Norway](#)

966 [Conclusions 2004, Norway](#)

967 [Conclusions 2014, Norway](#)

968 [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, §121

969 [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, §121

970 [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, §122

971 [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, §22

972 [Conclusions 2004, Norway](#)

973 [Conclusions 2004, Norway](#)

ii. 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.⁹⁷⁴ Situations where strikes can only be called if half the workers covered by the collective agreement give their approval, constitute an excessive restriction on trade unions' right to take collective action.⁹⁷⁵

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.⁹⁷⁶ A requirement that a 30-day period must elapse before mediation attempts are deemed to have failed, and strike action can be taken, is excessive.⁹⁷⁷

A requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is also excessive.⁹⁷⁸

Consequences of a strike

In principle, the Committee takes the view that a rule according to which a strike terminates contracts of employment is not compatible with the respect of the right to strike as envisaged by the Charter.⁹⁷⁹ Whether, in a given case, a rule of this kind constitutes a violation of the Charter is, however, a question which should not be answered in the abstract, but in the light of the consequences which the legislation and industrial practice of a given country attaches to the termination and resumption of the employment relationship.⁹⁸⁰ If, in practice, those participating in a strike are, after its termination, fully reinstated and if their previously acquired rights (e.g. as regards pension, holidays and seniority) are not impaired, the formal termination of the contracts of employment by the strike does not constitute a violation of the Charter.⁹⁸¹

Any deduction from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their strike participation.⁹⁸²

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 and should not be considered to be in breach of their contract of employment as a consequence of strike action.⁹⁸³

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.⁹⁸⁴

⁹⁷⁴ Conclusions XVII-2 (2005), Latvia; Conclusions II (1971), Cyprus

⁹⁷⁵ Conclusions XVII-1 (2004), Czech Republic

⁹⁷⁶ Conclusions XIV-1 (1998), Cyprus

⁹⁷⁷ Conclusions XVII-1 (2004), Czech Republic

⁹⁷⁸ Conclusions 2006, Italy

⁹⁷⁹ Conclusions I (1969), Statement of Interpretation on Article 6§4

⁹⁸⁰ Conclusions I (1969), Statement of Interpretation on Article 6§4

⁹⁸¹ Conclusions I (1969), Statement of Interpretation on Article 6§4

⁹⁸² Conclusions XIII-1 (1993), France

⁹⁸³ Conclusions XVIII-1 (2006), Denmark

⁹⁸⁴ Conclusions I (1969), Statement of Interpretation on Article 7§1

It also extends to all forms of economic activity, irrespective of the status of the worker (worker, self-employed, unpaid family helper or other).⁹⁸⁵

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.⁹⁸⁶ The Labor Inspectorate has a decisive role to play in this respect.⁹⁸⁷

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.⁹⁸⁸ States Parties are required to define the types of work which may be considered light, or at least to draw up a list of those which are not.⁹⁸⁹ The definition of light work authorised by legislation must be sufficiently precise.⁹⁹⁰ Work considered to be light ceases to be so if it is performed for an excessive duration.⁹⁹¹ States are therefore required to set out the conditions for the performance of "light work" and the maximum permitted duration of such work.⁹⁹²

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.⁹⁹³

Children who are still subject to compulsory schooling can carry out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance.⁹⁹⁴ However a situation in which a child under the age of 15 works for between 20 and 25 hours per week during school term, or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter.⁹⁹⁵

Children should be guaranteed at least two consecutive weeks of rest during the summer holidays.⁹⁹⁶

Regarding work done at home, States Parties are required to monitor the conditions under which it is performed in practice.⁹⁹⁷

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.*⁹⁹⁸

In application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise during the course of that work.⁹⁹⁹

However, if such work proves absolutely necessary for their vocational training, children may be permitted to perform it before the age of 18, but only where such work is carried out in accordance with conditions prescribed by the competent authority.¹⁰⁰⁰ Children must have received training for performing dangerous tasks.¹⁰⁰¹ The Labour Inspectorate must monitor these arrangements.¹⁰⁰²

⁹⁸⁵ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 27-28

⁹⁸⁶ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §32

⁹⁸⁷ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §32

⁹⁸⁸ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §29

⁹⁸⁹ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §29

⁹⁹⁰ Conclusions 2019, Albania

⁹⁹¹ [International Commission of Jurists against Portugal](#), Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 29-31

⁹⁹² Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

⁹⁹³ Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

⁹⁹⁴ Conclusions 2011, Portugal; Conclusions 2019, Armenia

⁹⁹⁵ Conclusions 2019, Armenia

⁹⁹⁶ Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

⁹⁹⁷ Conclusions 2006, General Introduction on Article 7§1

⁹⁹⁸ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

⁹⁹⁹ Conclusions 2006, France

¹⁰⁰⁰ Conclusions 2006, Norway

¹⁰⁰¹ Conclusions 2006, France

¹⁰⁰² Conclusions 2006, Norway

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 requires States Parties to ensure that children still subject to compulsory education and employed to work are not deprived of the full benefit of their education.¹⁰⁰³

Only light work is permissible for schoolchildren under this provision.¹⁰⁰⁴ The notion of “light work” is identical to that under article 7§1.¹⁰⁰⁵

In the case of States Parties that have set the same age limit for admission to employment and the end of compulsory education, which is over 15 years, questions related to light work are examined under Article 7§1.¹⁰⁰⁶ 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.¹⁰⁰⁷

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.¹⁰⁰⁸

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework.¹⁰⁰⁹

Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3.¹⁰¹⁰ Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school is not in conformity with the Charter.¹⁰¹¹

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.¹⁰¹² The assessment of compliance over the school year takes account of the length and distribution of holidays, the timing of uninterrupted periods of rest, the nature and the length of the light work and of the control efficiency of the labour inspectorate.¹⁰¹³

States Parties must provide for a mandatory and uninterrupted period of rest during school holidays.¹⁰¹⁴ Its duration shall not be less than 2 consecutive weeks during the summer holidays.¹⁰¹⁵

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.¹⁰¹⁶ The limitation may be the result of legislation, regulations, contracts or practice.¹⁰¹⁷

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to Article 7§4.¹⁰¹⁸ However, for persons over 16 years of age, the same limits are in conformity with Article 7§4.¹⁰¹⁹

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.

¹⁰⁰³ Conclusions I (1969), Statement of Interpretation on Article 7§3

¹⁰⁰⁴ Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

¹⁰⁰⁵ Conclusions I (1969), Statement of Interpretation on Article 7§1; Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

¹⁰⁰⁶ Conclusions 2006, Statement of Interpretation on Article 7§3

¹⁰⁰⁷ Conclusions 2006, Statement of Interpretation on Article 7§3

¹⁰⁰⁸ Conclusions V (1977), Statement of Interpretation on Article 7§3; Conclusions 2006, Portugal

¹⁰⁰⁹ Conclusions 2006, Albania; Conclusions 2019, Serbia

¹⁰¹⁰ Conclusions 2011, 2019, Italy

¹⁰¹¹ Conclusions XVII-2 (2005), The Netherlands

¹⁰¹² Conclusions XVII-2 (2005), The Netherlands

¹⁰¹³ Conclusions 2011, Statement of Interpretation on Article 7§3

¹⁰¹⁴ Conclusions 2011, Statement of Interpretation on Article 7§3

¹⁰¹⁵ Conclusions 2011, Statement of Interpretation on Article 7§3

¹⁰¹⁶ Conclusions 2006, Albania

¹⁰¹⁷ Conclusions 2006, Albania

¹⁰¹⁸ Conclusions XI-1 (1991), The Netherlands

¹⁰¹⁹ Conclusions 2002, Italy

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.¹⁰²⁰ This right may result from statutory law, collective agreements or other means.¹⁰²¹

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).¹⁰²²

In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.¹⁰²³

Young workers

The young worker’s wage may be less than the adult starting wage, but any difference must be reasonable.¹⁰²⁴ It must not be too substantial and ought to be for a limited time.¹⁰²⁵ For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable and for sixteen/eighteen year-olds, the difference may not exceed 20%.¹⁰²⁶

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter.¹⁰²⁷ If the reference wage is too low, even a young worker’s wage which respects these percentage differentials is not considered fair.¹⁰²⁸

Apprentices

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account.¹⁰²⁹ However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers.¹⁰³⁰ Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the apprentice’s allowance should be gradually increased throughout the contract period, starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.¹⁰³¹ After two or three years’ vocational training, an apprentice is sufficiently trained and should be considered as an adult worker for wage purposes.¹⁰³²

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.

Time spent on vocational training by young people during normal working hours must be treated as part of the working day.¹⁰³³ Such training must, in principle, be done with the employer’s consent – but not necessarily financed by the latter and be related to the young person’s work.

Training time must thus be remunerated as normal working time (by either the employer or by public funds as the case may be), and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked.¹⁰³⁴

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.

¹⁰²⁰ [Conclusions 2019, Azerbaijan](#)

¹⁰²¹ [Conclusions 2019, Azerbaijan](#)

¹⁰²² [Conclusions XI-1 \(1991\), United-Kingdom](#)

¹⁰²³ [Conclusions XI-1 \(1991\), United-Kingdom](#); [Conclusions 2019, Albania](#)

¹⁰²⁴ [Conclusions 2019, Azerbaijan](#)

¹⁰²⁵ [Conclusions II \(1971\), Statement of Interpretation on Article 7§5](#)

¹⁰²⁶ [Conclusions 2006, Albania](#)

¹⁰²⁷ [Conclusions IX-1 \(1987\), United Kingdom](#)

¹⁰²⁸ [Conclusions IX-1 \(1987\), United Kingdom](#)

¹⁰²⁹ [Conclusions II \(1971\), Statement of Interpretation on Article 7§5](#)

¹⁰³⁰ [Conclusions 2019, Albania](#)

¹⁰³¹ [Conclusions 2006, Portugal](#); [Conclusions XVII-2 \(2005\), Germany](#); [Conclusions 2019, Austria](#)

¹⁰³² [Conclusions II \(1971\), Statement of Interpretation on Article 7§5](#)

¹⁰³³ [Conclusions XV-2 \(2001\), The Netherlands](#)

¹⁰³⁴ [Conclusions V \(1977\), Statement of Interpretation on Article 7§6](#)

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3).¹⁰³⁵ Employed persons under 18 should not have the option of waiving their annual paid holiday.¹⁰³⁶ They should not have the option of giving up their annual holiday for financial compensation either.¹⁰³⁷

According to Article 7§7, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to secure to them the four weeks' paid annual leave provided for in the Charter.¹⁰³⁸ 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.¹⁰³⁹

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.*¹⁰⁴⁰

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

Laws or regulations must not cover only industrial work.¹⁰⁴¹ Exceptions can be made as regards certain occupations in very limited cases, if they are: explicitly provided in domestic law; necessary for the proper functioning of the economic sector, and if the number of young workers concerned is low.¹⁰⁴²

It is up to domestic laws or regulations to define the period of time considered as being "night".¹⁰⁴³

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-ups for persons under eighteen employed in those occupations specified by domestic laws or regulations.¹⁰⁴⁴

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.¹⁰⁴⁵ They may, however, be carried out by the occupational health services, if these services have the specific training to do so.¹⁰⁴⁶

The obligation entails a full medical examination on recruitment and regular check-ups thereafter.¹⁰⁴⁷ The intervals between check-ups must not be too long: in this regard, an interval of two years has been considered excessive.¹⁰⁴⁸

The medical check-ups foreseen by Article 7§9 should take into account the skills required for the work envisaged.¹⁰⁴⁹

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.

¹⁰³⁵ [Conclusions 2019, Albania](#)

¹⁰³⁶ [Conclusions 2019, Albania](#)

¹⁰³⁷ [Conclusions 2019, Azerbaijan](#)

¹⁰³⁸ [Conclusions 2006, France](#)

¹⁰³⁹ [Conclusions 2006, France](#), citing [Conclusions XII-2, Article 2§3](#)

¹⁰⁴⁰ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

¹⁰⁴¹ [Conclusions XVII-2 \(2005\) Portugal, Turkey](#)

¹⁰⁴² [Conclusions XVII-2 \(2005\), Malta](#)

¹⁰⁴³ [Conclusions I \(1969\), Statement of Interpretation on Article 7§8](#)

¹⁰⁴⁴ [Conclusions IV \(1975\), Statement of Interpretation on Article 7§9](#) ; [Conclusions 2006, Albania](#)

¹⁰⁴⁵ [Conclusions 2006, Albania](#)

¹⁰⁴⁶ [Conclusions VIII \(1984\), Statement of Interpretation on Article 7§9](#)

¹⁰⁴⁷ [Conclusions XIII-1 \(1993\), Sweden](#)

¹⁰⁴⁸ [Conclusions 2011, Estonia](#)

¹⁰⁴⁹ [Conclusions XIII-2 \(1994\), Italy](#) ; [Conclusions 2011, Estonia](#)

Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment.¹⁰⁵⁰ This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies.¹⁰⁵¹

States Parties must prohibit the use of children in forms of exploitation such as sexual exploitation, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.¹⁰⁵² They must also take measures to prevent and assist street children.¹⁰⁵³ 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.¹⁰⁵⁴

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§10.¹⁰⁵⁵ The issues dealt with under Article 17 include the protection of children from ill-treatment, including corporal punishment.¹⁰⁵⁶ However the issue of corporal punishment is examined under Article 7§10, where a State Party has not accepted Article 17.¹⁰⁵⁷

Personal scope

Article 7§10 is applicable to foreign children in an irregular situation on the territory of a State Party to the Charter as otherwise they would not be guaranteed their fundamental rights and could be exposed to serious impairments of their rights to life, health and psychological and physical integrity.¹⁰⁵⁸

Likewise, measures should be taken to ensure the protection of unaccompanied or separated minors.¹⁰⁵⁹ The failure to care for unaccompanied foreign minors present in the country and take the necessary measures to guarantee these minors the special protection against physical and moral hazards which threatens their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.¹⁰⁶⁰

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.¹⁰⁶¹

- ▶ Child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration.¹⁰⁶²
- ▶ 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.¹⁰⁶³

1050 [Conclusions 2004, Bulgaria](#)

1051 [Conclusions 2004, Bulgaria](#)

1052 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §185

1053 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §185

1054 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §176

1055 [Association for the protection of All Children \(APPROACH\) Ltd. v. Cyprus](#), complaint No.97/2013, decision on admissibility of July 2013, §10

1056 [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 7§10](#)

1057 [Association for the protection of All Children \(APPROACH\) Ltd. v. Cyprus](#), complaint No.97/2013, decision on admissibility of July 2013, §10

1058 [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §85.

1059 [Conclusions 2019, Greece](#)

1060 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §138

1061 [Conclusions 2004, Bulgaria](#)

1062 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on the merits of 12 September 2014, §57

1063 [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on the merits of 12 September 2014, §57

- ▶ Trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.¹⁰⁶⁴

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.¹⁰⁶⁵ This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.¹⁰⁶⁶

The following are minimum obligations:¹⁰⁶⁷

- ▶ Article 7§10 requires that all acts of sexual exploitation be criminalised;¹⁰⁶⁸ 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.¹⁰⁶⁹ Furthermore, States Parties must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.¹⁰⁷⁰ Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.¹⁰⁷¹
- ▶ a national action plan combating the sexual exploitation of children should be adopted, as well as a monitoring mechanism on the sexual exploitation of children and mechanisms for collecting statistical data on the sexual exploitation of children.¹⁰⁷²

Other measures to prohibit and combat all forms of sexual exploitation of children include awareness raising.¹⁰⁷³

With regard more specifically to accompanied or unaccompanied migrant girls, these children are exposed to a heightened risk of becoming subject to sexual and gender-based violence.¹⁰⁷⁴ States Parties should therefore put in place specific preventive measures to address their needs in terms of living space, privacy and security within reception centres and other accommodation facilities, taking into account their extreme vulnerability.¹⁰⁷⁵ They should also provide for gender-sensitive reporting procedures and support services allowing said children to report possible cases of violence and abuse and ask for assistance in a safe manner.¹⁰⁷⁶

Protection against the misuse of information technologies

The internet is becoming one of the most frequently used tools for the spread of child pornography.¹⁰⁷⁷

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.).¹⁰⁷⁸ Some States Parties have adopted a provision on "child grooming" – i.e. arranging a meeting with a child below the age of sexual consent with the intent of committing a sexual offence.¹⁰⁷⁹

¹⁰⁶⁴ [Conclusions 2004, Bulgaria; Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on the merits of 12 September 2014, §57

¹⁰⁶⁵ [Conclusions 2004, Bulgaria](#)

¹⁰⁶⁶ [Conclusions 2004, Bulgaria](#)

¹⁰⁶⁷ [Conclusions 2019, Azerbaijan](#)

¹⁰⁶⁸ [Conclusions XVII-2 \(2005\), Poland](#)

¹⁰⁶⁹ [Federation of Catholic Family Associations in Europe \(FAFCE\) v. Ireland](#), Complaint No. 89/2013, decision on the merits of 12 September 2014, §58

¹⁰⁷⁰ [Conclusions XIX-4 \(2011\), Croatia](#)

¹⁰⁷¹ [Conclusions XVII-2 \(2005\), United Kingdom](#)

¹⁰⁷² [Conclusions 2004, Bulgaria; Conclusions 2019, Azerbaijan](#)

¹⁰⁷³ [Conclusions 2019, Albania](#)

¹⁰⁷⁴ [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §189

¹⁰⁷⁵ [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §189

¹⁰⁷⁶ [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §189

¹⁰⁷⁷ [Conclusions 2004, Bulgaria](#)

¹⁰⁷⁸ [Conclusions 2004, Romania, Bulgaria](#)

¹⁰⁷⁹ [Conclusions XIX-4 \(2011\), Poland](#)

Internet services providers should be under an obligation to remove or prevent accessibility to illegal material about which they have knowledge.¹⁰⁸⁰ Internet safety hotlines should be set up through which illegal material could be reported.¹⁰⁸¹

Taking into consideration the spread of sexual exploitation of children through the means of new information technologies, States Parties should adopt measures in law and in practice to protect children from their misuse, such as unprotected access to harmful websites, audiovisual and print material.¹⁰⁸²

Corporal punishment

The Committee considers that the fact that the right of children and young persons to social, legal and economic protection is guaranteed under Article 17 of the Charter does not exclude the examination of certain relevant issues relating to the protection of children under Article 7§10.¹⁰⁸³ In this connection, the Committee recalls having held the scope of the said two provisions overlap to a large extent.¹⁰⁸⁴ Therefore, when States Parties have not accepted Article 17§1 of the Charter, the Committee will examine the issue relating to corporal punishment under Article 7§10.¹⁰⁸⁵

Under the Charter, the prohibition of all forms of corporal punishment of children is a measure that avoids discussions and concerns as to where the borderline would be between what might be acceptable form of corporal punishment and what is not.¹⁰⁸⁶ The Committee has clearly stated that all forms of corporal punishment must be prohibited in all settings and this prohibition must have an explicit legislative basis.¹⁰⁸⁷ The sanctions available must be adequate, dissuasive and proportionate.¹⁰⁸⁸

Protection from other forms of exploitation

States Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.¹⁰⁸⁹ They must also take measures to protect and assist children in vulnerable situations, with particular attention to children in street situations and children at risk of child labour, including those in rural areas.¹⁰⁹⁰

Street children are particularly exposed to trafficking and worst forms of child labour.¹⁰⁹¹ In this respect, the Committee has referred to the General Comment No. 21 of the UN Committee on the Rights of the Child which provides authoritative guidance to States on developing comprehensive, long-term national strategies on children in street situations using a holistic, child rights approach and addressing both prevention and response in line with the Convention on the Rights of the Child.¹⁰⁹²

States Parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that the measures adopted are fully effective in practice.¹⁰⁹³

States Parties must take measures to improve the knowledge of relevant professionals (including police officers, social workers, professionals working with children, labour inspectors, medical staff, public prosecutors, judges, the media and other groups concerned) about trafficking and the rights of victims.¹⁰⁹⁴

1080 Conclusions XIX-4 (2011), Croatia

1081 Conclusions XIX-4 (2011), Croatia

1082 Conclusions 2004, Romania

1083 Conclusions 2019, Azerbaijan

1084 Conclusions 2019, Azerbaijan, citing Conclusions XV-2 (2001), Statement of interpretation on Article 7§10

1085 Conclusions 2019, Azerbaijan

1086 Conclusions 2019, Azerbaijan, citing General Introduction to Conclusions XV-2 (2001)

1087 Conclusions 2019, Azerbaijan; Association for the Protection of all Children (APPROACH) Ltd v. Ireland, Complaint No. 93/2013, decision on the merits of 2 December 2014, §§ 53-54

1088 Conclusions 2019, Azerbaijan, citing World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §56

1089 Conclusions 2004, Bulgaria

1090 Conclusions 2019, Russian Federation

1091 Conclusions 2004, Romania; Conclusions 2019, Albania

1092 Conclusions 2019, Albania

1093 Conclusions 2006, Bulgaria

1094 Conclusions 2019, Serbia

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 rights of employed women to maternity leave and to employment benefits:

The right to maternity leave

The right to maternity leave of no less than 14 weeks under the Charter must be guaranteed by law.¹⁰⁹⁵ 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, i.e. the health of the mother and child.¹⁰⁹⁶ It must be guaranteed for all categories of employees¹⁰⁹⁷ and the leave must be maternity leave and not sick leave.

National legislation, on the one hand, must allow women the right to use all or part of their recognised entitlement to cease work for a period of at least 14 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliges the employer to respect the free choice of women.

Domestic law may permit women to opt for a shorter period of maternity leave.¹⁰⁹⁸ The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Article 8.¹⁰⁹⁹ Where compulsory leave is less than six weeks, the rights guaranteed under Article 8 may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parents can take paid leave at the end of the maternity leave).¹¹⁰⁰

In order to be in conformity with Article 8§1, States Parties must ensure that:

- ▶ legal safeguards exist to avoid any pressure from employers on women to shorten their maternity leave;¹¹⁰¹
- ▶ there is an agreement with social partners on the question of postnatal leave which protects the free choice of women, who should be protected in law and practice from undue pressure inciting them to take less than six weeks' postnatal leave;¹¹⁰² collective agreements offer additional protection.¹¹⁰³

The right to maternity benefits

Under Article 8§1 of the Charter, States Parties shall ensure that employed women are adequately compensated for their loss of earnings during the period of maternity leave.¹¹⁰⁴

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.¹¹⁰⁵

¹⁰⁹⁵ Conclusions III (1973), Statement of Interpretation on Article 8§1, Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1, Conclusions 2015, Statement of Interpretation on Article 8§1

¹⁰⁹⁶ Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1

¹⁰⁹⁷ Conclusions XV-2 (2001), Observation on Article 8§1

¹⁰⁹⁸ Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1

¹⁰⁹⁹ Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1

¹¹⁰⁰ Conclusions XIX-4 (2011), Statement of Interpretation on Article 8§1

¹¹⁰¹ Conclusions XXI-4 (2019), United Kingdom

¹¹⁰² Conclusions XXI-4 (2019), United Kingdom; Ukraine

¹¹⁰³ Conclusions XXI-4 (2019), United Kingdom

¹¹⁰⁴ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹⁰⁵ Conclusions 2015, Statement of Interpretation on Article 8§1

Regardless of the modality of the payment, the level shall be adequate.¹¹⁰⁶ It should not be reduced substantially compared to the previous wage, and not be less than 70% of that wage.¹¹⁰⁷

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.¹¹⁰⁸ If the benefit concerned falls between 40 and 50% of the median equivalised income, other benefits, including ones relating to social welfare or housing, will be taken into account.¹¹⁰⁹ However, a rate set at less than 40% of the median equivalised income is manifestly inadequate, so that combining it with other benefits cannot bring the situation into line with Article 8§1.¹¹¹⁰

For high salary earners, a ceiling on the amount of compensation during maternity leave is not, in itself, contrary to Article 8§1.¹¹¹¹ Various elements are taken into account in order to assess the fairness 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.¹¹¹²

The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution.¹¹¹³ However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.¹¹¹⁴ A required period of twelve months of contribution to the social security scheme prior to pregnancy to be entitled to maternity benefits will not be in conformity with the Charter.¹¹¹⁵

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.¹¹¹⁶*

Prohibition of dismissal

Article 8§2 requires that it be unlawful to dismiss employees from the time they notify the employer of their pregnancy to the end of their maternity leave.¹¹¹⁷

Article 8§2 applies equally to women on fixed-term and open-ended contracts.¹¹¹⁸

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.¹¹¹⁹ 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.¹¹²⁰

However, the dismissal of a pregnant woman is not contrary to this provision in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract.¹¹²¹ These exceptions are

¹¹⁰⁶ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹⁰⁷ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹⁰⁸ Conclusions XVII-2 (2005), Latvia

¹¹⁰⁹ Conclusions XXI-4 (2019), United Kingdom

¹¹¹⁰ Conclusions XXI-4 (2019), United Kingdom

¹¹¹¹ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹¹² Conclusions XV-2 (2001), Belgium

¹¹¹³ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹¹⁴ Conclusions 2015, Statement of Interpretation on Article 8§1

¹¹¹⁵ Conclusions 2019, Albania

¹¹¹⁶ Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

¹¹¹⁷ Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2

¹¹¹⁸ Conclusions XIII-4 (1996), Austria

¹¹¹⁹ Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2

¹¹²⁰ Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2

¹¹²¹ Conclusions X-2 (1990), Spain

strictly interpreted.¹¹²² Dismissing a worker during maternity leave on other grounds, such as a collective redundancy, is not compatible with Article 8§2.¹¹²³

Redress in case of unlawful dismissal

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, workers who consider that their rights in this respect have been violated must be entitled to take their case before the courts.¹¹²⁴

In the case of dismissal contrary to this provision, the reinstatement of the women should be the rule.¹¹²⁵ Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured.¹¹²⁶ Compensation should be sufficient to deter the employer and compensate the employee.¹¹²⁷ Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.¹¹²⁸ 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.¹¹²⁹

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.¹¹³⁰

Time off for nursing should in principle be granted during working hours, be treated as normal working time and remunerated as such.¹¹³¹ 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.¹¹³²

Time off for nursing must be granted at least until the child reaches the age of nine months.¹¹³³

The Committee assesses States Parties' compliance with Article 8§3 on a case-by-case basis. The following measures have all been found to be in conformity with the Charter: two half-hour breaks where the employer provides a nursery or room for breastfeeding;¹¹³⁴ one-hour daily breaks¹¹³⁵ and legislation providing for two daily breaks for a period of one year for breastfeeding or entitlement to begin or leave work earlier.¹¹³⁶

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.

To comply with this provision, States Parties are not obliged to enact specific regulations for women if they can demonstrate the existence of regulations applying without distinction to workers of both sexes.¹¹³⁷

¹¹²² Conclusions XXI-4 (2019), Spain

¹¹²³ Conclusions XXI-4 (2019), Spain

¹¹²⁴ Conclusions XXI-4 (2019), Spain

¹¹²⁵ Conclusions 2005, Cyprus; Conclusions I (1969), Statement of Interpretation on Article 8

¹¹²⁶ Conclusions XXI-4 (2019), Spain

¹¹²⁷ Conclusions 2005, Cyprus

¹¹²⁸ Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3

¹¹²⁹ Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3

¹¹³⁰ Conclusions XVII-2 (2005), Spain

¹¹³¹ Conclusions XIII-4 (1996), The Netherlands

¹¹³² Conclusions 2005, Sweden

¹¹³³ Conclusions 2005, Cyprus

¹¹³⁴ Conclusions I (1969), Italy

¹¹³⁵ Conclusions I (1969), Germany

¹¹³⁶ Conclusions 2011, France

¹¹³⁷ Conclusions X-2 (1988), Statement of Interpretation on Article 8§4

The regulations must:

- ▶ allow night workers with family responsibilities to transfer to a day work, and preclude employers from obliging such workers to move to night work;¹¹³⁸
- ▶ 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.¹¹³⁹

In order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation when an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health.¹¹⁴⁰ In particular, in cases where women cannot be employed in their workplace due to health and safety concerns and as a result, are transferred to another post or, should such a transfer not be possible, are granted leave instead, States Parties must ensure that during the protected period, they are entitled to their average previous pay or provided with a social security benefit corresponding to 100% of their previous average pay.¹¹⁴¹ Further, women should have the right to return to their previous employment.¹¹⁴² This right should be guaranteed by law.¹¹⁴³

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.

This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines.¹¹⁴⁴ 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.¹¹⁴⁵

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.¹¹⁴⁶ 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.¹¹⁴⁷

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.¹¹⁴⁸ If this is not possible women should be entitled to paid leave or social security benefit corresponding to 100% of their previous average pay.¹¹⁴⁹ The employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.¹¹⁵⁰

1138 [Conclusions 2003, France](#)

1139 [Conclusions X-2 \(1988\), Statement of Interpretation on Article 8§4](#)

1140 [Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5](#)

1141 [Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5](#)

1142 [Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5](#)

1143 [Conclusions 2019, Albania](#)

1144 [Conclusions X-2 \(1988\), Statement of Interpretation on Article 8§5 \(i.e. 8§4b\) of the 1961 Charter](#)

1145 [Conclusions X-2 \(1990\), Statement of Interpretation on Article 8§5 \(i.e. 8§4b\) of the 1961 Charter](#)

1146 [Conclusions 2019, Ukraine](#)

1147 [Conclusions 2003, Bulgaria](#)

1148 [Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5](#)

1149 [Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5](#)

1150 [Conclusions 2019, Ukraine](#)

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 requires States Parties to set up and operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance.¹¹⁵¹

Article 9 foresees a two-fold obligation for States Parties: on one hand the promotion and provision of guidance relating to education possibilities, and on the other hand, guidance services for vocational opportunities.¹¹⁵² 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.¹¹⁵³ Vocational guidance facilities should be placed at the disposal not only of unemployed persons but of all categories of students and particularly young people leaving school.¹¹⁵⁴ Foreigners and stateless persons must also enjoy access to vocational guidance on an equal footing both within the education system and in the labour market.¹¹⁵⁵

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including nationals of other States Parties lawfully resident or regularly working on the territory of the State Party concerned.¹¹⁵⁶ 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 State Party concerned before starting training.¹¹⁵⁷ 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.¹¹⁵⁸ 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.¹¹⁵⁹

The right to vocational guidance must be guaranteed:

- ▶ within the school system (information on training and access to training);¹¹⁶⁰
- ▶ within the labour market (information on vocational training and retraining, career planning, etc). In this framework, the right to vocational guidance must be guaranteed shall address in particular to school-leavers, job-seekers and unemployed persons.¹¹⁶¹

The indicators taken into consideration when assessing vocational guidance are: objectives, organisation, operation, overall expenditure, number of staff and number of beneficiaries.¹¹⁶²

Vocational guidance must be provided free of charge, by a sufficient number of qualified staff, to a significant number of persons and with an adequate budget, both within the school system and within the labour market.¹¹⁶³ During times of economic recession vocational guidance is of great importance.¹¹⁶⁴

Situations where only 50% of schools offer consistent vocational services are not in conformity with Article 9 of the Charter.¹¹⁶⁵

¹¹⁵¹ Conclusions I (1969), Statement of Interpretation on Article 9

¹¹⁵² Conclusions XIV-2 (1998), Statement of Interpretation on Article 9

¹¹⁵³ Conclusions IV (1975), Statement of Interpretation on Article 9

¹¹⁵⁴ Conclusions I (1969), Statement of Interpretation on Article 9

¹¹⁵⁵ Conclusions 2020, Bosnia and Herzegovina

¹¹⁵⁶ Conclusions 2020, 2012, Montenegro

¹¹⁵⁷ Conclusions 2020, 2012, Montenegro

¹¹⁵⁸ Conclusions XVI-2 (2003), Poland

¹¹⁵⁹ Conclusions 2012, Montenegro

¹¹⁶⁰ Conclusions 2012, Montenegro

¹¹⁶¹ Conclusions 2012, Montenegro

¹¹⁶² Conclusions 2012, Montenegro

¹¹⁶³ Conclusions 2020, Lithuania

¹¹⁶⁴ Conclusions IV (1975), Statement of Interpretation on Article 9

¹¹⁶⁵ Conclusions 2020, Lithuania

Where States Parties have accepted Article 9 and Article 15, vocational guidance of persons with disabilities is dealt with under Article 15.¹¹⁶⁶ A lack of information on the expenditure and staffing related to vocational guidance services offered to persons with disabilities leads to a finding of non-conformity under Article 9.¹¹⁶⁷

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.¹¹⁶⁸

Article 10§1 covers all kind of higher education.¹¹⁶⁹ In view of the evolution of national systems, which tend to blur the boundaries between education and training at all levels and merge them into an approach promoting 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 Article 10§3 of the Charter).¹¹⁷⁰ University and non-university higher education are considered to be vocational training insofar as they provide students with the knowledge and skills necessary to exercise a profession.¹¹⁷¹

At a time of economic recession, the importance of vocational training should be emphasised, and priority should be given to young persons, who face high levels of unemployment.¹¹⁷²

In order to provide for vocational training States Parties must:

- ▶ ensure general and vocational secondary education, university and non-university higher education; apprenticeships and continuing education;¹¹⁷³
- ▶ build bridges between secondary vocational education and university and non-university higher education;¹¹⁷⁴
- ▶ 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;¹¹⁷⁵
- ▶ take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;¹¹⁷⁶

Access to higher technical or university education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another: it also implies that registration fees or other educational costs should not create financial obstacles for some candidates.¹¹⁷⁷ Other measures must be taken to ease access to technical or university higher education based solely on individual aptitude (for example by having enough establishments, a reasonable level of educational fees and by offering scholarships and other grants or benefits).¹¹⁷⁸

The main indicators of compliance with Article 10§1 include: the existence of the education and training system; that system's total capacity (in particular, the ratio between training places and candidates); the total

¹¹⁶⁶ Conclusions 2003, France

¹¹⁶⁷ Conclusions 2020, Azerbaijan

¹¹⁶⁸ Conclusions I (1969), Statement of Interpretation on Article 10§1

¹¹⁶⁹ Conclusions 2003, France

¹¹⁷⁰ Conclusions 2003, France

¹¹⁷¹ Conclusions 2003, France

¹¹⁷² Conclusions IV (1975), Statement of Interpretation on Article 10

¹¹⁷³ Conclusions 2007, Ireland

¹¹⁷⁴ Conclusions 2016, Russian Federation

¹¹⁷⁵ Conclusions 2016, Russian Federation

¹¹⁷⁶ Conclusions 2016, Russian Federation

¹¹⁷⁷ Conclusions 2003, France

¹¹⁷⁸ Conclusions I (1969), Statement of Interpretation on Article 10§1

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.¹¹⁷⁹

Strategies and measures must be adopted to match the skills acquired through vocational education and training with the demands of the labour market, and in particular in view of technological developments and of globalisation.¹¹⁸⁰

According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other States Parties lawfully resident or regularly working on the territory of the State Party concerned.¹¹⁸¹ This implies that no length of residence is required from students and trainees residing in any capacity, or having the right to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training.¹¹⁸²

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.¹¹⁸³ Length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.¹¹⁸⁴

Measures must be taken to integrate migrants and refugees into vocational education and training.¹¹⁸⁵ Where the law on employment promotion and labour market institutions does not provide for any specific instruments on vocational training or skills development for refugees, the situation is not in conformity with Article 10§1.¹¹⁸⁶

The situation is not in conformity with Article 10§1 of the Charter where nationals of other States Parties suffer from indirect discrimination due to a one-year length of residence requirement for access to higher education.¹¹⁸⁷

Vocational training of persons with disabilities is dealt with under Article 15 of the Charter for States Parties having accepted Article 15.¹¹⁸⁸

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.

The apprenticeship facilities referred to in the Charter should not be purely empirical or aim solely at manual training but should be conceived in broad terms and comprise full, co-ordinated and systematic training.¹¹⁸⁹ ‘Apprenticeship’ means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract but also be school-based vocational training.¹¹⁹⁰ Apprenticeship must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.¹¹⁹¹

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.¹¹⁹² In addition, the main indicators for assessing compliance with this provision are the existence of the apprenticeship system and other training arrangements for young people, the quality of such training, i.e. the number of apprentices, the total amount of expenditure – both public and private – devoted to these types of training, and a sufficient supply of places to meet all demands.¹¹⁹³

The compulsory periods of partial experience forming part of the training of students in areas such as medicine, dentistry, law and education, whether in the course of their university studies or after, fall within the scope of Article 10§2.¹¹⁹⁴

¹¹⁷⁹ [Conclusions 2012, Cyprus](#)

¹¹⁸⁰ [Conclusions 2020, Ukraine](#)

¹¹⁸¹ [Conclusions 2003, Slovenia](#)

¹¹⁸² [Conclusions 2003, Slovenia](#)

¹¹⁸³ [Conclusions 2003, Slovenia](#)

¹¹⁸⁴ [Conclusions 2003, Slovenia](#)

¹¹⁸⁵ [Conclusions 2020, Estonia](#)

¹¹⁸⁶ [Conclusions XXII-1 \(2020\), Poland](#)

¹¹⁸⁷ [Conclusions 2007, Ireland](#)

¹¹⁸⁸ [Conclusions 2003, Slovenia](#)

¹¹⁸⁹ [Conclusions I \(1969\), Statement of Interpretation on Article 10§2](#)

¹¹⁹⁰ [Conclusions XIX-1 \(2008\), Slovak Republic](#)

¹¹⁹¹ [Conclusions XIV-2 \(1998\), Slovak Republic](#)

¹¹⁹² [Conclusions XVI-2 \(2004\), Malta](#)

¹¹⁹³ [Conclusions 2020, Georgia](#)

¹¹⁹⁴ [Conclusions III \(1973\), Statement of Interpretation on Article 10§2](#)

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 Article 10§1.¹¹⁹⁵ This implies that no length of residence is required from students and trainees residing in any capacity, or having the right to reside due to their ties with persons lawfully residing, on the territory of the State Party concerned before starting training.¹¹⁹⁶ 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.¹¹⁹⁷

With respect to access to training, the length of residence or employment requirements and/or the application of the reciprocity clause are not in conformity with the Charter.¹¹⁹⁸

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:

- ▶ **adequate and readily available training facilities for adult workers;**
- ▶ **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.¹¹⁹⁹ Self-employed persons are also covered by this provision.¹²⁰⁰ 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.¹²⁰¹ Specific measures for long-term unemployed people are dealt with under Article 10§4.¹²⁰² 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.¹²⁰³

As regards employed persons, the purpose of Article 10§3 of the Charter is, among others, to oblige States Parties to provide facilities for training and retraining of adult workers, in particular the arrangements for retraining redundant workers and workers affected by economic and technological change.¹²⁰⁴ The aim is to prevent the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development.¹²⁰⁵ Strategies and measures (legal, regulatory and administrative frameworks, financing and practical measures) must be put in place for training and retraining across the entire range of skills (especially digital culture, new technologies, human-machine interaction and new working environments, the use and operation of new tools and machines) which workers need in order to be competitive in emerging labour markets.¹²⁰⁶

As regards unemployed people, vocational training must be available to them.¹²⁰⁷ 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.¹²⁰⁸

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;¹²⁰⁹
- ▶ 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.¹²¹⁰

¹¹⁹⁵ Conclusions 2003, Slovenia

¹¹⁹⁶ Conclusions 2003, Slovenia

¹¹⁹⁷ Conclusions 2003, Slovenia

¹¹⁹⁸ Conclusions 2003, Slovenia

¹¹⁹⁹ Conclusions 2012, Serbia

¹²⁰⁰ Conclusions 2012, Serbia

¹²⁰¹ Conclusions 2012, Serbia

¹²⁰² Conclusions 2012, Serbia

¹²⁰³ Conclusions 2012, Serbia

¹²⁰⁴ Conclusions XIX-1 (2008), Spain

¹²⁰⁵ Conclusions XIX-1 (2008), Spain

¹²⁰⁶ Conclusions XXII-1 (2021), Luxembourg

¹²⁰⁷ Conclusions XIX-1 (2008), Hungary

¹²⁰⁸ Conclusions 2012, Serbia

¹²⁰⁹ Conclusions 2012, Serbia

¹²¹⁰ Conclusions 2012, Serbia

Any length of residence or employment requirement is contrary to the Charter.¹²¹¹

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.¹²¹² A person who has been without work for 12 months or more is long-term unemployed.¹²¹³

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.¹²¹⁴

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals.¹²¹⁵ Access to financial assistance for studies shall be provided to nationals of other States Parties lawfully resident in any capacity, or having authority to reside by reason of their ties with persons lawfully residing in the territory of the Party concerned.¹²¹⁶ Students and trainees, who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training are not covered by this provision of the Charter.¹²¹⁷ Therefore, Article 10§4 does not require the States Parties to grant financial aid to any foreign national who is not already resident in the State Party concerned, on an equal footing with its nationals.¹²¹⁸ However, it requires that nationals of other States Parties who already have a resident status in the State Party concerned, receive equal treatment with nationals in the matters of both access to vocational education (Article 10§1) and financial aid for education (Article 10§4).¹²¹⁹ Those States Parties who impose a permanent residence requirement or any length of residence requirement on nationals of other States Parties in order for those persons to be able apply for financial aid for vocational education and training are in breach of the Charter.¹²²⁰

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.

i. 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.¹²²¹ According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other States Parties lawfully resident or regularly working on the territory of the State Party concerned.¹²²² 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.¹²²³ 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.¹²²⁴

The situation is not in conformity with Article 10§5 of the Charter where there is a length of residence requirement of three years for eligibility for financial aid for vocational training.¹²²⁵

¹²¹¹ [Conclusions XVI-2 \(2004\), Ireland](#)

¹²¹² [Conclusions 2003, Italy](#)

¹²¹³ [Conclusions 2003, Italy](#)

¹²¹⁴ [Conclusions 2020, Cyprus](#)

¹²¹⁵ [Conclusions 2020, Ukraine](#)

¹²¹⁶ [Conclusions XXII-1 \(2020\), Luxembourg](#)

¹²¹⁷ [Conclusions XXII-1 \(2020\), Luxembourg](#)

¹²¹⁸ [Conclusions XXII-1 \(2020\), Luxembourg](#)

¹²¹⁹ [Conclusions XXII-1 \(2020\), Luxembourg](#)

¹²²⁰ [Conclusions XXII-1 \(2020\), Luxembourg](#)

¹²²¹ [Conclusions 2020, Malta](#)

¹²²² [Conclusions XVI-2 \(2004\), United Kingdom](#)

¹²²³ [Conclusions XVI-2 \(2004\), United Kingdom](#)

¹²²⁴ [Conclusions XVI-2 \(2004\), United Kingdom](#)

¹²²⁵ [Conclusions 2020, Andorra](#)

ii. granting financial assistance in appropriate cases;

The granting of financial assistance in appropriate cases means providing financial assistance to persons who would not otherwise be in a position to undergo apprenticeship or training.¹²²⁶ It entails, in addition to free or low-cost training, the provision of assistance in the form of grants, allowances or other arrangements where necessary.¹²²⁷ All issues relating to financial assistance are covered by Article 10§5, including allowances for training programmes in the context of the labour market policy.¹²²⁸ States Parties must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit.¹²²⁹ In any event, assistance should at least be available for those in need and shall be adequate.¹²³⁰ It may consist of scholarships or loans at preferential interest rates.¹²³¹ The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.¹²³²

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.¹²³³

iii. 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.¹²³⁴ 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.¹²³⁵ It does not imply any previous training.¹²³⁶ The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.¹²³⁷

iv. 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.¹²³⁸ In particular, the participation of employers’ and workers’ organisations is required in supervising the effectiveness of training schemes.¹²³⁹

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.¹²⁴⁰ 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”.¹²⁴¹

¹²²⁶ Conclusions XIII-1 (1993), Turkey

¹²²⁷ Conclusions XIII-1 (1993), Turkey

¹²²⁸ Conclusions 2016, Italy

¹²²⁹ Conclusions XIX-1 (2008), Turkey

¹²³⁰ Conclusions XIX-1 (2008), Turkey

¹²³¹ Conclusions 2016, Italy

¹²³² Conclusions 2016, Italy; Conclusions XIV-2 (1998), Ireland

¹²³³ Conclusions 2003, Slovenia

¹²³⁴ Conclusions 2020, Turkey

¹²³⁵ Conclusions 2020, Turkey

¹²³⁶ Conclusions 2020, Turkey

¹²³⁷ Conclusions 2020, Turkey

¹²³⁸ Conclusions 2020, Lithuania

¹²³⁹ Conclusions XIV-2 (1998), United Kingdom

¹²⁴⁰ Conclusions 2005, Statement of Interpretation on Article 11

¹²⁴¹ International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, decision on the merits of 3 November 2004, §31

The right to protection of health must be protected not merely theoretically, but also in practice. Implementation of the Charter requires States Parties not only to take legal measures but also practical action making available the resources and the operational procedures necessary to give full effect to the rights specified therein.¹²⁴²

Respect for physical and psychological integrity is an integral part of the rights to the protection of health guaranteed by Article 11.¹²⁴³

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 States Parties to the Charter.¹²⁴⁴

Article 11 imposes a range of positive and negative obligations.¹²⁴⁵ 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.¹²⁴⁶

This interpretation of Article 11 is consistent with the legal protection afforded by other important international human rights provisions related to health.¹²⁴⁷

States Parties must ensure the best possible state of health for the population according to existing knowledge. Public health arrangements should ensure special measures to protect the health of mothers, children and older persons.¹²⁴⁸

Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action.¹²⁴⁹ 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.¹²⁵⁰

Infant and maternal mortality are good indicators of how well a particular country’s overall health system is operating.¹²⁵¹ 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.¹²⁵² 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.¹²⁵³

Avoidable risks include those which result from environmental threats. Article 11§1 guarantees the right to a healthy environment.¹²⁵⁴

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.¹²⁵⁵

¹²⁴² [Statement of Interpretation on the right to protection of health in times of pandemic](#), 21 April 2020

¹²⁴³ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §74

¹²⁴⁴ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §71

¹²⁴⁵ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §79

¹²⁴⁶ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §79

¹²⁴⁷ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §79

¹²⁴⁸ [Conclusions I \(1969\)](#), [Statement of Interpretation on Article 11](#)

¹²⁴⁹ [Conclusions XV-2 \(2001\)](#), Denmark

¹²⁵⁰ [Conclusions 2005](#), Lithuania

¹²⁵¹ [Conclusions 2003](#), Romania

¹²⁵² [Conclusions 2003](#), France

¹²⁵³ [Conclusions 2013](#), Ukraine

¹²⁵⁴ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), complaint No.30/2005, decision on the merits of 6 December 2006, §§ 194-195, §202

¹²⁵⁵ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §80

Right of access to health care

The right to protection of health includes the right of access to health care, and that access to health care must be ensured to everyone without discrimination.¹²⁵⁶ This implies that healthcare must be effective and affordable to everyone, and that vulnerable groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected.¹²⁵⁷

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 conjunction with Article 11 on the right to protection of health, particularly with its first paragraph on access to health care.¹²⁵⁸

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.¹²⁵⁹

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.¹²⁶⁰

Providing migrant children with shelter and appropriate accommodation is a minimum prerequisite for attempting to remove the causes of ill-health among these minors (including epidemic, endemic or other diseases).¹²⁶¹

Failure to provide appropriate accommodation and sufficient health care to accompanied and unaccompanied migrant children with the result that some of these children are forced to live on the streets or are held in detention under "protective custody", breaches Article 11§§ 1 and 3 of the Charter.¹²⁶²

The Committee has stressed the importance of effective medical screening and psychosocial support of migrant and asylum-seeking children upon arrival.¹²⁶³ Such screening is indispensable for identifying those children with health problems, including mental health problems, and transmissible diseases.¹²⁶⁴ A shortage in doctors and medical staff within reception facilities leads to delays in the medical and psychosocial assessment of children, with the risk that health-related problems resulting from the poor living conditions prevailing in those centres or the transmission of diseases remain undetected and arise later.¹²⁶⁵

Language cannot be a barrier to accessing adequate medical services.¹²⁶⁶

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;¹²⁶⁷

¹²⁵⁶ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §218

¹²⁵⁷ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §218

¹²⁵⁸ *Conclusions 2005, Statement of Interpretation on Article 11*

¹²⁵⁹ *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §28

¹²⁶⁰ *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, decision on the merits of 3 November 2004, §32

¹²⁶¹ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §221

¹²⁶² *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §230

¹²⁶³ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §227

¹²⁶⁴ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §227

¹²⁶⁵ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, decision on the merits of 26 January 2021, §227

¹²⁶⁶ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 151/2017, decision on the merits of 5 December 2018, §80

¹²⁶⁷ *Conclusions I (1969), Statement of Interpretation on Article 11; Conclusions XV-2 (2001), Addendum, Cyprus*

- ▶ 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.¹²⁶⁸ Steps must be taken to reduce the financial burden on patients from the most disadvantaged sections of the community;¹²⁶⁹
- ▶ 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.¹²⁷⁰
- ▶ 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 transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life;¹²⁷¹
- ▶ 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.¹²⁷² 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.¹²⁷³ Conditions of stay in hospital, including psychiatric hospitals, must be satisfactory and compatible with human dignity.¹²⁷⁴
- ▶ States authorities have a responsibility to support the persons whose degree of exclusion, past experience and social status places them in a situation where they may not have the means for seeking remedies, in order to overcome the barriers so that they can effectively assert their rights.¹²⁷⁵

During a pandemic:

- ▶ Healthcare must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place.¹²⁷⁶
- ▶ Health equity as defined by the World Health Organisation (WHO) should be the goal: specifically, the absence of avoidable, unfair, or remediable differences among groups of people, whether those groups are defined socially, economically, demographically or geographically or by other means of stratification.¹²⁷⁷
- ▶ States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed and that their working conditions are healthy and safe (see also Article 3 of the Charter). This includes the provision of necessary personal protective equipment.¹²⁷⁸

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 11.¹²⁷⁹

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

¹²⁶⁸ Conclusions 2013, Georgia

¹²⁶⁹ Conclusions XVII-2 (2005), Portugal

¹²⁷⁰ Conclusions 2005, Statement of Interpretation on Article 11

¹²⁷¹ Conclusions XV-2 (2001), United Kingdom; Conclusions XX-2 (2013), Poland

¹²⁷² Conclusions XV-2 (2001), Addendum, Turkey

¹²⁷³ Conclusions XV-2 (2001), Denmark

¹²⁷⁴ Conclusions 2005, Statement of Interpretation on Article 11; Conclusions 2005, Romania

¹²⁷⁵ *European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 151/2017, decision on the merits of 5 December 2018, §84

¹²⁷⁶ *Statement of Interpretation on the right to protection of health in times of pandemic*, 21 April 2020

¹²⁷⁷ *Statement of Interpretation on the right to protection of health in times of pandemic*, 21 April 2020

¹²⁷⁸ *Statement of Interpretation on the right to protection of health in times of pandemic*, 21 April 2020

¹²⁷⁹ *International Planned Parenthood Federation – European Network (IPPF EN) v. Italy*, Complaint No. 87/2012, decision on the merits of 10 September 2013, §66; see also *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No 91/2013, decision on the merits of 12 October 2015, §162 and 190

(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.”¹²⁸⁰

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.¹²⁸¹

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.¹²⁸²

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.¹²⁸³

Furthermore, Article 11 does not impose on States Parties a positive obligation to provide a right to conscientious objection for healthcare workers.¹²⁸⁴

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:

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 that they implement an effective public health education policy for both the general population and population groups affected by specific health-related problems. This includes environmental health education as appropriate.¹²⁸⁵

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.¹²⁸⁶ 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.¹²⁸⁷

¹²⁸⁰ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §81

¹²⁸¹ [Transgender Europe and ILGA Europe v. Czech Republic](#), Complaint No. 117/2015, decision on the merits of 15 May 2018, §82

¹²⁸² [International Planned Parenthood Federation – European Network \(IPPF EN\) v. Italy](#), Complaint No. 87/2012, decision on the merits of 10 September 2013, §69; see also [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy](#), Complaint No 91/2013, decision on the merits of 12 October 2015, §§166-167

¹²⁸³ [Federation of Catholic Families Associations in Europe \(FAFCE\) v. Sweden](#), Complaint No 99/2013, decision on the merits of 17 March 2015, §73

¹²⁸⁴ [Federation of Catholic Families Associations in Europe \(FAFCE\) v. Sweden](#), Complaint No 99/2013, decision on the merits of 17 March 2015, §71

¹²⁸⁵ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No.30/2005, decision on the merits of 6 December 2006, §§ 216 and 219

¹²⁸⁶ [Conclusions 2007, Albania](#)

¹²⁸⁷ [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

In case of a pandemic, States Parties must take all necessary measures to educate people about the risks posed by the disease in question. This entails carrying out public awareness programmes so as to inform people about how to mitigate the risks of contagion and how to access healthcare services as necessary.¹²⁸⁸

Health education must be carried out throughout school life and form part of school curricula.¹²⁸⁹ 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.¹²⁹⁰

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.¹²⁹¹

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.¹²⁹²

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;
- ▶ 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.);
- ▶ 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;
- ▶ a procedure is in place for monitoring and evaluating the education with a view to effectively meeting the above requirements.¹²⁹³

The obligations under Article 11§2 as defined above do not affect the rights of parents to inform 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).¹²⁹⁴

Doctor's consultations and screening

There must be free and regular doctor's consultation and screening for pregnant women and children throughout the country.¹²⁹⁵

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.¹²⁹⁶

¹²⁸⁸ [Statement of Interpretation on the right to protection of health in times of pandemic](#), 21 April 2020

¹²⁸⁹ [Conclusions 2007, Albania](#)

¹²⁹⁰ [Conclusions 2007, Albania](#)

¹²⁹¹ [Conclusions 2007, Albania](#)

¹²⁹² [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

¹²⁹³ [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

¹²⁹⁴ [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

¹²⁹⁵ [Conclusions 2005, Republic of Moldova](#)

¹²⁹⁶ [Conclusions XV-2 \(2001\), France](#)

There should be screening, preferably systematic, for all the diseases that constitute the principal causes of death.¹²⁹⁷ Where it has proved to be an effective means of prevention, screening must be used to the full.¹²⁹⁸

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 inter alia to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

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.¹²⁹⁹

Such measures may include testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards.¹³⁰⁰ Measures required must not only comply with the obligation to protect the right to protection of health under Article 11, but also with other Charter obligations related to health, including obligations in respect of the right of workers to safe and healthy working conditions (Article 3), the right of persons in need of social and medical assistance (Article 13), the rights of the elderly to protection and health care (Article 23), the right of children and young persons to protection and health care (Article 7§§ 9-10 and Article 17§1).¹³⁰¹

Further, such measures should be taken in the shortest possible time, with the maximum use of available financial, technical and human resources, and by all appropriate means. In times of pandemic, such means must be both national and international in character, including international assistance and cooperation.¹³⁰² Furthermore, States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected, including especially their families on whom falls the heaviest burden in the event of institutional shortcomings.¹³⁰³

Finally, States Parties must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection.¹³⁰⁴

Healthy environment

Under the Charter overcoming pollution is an objective that is to 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.¹³⁰⁵ The measures taken by States Parties are assessed with reference to States Parties' national legislation, regulations and undertakings entered into with regard to the European Union and the United Nations,¹³⁰⁶ as well as in terms of how the relevant law is applied in practice.

Air pollution

In this respect the guarantee of a healthy environment requires that States Parties:

- ▶ develop and regularly update sufficiently comprehensive environmental legislation and regulations;¹³⁰⁷

¹²⁹⁷ Conclusions 2005, Republic of Moldova

¹²⁹⁸ Conclusions XV-2 (2001), Belgium

¹²⁹⁹ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020; see also [International Federation of Human Rights Leagues \(FIDH\) v. Greece](#), Complaint No. 72/2011, decision on the merits of 23 January 2013, §§ 150-154.

¹³⁰⁰ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020

¹³⁰¹ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020

¹³⁰² Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020

¹³⁰³ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020, citing [International Association Autism Europe v. France](#), Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

¹³⁰⁴ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020

¹³⁰⁵ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 205

¹³⁰⁶ Conclusions XV-2 (2001), Italy

¹³⁰⁷ Conclusions XV-2 (2001), Addendum, Slovak Republic

- ▶ take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level¹³⁰⁸ 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 (UNFCCC) of 9 May 1992, and of the Kyoto Protocol to the UNFCCC of 11 December 1997;¹³⁰⁹ 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;¹³¹⁰
- ▶ assess health risks through epidemiological monitoring of the groups concerned.¹³¹¹

Water management

In order to comply with Article 11 §3 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.¹³¹²

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.¹³¹³

Risks relating to asbestos

Article 11 requires States Parties to adopt a policy that bans the use, production and sale of asbestos and products containing it.¹³¹⁴ 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.¹³¹⁵

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.¹³¹⁶

Noise pollution

Preventive and protective measures concerned with noise pollution are also required under Article 11.

Housing

In the case of States Parties that have not accepted Article 31 (right to housing) – the enforcement of public health standards in housing is required under Article 11.¹³¹⁷

¹³⁰⁸ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No.30/2005, decision on the merits of 6 December 2006, §203

¹³⁰⁹ [Conclusions XV-2 \(2001\)](#), Italy

¹³¹⁰ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203, 209, 210 and 215

¹³¹¹ [Marangopoulos Foundation for Human Rights \(MFHR\) v. Greece](#), Complaint No. 30/2005, decision on the merits of 6 December 2006, §§ 203 and 220

¹³¹² [Conclusions 2013](#), Georgia

¹³¹³ [Conclusions XV-2 \(2001\)](#), France ; [Conclusions XV-2 \(2001\)](#), Denmark

¹³¹⁴ [Conclusions XVII-2 \(2005\)](#), Portugal

¹³¹⁵ [Conclusions XVII-2 \(2005\)](#), Latvia

¹³¹⁶ [Conclusions XV-2 \(2001\)](#), Addendum, Cyprus

¹³¹⁷ [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.¹³¹⁸ WHO indicators and the Framework Convention on Tobacco Control are taken into consideration for the assessment.¹³¹⁹

To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing.¹³²⁰ In particular, the sale of tobacco to young persons must be banned,¹³²¹ as must smoking in public places,¹³²² including transport, and advertising on posters and in the press.¹³²³ The Committee will assess the effectiveness of such policies on the basis of statistics on tobacco consumption.¹³²⁴

This approach in terms of the preventive measures to be adopted also applies *mutatis mutandis* to anti-alcoholism and drug addiction measures.¹³²⁵

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.¹³²⁶

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.¹³²⁷

Vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors.¹³²⁸

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,¹³²⁹ 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.¹³³⁰ States Parties must ensure this right through the existence of a social security system established by law and functioning in practice.¹³³¹

¹³¹⁸ Conclusions XV-2 (2001), Greece

¹³¹⁹ Conclusions 2013, Malta

¹³²⁰ Conclusions XVII-2 (2005), Malta

¹³²¹ Conclusions XV-2 (2001), Portugal

¹³²² Conclusions 2013, Andorra

¹³²³ Conclusions XV-2 (2001), Greece

¹³²⁴ Conclusions XVII-2 (2005), Malta

¹³²⁵ Conclusions XVII-2 (2005), Malta

¹³²⁶ Conclusions XV-2 (2001), Belgium

¹³²⁷ Conclusions XVII-2 (2005), Latvia

¹³²⁸ Statement of Interpretation on the right to protection of health in times of pandemic, 21 April 2020

¹³²⁹ Conclusions 2005, Republic of Moldova

¹³³⁰ Conclusions XIV-1 (1998), Ireland

¹³³¹ Conclusions 2017, Bosnia and Herzegovina

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 social risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.¹³³²

Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined allowances related to certain risks.¹³³³

Material and personal scope

A social security system exists within the meaning of Article 12§1 when it complies with the following criteria:¹³³⁴

- ▶ **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.¹³³⁵
- ▶ **personal scope:** the social security system must cover a significant percentage of the population for the health insurance and family benefit.¹³³⁶ Health coverage should extend beyond employment relationships.¹³³⁷ The system should cover a significant percentage of the active population as regards income-replacement benefits, such as sickness, maternity and unemployment benefits, pensions, and work accidents or occupational diseases benefits.¹³³⁸
- ▶ **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.).¹³³⁹

The principle of collective funding [i.e. funded by contributions of employers and employees and/or by the state budget]¹³⁴⁰ 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.¹³⁴¹

Adequacy of social security benefits

A social security system must guarantee an effective right to social security with respect to the benefits provided under each branch of that system.¹³⁴²

Under Article 12§1, when benefits 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.¹³⁴³ The Committee calculates this on the basis of the Eurostat at-risk-of-poverty threshold value.¹³⁴⁴ 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.¹³⁴⁵ Where the minimum level of an income-replacement benefit falls below 40% of the

¹³³² Statement of interpretation on Articles 12 and 13, Conclusions XIII-4

¹³³³ Conclusions 2017, Georgia

¹³³⁴ Conclusions XVI-1 (2002), Statement of Interpretation on Article 12

¹³³⁵ Conclusions 2006, Bulgaria

¹³³⁶ Conclusions 2017, Georgia

¹³³⁷ Conclusions 2017, Georgia

¹³³⁸ Conclusions 2017, Turkey

¹³³⁹ *Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits, 9 September 2014, §58, citing Conclusions XVIII-1 (2006), The Netherlands, Article 12§1

¹³⁴⁰ *Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits, 9 September 2014, §58, citing Conclusions XVIII-1 (2006), The Netherlands, Article 12§1

¹³⁴¹ Conclusions XVIII-1 (2006), The Netherlands

¹³⁴² Conclusions XIII-4 (1996), Statement of Interpretation on Article 12

¹³⁴³ *Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits, 9 September 2014, §63

¹³⁴⁴ Conclusions XXI-2 (2017), United Kingdom

¹³⁴⁵ Conclusions 2013, Hungary

median equivalised income (or the poverty threshold indicator), its aggregation with other benefits cannot bring the situation into conformity.¹³⁴⁶

Unemployment benefits must also meet specific conditions in order to be in conformity with Article 12§1:

- ▶ Their payment must be for a reasonable duration.¹³⁴⁷
- ▶ There must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching their previous skills without losing their unemployment benefits. It amounts to discrimination in the meaning of Article E (health status).¹³⁴⁸

With regard to maternity and family benefits, while the existence of maternity and family branches of the social security system is taken into consideration for the purposes of Article 12§1, the scope and level of those benefits are assessed under Articles 8¹³⁴⁹ and 16¹³⁵⁰ respectively.¹³⁵¹ Similarly, in its assessment of State Party conformity with Article 12§1, the Committee refers to the assessment done under Article 23, as regards old age benefits, and to the assessment done under Article 13§1, as regards social assistance benefits. In this connection, it has held that a conclusion of non-conformity under Article 23, due to the inadequate level of old-age pensions, would be mentioned under Article 12§1 but would not entail a finding of non-conformity on the same ground.¹³⁵²

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 maintain a social security system which is at least equal to that required for the purposes of 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 Parts II to X must be accepted certain branches count for more than one: Part II (medical care) counts as two parts, and Part V (old age) counts as three.¹³⁵³ Each branch sets minimum levels of personal coverage and minimum levels of benefits.¹³⁵⁴

Where a State Party has ratified the European Code of Social Security, the conclusion under this paragraph is 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).¹³⁵⁵ 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.¹³⁵⁶

When the State concerned has not ratified the European Code of Social Security, the Committee will assess its social security system in order to decide on the conformity of that system with Article 12§2.¹³⁵⁷ 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, the Committee has to be provided with thorough information regarding the branches covered, the personal scope and the level of benefits offered.¹³⁵⁸ Findings under Article 12§1 are also taken into account.¹³⁵⁹

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 Article 12§1 and 12§2 have not been met or if these provisions have not been accepted by the state in question.¹³⁶⁰

¹³⁴⁶ [Finnish Society of Social Rights v. Finland](#), Complaint No. 88/2012, decision on the merits, 9 September 2014, §§ 59-63

¹³⁴⁷ [Conclusions XVIII-1 \(2006\), Malta](#)

¹³⁴⁸ [Conclusions 2013, Slovak Republic](#)

¹³⁴⁹ [Conclusions XX-4 \(2015\), Statement of interpretation on Article 8§1](#)

¹³⁵⁰ [Conclusions I \(1969\); Statement of interpretation on Article 16](#)

¹³⁵¹ [Conclusions 2017, General Introduction](#)

¹³⁵² [Conclusions 2017, General Introduction](#)

¹³⁵³ [Conclusions 2013, Serbia](#)

¹³⁵⁴ [Conclusions 2013, Serbia](#)

¹³⁵⁵ [Conclusions 2006, Italy](#)

¹³⁵⁶ [Conclusions 2006, Italy](#)

¹³⁵⁷ [Conclusions XIV-1 \(1998\), Finland](#)

¹³⁵⁸ [Conclusions 2013, Serbia](#)

¹³⁵⁹ See, e.g., [Conclusions 2017, Andorra](#)

¹³⁶⁰ [Conclusions 2009, Statement of Interpretation on Article 12§3](#)

The expansion of schemes, protection against new risks, or an increase(s) in the level of benefits are all examples of improvement.¹³⁶¹

A partly restrictive development in the social security system (which can also be described as a 'restriction' or 'limitation' to 'rights in the area of social security') is not automatically in violation of Article 12§3.¹³⁶² It should be assessed under Article G of the Revised Charter.¹³⁶³ 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.);¹³⁶⁴
- ▶ the reasons given for the changes (the aims pursued) and the framework of social and economic policy in which they arise;¹³⁶⁵
- ▶ the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);¹³⁶⁶
- ▶ the necessity of the reform;¹³⁶⁷
- ▶ 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);¹³⁶⁸
- ▶ the results obtained by such changes.¹³⁶⁹

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.¹³⁷⁰

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 12.¹³⁷¹

However, with regard to such consolidation measures, any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk.¹³⁷² Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system.¹³⁷³ They should not transform the social security system into a basic social assistance system.¹³⁷⁴ Financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3.¹³⁷⁵

1361 [Conclusions 2013, Georgia](#)

1362 See, e.g., [Federation of employed pensioners of Greece \(\(IKA –ETAM\) v. Greece](#), Complaint No. 76/2012 decision on the merits of 7 December 2012, §70

1363 See, e.g., [Federation of employed pensioners of Greece \(\(IKA –ETAM\) v. Greece](#), Complaint No. 76/2012, decision on the merits of 7 December 2012, §72

1364 [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 12§1, 12§2, 12§3](#)

1365 [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 12§1, 12§2, 12§3](#)

1366 [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 12§1, 12§2, 12§3](#)

1367 [Panhellenic Federation of pensioners of the public electricity corporation \(POS-DEI\) v. Greece](#), Complaint No. 79/2012, decision on the merits, 7 December 2012, §67, citing General Introduction to Conclusions XIV-1, p. 11

1368 [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 12§1, 12§2, 12§3](#)

1369 [Conclusions XVI-1 \(2002\), Statement of Interpretation on Article 12§1, 12§2, 12§3](#)

1370 [Federation of employed pensioners of Greece \(\(IKA –ETAM\) v. Greece](#), Complaint No. 76/2012, decision on the merits of 7 December 2012, §§ 78-83

1371 [Federation of employed pensioners of Greece \(IKA-ETAM\) v. Greece](#), Complaint No. 76/2012, decision on the merits of 7 December 2012, §71

1372 [Federation of employed pensioners of Greece \(\(IKA –ETAM\) v. Greece](#) Complaint No. 76/2012, decision on the merits of 7 December 2012, §47

1373 [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 23 May 2012, §47

1374 [Finnish Society of Social Rights v. Finland](#), Complaint No.88/2012, decision on the merits of 9 September 2014, §85.

1375 [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 23 May 2012, §47. Note that despite the language used, the Committee does not employ retrogression analysis in the way that a number of UN treaty bodies do, for instance. Rather the Committee assesses the compliance of such restrictions with the Charter by using what would be regarded in international human rights law as 'limitations' analysis in terms of Article 31 of the original Charter and Article G of the Revised Charter on 'Restrictions'.

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;

*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.*¹³⁷⁶

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 States Parties lawfully resident or working regularly within the territory of the State 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.¹³⁷⁷ Self-employed workers are also covered.¹³⁷⁸

Finally, the principle of reciprocity does not apply to Article 12§4.¹³⁷⁹

Material scope of Article 12§4a

In order to ensure the right to social security of persons moving between States Parties 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 remove all forms of discrimination from their social security legislation against foreigners in so far as they are nationals of other States.¹³⁸⁰

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.¹³⁸¹ Nor 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 than nationals, and therefore affect them to a greater degree.¹³⁸² However, legislation may require the completion of a period of residence for non-contributory benefits.¹³⁸³ In this respect, Article 12§4 requires that any such prescribed period of residence is reasonable.¹³⁸⁴ A period of five years is considered to be too long.¹³⁸⁵

As regards child benefit, a condition that the child concerned resides on the territory of the paying state may be compatible with Article 12§4.¹³⁸⁶ 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, rather than under Article 16.¹³⁸⁷ However since not all countries apply such a system, states applying the ‘child residence requirement’ are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude

¹³⁷⁶ ETS 35 – Social Charter (Appendix), 18.X.1961

¹³⁷⁷ [Conclusions XIV-1 \(1998\), Turkey](#)

¹³⁷⁸ [Conclusions XIV-1 \(1998\), Turkey](#)

¹³⁷⁹ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 12§4](#)

¹³⁸⁰ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 12§4](#)

¹³⁸¹ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 12§4](#)

¹³⁸² [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 12§4](#)

¹³⁸³ [Conclusions 2004, Lithuania](#)

¹³⁸⁴ [Conclusions 2004, Lithuania](#)

¹³⁸⁵ [Conclusions 2004, Lithuania](#)

¹³⁸⁶ [Conclusions 2006, Italy](#)

¹³⁸⁷ [Conclusions XVI-1 \(2002\), Statement of Interpretation on Articles 12§4 and 16](#)

within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.¹³⁸⁸

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.¹³⁸⁹

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.¹³⁹⁰ 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.¹³⁹¹

In order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.¹³⁹²

- 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 in terms of accrual of rights for a person who changes their country of employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory. In the case of long-term benefits, the pro-rata approach should also be employed.¹³⁹³

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.¹³⁹⁴ States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.¹³⁹⁵

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 States 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".¹³⁹⁶

¹³⁸⁸ Conclusions 2006, Italy

¹³⁸⁹ Conclusions XIII-4 (1996), Statement of Interpretation on Article 12

¹³⁹⁰ Conclusions XVI-1 (2002), Belgium; see also Conclusions XIV-1 (1998), Finland

¹³⁹¹ Conclusions XIV-1 (1998), Norway

¹³⁹² Conclusions XIII-4 (1996), Statement of Interpretation on Article 12

¹³⁹³ Conclusions 2009, Finland

¹³⁹⁴ Conclusions 2009, Finland

¹³⁹⁵ Conclusions 2006, Italy

¹³⁹⁶ Conclusions I (1969), Statement of Interpretation on Article 13

The Charter provides for social security and social assistance in two separate Articles (Articles 12 and 13) carrying different undertakings.¹³⁹⁷ The Committee must therefore take this division into account. The wording of the Charter itself contains no specific indications as to the scope of either of these two notions.¹³⁹⁸ The main criteria to decide whether a particular benefit belongs to social security or to social assistance, is the purpose of that benefit and the conditions attached to it in question.¹³⁹⁹

The Committee thus considers as 'social assistance' those 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.¹⁴⁰⁰ Moreover, as Article 13§1 indicates, 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 their state of health.¹⁴⁰¹

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 they are in need.¹⁴⁰²

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 they are in need.¹⁴⁰³ A minimum age limit may be set on the grant of benefits on condition that the rule ensures that young people below that age limit receive appropriate subsistence assistance,¹⁴⁰⁴ not limited to supplementary or conditional assistance.¹⁴⁰⁵ 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 below) or excluding from social assistance people dismissed for serious misconduct¹⁴⁰⁶ is not in keeping with Article 13§1.¹⁴⁰⁷

The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain "adequate resources".¹⁴⁰⁸ This means the resources needed to live a decent life and meet basic needs in an adequate manner.¹⁴⁰⁹ Conversely, appropriate assistance is that which enables any person to meet their basic needs (see *below*). 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 their own efforts or from other sources, in particular by benefits under a social security scheme".¹⁴¹⁰ Where it appears as "a moral value not legally defined", family solidarity is not regarded as an "other source" of income for persons without resources, as it does not provide persons in need with a clear and precise basis of social support.¹⁴¹¹

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 their means of subsistence (at least emergency assistance should remain available).¹⁴¹² Furthermore, it must be possible to appeal against a decision to suspend or reduce assistance (see below).¹⁴¹³

1397 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13

1398 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13

1399 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13

1400 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13

1401 Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13

1402 [Conclusions 2013, Bosnia and Herzegovina](#)

1403 [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Complaint No. 48/2008, decision on the merits of 18 February 2009, §38

1404 [Conclusions XV-1 \(2000\), France](#)

1405 [Conclusions 2009, France](#)

1406 [Conclusions XIX-2 \(2009\), Luxembourg](#)

1407 [Conclusions XVI-1 \(2003\), Spain](#); see also [Conclusions 2013, Bosnia and Herzegovina](#)

1408 [Conclusions 2013, Bulgaria](#)

1409 [Conclusions XIV-1 \(1998\), Portugal](#)

1410 [Finnish Society of Social Rights v. Finland](#), Complaint No 88/2012, decision on the merits of 9 September 2014, §111

1411 [Conclusions 2009, France](#)

1412 [Conclusions XIV-1 \(1998\)](#), Statement of Interpretation on Article 13§1; [Conclusions 2006](#); [2009 Estonia](#)

1413 [Conclusions 2006, Estonia](#)

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 States Parties”,¹⁴¹⁴ but has not in theory made the introduction of an income guarantee system a condition of conformity with Article 13§1. However, where States Parties have not introduced a general income guarantee system, they have been found not to be in conformity with Article 13§1m on the ground that their system of assistance does not cover the whole population.¹⁴¹⁵

Furthermore, even if under domestic law local or regional authorities are responsible for the delivery/provision of social assistance, States Parties to the Charter remain the ultimate duty-bearers in terms of their international obligations, to ensure that those responsibilities are properly exercised.¹⁴¹⁶ Ultimate responsibility for implementation of official policy lies with the state.¹⁴¹⁷ Accordingly, where social welfare services are decentralised, an assessment of compliance with the Charter will include taking into account the effective application by sub-national bodies.¹⁴¹⁸ In this respect, although the Charter does not require the same level of protection across the country, it requires a reasonable uniformity of treatment.¹⁴¹⁹ Regardless of their strategic choices and priorities, the local entities (regions, provinces and/or municipalities) must nevertheless comply with Article 13 of the Charter.¹⁴²⁰

Insofar as the income guarantee for older 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 those Contacting States that have accepted this provision. Where States Parties have not accepted Article 23, it will be examined under Article 13§1.¹⁴²¹

Medical assistance

Everyone who lacks adequate resources must be able to obtain free of charge, in the event of sickness, the care necessitated by their condition.¹⁴²² 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.¹⁴²³

The Committee has not determined what care must cover, nor whether care 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”,¹⁴²⁴ It has however considered that the right to medical assistance should not be confined to emergency situations.¹⁴²⁵ As such a system that covers expenses for a limited time or does not include primary or specialised outpatient medical care that a person without resources might require, did not sufficiently ensure health care for poor or socially vulnerable persons who become sick.¹⁴²⁶ Furthermore, the seriousness of the illness in question cannot be a factor in refusing to grant medical assistance.¹⁴²⁷

Level and duration of assistance

Assistance must be “appropriate”, i.e. make it possible to live a decent life and sufficient to cover the individual's basic needs.¹⁴²⁸ In order to assess the level of assistance, basic benefits, additional benefits and the poverty threshold in the country are taken into account.¹⁴²⁹ (The poverty threshold is set at 50% of the median

1414 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§1

1415 [Conclusions 2006, Republic of Moldova](#)

1416 [Conclusions 2013, Italy](#)

1417 [Conclusions 2013, Italy](#)

1418 [Conclusions 2013, Italy](#)

1419 [Conclusions 2013, Italy](#)

1420 [Conclusions 2013, Italy](#)

1421 [Conclusions 2009, Armenia](#)

1422 [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Complaint No. 46/2007, decision on the merits of 3 December 2008, §44

1423 [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Complaint No. 46/2007, decision on the merits of 3 December 2008, §44

1424 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1425 [Conclusions 2009, Armenia](#)

1426 [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Complaint No. 46/2007, decision on the merits of 3 December 2008, §44

1427 [Conclusions XIII-4 \(1996\), Greece](#)

1428 [Conclusions XIX-2 \(2009\), Latvia](#)

1429 [Conclusions XIX-2 \(2009\), Latvia](#)

equivalised disposable income and calculated on the basis on the Eurostat at-risk-of-poverty threshold).¹⁴³⁰ The equivalised 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).¹⁴³¹

In the absence of this indicator, the national poverty threshold is taken into account.¹⁴³²

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.¹⁴³³

In conducting this assessment, the level of medical assistance is also taken into account.¹⁴³⁴

Social assistance must be provided for as long as the situation of need persists and cannot therefore be subject to time-limits.¹⁴³⁵ Subject to participating in training or accepting employment (see above), 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.¹⁴³⁶

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.¹⁴³⁷ In particular, making certain forms of social assistance conditional on budgetary resources is not compatible with the Charter.¹⁴³⁸

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,¹⁴³⁹ 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.¹⁴⁴⁰ 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.¹⁴⁴¹

Effective appeal

The right secured by Article 13§1 places an obligation on states “which they may be called on in court to honour”.¹⁴⁴² 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.¹⁴⁴³ 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

¹⁴³⁰ [Conclusions XIX-2 \(2009\), Latvia](#)

¹⁴³¹ [Finnish Society of Social Rights v. Finland](#), Complaint No 88/2012, decision on the merits of 9 September 2014, §62

¹⁴³² [Conclusions 2009, Armenia](#)

¹⁴³³ [Finnish Society of Social Rights v. Finland](#), Complaint No 88/2012, decision on the merits of 9 September 2014, §113, citing [Conclusions 2004, Lithuania](#)

¹⁴³⁴ [Conclusions 2009, Lithuania](#)

¹⁴³⁵ [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), Complaint No. 48/2008, decision on the merits of 18 February 2009, §39

¹⁴³⁶ [Conclusions XVIII-1 \(2006\), Spain](#)

¹⁴³⁷ [Conclusions I \(1969\), Statement of Interpretation on Article 13§1](#); [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 13](#)

¹⁴³⁸ [Conclusions XV-1 \(2000\), Spain](#)

¹⁴³⁹ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 13](#)

¹⁴⁴⁰ See also the [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 13](#)

¹⁴⁴¹ [Conclusions XIX-2 \(2009\), Greece](#)

¹⁴⁴² [Conclusions 2009, Andorra](#)

¹⁴⁴³ [Conclusions 2009, Andorra](#)

term of office and existing safeguards against outside pressures (rules governing removal from office, dismissal, instructions, qualifications required, etc.).¹⁴⁴⁴

- ▶ 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.¹⁴⁴⁵
- ▶ The review body must have the power to judge the case on its merits, not merely on points of law.¹⁴⁴⁶

In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.¹⁴⁴⁷

Personal scope

Nationals of States Parties legally residing or regularly working

In accordance with the Appendix to the Charter, foreigners who are nationals of States 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,¹⁴⁴⁸ without the need for reciprocity.¹⁴⁴⁹ The appendix to the 1961 Charter requires States Parties 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 State Party under the said Convention and under any other existing international instruments applicable to those refugees”.¹⁴⁵⁰ 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.¹⁴⁵¹

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 State Party. The Charter does not regulate procedures for admitting foreigners to the territory of States 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.”¹⁴⁵²

As a result, the resident 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.¹⁴⁵³

The guarantee of equal treatment in terms of assistance 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.¹⁴⁵⁴

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.¹⁴⁵⁵ 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.¹⁴⁵⁶

Repatriation

Foreigners lawfully resident in the territory of a State Party cannot be repatriated on the sole ground that they are in need of assistance.¹⁴⁵⁷ As long as their lawful residence or regular work continues, they enjoy equal

¹⁴⁴⁴ [Conclusions XVIII-1 \(2006\), Iceland](#)

¹⁴⁴⁵ [Conclusions XVIII-1 \(2006\), Hungary](#); [Conclusions 2009, Andorra](#)

¹⁴⁴⁶ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 13](#)

¹⁴⁴⁷ [Conclusions XVI-1 \(2003\), Ireland](#)

¹⁴⁴⁸ [Conclusions XIII-4 \(1996\), Statement of Interpretation on Article 13²](#)

¹⁴⁴⁹ [Conclusions VII \(1981\), Statement of Interpretation on Article 13§4](#)

¹⁴⁵⁰ [Appendix to the 1961 Charter, European Treaty Series - No. 35, §2](#)

¹⁴⁵¹ [Conclusions 2013, Serbia](#)

¹⁴⁵² [Appendix to the 1961 Charter, European Treaty Series - No. 35, §2](#); [Appendix to the 1996 Charter, European Treaty Series - No. 163](#)

¹⁴⁵³ [Conclusions XVIII-1 \(2006\), Czech Republic](#)

¹⁴⁵⁴ [Conclusions XIV-1 \(1998\), Greece](#)

¹⁴⁵⁵ [Conclusions XVIII-1 \(2006\), Belgium](#); [Conclusions XVIII-1 \(2006\), Germany](#)

¹⁴⁵⁶ [Médecins du Monde - International v. France](#), Complaint No. 67/2011, decision on the merits of 11 September 2012, §176; [Conclusions XVIII-1 \(2006\), Denmark](#)

¹⁴⁵⁷ [Conclusions 2017, Bosnia and Herzegovina](#)

treatment.¹⁴⁵⁸ Where such persons are migrant workers, they also enjoy the protection afforded by Article 19§8, which does not permit expulsion on the ground of needing assistance.¹⁴⁵⁹

Once the validity of the residence and/or work permit has expired, States Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need.¹⁴⁶⁰ 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 their family.¹⁴⁶¹

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, in a limited and exceptional way.¹⁴⁶² It is the same type of emergency social and medical assistance applicable under Article 13§4, to foreigners who are not resident.¹⁴⁶³

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 any diminution of their political or social rights as a result.

Any discrimination against persons receiving assistance that might result - directly or indirectly¹⁴⁶⁴ - from an express provision must be eradicated.¹⁴⁶⁵

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 restrictions with regard to civil or social rights.¹⁴⁶⁶

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.¹⁴⁶⁷

The political rights concerned go beyond those embodied in the European Convention on Human Rights because the scope of Article 13§2 is wider, as it prohibits discrimination (both direct and indirect) in relation to all civil, political, social and economic rights, including in relation to rights not guaranteed by the ECHR.¹⁴⁶⁸

Beneficiaries of social or medical assistance must enjoy effective protection against discriminatory measures, particularly with regard to their access to employment and public services.¹⁴⁶⁹

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."¹⁴⁷⁰

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 to persons without adequate resources or at risk of becoming so.¹⁴⁷¹

1458 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13

1459 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13

1460 Conclusions XXI-2 (2017), Denmark

1461 Conclusions XIV-1 (1998), Norway; Conclusions XXI-2 (2017), Denmark

1462 Conclusions 2013, Statement of Interpretation on Article 13§1 and 13§4

1463 Conclusions XXI-2 (2017), Spain

1464 Conclusions XVIII-1 (2006), Croatia

1465 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§2

1466 Conclusions 2002, Slovenia

1467 Conclusions 2006, Bulgaria

1468 Conclusions XVIII-1 (2006), Malta

1469 Conclusions XVI-2 (2004), Hungary

1470 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13§2

1471 Conclusions 2013, Bosnia and Herzegovina

Article 14§1 concerns social welfare services in general, whereas Article 13§3 is a more specific provision.¹⁴⁷² 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 31.¹⁴⁷³

Personal scope

Nationals of States Parties working regularly or residing legally within the territory of another State Party must have access to advice and personal help offered by social services on the same conditions as nationals.¹⁴⁷⁴

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.¹⁴⁷⁵

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.¹⁴⁷⁶ In most cases, employment opportunities, together with vocational training or re-training, constitute the core element in any such strategy.¹⁴⁷⁷

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 benefits and services adapted to their needs.¹⁴⁷⁸

Criteria for equal and effective access

In order to comply with the Charter, the main relevant social welfare services must ensure to their users equal and effective access by means of: 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.¹⁴⁷⁹

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.¹⁴⁸⁰

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.¹⁴⁸¹ For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge.¹⁴⁸²

1472 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1473 Conclusions 2005, Statement of Interpretation on Article 14§1

1474 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1475 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1476 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13

1477 Conclusions XIV-1 (1998), Statement of Interpretation on Article 13

1478 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1479 Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

1480 Conclusions 2005, Statement of Interpretation on Article 14§1

1481 [Conclusions XVIII-1 \(2006\), Iceland](#)

1482 Conclusions 2005, Statement of Interpretation on Article 14§1

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 States 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.*¹⁴⁸³

Article 13§4 grants non-resident foreign nationals an entitlement to emergency social and medical assistance.

Personal Scope 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 States Parties lawfully within their territories”. Accordingly, the beneficiaries of this are foreign nationals who are lawfully present in a particular country but don’t have resident status.¹⁴⁸⁴

By definition, no condition of length of presence can be set on the right to emergency assistance.¹⁴⁸⁵

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).¹⁴⁸⁶ States Parties are not required to apply the guaranteed income arrangements under their social protection systems.¹⁴⁸⁷

The provision of free emergency medical care must be governed by the individual’s particular state of health.¹⁴⁸⁸ 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.¹⁴⁸⁹

Right of appeal

Emergency social assistance should be supported by a right to appeal to an independent body. There must be a 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.¹⁴⁹⁰

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

¹⁴⁸³ Appendix to the 1961 Charter, European Treaty Series - No. 35; Appendix to the 1996 Charter, European Treaty Series – No. 163

¹⁴⁸⁴ Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

¹⁴⁸⁵ [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, §171

¹⁴⁸⁶ [Conclusions XIV-1 \(1998\), The Netherlands; Médecins du Monde - International v. France](#), complaint No. 67/2011, decision on the merits of 11 September 2012: §178; [Conclusions XX-2 \(2013\), Czech Republic](#)

¹⁴⁸⁷ Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

¹⁴⁸⁸ [Conclusions XX-2 \(2013\), Czech Republic; Conclusions 2013, Sweden; Conclusions XIV-1 \(1998\), Iceland](#)

¹⁴⁸⁹ [Defence for Children International \(DCI\) v. Belgium](#), complaint No. 69/2011, decision on the merits of 23 October 2012, §128

¹⁴⁹⁰ [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, §187

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).¹⁴⁹¹

The abovementioned conditions for repatriation of non-resident nationals of other States Parties in state of need apply also in respect of States Parties that have not ratified the 1953 Convention.¹⁴⁹²

The other conditions set in Article 7 of the 1953 Convention do not apply, insofar as nationals of other States Parties who work regularly or reside legally within the territory of another State 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 social assistance.¹⁴⁹³

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.¹⁴⁹⁴

Article 14 provides for an individual right subject to an effective right of appeal.¹⁴⁹⁵

Personal scope

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.¹⁴⁹⁶ This 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.”¹⁴⁹⁷

The provision of social welfare services concerns everybody who finds themselves in a situation of dependency, in particular the vulnerable groups and individuals who have a social problem.¹⁴⁹⁸ Social services must therefore be available to all categories of the population who are likely to need them.¹⁴⁹⁹ Delivery of such services frequently involve and depend on in-person contact and where digital delivery becomes preferable or necessary in the current context, States Parties should ensure that users of social welfare services have effective access to the requisite technology.¹⁵⁰⁰

The Committee has identified the following groups as particularly likely to need social services: 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.¹⁵⁰¹ The list is not exhaustive as the right to social welfare services must be available to all individuals and groups in the community.¹⁵⁰² There must be a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity.¹⁵⁰³

¹⁴⁹¹ Conclusions XIII-4 (1996), Statement of Interpretation on Article 13

¹⁴⁹² Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

¹⁴⁹³ Conclusions XIV-1 (1998), Statement of Interpretation on Article 13§4

¹⁴⁹⁴ [Conclusions 2005, Bulgaria](#)

¹⁴⁹⁵ [International Federation for Human Rights \(FIDH\) v. Belgium](#), complaint No. 75/2011, decision on the merits of 18 March 2013, §108

¹⁴⁹⁶ [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁴⁹⁷ [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁴⁹⁸ [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁴⁹⁹ [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁵⁰⁰ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

¹⁵⁰¹ [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁵⁰² [Conclusions 2009, Statement of Interpretation on Article 14§1](#)

¹⁵⁰³ [Conclusions 2017, Austria](#)

Eligibility criteria for foreigners legally residing and regularly working in the country to be entitled to receive social services assistance must not be too restrictive.¹⁵⁰⁴ A length of residence requirement of five years is excessive.¹⁵⁰⁵

“Temporary residents”, i.e. foreign nationals who are residing lawfully and working regularly on the territory of the country and who are not permanent residents, must have the same access to social services as nationals of a State Party.¹⁵⁰⁶

The other provisions of the Charter dealing with social services (Articles 12 and 13, including those services 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 14.¹⁵⁰⁷

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).¹⁵⁰⁸

It should be noted that matters 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 27.¹⁵⁰⁹ 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 31.¹⁵¹⁰

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 (as an issue related to effective and equal access), the quality and supervision of the social services, and the 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.¹⁵¹¹

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;¹⁵¹²
- ▶ 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 relevant individual and groups to the social environment;¹⁵¹³
- ▶ 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;¹⁵¹⁴
- ▶ 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;¹⁵¹⁵
- ▶ The geographical distribution of these services shall be sufficiently wide;¹⁵¹⁶

1504 Conclusions 2017, Azerbaijan

1505 Conclusions 2017, Azerbaijan

1506 Conclusions 2017, Bulgaria

1507 Conclusions 2009, Statement of Interpretation on Article 14§1

1508 Conclusions 2005, Bulgaria

1509 Conclusions 2005, Bulgaria

1510 Conclusions 2005, Bulgaria

1511 Conclusions 2009, Statement of Interpretation on Article 14§1

1512 Conclusions 2005, Bulgaria

1513 Conclusions 2005, Bulgaria

1514 Conclusions 2005, Bulgaria

1515 Conclusions 2005, Bulgaria

1516 Conclusions 2005, Bulgaria

- ▶ Recourse to these services must not interfere with people's right to privacy, including protection of personal data.¹⁵¹⁷

The right to social services must be guaranteed in law and in practice.¹⁵¹⁸ Social services must have resources that correspond to their responsibilities and the changing needs of users.¹⁵¹⁹ 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.¹⁵²⁰

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.¹⁵²¹ 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 they 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.¹⁵²²

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.¹⁵²³

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, as well as action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.¹⁵²⁴ A system of authorisation or accreditation must be set up and the standard of services provided by voluntary organisations must be monitored.¹⁵²⁵

ARTICLE 15 THE RIGHT OF PERSONS WITH DISABILITIES TO INDEPENDENCE, SOCIAL INTEGRATION AND PARTICIPATION IN THE LIFE OF THE COMMUNITY

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

- 1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;**
- 2. 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**

¹⁵¹⁷ [Conclusions 2005, Bulgaria](#)

¹⁵¹⁸ [Conclusions 2005, Bulgaria](#)

¹⁵¹⁹ [Conclusions 2005, Bulgaria](#)

¹⁵²⁰ [Conclusions 2005, Bulgaria](#)

¹⁵²¹ [Conclusions 2005, Statement of Interpretation on Article 14§2](#)

¹⁵²² [Conclusions 2015, Turkey](#)

¹⁵²³ [Conclusions 2005, Bulgaria](#)

¹⁵²⁴ [Conclusions 2005, Bulgaria](#)

¹⁵²⁵ [Conclusions 2017, Armenia](#)

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;

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Definition of disability

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition.¹⁵²⁶ An early example is that endorsed by the World Health Organisation in its International Classification of Functioning, Disability and Health (ICF 2001) which focuses on the interaction of health conditions, environmental factors and personal factors.¹⁵²⁷ Article 1 of the UN Convention on the Rights of Persons with Disabilities (CRPD) (2006) crystallises this trend by emphasizing that persons with disabilities include those with long term disabilities including physical, mental or intellectual disabilities which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Importantly, this means there is no a priori exclusion from inclusive education based on the type of disability.¹⁵²⁸ Indeed, Article 2 of the UN CRPD which prohibits discrimination “on the basis of disability” may be read to go further by including those who have had a record of disability in the past but who continue to be treated negatively and those who never had a disability but may nevertheless be treated by others as if they had a disability (“the so-called attitudinally disabled”).¹⁵²⁹

Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.¹⁵³⁰ An equality of treatment should exist, not only by law but also in practice, between persons with disability who are nationals of other States Parties to the Charter lawfully resident or regularly working in the territory of the State Party concerned.¹⁵³¹

15§1 States 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.

Under Article 15§1, all persons with disabilities, irrespective of age and the nature and origin of their disabilities, are entitled to guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialized bodies, public or private.¹⁵³² As under Article 10 of the Charter, vocational training, under Article 15, encompasses all types of higher education, including university education.¹⁵³³ The Committee examines Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).¹⁵³⁴

Legal framework

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.¹⁵³⁵ 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.¹⁵³⁶ 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

¹⁵²⁶ Conclusions 2020, Statement of Interpretation on Article 15§1

¹⁵²⁷ Conclusions 2020, Statement of Interpretation on Article 15§1

¹⁵²⁸ Conclusions 2020, Statement of Interpretation on Article 15§1

¹⁵²⁹ Conclusions 2020, Statement of Interpretation on Article 15§1

¹⁵³⁰ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48

¹⁵³¹ *Conclusions XIV-2 (1998)*, Statement of Interpretation on Article 15

¹⁵³² *Conclusions 2020*, Andorra

¹⁵³³ *Conclusions 2012*, Ireland

¹⁵³⁴ Conclusions 2020, Statement of Interpretation on Article 15§1

¹⁵³⁵ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48

¹⁵³⁶ *Conclusions 2007*, Statement of Interpretation on Article 15§1

otherwise denied an effective right to education.¹⁵³⁷ Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.¹⁵³⁸

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.¹⁵³⁹ 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.¹⁵⁴⁰ 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.¹⁵⁴¹

States Parties are required to provide the human assistance needed for the school career of the persons concerned.¹⁵⁴² 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.¹⁵⁴³ 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.¹⁵⁴⁴ The situation is not in conformity with Article 15§1 of the Charter on where it has not been established that the right of children with disabilities to mainstream education and training is effectively guaranteed.¹⁵⁴⁵

Measures aimed at promoting inclusion and quality in education

‘Integration’ and ‘inclusion’ are two different notions: integration does not necessarily lead to inclusion.¹⁵⁴⁶ There is integration when pupils are required to fit the mainstream system, whereas inclusion 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.¹⁵⁴⁷

The Committee noted that the UN Committee on the Rights of Persons with Disabilities, in its General Comment No. 4, (2016), on the Right to inclusive education has stated that “inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences. Placing students with disabilities within mainstream classes without accompanying structural changes to, for example, organisation, curriculum and teaching and learning strategies, does not constitute inclusion. Furthermore, integration does not automatically guarantee the transition from segregation to inclusion.”¹⁵⁴⁸

The right to inclusive education is a right protected under the Charter, in terms of which the child must be guaranteed access to a quality education.¹⁵⁴⁹ It also serves as a basis for establishing an inclusive society protecting a child with intellectual disability from exclusion and isolation.¹⁵⁵⁰ States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.¹⁵⁵¹

¹⁵³⁷ [Conclusions 2007, Statement of Interpretation on Article 15§1](#)

¹⁵³⁸ [Conclusions 2007, Statement of Interpretation on Article 15§1](#)

¹⁵³⁹ [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §78

¹⁵⁴⁰ [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §78

¹⁵⁴¹ [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §78

¹⁵⁴² [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §81

¹⁵⁴³ [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §81

¹⁵⁴⁴ [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §81

¹⁵⁴⁵ [Conclusions 2020, Serbia](#)

¹⁵⁴⁶ [Conclusions 2020, Statement of Interpretation on Article 15§1](#)

¹⁵⁴⁷ [Mental Disability Advocacy Center \(MDAC\) v. Belgium](#), Complaint No. 109/2014, decision on the merits of 16 October 2014, §66

¹⁵⁴⁸ [Conclusions 2020, Andorra](#)

¹⁵⁴⁹ [International Federation for Human Rights \(FIDH\) and Inclusion Europe v. Belgium](#), Complaint No. 141/2017, decision on the merits of 9 September 2020, §181

¹⁵⁵⁰ [International Federation for Human Rights \(FIDH\) and Inclusion Europe v. Belgium](#), Complaint No. 141/2017, decision on the merits of 9 September 2020, §181

¹⁵⁵¹ [Conclusions 2020, Statement of Interpretation on Article 15§1](#)

Inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively.¹⁵⁵² Such reasonable accommodations relate to an individual and help to correct factual inequalities.¹⁵⁵³ Appropriate reasonable accommodations may include: adaptations to the class and its location, provision of different forms of communication and educational material, provision of human or assistive technology in learning or assessment situations as well as non-material accommodations, such as allowing a student more time, reducing levels of background noise, sensitivity to sensory overload, alternative evaluation methods or replacing an element of the curriculum by an alternative element.¹⁵⁵⁴ Assistance at school is a particularly important means of being able to keep children and adolescents with autism in mainstream schools.¹⁵⁵⁵

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.¹⁵⁵⁶ Young persons with disabilities with an education below the upper secondary level are *per se* subject to various disadvantages on the employment market.¹⁵⁵⁷ States Parties must take measures in order to enable integration and guarantee that both mainstream and special schools ensure adequate teaching.¹⁵⁵⁸ Furthermore, States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.¹⁵⁵⁹

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 even when the law only foresees educational provision within these institutions as a subsidiary element amongst a number of other activities (pedagogical, psychological, social, medical and paramedical).¹⁵⁶⁰

Access to education

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;¹⁵⁶¹
- ▶ number of students with disabilities in mainstream classes, special unites within mainstream schools (or with complementary activities in mainstream settings) in special schools and vocational facilities;¹⁵⁶²
- ▶ the number and proportion of children with disabilities out of education;¹⁵⁶³
- ▶ the percentage of students with disabilities entering the labour market following mainstream or special education or/and training;¹⁵⁶⁴
- ▶ the number of persons with disabilities (children and adults) living in institutions;¹⁵⁶⁵
- ▶ 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;¹⁵⁶⁶
- ▶ the number of children with disabilities who do not complete compulsory school, as compared to the total number of children who do not complete compulsory school;¹⁵⁶⁷
- ▶ the number and proportion of children with disabilities under other types of educational settings, including home-schooled children; children attending school on a part time basis or in residential care institutions, whether on a temporary or long-term basis;¹⁵⁶⁸

1552 [Conclusions 2020, Andorra](#)

1553 [Conclusions 2020, Andorra](#)

1554 [Conclusions 2020, Andorra](#)

1555 [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §85

1556 [Conclusions XX-1 \(2012\), Austria](#)

1557 [Conclusions XX-1 \(2012\), Austria](#)

1558 [Conclusions XX-1 \(2012\), Austria](#)

1559 [Conclusions XX-1 \(2012\), Austria](#)

1560 [European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §§ 111 and 116

1561 [Conclusions 2012, Russian Federation](#)

1562 [Conclusions 2020, Andorra](#); [Conclusions 2012, Russian Federation](#)

1563 [Conclusions 2020, Andorra](#)

1564 [Conclusions 2012, Russian Federation](#)

1565 [Conclusions 2008, Lithuania](#)

1566 [Conclusions 2008, Lithuania](#)

1567 [Conclusions 2020, Andorra](#)

1568 [Conclusions 2020, Andorra](#)

- ▶ the drop-out rates of children with disabilities compared to the entire school population.¹⁵⁶⁹

Article 15§1 is one of the rights protected by the Charter which is exceptionally complex and particularly expensive to resolve.¹⁵⁷⁰ 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.¹⁵⁷¹

States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.¹⁵⁷²

15§2 States 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, by establishing a separate right to vocational training, rehabilitation and resettlement for physically and mentally disabled persons, aims to offer them an increased protection in an area, namely employment, in which they are more vulnerable than the rest of the workforce.¹⁵⁷³ Under the approach adopted in Article 15, the State Party is responsible for adopting measures to help disabled persons participate fully and actively in the community.¹⁵⁷⁴

Article 15§2 requires States Parties to promote an equal and effective access to employment on the open labour market for persons with disabilities.¹⁵⁷⁵ It applies to persons with physical and/or intellectual disabilities.¹⁵⁷⁶ This obligation is not reduced in times of health crisis.¹⁵⁷⁷ This requires States to take the reasonable accommodation measures required to ensure that persons with disabilities are protected from the risks caused by the virus associated with the workplace context (including travel to and from work).¹⁵⁷⁸

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.¹⁵⁷⁹

Legal framework

To this end, legislation must prohibit discrimination on the basis of disability to create genuine equality of opportunities on the open labour market.¹⁵⁸⁰ Under Article 15§2, anti-discrimination legislation must include the adjustment of working conditions (reasonable accommodation) and confer an effective remedy on those who are found to have been unlawfully discriminated.¹⁵⁸¹ In addition, 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.¹⁵⁸²

With persons with disabilities being less likely than others to be employed in the ordinary labour market, the Covid-19 crisis risks marginalising them further.¹⁵⁸³ In this situation, States Parties should, on the one hand, ensure that job and income losses of persons with disabilities are compensated by adequate social security

¹⁵⁶⁹ Conclusions 2020, Andorra

¹⁵⁷⁰ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

¹⁵⁷¹ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

¹⁵⁷² *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

¹⁵⁷³ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁷⁴ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁷⁵ Conclusions XX-1 (2012), Czech Republic

¹⁵⁷⁶ Conclusions I (1969), Statement of Interpretation on article 15§2

¹⁵⁷⁷ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁵⁷⁸ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁵⁷⁹ Conclusions XX-1 (2012), Czech Republic; Conclusions 2012, Cyprus

¹⁵⁸⁰ Conclusions 2012, Russian Federation; Conclusions 2003, Slovenia

¹⁵⁸¹ Conclusions XIX-1 (2008), Czech Republic

¹⁵⁸² Conclusions 2007, Statement of Interpretation on Article 15§2

¹⁵⁸³ Statement on Covid-19 and social rights adopted on 24 March 2021

benefits and, on the other hand, reinforce efforts to integrate persons with disabilities into the labour market.¹⁵⁸⁴ In this latter respect, the pandemic conditions make it particularly important that domestic law must provide for 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.¹⁵⁸⁵

Access of persons with disabilities to employment

The effective exercise of the right of persons with disabilities to vocational training and rehabilitation requires specific measures to be taken, which may, if need be, take the form of positive action designed to improve the “employability” of disabled persons and their access to and ability to remain in employment.¹⁵⁸⁶ Employment policy for disabled persons must allow them to use their skills by offering them jobs which correspond to their employment potential within the ordinary working environment.¹⁵⁸⁷ In addition, particular emphasis must be put on the protection of persons who are disabled as a result of an occupational accident or illness.¹⁵⁸⁸

The specific account taken of disabilities in working life implies the responsibility of all its participants: i.e. the State, employers and trade unions.¹⁵⁸⁹ The aim of this provision of the Charter is therefore to achieve equal employment opportunities for persons with disabilities, by not only rethinking the disability itself but also the means to obtain the participation of disabled persons in the life of the community on an equal footing.¹⁵⁹⁰

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 is applied, its effectiveness is taken into consideration when assessing conformity with Article 15§2.¹⁵⁹¹

Article 15§2 of the Revised Charter requires that persons with disabilities be employed in an ordinary working environment, except where this is not possible due to the nature of the disability.¹⁵⁹² In such exceptional cases, provision may be made for sheltered employment.¹⁵⁹³ They should aim to assist their beneficiaries to enter the open labour market.¹⁵⁹⁴

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.¹⁵⁹⁵

15§3 States 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).¹⁵⁹⁶ Such measures, including technical aids, must not be pursued in isolation and should be programmed to complement each other, on a clear legislative basis.¹⁵⁹⁷

Relevant legal framework and remedies

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

¹⁵⁸⁴ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁵⁸⁵ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁵⁸⁶ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁸⁷ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁸⁸ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁸⁹ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁹⁰ Conclusions XIV-2 (1998), Statement of Interpretation on Article 15

¹⁵⁹¹ Conclusions XIV-2 (1998), Belgium

¹⁵⁹² Conclusions 2005, Estonia

¹⁵⁹³ Conclusions 2005, Estonia

¹⁵⁹⁴ Conclusions 2005, Estonia

¹⁵⁹⁵ Conclusions XVII-2 (2005), Czech Republic

¹⁵⁹⁶ Conclusions 2005, Norway

¹⁵⁹⁷ Conclusions 2008, Statement of Interpretation on Article 15§3; Conclusions 2005, Norway

effective remedies for those who have been unlawfully treated.¹⁵⁹⁸ Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two;¹⁵⁹⁹

- ▶ 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.¹⁶⁰⁰ Such measures should have a clear legal basis and be coordinated.¹⁶⁰¹

To give meaningful effect to the promotion of the full social integration and participation in the life of the community of persons with disabilities:

- ▶ 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;¹⁶⁰²
- ▶ 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;¹⁶⁰³
- ▶ 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.¹⁶⁰⁴

Consultation

Article 15§3 requires that persons with disabilities and their representative organisations should be consulted in the design and ongoing review of positive action measures and that an appropriate forum should exist to enable this to happen.¹⁶⁰⁵

Persons with disabilities and their organisations must be consulted and participate in the design, implementation and review of disability policies in the context of Covid-19.¹⁶⁰⁶ Covid-19 must not result in increased institutionalisation of persons with disabilities.¹⁶⁰⁷

Measures to ensure the right of persons with disabilities to live independently in the community

Telecommunications and new information technology must be accessible and sign language must have an official status.¹⁶⁰⁸

In the context of the Covid-19 pandemic, services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community.¹⁶⁰⁹ Amongst other things, public health information must be made available in sign language and accessible means, modes and formats.¹⁶¹⁰

Mobility and transport

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.¹⁶¹¹

¹⁵⁹⁸ Conclusions 2005, Norway

¹⁵⁹⁹ Conclusions 2012, Estonia

¹⁶⁰⁰ Conclusions 2007, Slovenia

¹⁶⁰¹ Conclusions 2007, Slovenia

¹⁶⁰² Conclusions 2008, Statement of Interpretation on Article 15§3

¹⁶⁰³ Conclusions 2008, Statement of Interpretation on Article 15§3

¹⁶⁰⁴ Conclusions 2008, Statement of Interpretation on Article 15§3

¹⁶⁰⁵ Conclusions 2020, Serbia; Conclusions 2005, Norway

¹⁶⁰⁶ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁶⁰⁷ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁶⁰⁸ Conclusions 2016, Austria, citing Conclusions 2005, Estonia and Conclusions 2003, Slovenia

¹⁶⁰⁹ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁶¹⁰ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁶¹¹ Conclusions 2016, Latvia, citing Conclusions 2003, Italy

Housing

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.¹⁶¹² Further, financial assistance should be provided for the adaptation of existing housing.¹⁶¹³

Financial and personal assistance

The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.¹⁶¹⁴ The obligation of States to take measures to promote persons with disabilities' full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities.¹⁶¹⁵ Therefore, the Committee takes poverty levels experienced by persons with disabilities into account when considering the State's obligations under Article 15§3 of the Charter.¹⁶¹⁶

Measures must also focus on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.¹⁶¹⁷

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.*¹⁶¹⁸

Since "family" can mean different things in different places and at different times, the Committee refers to the definitions used in domestic law of each State Party.¹⁶¹⁹ However domestic law must not provide for an unduly restrictive definition.¹⁶²⁰

The scope of Article 16 is not restricted to family based on marriage.¹⁶²¹ Family means households of parents with children, including single parents and young couples that will potentially have children.¹⁶²² The principle of equality and non-discrimination form an integral part of Article 16.¹⁶²³ Family members who are in the territory of a State Party in accordance with the right to family reunion guaranteed by Article 19§6 must be afforded equal treatment with nationals in all aspects related to the protection of the family.¹⁶²⁴

The Committee examines the means used by States Parties to ensure the social, legal and economic protection of the various types of families in the population, including single parent families, and vulnerable families, such

¹⁶¹² Conclusions 2003, Italy

¹⁶¹³ Conclusions 2003, Italy

¹⁶¹⁴ Conclusions 2020, Andorra

¹⁶¹⁵ Conclusions 2020, Andorra

¹⁶¹⁶ Conclusions 2020, Andorra

¹⁶¹⁷ Conclusions 2020, Andorra

¹⁶¹⁸ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

¹⁶¹⁹ Conclusions 2011, Azerbaijan

¹⁶²⁰ Conclusions 2011, Azerbaijan

¹⁶²¹ Conclusions 2011, Azerbaijan

¹⁶²² Conclusions XVII-1 (2005), Turkey

¹⁶²³ European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §26

¹⁶²⁴ Conclusions XVI-1 (2002), Statement of Interpretation on Articles 12§4 and 16

as Roma ones.¹⁶²⁵ States Parties can choose such means freely, with the proviso that they must not jeopardise the effective protection of Roma families.¹⁶²⁶

Social protection

Housing for families

Adequate/decent housing

Article 16 guarantees a right to decent housing for families.¹⁶²⁷ 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.¹⁶²⁸ The notions of adequate housing and forced eviction are identical under Articles 16 and 31.¹⁶²⁹

The right to housing permits the exercise of many other rights – both civil and political as well as economic, social and cultural.¹⁶³⁰ It is also of central importance to the family.¹⁶³¹ In order to 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.¹⁶³² It must also include essential services (such as heating and electricity).¹⁶³³ Adequate housing refers not only to a dwelling that must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence.¹⁶³⁴

States Parties must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right to adequate housing in terms of Article 16.¹⁶³⁵ This objective must be achieved within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.¹⁶³⁶

Housing benefits

Housing benefits specifically targeted at families must also be available (e.g. grants or subsidies for the purchase or construction of family home, tax relief on mortgage repayments, subsidised loans for acquiring the first home, subsidised rent for families, housing allowances, etc.).¹⁶³⁷ Equal treatment for nationals of other States Parties and refugee families with regard to the payment of housing subsidies must be ensured.¹⁶³⁸ The part of Article 16 relating to the right of families to decent housing and particularly the right not to be deprived of shelter also applies to foreign families unlawfully present in the country.¹⁶³⁹

In order to ensure the satisfactory application of the right to family housing under Article 16 of the Charter, the same requirements as for the right to adequate housing under Article 31 should be met.¹⁶⁴⁰ States Parties should:

- ▶ adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;¹⁶⁴¹

¹⁶²⁵ Conclusions XVI-1 (2002), Statement of interpretation on Article 16

¹⁶²⁶ Conclusions 2006, Statement of Interpretation on Article 16

¹⁶²⁷ *European Roma Rights Center (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9

¹⁶²⁸ *European Roma Rights Center (ERRC) v. Bulgaria*, Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9

¹⁶²⁹ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §115; Conclusions 2011, Azerbaijan

¹⁶³⁰ *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶³¹ *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶³² *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶³³ *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶³⁴ *European Roma Rights Centre (ERRC) v. Greece*, Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶³⁵ *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, decision of 21 March 2013, §113

¹⁶³⁶ *International Federation of Human Rights (FIDH) v. Belgium*, Complaint No. 62/2010, decision of 21 March 2013, §113

¹⁶³⁷ Conclusions XVII-1 (2005), Turkey

¹⁶³⁸ Conclusions 2019, Austria

¹⁶³⁹ *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 20 October 2012, §136

¹⁶⁴⁰ *International Federation for Human Rights (FIDH) v. Ireland*, Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

¹⁶⁴¹ *International Federation for Human Rights (FIDH) v. Ireland*, Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

- ▶ maintain meaningful statistics on needs, resources and results;¹⁶⁴²
- ▶ undertake regular reviews of the impact of the strategies adopted;¹⁶⁴³
- ▶ establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;¹⁶⁴⁴
- ▶ pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.¹⁶⁴⁵

However, under Article 16 of the Charter, failure to comply with each and all of the above requirements does not per se necessarily amount to a violation of the right to family housing.¹⁶⁴⁶

Protection against eviction

The effectiveness of the right to adequate housing in terms of Article 16 requires its legal protection through adequate procedural safeguards.¹⁶⁴⁷ Occupiers and tenants must have access to affordable and impartial judicial or other remedies.¹⁶⁴⁸ Any appeals procedure must be effective.¹⁶⁴⁹ Furthermore, the obligation to promote and provide housing extends to security from unlawful eviction.¹⁶⁵⁰

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;¹⁶⁵¹
- ▶ an obligation to fix a reasonable notice period before eviction;¹⁶⁵²
- ▶ a prohibition to carry out evictions at night or during winter;¹⁶⁵³
- ▶ access to legal remedies;¹⁶⁵⁴
- ▶ access to legal aid;¹⁶⁵⁵
- ▶ compensation in case of illegal evictions.¹⁶⁵⁶

Furthermore, when evictions do take place, they must be:

- ▶ carried out under conditions respecting the dignity of the persons concerned;¹⁶⁵⁷
- ▶ governed by rules sufficiently protective of the rights of the persons;¹⁶⁵⁸
- ▶ accompanied by proposals for alternative accommodation.¹⁶⁵⁹

¹⁶⁴² [International Federation for Human Rights \(FIDH\) v. Ireland](#), Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

¹⁶⁴³ [International Federation for Human Rights \(FIDH\) v. Ireland](#), Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

¹⁶⁴⁴ [International Federation for Human Rights \(FIDH\) v. Ireland](#), Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

¹⁶⁴⁵ [International Federation for Human Rights \(FIDH\) v. Ireland](#), Complaint No. 110/2014, decision on the merits of 12 May 2017, §109, citing [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No. 39/2006, decision on the merits of 5 December 2007, §54

¹⁶⁴⁶ [International Federation for Human Rights \(FIDH\) v. Ireland](#), Complaint No. 110/2014, decision on the merits of 12 May 2017, §110

¹⁶⁴⁷ [Conclusions 2015, Austria](#)

¹⁶⁴⁸ [Conclusions 2015, Austria](#)

¹⁶⁴⁹ [Conclusions 2015, Austria](#)

¹⁶⁵⁰ [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §24

¹⁶⁵¹ [Conclusions 2011, Azerbaijan](#)

¹⁶⁵² [Conclusions 2011, Azerbaijan](#)

¹⁶⁵³ [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §41

¹⁶⁵⁴ [Conclusions 2011, Azerbaijan](#)

¹⁶⁵⁵ [Conclusions 2011, Azerbaijan](#)

¹⁶⁵⁶ [Conclusions 2011, Azerbaijan](#)

¹⁶⁵⁷ [Conclusions 2011, Turkey](#), Article 31§2; [European Roma and Travellers Forum \(ERTF\) v. Czech Republic](#), Complaint No.104/2014, decision on the merits of 17 May 2016, §82

¹⁶⁵⁸ [Conclusions 2011, Turkey](#), Article 31§2; [European Roma and Travellers Forum \(ERTF\) v. Czech Republic](#), Complaint No.104/2014, decision on the merits of 17 May 2016, §82

¹⁶⁵⁹ [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §41

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants.¹⁶⁶⁰ 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.¹⁶⁶¹

Where forced evacuation of villages or destruction of housing have taken place, 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.¹⁶⁶²

Where families were displaced by the war, States Parties are under a positive obligation by virtue of Article 16 to take appropriate steps to provide housing and security of tenure to displaced families who lost housing rights and have expressed a clear desire to return to their country, or who have been discouraged from returning due to a lack of housing and other forms of protection.¹⁶⁶³

Vulnerable Groups

Where the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities causes many families to live in precarious circumstances, undermining their cohesion, this amounts to a lack of protection of the family as a unit of society, in breach of Article 16 of the Charter.¹⁶⁶⁴

As a result of their history, the Roma have become a specific type of disadvantaged group and vulnerable minority.¹⁶⁶⁵ The imperative to avoid social exclusion, respect difference and not to discriminate applies to all groups of Roma, whether itinerant and settled.¹⁶⁶⁶ They therefore require special protection.¹⁶⁶⁷ 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.¹⁶⁶⁸ In this respect, suitable temporary and permanent accommodation must be available.¹⁶⁶⁹

Any place in which a family resides legally or illegally, whether a building or a movable piece of property such as a caravan, must be regarded as housing within the meaning of the Charter.¹⁶⁷⁰ The rights and obligations arising from the legal recognition of a dwelling must apply to all forms of housing, including alternative forms such as caravans.¹⁶⁷¹ Therefore, the regulations on living conditions (particularly those on health and safety) must be reasonably adapted to these alternative forms of housing so as not to place unwarranted restrictions on the possibility of residing in such dwellings.¹⁶⁷²

When applied to the lifestyle of Travellers, this requirement gives rise to a positive obligation to ensure that a sufficient number of residential sites are provided for them to park their caravans.¹⁶⁷³

Childcare facilities

Where a State Party has accepted Article 27 of the Charter, childcare facilities and arrangements are examined under this provision.¹⁶⁷⁴

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.).¹⁶⁷⁵

Creches and day nurseries or similar facilities, as well as family planning information must be available in rural areas.¹⁶⁷⁶

¹⁶⁶⁰ [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §51

¹⁶⁶¹ [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §51

¹⁶⁶² [Conclusions XIII-3 \(1995\)](#), Turkey

¹⁶⁶³ [Centre on Housing Rights and Evictions \(COHRE\) v. Croatia](#), Complaint No. 52/2008, decision on the merits of 22 June 2010, §63

¹⁶⁶⁴ [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 75/2011, decision on the merits of 18 March 2013, §187

¹⁶⁶⁵ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

¹⁶⁶⁶ [European Roma Right Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §25

¹⁶⁶⁷ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

¹⁶⁶⁸ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

¹⁶⁶⁹ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁶⁷⁰ [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010, decision of 21 March 2013, §73

¹⁶⁷¹ [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010, decision of 21 March 2013, §74

¹⁶⁷² [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010, decision of 21 March 2013, §74

¹⁶⁷³ [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 62/2010, decision of 21 March 2013, §112, citing

[European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §25

¹⁶⁷⁴ [Conclusions 2011](#), Azerbaijan

¹⁶⁷⁵ [Conclusions 2019](#), Azerbaijan

¹⁶⁷⁶ [Conclusions XIII-3 \(1995\)](#), Turkey

Family counselling services

Families should have access to appropriate social services, in particular in times of difficulty.¹⁶⁷⁷ States Parties should provide *inter alia* family counselling and psychological guidance advice on childrearing.¹⁶⁷⁸

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.¹⁶⁷⁹

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, parental authority and management of children's property.¹⁶⁸⁰

In cases of family breakdown, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children including care and maintenance, deprivation and limitation of parental rights, custody and access to children.¹⁶⁸¹

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.¹⁶⁸²

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.¹⁶⁸³ On the other hand, the financial conditions or material circumstances of the family should not be the sole reason for placement.¹⁶⁸⁴ In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, their parents and other members of the family.¹⁶⁸⁵

When placement is necessary, it should be considered as a temporary solution, during which continuity of the relationship with the family should be maintained.¹⁶⁸⁶ 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.¹⁶⁸⁷ Whenever possible, placement in a foster family or in a family-type environment should have preference over placement in an institution.¹⁶⁸⁸

Issues related to restrictions to parental right and placement of children are examined under Article 17§1.¹⁶⁸⁹

Mediation services

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, help settle disputes and ensure that future relations between parents and between them and their children are not unduly damaged.¹⁶⁹⁰ To be in conformity with Article 16, these services must be easily accessible to all families.¹⁶⁹¹ In particular, families must

¹⁶⁷⁷ Conclusions 2011, Turkey

¹⁶⁷⁸ Conclusions 2011, Turkey

¹⁶⁷⁹ Conclusions 2006, Statement of Interpretation on Article 16

¹⁶⁸⁰ Conclusions XIII-3 (1995), Turkey; Conclusions XVI-1 (2002), United Kingdom; Conclusions 2019, Austria

¹⁶⁸¹ Conclusions 2011, Azerbaijan

¹⁶⁸² Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1

¹⁶⁸³ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁴ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁵ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁶ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁷ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁸ Conclusions 2011, Statement of Interpretation on Article 16 and 17§1

¹⁶⁸⁹ Conclusions 2019, Austria

¹⁶⁹⁰ Conclusions 2015, Austria; Conclusions 2006, Statement of Interpretation on Article 16

¹⁶⁹¹ Conclusions 2015, Austria

not be dissuaded from availing of such services for financial reasons.¹⁶⁹² If these services are free of charge, this constitutes an adequate measure to this end.¹⁶⁹³ Otherwise, a possibility of access for families when needed should be provided.¹⁶⁹⁴

The Committee examines the conditions governing access to family mediation services, whether such services are free of charge and cover the whole country, and how effective they are.¹⁶⁹⁵

Domestic violence against women

Article 16 of the Charter applies to all forms of violence against women and domestic violence and States Parties are required to ensure an adequate protection against such violence in both law and practice.¹⁶⁹⁶ Since violence against children is more specifically addressed by Article 17 (or Article 7(10) where States Parties have not accepted Article 17), the issue is examined under Article 17.¹⁶⁹⁷

With a view to interpreting States' Parties obligations in this field, the Committee refers to Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. Article 8 does not merely compel the State Party to abstain from arbitrary interference but also implies positive obligations to ensure effective respect for the rights it guarantees.¹⁶⁹⁸ The Committee considers that the same applies with regard to Article 16.¹⁶⁹⁹

States Parties are required to ensure adequate protection with respect to women, both in law and practice. In terms of law, States Parties must ensure that:

- ▶ appropriate measures—including restraining orders—are available and enforced;
- ▶ perpetrators are punished;
- ▶ victims are awarded fair compensation for the pecuniary and non-pecuniary damage sustained;
- ▶ victims – and associations acting on their behalf – can take their cases to court and special arrangements for the examination of victims in court).¹⁷⁰⁰

In practical terms, States Parties must ensure:

- ▶ recording and analysis of reliable data
- ▶ training, particularly for police officers,
- ▶ and services to reduce the risk of violence and support and rehabilitate victims).¹⁷⁰¹

States Parties must show due diligence in deploying measures such as restraining orders penal sanctions for perpetrators, adapted judicial procedures, and adequate compensation for victims, and training, particularly for police officers and other working directly with victims as well as collection and analysis of reliable data.¹⁷⁰² States must ensure provision of shelter or protected accommodation for victims or for women at risk of violence, as well as services to reduce the risk of violence and support and rehabilitate victims.¹⁷⁰³ Victim empowerment should also be strengthened through early advice and protection measures as well as minimum or supplemented income for victims or would-be victims.¹⁷⁰⁴

States Parties' efforts to protect women from domestic violence in law and practice 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.¹⁷⁰⁵ Where States Parties

¹⁶⁹² [Conclusions 2015, Austria](#)

¹⁶⁹³ [Conclusions 2015, Austria](#)

¹⁶⁹⁴ [Conclusions 2015, Austria](#)

¹⁶⁹⁵ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁶⁹⁶ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

¹⁶⁹⁷ [Conclusions 2006, Statement of Interpretation on Article 16; Association for the protection of All Children \(APPROACH\) Ltd. v. Cyprus, Complaint No.97/2013, decision on admissibility of July 2013 §10](#)

¹⁶⁹⁸ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁶⁹⁹ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁷⁰⁰ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁷⁰¹ [Conclusions 2006, Statement of Interpretation on Article 16](#)

¹⁷⁰² [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

¹⁷⁰³ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

¹⁷⁰⁴ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

¹⁷⁰⁵ [Conclusions 2006, Statement of Interpretation on Article 16](#)

have signed and ratified the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence, the Committee refers to the assessment procedure which takes place in the context of that mechanism.¹⁷⁰⁶

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.¹⁷⁰⁷

Family benefits of a sufficient amount

Family benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household.¹⁷⁰⁸ 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.).¹⁷⁰⁹

The level of benefit should be adjusted as necessary to keep pace with inflation.¹⁷¹⁰ 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.¹⁷¹¹

The suspension or termination of a family allowance when a child stops attending school may pursue the legitimate aim to reduce absenteeism and pupils return to school, the aim being to guarantee rights and freedoms of others and even, in this case, the right of children to education.¹⁷¹² States Parties have a margin of appreciation when devising and implementing such measures.¹⁷¹³ However, such measures should not be punitive in nature, as they can make the family concerned more vulnerable regarding their economic and social situation, thereby making it more difficult to create the necessary conditions for the full development of the family, and increasing the economic and social vulnerability of the children concerned.¹⁷¹⁴ Suspending for a period of one year or terminating family allowances due to the child's lack of attendance for 3 successive months or for 6 months in one school year, is not in compliance with Article 16.¹⁷¹⁵

The termination of family allowances when the child themselves becomes a parent is a violation of Article 16 of the Charter.¹⁷¹⁶

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.¹⁷¹⁷

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.¹⁷¹⁸

¹⁷⁰⁶ Conclusions XXI-4 (2019), Denmark

¹⁷⁰⁷ Conclusions 2019, Bosnia and Herzegovina

¹⁷⁰⁸ Conclusions 2006, Statement of Interpretation on Article 16

¹⁷⁰⁹ Conclusions 2006, Statement of Interpretation on Article 16

¹⁷¹⁰ Conclusions XVII-1 (2005), The Netherlands (Aruba)

¹⁷¹¹ Conclusions XVII-1 (2005), The Netherlands (Aruba)

¹⁷¹² *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §58

¹⁷¹³ *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §58

¹⁷¹⁴ *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §§ 59-61

¹⁷¹⁵ *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §61

¹⁷¹⁶ *Equal Rights Trust v. Bulgaria*, Complaint No. 121/2016, decision on the merits of 16 October 2018, §69

¹⁷¹⁷ Conclusions 2019, Bosnia and Herzegovina

¹⁷¹⁸ Conclusions XV-1 (2000), United Kingdom; Conclusions 2011, Azerbaijan

As 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 Parties may apply a length of residence requirement as regards non-contributory benefits on condition that the length is not excessive.¹⁷¹⁹

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 16.¹⁷²⁰ On the other hand, periods of 1 year, and *a fortiori* 3-5 years are manifestly excessive and therefore in violation of Article 16.¹⁷²¹

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§4.¹⁷²²

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.*¹⁷²³

Article 17 is interpreted in light of the UN Convention on the Rights of the Child.¹⁷²⁴ It imposes a positive obligation on States to adopt the necessary measures to ensure that children can effectively exercise their right to grow up in an environment favourable to the development of their personality and their physical and mental abilities.¹⁷²⁵ States having accepted such provision must take all appropriate and necessary measures 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.¹⁷²⁶

The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion.¹⁷²⁷ This also applies where child poverty and social exclusion are caused or exacerbated by a public health crisis such as the Covid-19 pandemic.¹⁷²⁸

¹⁷¹⁹ Conclusions XIV-1 (1998), Sweden

¹⁷²⁰ Conclusions XIV-1 (1998), Sweden

¹⁷²¹ Conclusions XVIII-1 (2006), Denmark; Conclusions 2019, Bosnia and Herzegovina

¹⁷²² Conclusions XVI-1 (2002), Statement of Interpretation on Articles 12§4 and 16

¹⁷²³ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

¹⁷²⁴ Conclusions XV-2 (2001), Statement of Interpretation on Article 17; *World Organisation against Torture (OMCT) v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, §55

¹⁷²⁵ *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, Complaint No. 157/2017, decision on the merits of 17 June 2020, §134

¹⁷²⁶ *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, Complaint No. 157/2017, decision on the merits of 17 June 2020, §134

¹⁷²⁷ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁷²⁸ Statement on Covid-19 and social rights adopted on 24 March 2021

Article 17 covers the following issues:

- ▶ The legal status of the child;¹⁷²⁹
- ▶ Rights of children in public care;¹⁷³⁰
- ▶ Protection of children from violence, ill-treatment and abuse;¹⁷³¹
- ▶ Children in conflict with the law;¹⁷³²
- ▶ The right to assistance.¹⁷³³

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.¹⁷³⁴

Article 17 guarantees the right of a child to know, in principle, their origins.¹⁷³⁵ 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 their origins is restricted.¹⁷³⁶

As regards the minimum age for marriage, questions have been raised as to the reasons for a difference in the minimum age for marriage for males and females in States Parties.¹⁷³⁷ States Parties should equalise the minimum age of marriage for women and men.¹⁷³⁸

Owing to the increasing number of children in Europe registered as stateless, States Parties must take measures to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures for obtaining nationality, and taking measures to identify children unregistered at birth).¹⁷³⁹

States Parties must also take measures to facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation.¹⁷⁴⁰

Right to education

Article 17, in its both paragraphs, guarantees the right of all children to education.¹⁷⁴¹ However, where States have accepted both paragraphs of Article 17, the issue is examined under Article 17§2.¹⁷⁴² Where a State has also ratified Article 15, then education for disabled children will be considered under that provision rather than under Article 17§2 of the Revised Charter.¹⁷⁴³

Children in public care

The family is the natural environment for the growth and well-being of the child and parents have the primary responsibility for the upbringing and development of the child.¹⁷⁴⁴ States Parties must take all the necessary legal, financial and operational measures to progressively provide all young children with the most appropriate care services in family-based and community-based family-type settings, particularly children under the age of three.¹⁷⁴⁵

1729 [Conclusions 2019, Armenia](#)

1730 [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 17](#)

1731 [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 17](#)

1732 [Conclusions 2019, Armenia](#)

1733 [Conclusions 2019, Armenia](#)

1734 [Conclusions XVII-2 \(2005\), Malta](#)

1735 [Conclusions XV-2 \(2001\), France](#)

1736 [Conclusions XV-2 \(2001\), France](#)

1737 [Conclusions XV-2 \(2001\), France](#); [Conclusions 2011, Ukraine](#)

1738 [Conclusions XV-2 \(2001\), France](#); [Conclusions 2011, Ukraine](#)

1739 [Conclusions 2019, Armenia](#)

1740 [Conclusions 2019, Armenia](#)

1741 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on the merits of 3 June 2008, §34

1742 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on the merits of 3 June 2008, §34

1743 [Conclusions 2019, Austria](#)

1744 [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §135

1745 [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §144

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.¹⁷⁴⁶

The long-term care of children outside their home should take place primarily in foster families suitable for their upbringing or, only if necessary, in institutions.¹⁷⁴⁷ 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 interests of the child.¹⁷⁴⁸ 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.¹⁷⁴⁹ Such institutions must provide conditions promoting all aspects of children's growth.¹⁷⁵⁰ 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.¹⁷⁵¹ The placement of the child should be subject to periodic review with regard to the child's best interest.¹⁷⁵²

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.¹⁷⁵³

Only the restrictions on the right to integrity, privacy and property necessary for the security, physical and mental health and development of the child or the health and security of the others are admissible.¹⁷⁵⁴ The conditions for any restrictions to the freedom of movement and for isolation as a disciplinary measure or punishment, should also be laid down in legislation and be limited to what is necessary for the purpose of the upbringing of the young person.¹⁷⁵⁵

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.¹⁷⁵⁶

Furthermore, a procedure must exist for complaining about the care and treatment in institutions.¹⁷⁵⁷ There must be adequate supervision of the child welfare system and in particular the institutions involved.¹⁷⁵⁸ Where children's homes are run by private providers and foster families are recruited by private agencies, States Parties must ensure that mechanisms are in place to ensure appropriate care of adequate quality.¹⁷⁵⁹

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.¹⁷⁶⁰ The financial conditions or material circumstances of the family should not be the sole reason for placement.¹⁷⁶¹ In all circumstances, appropriate alternatives to placement should first be explored, taking into account the views and wishes expressed by the child, their parents and other members of the family.¹⁷⁶²

When it is generally acknowledged that a particular group of children is or could be faced with a disproportionate risk of being placed in care in comparison with the majority of population, as is the case for both Roma children and children with disabilities, States Parties have an obligation to collect data on the extent of the problem.¹⁷⁶³ The collection and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of an adequate policy and the adoption of appropriate measures to ensure the social and economic protection the children in question respectively need.¹⁷⁶⁴

1746 [Conclusions XIX-4 \(2011\), Statement of interpretation on Articles 16 and 17§1](#), citing [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1747 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1748 [Conclusions XIX-4 \(2011\), Statement of interpretation on Articles 16 and 17§1](#)

1749 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1750 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1751 [Conclusions 2005, Republic of Moldova](#); [Conclusions XVII-2 \(2005\), Malta](#)

1752 [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §143

1753 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1754 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1755 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1756 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1757 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1758 [Conclusions XV-2, Statement of Interpretation on Article 17§1](#)

1759 [Conclusions XXI-4 \(2019\), United Kingdom](#)

1760 [Conclusions XIX-4 \(2011\), Statement of interpretation on Articles 16 and 17§1](#)

1761 [Conclusions XIX-4 \(2011\), Statement of interpretation on Articles 16 and 17§1](#)

1762 [Conclusions XIX-4 \(2011\), Statement of interpretation on Articles 16 and 17§1](#)

1763 [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §172, citing [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §23

1764 [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §172, citing [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §23

Article 17 implies an obligation to initiate and carry forward a deinstitutionalisation process, by effectively making community-based family-type services available to all young children who cannot grow up in a family environment or are temporarily or definitively deprived of their family's support.¹⁷⁶⁵ In doing so, States Parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.¹⁷⁶⁶ Failure to do so violates Article 17.¹⁷⁶⁷

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 all settings.¹⁷⁶⁸ These are acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.¹⁷⁶⁹ 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.¹⁷⁷⁰ Moreover, States Parties must act with due diligence to ensure that such violence is eliminated in practice.¹⁷⁷¹

Children in conflict with the law

The Committee considers that the right to social and economic protection envisaged in Article 17 has long been considered to apply to children in conflict with the law.¹⁷⁷² The obligation of States Parties in terms of Article 17 to 'take all appropriate and necessary measures' to ensure the effective exercise of that right, including 'the establishment or maintenance of appropriate institutions or services' necessarily extends to those measures, institutions and services that are specific to the position of children in conflict with the law.¹⁷⁷³

Diversion

Article 17 includes the obligation to develop and take measures to reduce the especially harmful effects of contact with the justice system and to ensure that the danger posed to the child's wellbeing and development by such contact is limited.¹⁷⁷⁴ One of the primary ways in which this can be achieved is through the diversion of children away from formal processes and into effective diversionary programmes in line with international standards on the rights of the child.¹⁷⁷⁵

It may be left to the discretion of States Parties to decide on the exact nature and content of measures of diversion measures, and to take the necessary legislative and other measures for their implementation.¹⁷⁷⁶ With regard to the form that such diversion measures might take, a variety of community based programmes can be developed such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.¹⁷⁷⁷

All diversion measures must be consistent with the child's human rights and in the child best interests.¹⁷⁷⁸ This includes ensuring respect for legal safeguards in this context, such as ensuring legal assistance relating to the diversion offered to the child and the possibility of review of the measure.¹⁷⁷⁹

The failure to provide alternatives (diversion) to formal judicial proceedings for children below the age of criminal responsibility amounts to a violation of Article 17 of the Charter.¹⁷⁸⁰

¹⁷⁶⁵ [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §145

¹⁷⁶⁶ [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §146

¹⁷⁶⁷ [European Roma Rights Centre \(ERRC\) and Mental Disability Advocacy Centre \(MDAC\) v. Czech Republic](#), Complaint No. 157/2017, decision on the merits of 17 June 2020, §165

¹⁷⁶⁸ [Conclusions 2005, Republic of Moldova; Association for the Protection of all Children \(APPROACH\) Ltd v. Ireland](#), Complaint No. 93/2013, decision on the merits of 2 December 2014, §§ 53-54; Conclusions 2019, Belgium

¹⁷⁶⁹ [World Organisation against Torture \(OMCT\) v. Portugal](#), Complaint No. 34/2006, decision on the merits of 5 December 2006, §§ 19-21

¹⁷⁷⁰ [World Organisation against Torture \(OMCT\) v. Portugal](#), Complaint No. 34/2006, decision on the merits of 5 December 2006, §§ 19-21

¹⁷⁷¹ [Association for the protection of all children \(APPROACH\) Ltdv. Belgium](#), Complaint No. 98/2013, decision on the merits of 20 January 2015, §47

¹⁷⁷² [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §45

¹⁷⁷³ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §45

¹⁷⁷⁴ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §120

¹⁷⁷⁵ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §120

¹⁷⁷⁶ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §121

¹⁷⁷⁷ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §121

¹⁷⁷⁸ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §123

¹⁷⁷⁹ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §123

¹⁷⁸⁰ [International Commission of Jurists \(ICJ\) v. Czech Republic](#), Complaint No. 148/2017, decision on the merits of 20 October 2020, §124

Procedural safeguards

Under Article 17 of the Charter children must benefit from an adequate level of protection, irrespective of the formal designation and nature of proceedings (criminal or civil) in national law.¹⁷⁸¹ Adequate protection must be provided to children below the age of criminal responsibility in both the pre-trial and trial stages of proceedings.¹⁷⁸²

The age of criminal responsibility must not be too low.¹⁷⁸³ It should not be lower than 14 years of age and States should seek to progressively raise the minimum age of criminal responsibility.¹⁷⁸⁴ Even though children below the age of criminal responsibility cannot be held criminally liable, they must be afforded adequate legal procedural protections because those proceedings may have important consequences for them in terms of their social and economic protection.¹⁷⁸⁵

The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly.¹⁷⁸⁶ The adoption of measures in light of the intention of the State to create a more protective system for children below the age of criminal responsibility should not result in children being provided with less and/or weaker legal procedural protection than adults.¹⁷⁸⁷

Right to legal assistance

Children below the age of criminal responsibility should be assisted by a lawyer in order to understand their rights and the procedure applied to them, so as to prepare their defence.¹⁷⁸⁸ Moreover, they should in all cases be able to obtain legal assistance from the outset of the proceedings and especially during questioning by the police. States should arrange for the child to be assisted by a lawyer where the child or the legal guardian has not arranged such assistance.¹⁷⁸⁹

The assistance of a lawyer is moreover necessary in situations where parents/legal guardians have interests that conflict with those of the child and where it is in the child's best interest to exclude the parents/legal guardians from being involved in the proceedings.¹⁷⁹⁰ As such, mandated separate legal representation for children is crucial at the pretrial stage of proceedings.¹⁷⁹¹

The provision of legal assistance to children in conflict with the law should not be left at the discretion of the authorities, even in the context of the pre-trial stage of proceedings.¹⁷⁹²

Children should be supported by a parent, legal guardian or other trusted person during questioning.¹⁷⁹³ The latter have the role of providing general psychological and emotional assistance to the child and thereby contribute to effective outcomes, but they cannot be expected to have sufficient knowledge of the legal matters concerning the rights of the child and the child justice system.¹⁷⁹⁴

Children should be accorded the right to be informed of the content of the final resolution of a police authority.¹⁷⁹⁵ States Parties may choose the means and measures used to achieve this in practice.¹⁷⁹⁶

Children in detention

Minors should only exceptionally be detained pending trial for serious offences, for short periods of time and should in such cases be separated from adults.¹⁷⁹⁷

1781 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §85

1782 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §86

1783 *Conclusions 2011, Ireland; Conclusions XIX-4 (2011), United Kingdom*

1784 *Conclusions 2019, France*

1785 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §86

1786 *Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1*

1787 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §85

1788 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §93

1789 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §93

1790 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §99

1791 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §99

1792 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §94

1793 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §98

1794 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §98

1795 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §104

1796 *International Commission of Jurists (ICJ) v. Czech Republic*, Complaint No. 148/2017, decision on the merits of 20 October 2020, §106

1797 *Conclusions 2005, France; Conclusions XIX-4 (2011), Denmark; Conclusions XV-2 (2001), Statement of Interpretation on Article 17§1*

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length of sentence must be laid down by a court.¹⁷⁹⁸ Sentences should be regularly reviewed.¹⁷⁹⁹ Moreover, young offenders should not serve their sentence together with adult prisoners.¹⁸⁰⁰

Solitary confinement of a child for up to four weeks is not in conformity with Article 17.¹⁸⁰¹

Children found guilty of offences should be able to maintain contact with their family, inter alia, by placing them as close to the family as possible and by allowing them to receive correspondence and visits.¹⁸⁰²

Right to assistance

Article 17 of the Charter stipulates that minors must be able to receive protection which is appropriate to their age and the dangers to which they are exposed because of it.¹⁸⁰³ Article 17 guarantees the right of children, including children in an irregular situation and unaccompanied minors to care and assistance, including medical assistance and appropriate accommodation.¹⁸⁰⁴

Article 17 includes the assistance to be provided by a State Party where the minor is unaccompanied or if the parents are unable to provide such assistance.¹⁸⁰⁵ 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.¹⁸⁰⁶ As the scope of Articles 31§2 and 17 overlap to a large extent, the Committee assesses the issue of the right to a shelter of unaccompanied minors under the scope of Article 31§2 when States Parties have accepted both provisions.¹⁸⁰⁷

States Parties must take the necessary and appropriate measures to guarantee unaccompanied minors 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.¹⁸⁰⁸

The system for the reception of unaccompanied foreign minors must respect the dignity of the children.¹⁸⁰⁹

Unaccompanied migrant children must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed.¹⁸¹⁰ Indeed, immediate assistance is essential and allows assessing material needs of young people, including the need for medical and psychological care, in order to set up a child support plan.¹⁸¹¹ This assessment is often crucial for the effectiveness of the right to asylum.¹⁸¹²

The detention of unaccompanied minors in waiting areas, together with adults, and/or the accommodation of unaccompanied minors in hotels, without the assistance of a guardian, particularly if it is for long periods of time (i.e. for weeks or even months) and without age-appropriate services, cannot be in the best interests of the child and violates Article 17.¹⁸¹³

1798 [Conclusions 2011, Norway](#); [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 17§1](#)

1799 [Conclusions 2019, Bosnia and Herzegovina](#)

1800 [Conclusions 2011, Belgium](#); [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 17§1](#)

1801 [Conclusions XXI-4 \(2019\), Denmark](#)

1802 [Conclusions XV-2 \(2001\), Statement of Interpretation on Article 17§1](#)

1803 [European Committee for Home Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §97

1804 [International Federation of Human Rights Leagues \(FIDH\) v. France](#), Complaint No. 14/2003, decision on the merits of 3 November 2004, §36; [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 70-71 ; [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, §50

1805 [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §73

1806 [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §73

1807 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §173

1808 [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §82

1809 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §138

1810 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

1811 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

1812 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §157

1813 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §§ 100-101

Unaccompanied children should not be deprived of their liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status or lack thereof.¹⁸¹⁴ The Committee also considers that the detention of children on the basis of their or their parents' immigration status is contrary to the best interests of the child.¹⁸¹⁵

Measures must be taken to find alternatives to detention for asylum seeking families and to ensure that accommodation facilities for migrant children in an irregular situation, whether accompanied or unaccompanied, are appropriate and are adequately monitored.¹⁸¹⁶ Detention in police stations or in closed facilities, even for short periods of time, cannot be an alternative to proper shelter and accommodation suited to the age and the needs of unaccompanied children.¹⁸¹⁷

Medical age assessments can have serious consequences for minors and the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable.¹⁸¹⁸ The use of such testing therefore violates Article 17§1 of the Charter.¹⁸¹⁹

An ad hoc guardian for unaccompanied foreign minors must be appointed without delays.¹⁸²⁰ An effective guardianship system for unaccompanied and separated migrant children is a pre-condition for ensuring the best interests and the care and assistance of such children, as required by Article 17§1 of the Charter.¹⁸²¹ States Parties should therefore appoint a guardian without undue delay, as soon as an unaccompanied or separated migrant child, including a refugee and asylum-seeking child, is identified.¹⁸²² Without a guardian, such children may be exposed to serious protection risks and may remain denied of enjoyment of a number of their rights, including effective access to legal assistance and to the asylum procedure.¹⁸²³

The guardian should have the necessary expertise in the field of childcare, so as to ensure that the interests of the child are safeguarded and that the child's needs are appropriately covered by, inter alia, the guardian acting as a link between the child and the authorities, agencies and individuals who provide the care.¹⁸²⁴ With regard to the appointment, responsibilities and tasks of guardians, States Parties to the Charter should be guided by the principles contained in the Recommendation of the Committee of Ministers of the Council of Europe to member States on effective guardianship for unaccompanied and separated children in the context of migration, adopted on 11 December 2019 (CM/Rec(2019)11, Appendix, in particular Principles 2 and 3).¹⁸²⁵

Child poverty

The prevalence of child poverty in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection.¹⁸²⁶ The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the improvement and eradication of child poverty and social exclusion.¹⁸²⁷

1814 [Conclusions 2019, Andorra](#)

1815 [Conclusions XXI-4 \(2019\), United Kingdom](#)

1816 [Conclusions 2019, Hungary](#)

1817 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §176

1818 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §§ 106, 108

1819 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §113

1820 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §158

1821 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §165

1822 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §165

1823 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §165

1824 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §165

1825 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), complaint No. 173/2018, decision on the merits of 26 January 2021, §165

1826 [Conclusions 2019, Andorra](#)

1827 [Conclusions 2019, Andorra](#)

Therefore, the Committee will take child poverty levels into account when considering the state's obligations under the terms of Article 17 of the Charter.¹⁸²⁸

Measures must be adopted to reduce child poverty, including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.¹⁸²⁹

Child participation must be ensured in work directed towards combatting child poverty.¹⁸³⁰

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.*¹⁸³¹

*This does not imply an obligation to provide compulsory education up to the above-mentioned age.*¹⁸³²

Article 17 requires States Parties to establish and maintain an education system that is both accessible and effective.¹⁸³³

Quality of teaching

States Parties must establish and maintain an accessible and effective system of education.¹⁸³⁴ A functioning system of primary and secondary education includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas).¹⁸³⁵ Class sizes and the teacher pupil ratio must be reasonable.¹⁸³⁶ There must be a mechanism to control the quality of teaching and the methods used in public as well as private educational institutions.¹⁸³⁷

Education must be compulsory until the minimum age for admission to employment.¹⁸³⁸

The Charter provides that the obligations under this provision may be met directly or through the involvement of private actors.¹⁸³⁹ In this respect, the Committee is mindful of the *Abidjan Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*.¹⁸⁴⁰ It recalls that the requirement that States respect the freedom of parents to choose an educational institution other than a public institution leaves unchanged the obligation under the Charter to provide free quality public education.¹⁸⁴¹ Similarly, the offer of educational alternatives by private actors must not be to detrimental to the allocation of resources towards, or otherwise undermine the accessibility and quality of, public education.¹⁸⁴² Moreover, States are required to regulate and supervise private sector involvement in education strictly, making sure that the right to education is not undermined.¹⁸⁴³

Personal scope

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

¹⁸²⁸ Conclusions 2019, Andorra

¹⁸²⁹ Conclusions 2019, Andorra

¹⁸³⁰ Conclusions 2019, Andorra

¹⁸³¹ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

¹⁸³² Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

¹⁸³³ Conclusions 2003, Bulgaria

¹⁸³⁴ Conclusions 2003, Bulgaria

¹⁸³⁵ Conclusions 2003, Bulgaria

¹⁸³⁶ Conclusions 2003, Bulgaria

¹⁸³⁷ Conclusions 2003, Bulgaria

¹⁸³⁸ Conclusions 2003, Statement of interpretation on Article 17

¹⁸³⁹ Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education

¹⁸⁴⁰ Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education

¹⁸⁴¹ Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education

¹⁸⁴² Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education

¹⁸⁴³ Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education

in hospital, children in care, pregnant teenagers, teenage months, children deprived of their liberty, etc.¹⁸⁴⁴ Where necessary, special measures should be taken to ensure equal access to education for these children.¹⁸⁴⁵ However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.¹⁸⁴⁶

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§1 and Article 10.¹⁸⁴⁷ However, in view of the particularities of these different provisions, Article 15 will apply as a priority. When States Parties have adopted Article 15, the Committee will examine the issue of access to education for children with disabilities under that provision.¹⁸⁴⁸ Children with disabilities should have access to inclusive education in terms of Article 17¹⁸⁴⁹ (as well as such access required in terms of Article 15).

Access to education is crucial for every child's life and development.¹⁸⁵⁰ The denial of access to education will exacerbate the vulnerability of an irregularly present child.¹⁸⁵¹ Therefore, children, whatever their residence status, come within the personal scope of Article 17§2.¹⁸⁵² 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.¹⁸⁵³

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.¹⁸⁵⁴ Access to education is crucial for every child's life and development.¹⁸⁵⁵ The denial of access to education will exacerbate the vulnerability of an unlawfully present child.¹⁸⁵⁶ The non-formal education arrangements provided by non-state actors (e.g. NGOs) cannot be a substitute to the integration of migrant children in the public education system.¹⁸⁵⁷

Cost of education

According to Article 17§2, primary and secondary education must be free of charge.¹⁸⁵⁸ This covers the basic education system.¹⁸⁵⁹ 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.¹⁸⁶⁰

School attendance

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.¹⁸⁶¹

States Parties have a margin of appreciation when devising and implementing measures to combat truancy.¹⁸⁶²

1844 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on the merits of 3 June 2008, §34, citing [Conclusions 2003, Bulgaria](#)

1845 [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on the merits of 3 June 2008, §34

1846 [Conclusions 2011, Slovakia](#)

1847 [Conclusions 2003, Bulgaria; European Action of the Disabled \(AEH\) v. France](#), Complaint No. 81/2012, decision on the merits of 11 September 2013, §25

1848 [Conclusions 2019, Andorra](#)

1849 [Conclusions 2019, Bosnia and Herzegovina](#)

1850 [Médecins du Monde - International v. France](#), Complaint No. 67/2011, decision on the merits of 11 September 2012, §128

1851 [Conclusions 2011, Statement of interpretation on Article 17§2](#)

1852 [Conclusions 2011, Statement of interpretation on Article 17§2](#)

1853 [Médecins du Monde - International v. France](#), Complaint No. 67/2011, decision on the merits of 11 September 2012, §128; [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §125

1854 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §201

1855 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §201

1856 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §201

1857 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §207

1858 [Conclusions 2003, Bulgaria](#)

1859 [Conclusions 2003, Bulgaria](#)

1860 [Conclusions 2003, Bulgaria](#)

1861 [Conclusions 2003, Bulgaria](#)

1862 [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

Anti-bullying measures

Measures must be taken to introduce anti bullying policies in schools, i.e., measures relating to awareness raising, prevention and intervention.¹⁸⁶³

The voice of the child in education

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2.¹⁸⁶⁴ This requires States Parties to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments.¹⁸⁶⁵

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

Personal scope

Whilst the provisions of Article 18 do not cover regulations governing the entry of foreigners to the territory of the State Party, the Committee cannot accept an interpretation which would undermine its aim, which is "to ensure the effective exercise of the right to exercise a gainful activity in the territory of another State Party," by restricting the benefits of liberalisation to only those nationals of other States Parties already in the country.¹⁸⁶⁶

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§1 applies to employees and the self-employed who are nationals of States which are party to the Charter.¹⁸⁶⁷ It also covers members of their family allowed into the country for the purposes of family reunion.¹⁸⁶⁸

Article 18§1 is concerned with administrative practice rather than legal aspects.¹⁸⁶⁹ A State Party may comply with this provision even where its legislation on the employment of aliens contains strict rules, provided that these rules allow some administrative discretion and are applied in a liberal spirit.¹⁸⁷⁰

Regulations preventing nationals of another State Party from applying for work permit, due to the combined effects of the various rules on entry, length of stay, residence and the exercise of a gainful activity would not be in keeping with this provision of the Charter.¹⁸⁷¹

Neither restricting a wage-earner or salaried employee who is a national of a State Party to a specific activity under a specific employer, nor systematically refusing a work permit to a foreign national who had entered the territory of another State Party without having obtained a work permit beforehand could be regarded as displaying a "spirit of liberality" or proceeding from a flexible system of regulations.¹⁸⁷²

Any regulation which *de jure* or *de facto* restricts an authorisation to engage in a gainful occupation to a specific post for a specific employer cannot be regarded as satisfactory.¹⁸⁷³

To tie an employed person to an enterprise by the threat of being obliged to leave the host country if they lose that job in fact constitutes an infringement of their freedom such that it cannot be regarded as evidence

¹⁸⁶³ Conclusions 2019, Andorra

¹⁸⁶⁴ Conclusions 2019, Andorra

¹⁸⁶⁵ Conclusions 2019, Andorra

¹⁸⁶⁶ Conclusions XIII-1 (1993), Sweden; see also [Conclusions II \(1971\), Statement of Interpretation on Article 18](#)

¹⁸⁶⁷ Conclusions 2012, Serbia

¹⁸⁶⁸ Conclusions 2012, Serbia

¹⁸⁶⁹ Conclusions 2012, Serbia

¹⁸⁷⁰ Conclusions 2012, Serbia

¹⁸⁷¹ Conclusions 2012, Serbia, citing Conclusions XIII-1 (1993), Sweden

¹⁸⁷² Conclusions III (1973), [Statement of Interpretation on Article 18](#)

¹⁸⁷³ Conclusions II (1971), [Statement of Interpretation on Article 18](#)

of “a spirit of liberality” or of liberal regulations.¹⁸⁷⁴ Economic or social reasons might justify restricting the employment of aliens to specific types of jobs in certain occupational and geographical sectors, but not the obligation to remain in the employment of a specific enterprise.¹⁸⁷⁵

Limiting access of foreign workers to the national labour market may occur, for example, with a view to addressing the problem of national unemployment by means of favouring employment of national workers.¹⁸⁷⁶ 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.¹⁸⁷⁷

In order to assess the degree of liberality in applying existing regulations, the Committee requires figures showing the rejection rates for work permits for both first-time and renewal applications.¹⁸⁷⁸ A high percentage of successful applications by nationals of States Parties to the Charter for work permits and for renewal of work permits and a low percentage of refusals has been regarded by the Committee as a clear sign that existing regulations are being applied in a spirit of liberality.¹⁸⁷⁹

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 Article 18§3 but are dealt with specifically under this provision.¹⁸⁸⁰

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 and obtaining the residence and work permits at the same time and through a single application.¹⁸⁸¹ It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.¹⁸⁸² An average time of two months for the granting of both work/residence visa for employees as well as self-employed is in compliance with Article 18§2.¹⁸⁸³

Situations where work permits and residence permits are issued under two separate procedures, and foreign nationals are not allowed to submit their applications from within the country, thereby lengthening the time taken to obtain residence permits, are not in conformity with Article 18§2 of the Charter.¹⁸⁸⁴

States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers.¹⁸⁸⁵ 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.¹⁸⁸⁶ Fees of €48 charged to employers for obtaining a work permit for a foreign worker, and of €108 for temporary residence or €264 for permanent residence, are considered excessive and therefore not in conformity with Article 18§2.¹⁸⁸⁷ Fees ranging from €266 to €1536 for work permits are also not in conformity with Article 18§2.¹⁸⁸⁸ In addition, States Parties have to make concrete efforts to progressively reduce the level of fees and other charges payable by foreign workers or their employers.¹⁸⁸⁹ States are required to demonstrate that they have taken measures towards achieving such a reduction.¹⁸⁹⁰ 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

1874 Conclusions II (1971), Statement of Interpretation on Article 18

1875 Conclusions II (1971), Statement of Interpretation on Article 18

1876 Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3

1877 Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3

1878 Conclusions XXII-1 (2020), Germany

1879 Conclusions 2012, Serbia

1880 Conclusions IX-1 (1990), United Kingdom

1881 Conclusions 2016, Armenia; Conclusions XVII-2 (2005), Finland

1882 Conclusions XVII-2 (2005), Portugal

1883 Conclusions XVII-2 (2005), Portugal

1884 Conclusions XXII-1 (2020), Iceland; see also Conclusions 2020, Ukraine

1885 Conclusions 2012, Statement of Interpretation of Article 18§2

1886 Conclusions 2012, Statement of Interpretation of Article 18§2

1887 Conclusions 2020, Armenia

1888 Conclusions XXII-1 (2020), United Kingdom

1889 Conclusions 2012, Statement of Interpretation of Article 18§2

1890 Conclusions 2012, Statement of Interpretation of Article 18§2

a gainful occupation in their territory.¹⁸⁹¹ The Committee considers, however, that increases in chancery dues or other charges can be in conformity with Article 18§2 of the Charter as long as they are made for a good reason (for example in order to cover increased processing costs or inflation) and they are not excessive.¹⁸⁹²

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 Parties 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.¹⁸⁹³

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.¹⁸⁹⁴ 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 national of that country.¹⁸⁹⁵ The restrictions initially imposed with regard to access to employment must therefore be gradually lifted.¹⁸⁹⁶

In order not to be in contradiction with Article 18 of the Charter, the implementation of 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.¹⁸⁹⁷ 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.¹⁸⁹⁸

The situation is not in conformity with Article 18§3 where the majority of refusals of work permit applications for nationals of non-EU/EEA States Parties to the Charter are the result of the application of so-called "priority worker" rules, as this does not show that the regulations have been applied in a liberal spirit.¹⁸⁹⁹

The situation is not in conformity with Article 18§3 when the regulations governing access to self-employment of foreign workers have not been liberalised and foreign workers wishing to engage in a self-employed activity are subjected to a 5-year residence requirement and must demonstrate the creation of 10 new jobs on the market.¹⁹⁰⁰

Recognition of certificates, qualifications and diplomas

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.¹⁹⁰¹ With a view to 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.¹⁹⁰²

A requirement that foreign workers must be in possession of certificates, professional qualifications or diplomas issued only by national authorities, schools, universities, or other training institutions - without opening

¹⁸⁹¹ [Conclusions 2012, Statement of Interpretation of Article 18§2](#)

¹⁸⁹² [Conclusions XXII-1 \(2020\), Iceland](#)

¹⁸⁹³ [Conclusions V \(1977\), Germany](#)

¹⁸⁹⁴ [Conclusions 2012, Ireland](#)

¹⁸⁹⁵ [Conclusions 2012, Ireland](#)

¹⁸⁹⁶ [Conclusions 2012, Ireland](#)

¹⁸⁹⁷ [Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3](#)

¹⁸⁹⁸ [Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3](#)

¹⁸⁹⁹ [Conclusions XXII-1 \(2020\), Iceland](#)

¹⁹⁰⁰ [Conclusions 2020, Turkey, citing Conclusions 2016, Turkey](#)

¹⁹⁰¹ [Conclusions 2012, Statement of interpretation on Article 18§3](#)

¹⁹⁰² [Conclusions 2012, Statement of interpretation on Article 18§3](#)

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.¹⁹⁰³ 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.¹⁹⁰⁴

Rights in the event of loss of employment

Both the granting and the cancellation of work and temporary residence permits may well be interlinked, in as much as they pursue the same goal, namely, to enable a foreigner to engage in a gainful occupation.¹⁹⁰⁵

In cases where a work permit is 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 Party concerned and to seek another job and a new work permit, unless there are exceptional circumstances which would authorise expulsion of the foreign worker concerned, in the meaning of Article 19§8.¹⁹⁰⁶

The loss of employment should not lead to the cancellation of the residence permit, as this would require the worker to leave the country as soon as possible.¹⁹⁰⁷ The validity of the residence permit should in fact be extended to give them enough time to find a new job.¹⁹⁰⁸

Early termination of the employment relationship of a foreign national for professional misconduct resulting in the automatic withdrawal of that person's residence permit with no possibility of seeking new employment is also contrary to Article 18§3 of the Charter.¹⁹⁰⁹

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 Parties undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter.¹⁹¹⁰

There must be a legal framework guaranteeing the right of nationals to leave their country without restriction.¹⁹¹¹ People whose right to leave the country is restricted must have legal remedies to challenge such decisions.¹⁹¹²

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."¹⁹¹³

Restrictions may apply during the period of service (either voluntary or obligatory) of medical officers engaged in the armed forces provided that once they are free of their obligations there is no restriction on them exercising their right under Article 18§4.¹⁹¹⁴

Blanket restrictions on the right of citizens to leave the national territory go beyond the permitted restrictions under Article G of the Charter and are not in conformity with Article 18§4 of the Charter.¹⁹¹⁵

¹⁹⁰³ Conclusions 2012, Statement of interpretation on Article 18§3

¹⁹⁰⁴ Conclusions 2012, Statement of interpretation on Article 18§3

¹⁹⁰⁵ Conclusions 2012, Statement of interpretation on Article 18§3

¹⁹⁰⁶ Conclusions 2012, Statement of interpretation on Article 18§3

¹⁹⁰⁷ Conclusions XXII-1 (2020), Germany

¹⁹⁰⁸ Conclusions XXII-1 (2020), Germany, citing Conclusions XVII-2, (2005), Finland

¹⁹⁰⁹ Conclusions 2020, The Netherlands

¹⁹¹⁰ Conclusions 2020, Serbia

¹⁹¹¹ Conclusions 2020, Latvia

¹⁹¹² Conclusions 2020, Latvia

¹⁹¹³ Conclusions 2005, Cyprus; Conclusions XI-1 (1989), The Netherlands

¹⁹¹⁴ European Federation of Public Service Employees (EUROFEDOP) v. Greece, Complaint No. 115/2015, decision on the merits of 13 September 2017, §52

¹⁹¹⁵ Conclusions 2020, Ukraine

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.¹⁹¹⁶ Information should be reliable and accurate, and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).¹⁹¹⁷

Free information and assistance services for migrants must be accessible in order to be effective.¹⁹¹⁸ While the provision of online resources is a valuable service, due to the potential restricted access to the Internet of migrants, other means of information are necessary, such as helplines and drop-in centres.¹⁹¹⁹

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration.¹⁹²⁰ 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.¹⁹²¹

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking.¹⁹²² 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.¹⁹²³ In order to combat misleading propaganda, there must be an effective system to monitor discriminatory, racist or hate-inciting speech, particularly in the public sphere.¹⁹²⁴

States Parties must also take measures to raise awareness about misleading propaganda amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.¹⁹²⁵

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 to facilitate their departure, journey and reception.¹⁹²⁶

'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.¹⁹²⁷ Special measures 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.¹⁹²⁸

¹⁹¹⁶ Conclusions I (1969), Statement of Interpretation on Article 19§1

¹⁹¹⁷ Conclusions III (1973), Cyprus; Conclusion XV-1 (2000), Austria

¹⁹¹⁸ Conclusions 2015, Armenia; Conclusions 2019, Albania

¹⁹¹⁹ Conclusions 2015, Armenia; Conclusions 2019, Albania

¹⁹²⁰ Conclusions XIV-1 (1998), Greece

¹⁹²¹ Conclusions 2019, Estonia, citing Conclusions XIV-1 (1998), Greece

¹⁹²² Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 138-140; Conclusions 2019, Albania

¹⁹²³ Conclusion XV-1 (2000), Austria

¹⁹²⁴ Conclusions 2019, Albania

¹⁹²⁵ Conclusions 2019, Albania

¹⁹²⁶ Conclusions III (1973), Cyprus

¹⁹²⁷ Conclusions IV (1975), Statement of interpretation on Article 19§2

¹⁹²⁸ Conclusions IV (1975), Germany

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.¹⁹²⁹ 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.¹⁹³⁰ However, in that case, the need for reception facilities is all the greater.¹⁹³¹

In assessing States Parties’ compliance with Article 19§2, the Committee takes into consideration the following information:

- ▶ specific steps are taken in the period following the arrival of any new migrants to assist them;
- ▶ the assistance, financial or otherwise, available to all migrants in emergency situations, in particular in response to their needs of food, clothing and shelter;
- ▶ limits or restrictions on the access of working migrants to state welfare provision;
- ▶ the rules govern the access to healthcare for all migrants, irrespectively of their status, in particular in emergency.¹⁹³²

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.¹⁹³³ Formal arrangements are not always necessary, especially if there is little migratory movement in a given country.¹⁹³⁴ In such cases, the provision of practical co-operation on a need basis may be sufficient.¹⁹³⁵

Common situations in which such co-operation would be useful include where the migrant worker, who has left their 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 their country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which they were employed.¹⁹³⁶

In order to assess States Parties’ compliance with Article 19§3, the Committee takes into consideration the following information:

- ▶ the form and nature of contacts and information exchanges established by social services in emigration and immigration countries;
- ▶ measures taken to establish such contacts and to promote the cooperation between social services in other countries;
- ▶ international agreements or networks, and specific examples of cooperation (whether formal or informal) which exist between the social services of the country and other origin and destination countries;
- ▶ whether the cooperation extends beyond social security alone (for example in family matters);
- ▶ examples of cooperation at a local level.¹⁹³⁷

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: (a) remuneration and other employment and working conditions, (b) trade union membership and the enjoyment of benefits of collective bargaining, and (c) accommodation.

¹⁹²⁹ Conclusions IV (1975), Statement of interpretation on Article 19§2

¹⁹³⁰ Conclusions IV (1975), Statement of interpretation on Article 19§2

¹⁹³¹ Conclusions IV (1975), Statement of interpretation on Article 19§2

¹⁹³² Conclusions 2019, Armenia

¹⁹³³ Conclusions XIV-1 (1998), Belgium

¹⁹³⁴ Conclusions 2019, Albania

¹⁹³⁵ Conclusions 2019, Albania

¹⁹³⁶ Conclusions XV-1 (2000), Finland

¹⁹³⁷ Conclusions 2019, Albania

Scope

States Parties are required to prove the absence of discrimination, whether direct or indirect, in terms of law and practice, and should inform of any practical measures taken to remedy cases of discrimination.¹⁹³⁸ Equality in law does not always and necessarily ensure equality in practice.¹⁹³⁹ Hence, additional action becomes necessary owing to the different situation of migrant workers as compared with nationals.¹⁹⁴⁰ States Parties should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.¹⁹⁴¹

Article 19§4 also applies to posted workers, i.e. workers who, for a limited period, carry out their work in the territory of a State Party other than the State in which they usually work.¹⁹⁴² States must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction.¹⁹⁴³ Accordingly, 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).¹⁹⁴⁴

States Parties are also responsible for the regulation in national law of the conditions and rights of workers in cross-border postings.¹⁹⁴⁵

Remuneration and other employment and working conditions

Under Article 19§4(a), 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 promotions as well as vocational training.¹⁹⁴⁶

Membership of trade unions and enjoyment of the benefits of collective bargaining

Article 19§4(b) 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.¹⁹⁴⁷

Applying the principle of non-discrimination, as set out in Article 19§4(b) of the Charter, to the context of collective bargaining, requires States Parties 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.¹⁹⁴⁸

Excluding or limiting the right to collective bargaining or action with respect to foreign undertakings, for the sake of enhancing free cross border movement of services and advantages in terms of competition within a common market zone, constitutes discriminatory treatment on the ground of nationality of the workers.¹⁹⁴⁹ This is because it determines, in the host State, lower protection and more limited economic and social rights for posted foreign workers, in comparison with the protection and rights guaranteed to all other workers.¹⁹⁵⁰

¹⁹³⁸ Conclusions III (1973), Statement of Interpretation on Article 19§4; *European Federation of national organisations working with the Homeless (FEANSA) v. the Netherlands*, Complaint No. 86/2012, decision on the merits of 2 July 2014, §§ 202-203.

¹⁹³⁹ Conclusions V (1977), Statement of Interpretation on Article 19

¹⁹⁴⁰ Conclusions V (1977), Statement of Interpretation on Article 19

¹⁹⁴¹ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, decision on the merits of 3 July 2013, §133

¹⁹⁴² Conclusions 2015, Statement of interpretation on Article 19§4

¹⁹⁴³ Conclusions 2015, Statement of interpretation on Article 19§4

¹⁹⁴⁴ Conclusions 2015, Statement of interpretation on Article 19§4

¹⁹⁴⁵ Conclusions 2015, Statement of interpretation on Article 19§4

¹⁹⁴⁶ Conclusions VII (1981), United Kingdom; Conclusions 2019, Albania

¹⁹⁴⁷ Conclusions XIII-3 (1995), Turkey; Conclusions 2011, Statement of interpretation on Article 19§4b; Conclusions XIX-4 (2011), Luxembourg

¹⁹⁴⁸ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, decision on the merits, 3 July 2013, §140

¹⁹⁴⁹ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, decision on the merits, 3 July 2013, §141

¹⁹⁵⁰ *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012, decision on the merits, 3 July 2013, §141

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.¹⁹⁵¹ Irregularly present immigrants, however, do not fall within the scope of Article 19§4(c).¹⁹⁵²

There must be no legal or de facto restrictions on home-buying,¹⁹⁵³ access to subsidised housing or housing aids, such as loans or other allowances.¹⁹⁵⁴

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.¹⁹⁵⁵

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.¹⁹⁵⁶

Monitoring and judicial review

It is not enough for a government to demonstrate that no discrimination exists in law alone; it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning the rights secured by Article 19§4 of the Charter.¹⁹⁵⁷

In order to monitor and ensure that no discrimination occurs in practice, States Parties should have in place sufficient effective monitoring procedures or bodies to collect information, for example disaggregated data on remuneration or information on cases in employment tribunals.¹⁹⁵⁸

Under Article 19§4(c), equal treatment can only be effective if there is a right of appeal before an independent body against the relevant administrative decision.¹⁹⁵⁹ The Committee considers that existence of such review is important for all aspects covered by Article 19§4.¹⁹⁶⁰

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.¹⁹⁶¹

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.¹⁹⁶²

1951 [European Roma Rights Centre \(ERRC\) v. France](#), Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 111-113; [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).

1952 [European Roma Rights Centre \(ERRC\) v. France](#), Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 111-113; [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).

1953 [Conclusions IV \(1975\)](#), Norway; [Conclusions 2019](#), Albania

1954 [Conclusions III \(1973\)](#), Italy; [Conclusions 2019](#), Albania

1955 [European Federation of national organisations working with the Homeless \(FEANSA\) v. the Netherlands](#), Complaint No. 86/2012, decision on the merits of 2 July 2014, §204, citing [Conclusions XV-1 \(2000\)](#), Finland

1956 [Conclusions 2015](#), Slovenia

1957 [Conclusions III \(1973\)](#), [Statement of interpretation on Article 19§4](#); [Conclusions 2019](#), Albania

1958 [Conclusions XX-4 \(2015\)](#), Germany; [Conclusions 2019](#), Albania

1959 [Conclusions XV-1 \(2000\)](#), Finland

1960 [Conclusions 2019](#), Albania

1961 [Conclusions 2019](#), Albania, citing [Conclusions XIX-4 \(2011\)](#), Greece

1962 Appendix to the Revised European Social Charter, European Treaty Series - No. 163

Scope

This provision obliges States Parties to allow the families of migrants legally established in State Party territory to join them.¹⁹⁶³ The worker's children entitled to family reunion are those who are dependent, unmarried, and who fall under the legal age of majority in the receiving State.¹⁹⁶⁴

"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.¹⁹⁶⁵

Where the national legislation prescribes a lower age, it suffices in practice that applications for reunion in respect of children up to 21 years of age should be generally accepted.¹⁹⁶⁶

Where children aged 18 to 21 are not only disqualified in law from family reunion but also denied it in practice, the Committee assesses the proportion of children aged 18 to 21 refused family reunion.¹⁹⁶⁷ A high proportion of children aged 18 to 21 refused family reunion leads to a finding of non-conformity with Article 19§6 in this respect.¹⁹⁶⁸

Conditions governing family reunion

States Parties should not adopt a blanket approach to the application of relevant requirements, so as to preclude the possibility of exemptions being made in respect of particular categories of cases, or for consideration of individual circumstances.¹⁹⁶⁹

The Covid-19 pandemic has in some cases led to the separation of migrant workers and their families for extended periods, for example due to closure of borders, travel restrictions and quarantine requirements or due to fear of job loss in case of travel.¹⁹⁷⁰ Article 19§6 requires States Parties to facilitate family reunion as far as possible and refers to the possibility for the States Parties to take extraordinary measures to avoid separation of families during the pandemic.¹⁹⁷¹

i. Refusal on health grounds

States Parties may not deny entry to their 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.¹⁹⁷² 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.¹⁹⁷³ 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.¹⁹⁷⁴

ii. 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.¹⁹⁷⁵ Thus, for example, a period of eighteen months or more is not in conformity with this provision of the Charter.¹⁹⁷⁶

iii. Housing condition

The requirement of having sufficient or suitable accommodation to house the family or certain family members as a precondition for its admission to a State Party should not be so restrictive as to prevent family reunion.¹⁹⁷⁷

¹⁹⁶³ Conclusions 2019, Albania

¹⁹⁶⁴ Appendix to the Revised European Social Charter, European Treaty Series - No. 163

¹⁹⁶⁵ Conclusions VIII (1984) Statement of Interpretation on Article 19§6

¹⁹⁶⁶ Conclusions XVI-1 (2002), The Netherlands

¹⁹⁶⁷ Conclusions XVI-1 (2002), The Netherlands

¹⁹⁶⁸ Conclusions XVI-1 (2002), The Netherlands

¹⁹⁶⁹ Conclusions 2019, Albania, citing Conclusions 2015, Statement of Interpretation on Article 19§6 – housing requirements

¹⁹⁷⁰ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁹⁷¹ Statement on Covid-19 and social rights adopted on 24 March 2021

¹⁹⁷² Conclusions XVI-1 (2002), Greece

¹⁹⁷³ Conclusions XV-1 (2000), Finland

¹⁹⁷⁴ Conclusions XV-1 (2000), Finland

¹⁹⁷⁵ Conclusion 2011, Statement of Interpretation on Article 19§6

¹⁹⁷⁶ Conclusions I (1969), Germany; Conclusions 2011, France; Conclusions 2011, Cyprus

¹⁹⁷⁷ Conclusions IV (1975), Norway

States are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family.¹⁹⁷⁸ 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.¹⁹⁷⁹

iv. Means requirement

The level of means required by States Parties to bring in a migrant worker's family or certain family members should not be so restrictive as to prevent any family reunion.¹⁹⁸⁰ Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.¹⁹⁸¹

v. 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.¹⁹⁸²

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.¹⁹⁸³ They are therefore contrary to Article 19§6 of the Charter where they:

- ▶ have the potential effect of denying entry or the right to remain to family members of a migrant worker, or
- ▶ 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.¹⁹⁸⁴

Independent right to stay

Even where the requirements for the expulsion of a migrant worker are met under Article 19§8, the members of the worker's family who are in the territory of the receiving State should not be deported as consequence of the migrant worker's expulsion.¹⁹⁸⁵ The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker.¹⁹⁸⁶

The conformity of the expulsion of family members of a migrant worker with the Charter is assessed under Article 19§6.¹⁹⁸⁷

Remedies

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.¹⁹⁸⁸

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.¹⁹⁸⁹ This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).¹⁹⁹⁰

¹⁹⁷⁸ Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements

¹⁹⁷⁹ Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements

¹⁹⁸⁰ Conclusions XVII-1 (2004), The Netherlands

¹⁹⁸¹ Conclusions 2011, Statement of Interpretation on Article 19§6

¹⁹⁸² Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests

¹⁹⁸³ Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests

¹⁹⁸⁴ Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests

¹⁹⁸⁵ Conclusions XVI-1 (2002), The Netherlands, Article 19§8

¹⁹⁸⁶ Conclusions XVI-1 (2002), The Netherlands, Article 19§8

¹⁹⁸⁷ Conclusions 2015, Statement of interpretation on Article 19§6 and 19§8

¹⁹⁸⁸ Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements

¹⁹⁸⁹ Conclusions I (1969), Italy, Norway, United-Kingdom; Conclusions I (1969), Germany; Conclusions 2019, Albania

¹⁹⁹⁰ 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 their own choosing should be advised that they may appoint counsel and, whenever the interests of justice so require, be provided with counsel, free of charge if they do not have sufficient means to pay the latter, as is the case for nationals or should be by virtue of the European Social Charter.¹⁹⁹¹ Under the same conditions (involvement of a migrant worker in legal or administrative proceedings), whenever the interests of justice so require, a migrant worker must have the free assistance of an interpreter if they cannot properly understand or speak the national language used in the proceedings and have any necessary documents translated.¹⁹⁹² Such legal assistance should be extended to obligatory pre-trial proceedings.¹⁹⁹³

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.¹⁹⁹⁴

In cases where a fundamental right such as the right of residence is at stake, the burden of proof rests with the Government: to demonstrate that a person does not reside legally on its territory.¹⁹⁹⁵

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.¹⁹⁹⁶ 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.¹⁹⁹⁷ Expulsion orders must be proportionate, taking into account all aspects of the individual's behaviour as well as the circumstances and the length of time of their presence in the territory of the State.¹⁹⁹⁸ The individual's connection or ties with both the host state and the state of origin, as well as the strength of any family relationships that they may have formed during this period, must also be considered to determine whether expulsion is proportionate.¹⁹⁹⁹

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.²⁰⁰⁰

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.²⁰⁰¹

States Parties must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body.²⁰⁰²

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.²⁰⁰³

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

1991 [Conclusions 2011, Statement of Interpretation on Article 19§7](#)

1992 [Conclusions 2011, Statement of Interpretation on Article 19§7](#)

1993 [Conclusions 2011, Statement of Interpretation on Article 19§7](#)

1994 [Conclusions VI \(1979\), Cyprus](#); [Conclusions 2011, Statement of Interpretation on Article 19§8](#); [Conclusions 2015, Statement of interpretation on Article 19§8](#)

1995 *Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012, §114

1996 [Conclusions 2015, Statement of interpretation on Article 19§8](#)

1997 [Conclusions 2015, Statement of interpretation on Article 19§8](#)

1998 [Conclusions 2015, Statement of interpretation on Article 19§8](#)

1999 [Conclusions 2015, Statement of interpretation on Article 19§8](#)

2000 [Conclusions V \(1977\), Germany](#)

2001 [Conclusions V \(1977\), Italy](#)

2002 [Conclusions V \(1977\), United Kingdom](#); [Conclusions 2015, Statement of interpretation on Article 19§8](#)

2003 [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 155-158, [Centre on Housing Rights and Evictions \(COHRE\) v. France](#), Complaint No. 63/2010, decision on the merits of 28 June 2011, §§ 68-79; [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §§ 51-67; *Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012, §§ 112-117

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.²⁰⁰⁴

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.²⁰⁰⁵

The right to transfer earnings and savings includes the right to transfer movable property (including money).²⁰⁰⁶

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.²⁰⁰⁷

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.²⁰⁰⁸ In addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.²⁰⁰⁹

A finding of non-conformity with regard to any of the other paragraphs of Article 19 ordinarily leads to a finding of non-conformity under Article 19§10, because the same grounds for non-conformity also apply to self-employed workers.²⁰¹⁰ Such finding of non-conformity prevents discrimination or difference in treatment.²⁰¹¹

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.²⁰¹² The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into normal employment and society at large.²⁰¹³

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.²⁰¹⁴

Teaching the language of the host country to primary and secondary school students throughout the school curriculum is not enough to satisfy the obligations laid down by Article 19§11.²⁰¹⁵ States Parties must make special efforts 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.²⁰¹⁶

States Parties shall encourage the teaching of the national language in the workplace, in the voluntary sector or in public establishments such as universities.²⁰¹⁷ Such services shall be free of charge so as not to exacerbate the disadvantaged position of migrant workers in the labour market.²⁰¹⁸

2004 [Conclusions 2011, Statement of Interpretation on Article 19§8](#)

2005 [Conclusions XIII-1 \(1993\), Greece](#)

2006 [Conclusions 2011, Statement of Interpretation on Article 19§9](#)

2007 [Conclusions I \(1969\), Norway](#)

2008 [Conclusions 2002, France](#)

2009 [Conclusions XVIII-1 \(2006\) Luxembourg](#)

2010 [Conclusions 2019, Albania](#)

2011 [Conclusions 2019, Albania](#)

2012 [Conclusions 2002, France](#)

2013 [Conclusions 2002, France](#)

2014 [Conclusions 2011, Norway](#)

2015 [Conclusions 2002, France](#)

2016 [Conclusions 2002, France](#)

2017 [Conclusions 2002, France](#)

2018 [Conclusions 2002, France](#)

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.

States Parties should promote and facilitate the teaching of the languages 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.²⁰¹⁹

For a comprehensive assessment of the situation under this provision, the Committee takes into consideration, in particular, the following detailed information:

- ▶ statistics on major migrant groups,²⁰²⁰
- ▶ whether any measures or projects have been put in place in the framework of the school system or other structures to provide education of migrants' mother tongue,²⁰²¹
- ▶ whether the children of migrants have access to multilingual education and on what basis; what steps that government has taken to facilitate the access of migrants' children to these schools,²⁰²²
- ▶ whether any non-governmental organisations or other bodies, such as local associations, cultural centres or private initiatives that teach migrant workers' children the language of their country of origin, and whether they receive support.²⁰²³

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.*²⁰²⁴
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.*²⁰²⁵
3. *This article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.*²⁰²⁶
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.*²⁰²⁷

2019 [Conclusions 2002, Italy](#); [Conclusions 2011, Armenia](#); [Conclusions 2011, Statement of Interpretation on Article 19§12](#)

2020 [Conclusions 2019, Albania](#)

2021 [Conclusions 2019, Albania](#)

2022 [Conclusions 2019, Albania](#)

2023 [Conclusions 2019, Albania](#)

2024 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

2025 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

2026 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

2027 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

Equality at work and in social security matters

Definitions and scope

Article 20 guarantees the right to equality of opportunity and equal treatment in the field of employment and occupation, without discrimination based on sex.²⁰²⁸

Acceptance of Article 20 entails the following obligations for States Parties:

- ▶ the obligation to promulgate this right in legislation;²⁰²⁹
- ▶ the obligation to take legal measures designed to ensure the effectiveness of this right.²⁰³⁰ In this regard, such measures must provide for the nullity of clauses in collective agreements and individual contracts which are contrary to the principle; as well as for adequate appeal procedures where the right has been violated and for the effective protection of workers against any retaliatory measures (dismissal or other measures) taken as a result of their demand to benefit from the right.²⁰³¹
- ▶ the obligation to define an active policy and to take practical measures to implement it.²⁰³²

For States Parties which have accepted both Article 1§2 and Article 20, the Committee examines under the latter the general framework for guaranteeing equality between women and men (equal rights, specific protection measures, situation of women in employment and training schemes, measures to promote equal opportunities).²⁰³³ As a result it does not deal specifically with discrimination based on sex under Article 1§2 with regard to those States Parties.²⁰³⁴

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

The right of women and men to equality must be guaranteed by law. The Charter requires States Parties not only to provide for equal treatment but also to protect women and men from discrimination in employment and training.²⁰³⁵ This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.²⁰³⁶ A general ban on all forms of discrimination in the constitution is not sufficient.²⁰³⁷

Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked.²⁰³⁸ The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.²⁰³⁹ 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.²⁰⁴⁰

The Committee considers it advisable for States Parties to introduce measures likely to discourage employers from applying, even inadvertently, clauses which are null and void.²⁰⁴¹ These measures could take the form of the introduction of a statutory legal provision rendering any such stipulation null and void, the possibility for a court to declare this nullity by a decision applicable *erga omnes*, the introduction of a specific right for trade unions to take legal action in these matters, including the right to act as an intervener in individual litigation, or the possibility of class action on the part of persons in whose interest it would be to have this nullity declared.²⁰⁴²

²⁰²⁸ Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

²⁰²⁹ Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

²⁰³⁰ Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

²⁰³¹ Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

²⁰³² Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol

²⁰³³ Conclusions 2002, Statement of Interpretation on Articles 1§2 and 20

²⁰³⁴ Conclusions 2002, Statement of Interpretation on Article 20

²⁰³⁵ Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol

²⁰³⁶ Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol

²⁰³⁷ Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol

²⁰³⁸ *University Women of Europe (UWE) v. Bulgaria*, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131

²⁰³⁹ *University Women of Europe (UWE) v. Bulgaria*, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131

²⁰⁴⁰ *University Women of Europe (UWE) v. Bulgaria*, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131

²⁰⁴¹ Conclusions XV-2 (2001) Addendum, Slovak Republic, Article 1 of the Additional Protocol

²⁰⁴² Conclusions XV-2 (2001) Addendum, Slovak Republic, Article 1 of the Additional Protocol

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 for States Parties which have accepted Article 4§3 only.²⁰⁴³

Equal opportunities and positive measures

States Parties must take practical steps to promote equal opportunities by removing *de facto* inequalities that affect women's and men's chances.²⁰⁴⁴ The elimination of potentially discriminatory provisions protecting women must therefore be accompanied by action to promote quality employment for women.²⁰⁴⁵

Gender mainstreaming should form part of a strategy covering all aspects of the labour market, including remuneration, career development and occupational recognition, and extending to the education system.²⁰⁴⁶

Appropriate measures include:

- ▶ adopting and implementing national equal opportunities action plans;²⁰⁴⁷
- ▶ requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;²⁰⁴⁸
- ▶ encouraging employers and workers to deal with equality issues in collective agreements;²⁰⁴⁹
- ▶ setting more store by equality between women and men in national action plans for employment.²⁰⁵⁰

Specific protection measures relating to pregnancy, childbirth and the postnatal period, are generally examined under Article 8§4 of the Charter.²⁰⁵¹

Obligations to promote the right to equal pay

Under Articles 4§3 and 20 of the Charter, the concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.²⁰⁵²

In order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases is crucial.²⁰⁵³ The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap.²⁰⁵⁴ The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value.²⁰⁵⁵ In addition, to the overall pay gap (unadjusted and adjusted), the Committee will, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc.²⁰⁵⁶ The Committee further considers that States Parties are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it.²⁰⁵⁷ Failure to make measurable progress in reducing the gender pay gap is contrary to Article 20.²⁰⁵⁸

Pay transparency and job comparisons

Pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value.²⁰⁵⁹ Transparency contributes to identifying gender bias and discrimination and it facilitates the taking

2043 [Conclusions 2002, Statement of Interpretation on Articles 1§2 and 20](#)

2044 [Conclusions XVII-2 \(2005\), The Netherlands \(Aruba\), Article 1 of the Additional Protocol](#)

2045 [Conclusions XVII-2 \(2005\), The Netherlands \(Aruba\), Article 1 of the Additional Protocol](#)

2046 [Conclusions XVII-2 \(2005\), Greece, Article 1 of the Additional Protocol](#)

2047 [Conclusions 2016, Bosnia and Herzegovina](#)

2048 [Conclusions 2016, Bosnia and Herzegovina](#)

2049 [Conclusions 2016, Bosnia and Herzegovina](#)

2050 [Conclusions 2016, Bosnia and Herzegovina](#)

2051 [Conclusions XVII-2 \(2005\), Greece, Article 1 of the Additional Protocol](#)

2052 [Conclusions 2020, North Macedonia, citing *University Women of Europe \(UWE\) v. France*, Complaint No. 130/2016, decision on the merits of 5 December 2019, §163](#)

2053 [Conclusions 2020, Albania](#)

2054 [Conclusions 2020, Albania](#)

2055 [Conclusions 2020, Albania](#)

2056 [Conclusions 2020, Albania](#)

2057 [Conclusions 2020, Albania](#)

2058 [Conclusions 2020, Andorra](#)

2059 [Conclusions 2020, Albania](#)

of corrective action by workers and employers and their organisations as well as by the relevant authorities.²⁰⁶⁰ States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender.²⁰⁶¹ The Committee regards such measures as indicators of compliance with the Charter in this respect.²⁰⁶²

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value.²⁰⁶³ Usually, pay comparisons are made between persons within the same undertaking/company.²⁰⁶⁴ However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings.²⁰⁶⁵ Therefore, Article 20 requires that it be possible to make pay comparisons across companies.²⁰⁶⁶ 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;²⁰⁶⁷
- ▶ cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;²⁰⁶⁸
- ▶ cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.²⁰⁶⁹

In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account.²⁰⁷⁰ States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law.²⁰⁷¹ In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination.²⁰⁷²

In equal pay litigation cases, the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source.²⁰⁷³ For example, the Committee has considered that the situation complied with this principle when, in equal pay cases, comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit.²⁰⁷⁴

Effective remedies

Domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination.²⁰⁷⁵ Workers who claim that they have suffered discrimination must be able to take their case to court.²⁰⁷⁶ Effective access to courts must be guaranteed for victims of pay discrimination.²⁰⁷⁷ Therefore, proceedings should be affordable and timely.²⁰⁷⁸

²⁰⁶⁰ Conclusions 2020, Albania

²⁰⁶¹ Conclusions 2020, Albania

²⁰⁶² Conclusions 2020, Albania

²⁰⁶³ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁴ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁵ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁶ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁷ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁸ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁶⁹ Conclusions 2012, Statement of Interpretation on Article 20

²⁰⁷⁰ Conclusions 2020, Albania

²⁰⁷¹ Conclusions 2020, Albania

²⁰⁷² Conclusions 2020, Albania

²⁰⁷³ Conclusions 2016, Bosnia and Herzegovina

²⁰⁷⁴ Conclusions 2016, Bosnia and Herzegovina, citing Conclusions 2012, The Netherlands; and Conclusions 2014, France, Article 453

²⁰⁷⁵ Conclusions 2020, Albania

²⁰⁷⁶ Conclusions 2020, Albania

²⁰⁷⁷ Conclusions 2020, Albania

²⁰⁷⁸ Conclusions 2020, Albania

The absence or a low number of wage discrimination cases brought before the courts is likely to indicate the lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in the legal remedies available or the absence of such remedies, lack of practical access to procedures or fear of retaliation.²⁰⁷⁹

The Committee assesses compliance with Article 20 in respect of access to effective remedies on the basis of the following indicators:

- ▶ the number of gender pay discrimination cases brought before the courts with specific information on their outcome and the sanctions imposed on employers;²⁰⁸⁰
- ▶ whether there is an upper limit on the amount of compensation which can be granted in the case of gender pay discrimination;²⁰⁸¹
- ▶ whether sanctions are imposed on employers in the event of pay discrimination;²⁰⁸²
- ▶ what rules apply in cases of retaliatory dismissal involving equal pay litigation;²⁰⁸³
- ▶ examples of compensation awarded by the courts in cases of gender pay discrimination.²⁰⁸⁴

Burden of proof

Article 20 of the Charter implies a modification of the burden of proof in favour of workers who believe that they have been the victims of a discriminatory measure.²⁰⁸⁵ The shift in the burden of proof consists in ensuring that where a person believes they have 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 the apparent discrimination is due to objective factors unrelated to any discrimination based on sex and thus does not constitute any contravention of the principle of equal treatment.²⁰⁸⁶

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 individuals²⁰⁸⁷ or setting up an independent body to promote equal treatment and provide legal assistance to victims.

Adequate compensation

States Parties must ensure through legislation that adequate safeguards exist against discrimination and retaliatory measures.²⁰⁸⁸ Legislation must provide for the rectification of the situation concerned — in the case of dismissal, reinstatement — and compensation for any financial loss incurred during the intermediate period.²⁰⁸⁹

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation.²⁰⁹⁰ In this connection, the Committee makes a distinction between compensation that is granted in cases of successful unequal pay claims and compensation/severance pay that is granted in retaliatory dismissal cases, even when the latter are the result of equal pay claims.²⁰⁹¹ In the first case no ceiling can be established by law.²⁰⁹² In the second case, a ceiling established by law is permissible under the Charter, only if its level is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.²⁰⁹³

Adequate compensation means:

- ▶ reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;²⁰⁹⁴

2079 [Conclusions 2020, Georgia](#)

2080 [Conclusions XXII-1 \(2020\), Croatia](#)

2081 [Conclusions XXII-1 \(2020\), Croatia](#)

2082 [Conclusions XXII-1 \(2020\), Croatia](#)

2083 [Conclusions XXII-1 \(2020\), Croatia](#)

2084 [Conclusions XXII-1 \(2020\), Croatia](#)

2085 [Conclusions 2004, Romania](#)

2086 [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

2087 [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

2088 [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

2089 [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

2090 [Conclusions 2020, Andorra](#)

2091 [Conclusions 2020, Andorra](#)

2092 [Conclusions 2020, Andorra](#)

2093 [Conclusions 2020, Andorra](#)

2094 [Conclusions XVII-2 \(2005\), Finland, Article 1 of the Additional Protocol](#)

- ▶ 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.²⁰⁹⁵
- ▶ in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.²⁰⁹⁶

Protection against reprisals

Retaliatory dismissal in cases of pay discrimination must be forbidden.²⁰⁹⁷ Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.²⁰⁹⁸

Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason.²⁰⁹⁹ In this case, the employer must reinstate them in the same or a similar post.²¹⁰⁰ If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.²¹⁰¹

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).²¹⁰²

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).²¹⁰³ 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.²¹⁰⁴

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).

Prohibiting women from performing night work or underground mining while authorising men to do so is contrary to the principle of equal treatment.²¹⁰⁵

Specific protection measures are examined under Article 8 and 27 of the Charter.²¹⁰⁶

Social security

Article 20 guarantees equal treatment with regard to social security.²¹⁰⁷ However, the Appendix authorises States, when they ratify the Charter or accept Article 20, to make a declaration excluding social security matters

²⁰⁹⁵ [Conclusions XVII-2 \(2005\), Finland, Article 1 of the Additional Protocol](#); see also [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

²⁰⁹⁶ [Conclusions XVII-2 \(2005\), Finland, Article 1 of the Additional Protocol](#)

²⁰⁹⁷ [Conclusions 2020, Albania](#)

²⁰⁹⁸ [Conclusions 2020, Cyprus](#); see also [Conclusions XIII-5 \(1997\), Statement of Interpretation on Article 1 of the Additional Protocol](#)

²⁰⁹⁹ [Conclusions 2020, Albania](#)

²¹⁰⁰ [Conclusions 2020, Albania](#)

²¹⁰¹ [Conclusions 2020, Albania](#)

²¹⁰² Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²¹⁰³ [Conclusions XVI-2 \(2004\), Greece, Article 1 of the Additional Protocol](#)

²¹⁰⁴ [Conclusions XVI-2 \(2004\), Greece, Article 1 of the Additional Protocol](#)

²¹⁰⁵ [Conclusions 2012 Bosnia and Herzegovina](#); [Conclusions XVII-2 \(2005\), The Netherlands \(Aruba\), Article 1 of the Additional Protocol](#)

²¹⁰⁶ [Conclusions 2012, Georgia](#)

²¹⁰⁷ [Conclusions 2002, Italy](#)

from the scope of Article 20.²¹⁰⁸ 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.²¹⁰⁹

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.²¹¹⁰

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)²¹¹¹

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.

Consultation at the enterprise level is dealt with by Article 6§1 and Article 21 of the Charter.²¹¹² For the States Parties that have ratified both provisions, consultation at enterprise level is examined under Article 21.²¹¹³

Personal scope

Article 21 of the Charter entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking.²¹¹⁴

²¹⁰⁸ Conclusions 2002, Italy

²¹⁰⁹ Conclusions 2012, Russian Federation

²¹¹⁰ *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, decision on the merits of 10 October 2000, §25.

²¹¹¹ Appendix to the European Social Charter (Revised) – European Treaty Series - No. 163

²¹¹² Conclusions 2018, Latvia, citing Conclusions 2004, Ireland

²¹¹³ Conclusions 2018, Latvia, citing Conclusions 2004, Ireland

²¹¹⁴ Conclusions XIX-3 (2010), Croatia

They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.²¹¹⁵

The national situation is in conformity with the requirements of Article 21 of the Charter if legal provisions governing the information and consultation of workers cover all categories of workers and all undertakings.²¹¹⁶

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, undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state may be excluded from the scope of this provision, as per the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002.²¹¹⁷ 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.²¹¹⁸

Even though Article 21 may apply to workers in state-owned enterprises, public employees as a whole are not covered by these provisions.²¹¹⁹

Material scope

The determination of the material scope of the workers' right to information and consultation within the undertaking is mainly left to collective bargaining.²¹²⁰

Enforcement of rules and procedures

In order to effectively guarantee the workers' rights under Article 21, there must be a supervising mechanism such as a Labour Inspectorate that can impose sanctions for the violation of the provisions on access to information and consultation.²¹²¹ Administrative and/or judicial procedures must be available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected.²¹²² In particular, all employees or their representatives must have legal capacity to trigger an administrative action against their employer and have a subsequent right of appeal before a court.²¹²³ There must also be sanctions for employers which fail to fulfil their obligations under this Article.²¹²⁴

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.

²¹¹⁵ Conclusions XIX-3 (2010), Croatia

²¹¹⁶ Conclusions 2010, Belgium, citing Conclusions XVI-2 (2004), Greece

²¹¹⁷ Conclusions XIX-3 (2010), Croatia

²¹¹⁸ Conclusions XIX-3 (2010), Croatia

²¹¹⁹ European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 40/2007, decision on the merits of 23 September 2008, §42

²¹²⁰ Conclusions 2003, Romania

²¹²¹ Conclusions 2018, Republic of Moldova

²¹²² Conclusions 2018, Ukraine

²¹²³ Conclusions 2003, Romania

²¹²⁴ Conclusions 2005, Lithuania

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.²¹²⁵

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.²¹²⁶

The workers’ right to take part in the determination and improvement of the working conditions and working environment implies that workers may contribute, to a certain extent, to the employer’s decision-making process.²¹²⁷ The great majority of workers (at least 80 %) must be granted a right to participate in the determination and improvement of the working conditions and working environment within the undertaking.²¹²⁸ This provision applies to all undertakings, whether private or public.²¹²⁹

Even though Article 22 may apply to workers in state-owned enterprises, public employees are as a whole not covered by this provision.²¹³⁰ It follows that the right of police staff to participation in the determination and improvement of their working conditions and working environment does not fall within the scope of application of Article 22 of the Revised Charter.²¹³¹

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 and tendency undertakings.²¹³²

Protection of health and safety

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 regarding the protection of health and safety within the undertaking.²¹³³

²¹²⁵ Appendix to the European Social Charter (Revised) – European Treaty Series - No. 163

²¹²⁶ Appendix to the European Social Charter (Revised) – European Treaty Series - No. 163

²¹²⁷ [Conclusions 2005, Estonia](#)

²¹²⁸ [Conclusions 2007, Italy](#)

²¹²⁹ [Conclusions 2018, Latvia](#)

²¹³⁰ [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 60/2010, decision on the merits of 17 October 2011, §36

²¹³¹ [European Council of Police Trade Unions \(CESP\) v. Portugal](#), Complaint No. 60/2010, decision on the merits of 17 October 2011, §36

²¹³² [Conclusions 2018, Latvia](#); see also [Conclusions 2005, Estonia](#)

²¹³³ [Conclusions 2018, Latvia](#)

The practical means of informing and consulting employers' and workers' organisations about labour inspectorate activities is examined under Article 22 of the Revised Charter.

The organisation of social and socio-cultural services and facilities

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.²¹³⁴ 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.²¹³⁵

Enforcement

Workers must have legal remedies when these rights are not respected.²¹³⁶ There must also be sanctions for employers which fail to fulfil their obligations under this Article.²¹³⁷

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.*²¹³⁸

Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of older persons.²¹³⁹ 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 older persons, obliging States Parties to devise and carry out coherent actions in the different areas covered.²¹⁴⁰

One of the primary objectives of Article 23 is to enable older persons to remain full members of society. The expression "full members" means that older persons must suffer no ostracism on account of their age.²¹⁴¹ 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.²¹⁴² The Covid-19 crisis has exposed examples of a lack of equal treatment of older

²¹³⁴ Conclusions 2018, Latvia

²¹³⁵ Conclusions 2018, Latvia; Conclusions 2007, Italy; Conclusions 2007, Armenia

²¹³⁶ Conclusions 2003, Bulgaria

²¹³⁷ Conclusions 2003, Bulgaria, Slovenia

²¹³⁸ Appendix to the European Social Charter (Revised), *European Treaty Series - No. 163*

²¹³⁹ Conclusions XIII-3 (1995), Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)

²¹⁴⁰ Conclusions XIII-3 (1995), Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)

²¹⁴¹ *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on the merits of 2 July 2013, §116

²¹⁴² *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on the merits of 2 July 2013, §116, citing Conclusions XIII-5, Finland

persons, such as in medical care where rationing of scarce resources (e.g. ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age.²¹⁴³ Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.²¹⁴⁴ Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives.²¹⁴⁵

Article 23 overlaps with other provisions of the Charter which protect older persons as members of the general population, such as Article 11 (Right to protection of health),²¹⁴⁶ Article 12 (Right to social security),²¹⁴⁷ Article 13 (Right to social and medical assistance) and Article 30 (Right to protection against poverty and social exclusion).²¹⁴⁸ Article 23 requires States Parties to make focused and planned provision in accordance with the specific needs of older persons.

The focus of Article 23 is on social protection of older persons outside the employment field.²¹⁴⁹ Questions of age discrimination in employment are primarily examined under Articles 15(2) (non-discrimination in employment) and 24 (right to protection in cases of termination of employment) of the Charter.²¹⁵⁰

Non-discrimination legislation should exist at least in certain domains protecting persons against discrimination on grounds of age.²¹⁵¹

Legislative framework

Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services.²¹⁵² Pervasive age discrimination persists in many areas of society throughout Europe, including healthcare, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities.²¹⁵³ Therefore an adequate legal framework is a fundamental measure to combat age discrimination in these areas.²¹⁵⁴ Article 23 must be fully respected during the Covid-19 crisis.²¹⁵⁵

Article 23 requires the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.²¹⁵⁶

Legislation allowing practices leading to a part of the older population being denied access to informal care allowances or other alternative support constitutes a violation of Article 23.²¹⁵⁷ Older persons at times may have reduced capacity-making powers or no such powers or capacity at all.²¹⁵⁸ Therefore, there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves.²¹⁵⁹ This means that older 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.²¹⁶⁰

An older 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.²¹⁶¹

²¹⁴³ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁴⁴ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁴⁵ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁴⁶ Statement of Interpretation on the right to protection of health in times of pandemic, 20 April 2020

²¹⁴⁷ General Introduction to Conclusions 2017

²¹⁴⁸ Conclusions 2017, Ukraine

²¹⁴⁹ Conclusions 2009, Andorra

²¹⁵⁰ Conclusions 2009, Andorra

²¹⁵¹ *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on the merits of 2 July 2013, §115

²¹⁵² Conclusions 2009, Andorra

²¹⁵³ Conclusions 2009, Andorra

²¹⁵⁴ Conclusions 2009, Andorra

²¹⁵⁵ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁵⁶ Conclusions 2017, Andorra

²¹⁵⁷ Conclusions 2003, France

²¹⁵⁸ Conclusions 2003, France

²¹⁵⁹ Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making

²¹⁶⁰ Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making

²¹⁶¹ Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making

Older 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.²¹⁶²

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons, including in instances of reduced decision-making capacity.²¹⁶³ It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights.²¹⁶⁴

Article 23 also requires States Parties to take appropriate measures against the abuse of older persons.²¹⁶⁵ Abuse can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect.²¹⁶⁶ States Parties must therefore take measures to evaluate the extent of the problem, to raise awareness on the need to eradicate abuse and neglect of older persons, and to adopt legislative or other measures.²¹⁶⁷

- ▶ **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 older persons to lead a 'decent life' and play an active part in public, social and cultural life.²¹⁶⁸

However when assessing the adequacy of resources of older persons under Article 23, all social protection measures guaranteed to older 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.²¹⁶⁹ In particular, pensions, contributory or non-contributory, and other complementary cash benefits available to older persons are examined.²¹⁷⁰ These resources are then compared with the median equivalised income.²¹⁷¹ The Committee also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.²¹⁷²

- 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, paragraph 1b presupposes the existence of services and facilities.²¹⁷³ Therefore, it is not only information relating to the provision of information about these services and facilities that is examined but also the services and facilities themselves.²¹⁷⁴ In doing so, the Committee examines 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 older persons.²¹⁷⁵

Furthermore, States Parties must have a system for monitoring the quality of services and a procedure for complaining about the standard of services.²¹⁷⁶

Insufficient regulation of fees for service housing and service housing with 24-hour assistance may amount to a violation of Article 23.²¹⁷⁷

²¹⁶² [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

²¹⁶³ [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

²¹⁶⁴ [Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making](#)

²¹⁶⁵ [Conclusions 2009, Andorra](#)

²¹⁶⁶ [Conclusions 2009, Andorra](#)

²¹⁶⁷ [Conclusions 2009, Andorra](#)

²¹⁶⁸ [Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly](#)

²¹⁶⁹ [Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly](#)

²¹⁷⁰ [Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly](#)

²¹⁷¹ [Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly](#)

²¹⁷² [Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly](#)

²¹⁷³ [Conclusions 2003, France](#)

²¹⁷⁴ [Conclusions 2003, France](#)

²¹⁷⁵ [Conclusions 2003, France](#)

²¹⁷⁶ [Conclusions 2009, Andorra](#)

²¹⁷⁷ [The Central Association of Carers in Finland v. Finland](#), Complaint No 71/2011, decision on the merits of 4 December 2012, §53

► **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:**

a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

The needs of older persons must be taken into account in national or local housing policies.²¹⁷⁸ The supply of adequate housing for older persons must be sufficient.²¹⁷⁹ Policies should help older 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.²¹⁸⁰ The improvement of housing conditions of older persons requires considerable public funding as the average older person usually cannot afford the costs of modernisation of their apartment or purchasing a new apartment of higher standard.²¹⁸¹ Improvement of housing conditions by moving elsewhere is often not a viable option in that it uproots the older person from their “natural” environment.²¹⁸²

b. the health care and the services necessitated by their state;

In the context of the right to adequate health care for older 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 older persons.²¹⁸³ In addition, there should be mental health programmes for any psychological problems in respect of older persons, and adequate palliative care services.²¹⁸⁴

► **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 older 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 older person, and the right to complain about treatment and care in institutions.²¹⁸⁵

There should be a sufficient supply of institutional facilities for older 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 body.²¹⁸⁶

Older persons of foreign origin in institutional care who unable to communicate in the national language must benefit from measures ensuring that they can express themselves, communicate and be consulted in an appropriate manner.²¹⁸⁷

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.²¹⁸⁸

Older persons and their organisations must be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis.²¹⁸⁹ Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.²¹⁹⁰

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 and sedatives are also examined under this provision.²¹⁹¹

²¹⁷⁸ Conclusions 2003, France

²¹⁷⁹ Conclusions 2003, France

²¹⁸⁰ Conclusions 2013, Andorra; *International Federation of Associations of the Elderly (FIAPA) v. France*, Complaint No. 145/2017, decision on the merits of 25 May 2019, §45

²¹⁸¹ Conclusions 2009, Andorra

²¹⁸² Conclusions 2017, Bosnia and Herzegovina

²¹⁸³ Conclusions 2003, France; Conclusions 2017, Ukraine

²¹⁸⁴ Conclusions 2003, France

²¹⁸⁵ Conclusions 2017, Malta; Portugal

²¹⁸⁶ Conclusions 2005, Slovenia; Conclusions XX-2 (2013), Czech Republic

²¹⁸⁷ Conclusions 2005, Slovenia

²¹⁸⁸ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁸⁹ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁹⁰ Statement on Covid-19 and social rights adopted on 24 March 2021

²¹⁹¹ Conclusions 2005, Slovenia; Conclusions 2003, France

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:*
 - d. *trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;*
 - e. *seeking office as, acting or having acted in the capacity of a workers’ representative;*
 - f. *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;*
 - g. *race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;*
 - h. *maternity or parental leave;*
 - i. *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.²¹⁹² A situation where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, does not fall within the scope of this provision. However, the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted (but not mandated) by law, is not justified.²¹⁹³

Definition of an “employee”

All workers who have signed an employment contract are entitled to protection in the event of termination of employment.²¹⁹⁴ However, according to the Appendix, the State Party may exclude one or more of the following categories:

- ▶ workers engaged under a contract of employment for a specified period of time or a specified task.²¹⁹⁵ In the public sector, the non-renewal of fixed-term contracts or the fact that such contracts are not converted

²¹⁹² Conclusions 2012, Statement of Interpretation on Article 24

²¹⁹³ Conclusions 2020, Malta ; Conclusions 2012, Statement of Interpretation on Article 24

²¹⁹⁴ Conclusions 2003, Italy

²¹⁹⁵ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

into indefinite duration contracts, even though there are vacant positions within the workforce, cannot be regarded as dismissals contrary to Article 24 of the Charter.²¹⁹⁶

- ▶ 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.²¹⁹⁷ Under Article 24, exclusion of employees from protection against dismissal for six months during the probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification.²¹⁹⁸ A one year period of exclusion is manifestly unreasonable and therefore not in conformity with the Charter.²¹⁹⁹
- ▶ workers engaged on a casual basis for a short period.²²⁰⁰

This list is exhaustive. Exclusion of any other category of employee, such as employees having reached the normal retiring age, from protection against unfair dismissal is not in conformity with the Charter.²²⁰¹

Safeguards must exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.²²⁰²

Definition of valid reasons

Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship.²²⁰³ Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).²²⁰⁴

i. reasons connected with the capacity or conduct of the employee

A prison sentence delivered in court can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related offences.²²⁰⁵ This is not the case with prison sentences for offences unrelated to 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.²²⁰⁶

ii. certain economic reasons

Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service.²²⁰⁷ The assessment relies on the domestic courts' interpretation of the law.²²⁰⁸ The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law.²²⁰⁹ Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run their enterprise as they see fit and the need to protect the rights of the employees.²²¹⁰

In cases of collective dismissals due to a reduction or change in the company's activities caused by the Covid-19 crisis, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies.²²¹¹

²¹⁹⁶ *Associazione Professionale e Sindacale (ANIEF) v. Italy*, Complaint No. 146/2017, decision on the merits of 7 July 2020, §§ 104-106

²¹⁹⁷ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²¹⁹⁸ *Conclusions 2012, Ireland; Conclusions 2012, Cyprus; Conclusions 2003, Italy*

²¹⁹⁹ *Conclusions 2012, Ireland*

²²⁰⁰ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²²⁰¹ *Conclusions 2012, Ireland*

²²⁰² *Conclusions 2020, Albania*

²²⁰³ *Conclusions 2012, Statement of Interpretation on Article 24*

²²⁰⁴ *Conclusions 2012, Statement of Interpretation on Article 24*

²²⁰⁵ *Conclusions 2008, Lithuania*

²²⁰⁶ *Conclusions 2008, Lithuania*

²²⁰⁷ *Conclusions 2016, Latvia*

²²⁰⁸ *Conclusions 2016, Latvia* citing *Conclusions 2012, Turkey*

²²⁰⁹ *Conclusions 2012, Turkey*

²²¹⁰ *Conclusions 2016, Latvia*

²²¹¹ *Statement on Covid-19 and social rights adopted on 24 March 2021*

Prohibited dismissals

A series of Charter provisions require increased protection against termination of employment on certain grounds:

- ▶ discrimination (Articles 1§2, 4§3, and 20);²²¹²
- ▶ trade union activities (Article 5);²²¹³
- ▶ participation in strikes (Article 6§4);²²¹⁴
- ▶ maternity (Article 8§2);²²¹⁵
- ▶ disability (Article 15);²²¹⁶
- ▶ family responsibilities (Article 27);²²¹⁷
- ▶ worker representation (Article 28).²²¹⁸

Only two reasons are examined 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.²²¹⁹ 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.²²²⁰ 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.²²²¹

ii. temporary absence from work due to illness or injury.

A time limit can be placed on protection against dismissal in such cases.²²²² Absence from work 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.²²²³

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?²²²⁴
- ▶ are employers required to pay compensation for termination in such cases?²²²⁵
- ▶ 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?²²²⁶

iii. Dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age

States Parties should take adequate measures to ensure protection for all workers against dismissal on grounds of age.²²²⁷

²²¹² Conclusions 2016, Latvia

²²¹³ Conclusions 2016, Latvia

²²¹⁴ Conclusions 2016, Latvia

²²¹⁵ Conclusions 2016, Latvia

²²¹⁶ Conclusions 2016, Latvia

²²¹⁷ Conclusions 2016, Latvia

²²¹⁸ Conclusions 2016, Latvia

²²¹⁹ Conclusions 2016, Latvia

²²²⁰ Conclusions 2016, North Macedonia

²²²¹ Conclusions 2016, Russian Federation

²²²² Conclusions 2012, Ukraine

²²²³ Conclusions 2016, Latvia

²²²⁴ Conclusions 2008, Azerbaijan

²²²⁵ Conclusions 2008, Azerbaijan

²²²⁶ Conclusions 2008, Azerbaijan

²²²⁷ Conclusions 2007, Statement of Interpretation on Article 24

Dismissal on grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as a legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary.²²²⁸

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.²²²⁹

The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.²²³⁰

Adequate compensation

Right of appeal

Any employee who considers himself to have been dismissed without valid reason must have the right to appeal to an impartial body.²²³¹ The burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.²²³²

Damages

Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief.²²³³ In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.²²³⁴

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are in principle contrary to the Charter.²²³⁵ 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.²²³⁶

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.

Appendix²²³⁷

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.

²²²⁸ Conclusions 2008, Lithuania; Conclusions 2007, Statement of Interpretation on Article 24

²²²⁹ *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on the merits of 2 July 2013, §§ 86, 89, 97, 99

²²³⁰ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²²³¹ Conclusions 2005, Cyprus, France, Estonia

²²³² Conclusions 2008, Statement of Interpretation on Article 24 and Statement of Interpretation on the burden of proof in discrimination cases

²²³³ Conclusions 2016, North Macedonia

²²³⁴ Conclusions 2016, North Macedonia, *Finnish Society of Social Rights v. Finland*, decision on the merits of 8 September 2016

²²³⁵ Conclusions 2012, Slovenia; Conclusions 2012, Finland, *Finnish Society of Social Rights v. Finland*, decision on the merits of 8 September 2016

²²³⁶ Conclusions 2012, Slovenia; Conclusions 2012, Finland, *Finnish Society of Social Rights v. Finland*, decision on the merits of 8 September 2016

²²³⁷ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

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.²²³⁸

The term “insolvency” includes both situations in which formal insolvency proceedings have been opened relating to an employer’s assets with a view to the collective reimbursement of their creditors, and situations in which the employer’s assets are insufficient to justify the opening of formal proceedings.²²³⁹

In the event of the insolvency of their employer, workers’ claims must be guaranteed by a guarantee institution or by any other effective form of protection.²²⁴⁰ States Parties which have accepted this provision benefit from a margin of discretion as to the form of protection of workers’ claims; Article 25 does not require the existence of a specific guarantee institution.²²⁴¹

The appendix to the Charter stipulates, *inter alia*, the minimum amounts of wages and paid absence that must be covered depending on whether recourse is had to a “privilege system” (three months prior to the insolvency) or a “guarantee system” (eight weeks).²²⁴²

The protection afforded, whatever its form, must be adequate and effective including in situations where the assets of an enterprise are insufficient to cover salaries owed to workers.²²⁴³ Guarantees must exist for workers that their claims will be satisfied in such cases.²²⁴⁴

Employees’ claims must take precedence over other creditors both under formal bankruptcy proceedings and well as in those cases when an enterprise closes down without formally being declared insolvent.²²⁴⁵

A privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25.²²⁴⁶ While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets.²²⁴⁷ It serves no purpose to have a privilege system when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers’ claims in those situations.²²⁴⁸

Therefore, situations where there is no alternative to the privilege system are not in conformity with the Charter as such a system does not itself provide effective guarantees of protection of workers’ claims in situations where the employer no longer has any assets.²²⁴⁹

A privilege system where workers’ claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs does not amount to an effective protection under the Charter.²²⁵⁰

²²³⁸ Conclusions 2003, France

²²³⁹ Conclusions 2012, Statement of Interpretation Article 25

²²⁴⁰ Conclusions 2012, Statement of Interpretation Article 25

²²⁴¹ Conclusions 2003, France

²²⁴² Conclusions 2012, Statement of Interpretation Article 25

²²⁴³ Conclusions 2003, France

²²⁴⁴ Conclusions 2012, Ireland

²²⁴⁵ Conclusions 2012, Albania

²²⁴⁶ Conclusions 2012, Statement of Interpretation Article 25

²²⁴⁷ Conclusions 2012, Statement of Interpretation Article 25

²²⁴⁸ Conclusions 2012, Statement of Interpretation Article 25

²²⁴⁹ Conclusions 2012 and 2020, Albania

²²⁵⁰ Conclusions 2003, Bulgaria

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 and on the overall proportion of workers' claims which are satisfied by the guarantee institution.²²⁵¹

States Parties may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level.²²⁵² Three times the average monthly wage of the employee is an acceptable level.²²⁵³ In addition, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system.²²⁵⁴

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship.²²⁵⁵ However, it is for the Committee to determine on each occasion whether the nature of the employment relationship warrants such an exclusion.²²⁵⁶ Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.²²⁵⁷

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.²²⁵⁸

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.*²²⁵⁹

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature, which may undermine those persons' dignity or harm their career.²²⁶⁰

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.²²⁶¹

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.²²⁶²

The effectiveness of legal protection against sexual harassment depends on how the domestic courts interpret the law as it stands.²²⁶³

²²⁵¹ Conclusions 2012, Ireland

²²⁵² Conclusions 2012, Ireland

²²⁵³ Conclusions 2012, Slovakia, citing Conclusions 2005, Estonia

²²⁵⁴ Conclusions 2012, Slovakia

²²⁵⁵ Conclusions 2008, Statement of Interpretation on Article 25

²²⁵⁶ Conclusions 2008, Statement of Interpretation on Article 25

²²⁵⁷ Conclusions 2008, Statement of Interpretation on Article 25

²²⁵⁸ Conclusions 2012, Turkey

²²⁵⁹ Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

²²⁶⁰ Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova

²²⁶¹ Conclusions 2014, Georgia

²²⁶² Conclusions 2014, Georgia

²²⁶³ Conclusions 2007, Slovenia

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) against sexual harassment.²²⁶⁴ In particular, they should inform workers about the nature of the behaviour in question and the available remedies.²²⁶⁵

Social partners should be consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis sexual harassment in the workplace.²²⁶⁶

Liability of employers and remedies

There is no need for a State's legislation to make express reference to harassment where that State's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination.²²⁶⁷

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.²²⁶⁸

Employers may be held liable towards persons working for them who are not their employees, such as sub-contractors, self-employed persons, customers and visitors, and who have suffered sexual harassment committed on their business premises or by employees answerable to them.²²⁶⁹

The situation is not in conformity with Article 26§1 of the Charter where it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work.²²⁷⁰

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.²²⁷¹ The situation will not be in conformity with Article 26§1 of the Charter where there is no shift in the burden of proof in sexual harassment cases.²²⁷²

Damages

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.²²⁷³ 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.²²⁷⁴

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign due to the unfriendly environment determined by the sexual harassment.²²⁷⁵

A lack of appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment is not in conformity with Article 26§1.²²⁷⁶

²²⁶⁴ Conclusions 2018, Lithuania; Conclusions 2005, Republic of Moldova

²²⁶⁵ Conclusions 2005, Lithuania; Conclusions 2003, Italy

²²⁶⁶ Conclusions 2018, Ukraine

²²⁶⁷ Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova

²²⁶⁸ Conclusions 2007, Statement of Interpretation on Article 26§2

²²⁶⁹ Conclusions 2014, Finland

²²⁷⁰ Conclusions 2018, Lithuania; Conclusions 2018, Georgia

²²⁷¹ Conclusions 2018, Azerbaijan; Conclusions 2014, Azerbaijan

²²⁷² Conclusions 2018, Azerbaijan

²²⁷³ Conclusions 2018, Turkey; Conclusions 2005, Republic of Moldova

²²⁷⁴ Conclusions 2018, Turkey; Conclusions 2007, Slovenia

²²⁷⁵ Conclusions 2018, Turkey; Conclusions 2003, Bulgaria

²²⁷⁶ Conclusions 2018, Ukraine

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.*²²⁷⁷ *It is understood that paragraph 2 does not cover sexual harassment.*²²⁷⁸

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.²²⁷⁹ 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.²²⁸⁰

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.²²⁸¹ Harassment should be prohibited and repressed even when the harassing behavior does not amount to discrimination.²²⁸²

The Appendix to Article 26§2 specifies that States Parties have no obligation to enact legislation relating specifically to harassment.²²⁸³ However, States Parties to the Revised Charter having accepted Article 26§2 shall ensure an adequate legal protection of employees against distinctly negative and offensive actions or conduct at work.²²⁸⁴ This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights.²²⁸⁵

Prevention

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.²²⁸⁶ 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.²²⁸⁷ In particular, they should inform workers about the nature of the behaviour in question and the available remedies.²²⁸⁸ Specific measures to raise awareness about harassment in the workplace may include public education programmes, campaigns, cooperation with NGO's and employers' organisations, provision of online sources of information on harassment, etc.²²⁸⁹ A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2.²²⁹⁰

Liability of employers and remedies

It must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator.²²⁹¹

²²⁷⁷ Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

²²⁷⁸ Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

²²⁷⁹ Conclusions 2003, Bulgaria

²²⁸⁰ Conclusions 2003, Bulgaria

²²⁸¹ Conclusions 2007, Statement of Interpretation on Article 26§2

²²⁸² Conclusions 2007, Statement of Interpretation on Article 26§2

²²⁸³ Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163

²²⁸⁴ Conclusions 2005, Republic of Moldova

²²⁸⁵ Conclusions 2005, Republic of Moldova

²²⁸⁶ Conclusions 2018, Andorra; Conclusions 2003, Slovenia

²²⁸⁷ Conclusions 2014, Azerbaijan; Conclusions 2005, Republic of Moldova

²²⁸⁸ Conclusions 2005, Republic of Moldova

²²⁸⁹ Conclusions 2018, Serbia

²²⁹⁰ *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No 91/2013, decision on the merits of 12 October 2015, §295

²²⁹¹ Conclusions 2014, Finland

The situation is not in conformity with Article 26§2 of the Charter where employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator.²²⁹²

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.²²⁹³

Damages

Under Article 26§2, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.²²⁹⁴ 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.²²⁹⁵

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 moral harassment.²²⁹⁶

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 on 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.²²⁹⁷

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:

- a. 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.²²⁹⁸

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.²²⁹⁹

²²⁹² Conclusions 2014, Finland

²²⁹³ Conclusions 2007, Statement of Interpretation on Article 26§2

²²⁹⁴ Conclusions 2014, Azerbaijan

²²⁹⁵ Conclusions 2014, Azerbaijan

²²⁹⁶ Conclusions 2014, Azerbaijan

²²⁹⁷ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²²⁹⁸ Conclusions 2005, Sweden

²²⁹⁹ Conclusions 2005, Estonia

However, when the quality of standard employment services available to everyone is adequate, there is no need to provide extra services for people with family responsibilities.²³⁰⁰

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.²³⁰¹

Measures need to be taken concerning the length and organisation of working time.²³⁰² Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.²³⁰³ These measures should apply equally to men and women.²³⁰⁴

The type of measures to be taken cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).²³⁰⁵

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.²³⁰⁶

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, that are available and accessible to workers with family responsibilities.²³⁰⁷ Preschool education should be free of charge and, if it is not, measures must be taken to make it financially accessible for vulnerable families.²³⁰⁸

Where a State has accepted Article 16, childcare arrangements are dealt with under that provision.²³⁰⁹

In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.²³¹⁰

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 provides for the right to parental leave which is distinct from maternity leave.²³¹¹ (Maternity leave is addressed under Article 8 of the Charter).

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 and conditions of parental leave should be determined by States Parties.²³¹²

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.²³¹³ 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.²³¹⁴

2300 [Conclusions 2003, Sweden](#)

2301 [Conclusions 2005, Statement of Interpretation on Article 27§1b](#); see e.g. [Conclusions 2005, Estonia](#)

2302 [Conclusions 2005, Statement of Interpretation on Article 27§1b](#); see e.g. [Conclusions 2005, Estonia](#)

2303 [Conclusions 2005, Statement of Interpretation on Article 27§1b](#); see e.g. [Conclusions 2005, Estonia](#)

2304 [Conclusions 2005, Lithuania](#)

2305 [Conclusions 2019, Belgium](#)

2306 [Conclusions 2003, Sweden](#)

2307 [Conclusions 2005, Statement of Interpretation on Article 27§1c](#); see e.g. [Conclusions 2005, Estonia](#)

2308 [Conclusions 2019, Armenia](#)

2309 [Conclusions 2003, Italy](#)

2310 [Conclusions 2003, Italy](#)

2311 [Conclusions 2011, Armenia](#)

2312 [Conclusions 2011, Armenia](#)

2313 [Conclusions 2011, Armenia](#)

2314 [Conclusions 2011, Armenia](#)

The States Parties are under a positive obligation to encourage the use of parental leave by either parent.²³¹⁵

Remuneration of parental leave plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.²³¹⁶ States Parties shall ensure that an employed parent is adequately compensated for their loss of earnings during the period of parental leave.²³¹⁷ 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.²³¹⁸ Regardless of the modalities of payment, the level must be adequate.²³¹⁹

Unpaid parental leave is not in conformity with Article 27§2.²³²⁰

The Covid-19 crisis must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the crisis.²³²¹ Indications are that women's employment has been placed at greater risk than men's by the pandemic.²³²² Women workers are likely at a greater danger of infection as they make up the vast majority of exposed domestic, health and social care workers.²³²³ The need to reconcile family life with teleworking from home, home-schooling of children and childcare, combined with the stresses of potential Covid-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.²³²⁴ Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate Charter rights such as Article 27.²³²⁵

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 as well as other members of the immediate family who need care and support (for instance elderly parents).²³²⁶ 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 for works with family responsibilities.²³²⁷

Workers dismissed on such illegal grounds must be afforded the same level of protection as that afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.²³²⁸ 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.²³²⁹

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.²³³⁰ 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.²³³¹

²³¹⁵ [Conclusions 2015, Statement of interpretation on Article 27§2](#)

²³¹⁶ [Conclusions 2011, Armenia](#)

²³¹⁷ [Conclusions 2015, Statement of interpretation on Article 27§2](#)

²³¹⁸ [Conclusions 2015, Statement of interpretation on Article 27§2](#)

²³¹⁹ [Conclusions 2015, Statement of interpretation on Article 27§2](#)

²³²⁰ [Conclusions 2019, Ireland, Malta](#)

²³²¹ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³²² [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³²³ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³²⁴ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³²⁵ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³²⁶ [Conclusions 2003, Statement of Interpretation on Article 27§3](#); see e.g. [Conclusions 2003, Bulgaria](#)

²³²⁷ [Conclusions 2003, Statement of Interpretation on Article 27§3](#); see e.g. [Conclusions 2003, Bulgaria](#)

²³²⁸ [Conclusions 2007, Finland](#)

²³²⁹ [Conclusions 2007, Finland](#)

²³³⁰ [Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3](#)

²³³¹ [Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3](#), see also [Confederazione Generale Italiana del Lavoro \(CGIL\) v. Italy](#), Complaint No.158/2017, decision on the merits of 11 September 2019, §96

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.*²³³²

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities.²³³³ It complements Article 5, which recognises a similar right in respect of trade union representatives.²³³⁴

Types of workers' representatives

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.²³³⁵ States Parties may therefore recognise different kinds of workers' representatives other than trade union representatives.²³³⁶ However, Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer.²³³⁷ Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.²³³⁸

Protection granted to workers' representatives

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against any other detrimental treatment.²³³⁹ Prejudicial acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts, cut-down or any other taunts or abuse.²³⁴⁰

The rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.²³⁴¹ To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.²³⁴²

Situations where the protection of worker's representatives against dismissal is limited for the period of performance of their functions, until their mandate expire, are not in conformity with Article 28 of the Charter.²³⁴³ Nor are situations where the protection afforded to workers' representatives lasts for three months after the end of their mandate.²³⁴⁴

²³³² Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²³³³ Conclusions 2003, Bulgaria

²³³⁴ Conclusions 2003, Bulgaria

²³³⁵ Conclusions 2003, Bulgaria

²³³⁶ Conclusions 2003, Bulgaria

²³³⁷ Conclusions 2018, Latvia

²³³⁸ Conclusions 2014, Austria

²³³⁹ Conclusions 2018, Russian Federation

²³⁴⁰ Conclusions 2018, Azerbaijan

²³⁴¹ Conclusions 2010, Statement of Interpretation on Article 28, citing *International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59*

²³⁴² Conclusions 2010, Statement of Interpretation on Article 28

²³⁴³ Conclusions 2018, Armenia

²³⁴⁴ Conclusions 2018, Austria

The Committee has found the situation to be in conformity with the requirements of Article 28 in countries where the protection is extended for one year after the end of mandate of workers' representatives²³⁴⁵ or where the protection granted to workers' representatives is extended for six months after the end of their mandate.²³⁴⁶

Remedies must be available to worker representatives who are dismissed unlawfully.²³⁴⁷

Where discrimination takes place, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.²³⁴⁸ 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.²³⁴⁹

Facilities granted to workers' representatives

Protected workers must be granted the following facilities: paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities 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).²³⁵⁰

Moreover, the participation in training courses on economic, social and union issues should not result in a loss of pay.²³⁵¹ Training costs should not be borne by the workers' representatives.²³⁵²

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.*²³⁵³

Under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.²³⁵⁴

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.²³⁵⁵

²³⁴⁵ Conclusions 2018, Austria, citing Conclusions 2010, Estonia, and Conclusions 2010, Slovenia

²³⁴⁶ Conclusions 2018, Austria, citing Conclusions 2010, Bulgaria

²³⁴⁷ Conclusions 2010, Norway

²³⁴⁸ Conclusions 2010, Bulgaria

²³⁴⁹ Conclusions 2007, Bulgaria

²³⁵⁰ Conclusions 2010, Statement of Interpretation on Article 28

²³⁵¹ Conclusions 2010, Statement of Interpretation on Article 28

²³⁵² Conclusions 2010, Statement of Interpretation on Article 28

²³⁵³ Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²³⁵⁴ Conclusions 2003, Statement of Interpretation on Article 29

²³⁵⁵ Conclusions 2003, Statement of Interpretation on Article 29; Conclusions 2018, Latvia

The definition of collective redundancies in domestic law must not be too restrictive.²³⁵⁶

A situation where collective redundancies are such where the number of employees to be made redundant within 30 days is at least five in undertakings employing between 20 and 50 persons; at least 10 in undertakings employing between 50 and 100 persons; at least 10% of employees in undertakings employing between 100 and 300 persons; or at least 30 employees in undertakings employing 300 or more persons is compatible with the Charter.²³⁵⁷

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.²³⁵⁸

When employers implement information and consultation procedures preceding collective redundancies, employees should be represented by persons acting on behalf of all workers employed in the workplace.²³⁵⁹ Such representatives may be either bodies operating in the employer's enterprise (for example, trade unions or workers' councils) or ad hoc representatives appointed to take part in this process.²³⁶⁰

National 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.²³⁶¹ 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.²³⁶²

Consultation procedure

Prior information and consultation

Under Article 29, consultation procedures must take place in good time prior to collective redundancies.²³⁶³ National law should thus ensure that employers are obliged to provide employees with information about planned collective redundancies sufficiently far in advance of the process, so as to enable employees and their representatives to become familiar with the key aspects of the planned redundancies.²³⁶⁴ National law should also guarantee the right of employees' representatives to be provided with all relevant information throughout the entire duration of the consultation process.²³⁶⁵

Consultation should be conducted within a time period that is sufficient to ensure that employees' representatives have an opportunity to present suitable proposals with a view to avoiding, limiting or mitigating the effect of the proposed redundancies.²³⁶⁶

Employers should be required to provide employees' representatives with all the relevant information necessary to ensure the integrity and effectiveness of the information and consultation process.²³⁶⁷ This information should in particular include the reasons for the proposed redundancies, the criteria for determining which employees are to be made redundant, the proposed order and scheduling of such redundancies, the amount of any cash benefits or other forms of compensation and the scope and content of any planned social measures which are designed to mitigate the consequences of this process.²³⁶⁸

Purpose of the consultation

Article 29 requires that States Parties establish an information and consultation procedure which should precede the process of collective redundancies. The provisions of Article 29 are directed – on the one hand – towards

²³⁵⁶ Conclusions 2014, Azerbaijan

²³⁵⁷ Conclusions 2014, Azerbaijan

²³⁵⁸ Explanatory Report to the European Social Charter (Revised) – European Treaty Series – No. 163; see also Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

²³⁵⁹ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁰ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶¹ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶² Conclusions 2014, Statement of Interpretation on Article 29

²³⁶³ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁴ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁵ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁶ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁷ Conclusions 2014, Statement of Interpretation on Article 29

²³⁶⁸ Conclusions 2014, Statement of Interpretation on Article 29

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.²³⁶⁹

Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. 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.²³⁷⁰ The failure of the employer to carry out their information and consultation obligations amounts to a violation of Article 29.²³⁷¹

Simple notification of redundancies to workers or their representatives is not sufficient.²³⁷²

The consultation procedure must cover the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.²³⁷³

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 by providing them with other forms of assistance with a view to obtaining a new job.²³⁷⁴

Preventive measures and sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice.²³⁷⁵ 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.²³⁷⁶

Provision must be made for sanctions after the event, and these must be effective, i.e. a sufficient deterrent for employers.²³⁷⁷ The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.²³⁷⁸

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 co-ordinated 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.²³⁷⁹

²³⁶⁹ Conclusions 2014, Statement of Interpretation on Article 29

²³⁷⁰ Conclusions 2003, Sweden; Conclusions 2003, Statement of Interpretation on Article 29

²³⁷¹ Conclusions 2014, Georgia

²³⁷² Conclusions 2014, Georgia

²³⁷³ Conclusions 2014, Georgia

²³⁷⁴ Conclusions 2014, Statement of Interpretation on Article 29

²³⁷⁵ Conclusions 2014, Georgia

²³⁷⁶ Conclusions 2003 and 2007, Sweden

²³⁷⁷ Conclusions 2003, Sweden

²³⁷⁸ Conclusions 2003 Statement of Interpretation on Article 29

²³⁷⁹ Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France

Personal scope

States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion.²³⁸⁰ The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable with regard to migrants in an irregular situation.²³⁸¹ Nor does it apply to unlawfully present foreign minors.²³⁸²

An overall and coordinated approach

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework,²³⁸³ 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.²³⁸⁴

It must link and integrate public policies in a consistent way, embedding the fight against poverty and social exclusion in all strands of policy and moving beyond a purely sectoral or target group approach.²³⁸⁵ Effective coordination mechanisms should exist at all levels, including at the level of delivery of assistance and services to the end users.²³⁸⁶ Adequate resources must be made available for the implementation of the measures taken in the context of the overall and coordinated approach under Article 30.²³⁸⁷ In many instances, a significant and enduring expansionary fiscal policy effort by the States Parties will be necessary to prevent an increase in poverty and social exclusion.²³⁸⁸

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.²³⁸⁹ The measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.²³⁹⁰ As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.²³⁹¹

i. Measures to prevent and remove obstacles to access fundamental social rights

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.²³⁹²

ii. monitoring mechanisms involving all relevant actors

States Parties must also adopt monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.²³⁹³

Further, States' failure to collect reliable data and statistics in respect of groups generally acknowledged to be socially excluded or disadvantaged, including highly dependent adults with disabilities deprived of access to

²³⁸⁰ [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, para. 211, citing [DCI v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147

²³⁸¹ [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, para. 211, citing [DCI v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147

²³⁸² [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2012, §145

²³⁸³ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁸⁴ [Conclusions 2013, Statement of interpretation on Article 30](#)

²³⁸⁵ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³⁸⁶ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³⁸⁷ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³⁸⁸ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²³⁸⁹ [Conclusions 2005, Slovenia](#)

²³⁹⁰ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁹¹ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁹² Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁹³ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

care and accommodation centres, prevents an “overall and co-ordinated approach” to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them.²³⁹⁴

Assessing the effectiveness of policies

When assessing compliance with the Charter, definitions of poverty and social exclusion and measuring methodologies applied at the national level and the main data made available are systematically reviewed.²³⁹⁵ The Committee also 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.²³⁹⁶ In doing so, it has made clear that its consideration of state practice in terms of Article 30 reflects an understanding of both income and multi-dimensional understandings of poverty.²³⁹⁷

i. Resources

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,²³⁹⁸ in so far as “adequate resources are an essential element to enable people to become self-sufficient”.²³⁹⁹

ii. Relative poverty rate

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).²⁴⁰⁰

iii. At-risk-of-poverty-rate

Furthermore, the at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations.

These resource-related and income-based indicators are employed 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.).²⁴⁰¹

The absence of decisive progress in combating poverty and social exclusion in a context of economic growth is a ground for non-conformity under Article 30.²⁴⁰²

Poverty and social exclusion in times of crisis

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.²⁴⁰³ 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”.²⁴⁰⁴

²³⁹⁴ [International Federation of Human Rights \(FIDH\) v. Belgium](#), Complaint No. 75/2011, decision of 18 March 2013, §§ 193, 197

²³⁹⁵ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁹⁶ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#); [Conclusions 2013, Statement of interpretation on Article 30](#)

²³⁹⁷ See, e.g., the Committee description of ‘the multidimensional poverty and exclusion phenomena’ in its [Conclusions 2005, Norway](#) and [Conclusions 2007, Belgium](#)

²³⁹⁸ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²³⁹⁹ Conclusions 2003, Statement of interpretation on Article 30, see e.g. [Conclusions 2003, France](#)

²⁴⁰⁰ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴⁰¹ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴⁰² See, e.g., [Conclusions 2017, Ireland](#)

²⁴⁰³ General Introduction to Conclusions XIX-2 (2009)

²⁴⁰⁴ General Introduction to Conclusions XIX-2 (2009)

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.²⁴⁰⁵

Social exclusion

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.²⁴⁰⁶

Concerning social exclusion, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of minorities 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.²⁴⁰⁷

Further, 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.²⁴⁰⁸ 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 30.²⁴⁰⁹ Therefore, States must also facilitate access to identification documents that are fundamental to obtaining residency and citizenship in order to exercise civil and political participation.²⁴¹⁰

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).²⁴¹¹

The relationship between Article 30 and other Charter rights

The Committee has emphasized 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.²⁴¹²

Consequently, together with the indicators mentioned above, when assessing state compliance with 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).²⁴¹³ 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 30; but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.²⁴¹⁴

²⁴⁰⁵ [Defence for Children International \(DCI\) v. Belgium](#), Complaint No. 69/2011, decision on the merits of 23 October 2013, §81; [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴⁰⁶ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴⁰⁷ [Conclusions 2013, Statement of interpretation on Article 30](#) citing [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §107

²⁴⁰⁸ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴⁰⁹ [Conclusions 2013, Statement of interpretation on Article 30](#) citing [European Roma Rights Centre \(ERRC\) v. France](#), Complaint No. 51/2008, decision on the merits of 19 October 2009, §99

²⁴¹⁰ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 103 and 108

²⁴¹¹ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴¹² [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴¹³ [Conclusions 2013, Statement of interpretation on Article 30](#)

²⁴¹⁴ [Conclusions 2013, Statement of interpretation on Article 30](#), citing [EUROCEF v. France](#), Complaint No. 82/2012, decision on the merits of 19 March 2013, §59

ARTICLE 31 THE RIGHT TO HOUSING

Everyone has the right to housing

Personal scope

Refugees come under the personal scope of Article 31 and should be treated as favourably as possible and, in any event, not less favourably than the treatment accorded to aliens generally in the same circumstances.²⁴¹⁵ States are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation. However, Article 31§2 applies to migrants in an irregular situation.²⁴¹⁶ The right to shelter should be guaranteed to persons present in an irregular manner, including children, for as long as they are within the jurisdiction of the State.²⁴¹⁷

Material scope

The Committee has previously stated that Article 31 cannot be interpreted as imposing on States Parties an obligation of “results”;²⁴¹⁸ rather it concerns an “obligation of means” (namely, the taking of suitable measures).²⁴¹⁹ The rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form.²⁴²⁰ This implies that, for the situation to be in conformity with Article 31, 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;²⁴²¹
- b) maintain meaningful statistics on needs, resources and results;²⁴²²
- c) undertake regular reviews of the impact of the strategies adopted;²⁴²³
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;²⁴²⁴
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.²⁴²⁵

As concerns the means of ensuring steady progress towards achieving the goals laid down by the Charter, implementation of the Charter requires States 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.²⁴²⁶

When one of the rights in question is exceptionally complex and particularly expensive to implement, States Parties must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.²⁴²⁷

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

²⁴¹⁵ Conclusions 2015, Statement on Interpretation on the Rights of Refugees

²⁴¹⁶ *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

²⁴¹⁷ *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

²⁴¹⁸ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No 39/2006, decision on the merits of 5 December 2007 §§ 52-53; *Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits 11 September 2012, §55 citing *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59

²⁴¹⁹ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007 §58; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No 39/2006, decision on the merits of 5 December 2007 §52

²⁴²⁰ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No 39/2006, decision on the merits of 5 December 2007 §53; *Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits 11 September 2012, §55 citing *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §59

²⁴²¹ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

²⁴²² *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

²⁴²³ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

²⁴²⁴ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

²⁴²⁵ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 58-60

²⁴²⁶ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §61

²⁴²⁷ *International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, §62; *European Roma and Travellers Forum (ERTF) v. France*, Complaint No. 64/2011, decision on the merits of 24 January 2012, §96

occur as a result of this complexity.²⁴²⁸ However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.²⁴²⁹

The authorities must also pay particular attention to the impact of their housing policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty.²⁴³⁰

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.²⁴³¹

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.²⁴³² The notions of adequate housing and forced eviction are identical under Articles 16 and 31.²⁴³³

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.

Personal scope

Under Article 31§1 of the Charter, States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing.²⁴³⁴ States must take the legal and practical measures which are necessary and adequate for the effective protection of the right in question.²⁴³⁵ States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards 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.²⁴³⁶

States Parties must guarantee to everyone the right to adequate housing.²⁴³⁷ They should promote access to housing in particular to 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.²⁴³⁸

Adequate housing

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;²⁴³⁹
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;²⁴⁴⁰
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.²⁴⁴¹

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock.²⁴⁴² It must also be applied to housing available for rent as well as to housing owner occupied housing.²⁴⁴³

2428 [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §63
2429 [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §63
2430 [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §67, citing [International Association Autism Europe v. France](#), Complaint No. 13/2002, decision on the merits of 4 November 2003, §53; [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §96
2431 [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 68-71
2432 [European Roma Rights Center \(ERRC\) v. Bulgaria](#), Complaint No. 31/2005, decision on admissibility of 10 October 2005, §9
2433 [European Roma Rights Center \(ERRC\) v. Bulgaria](#), Complaint No. 31/2005, decision on the merits of 18 October 2006, §17
2434 [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
2435 [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
2436 [European Roma and Travellers Forum \(ERTF\) v. France](#), Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
2437 [Conclusions 2003, France](#)
2438 [Conclusions 2003, Italy](#)
2439 [Conclusions 2003, France](#)
2440 [Conclusions 2003, France](#)
2441 [Conclusions 2003, France](#)
2442 [Conclusions 2003, France](#)
2443 [Conclusions 2003, France](#)

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.²⁴⁴⁴ They, therefore, require special protection.²⁴⁴⁵ 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.²⁴⁴⁶

The failure to provide a sufficient number of halting sites for Travellers as well as the poor living conditions and operational failures on such sites have led to findings of non-conformity under this provision.²⁴⁴⁷

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.²⁴⁴⁸

The fact that some refugee and asylum-seeking unaccompanied children may remain for lengthy periods of time in temporary accommodation facilities (emergency hotels and Safe zones) does not satisfy the requirements of long-term accommodation suited to their specific circumstances, needs and extreme vulnerability and violates Article 31§1.²⁴⁴⁹ These facilities do not offer the quality standards necessary for the long-term accommodation of unaccompanied children.²⁴⁵⁰

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.²⁴⁵¹ States Parties are expected to demonstrate how the adequacy of the existing housing stock (whether rented or not, privately or publicly owned) is checked, whether regular inspections are carried out and what follow-up is given to decisions finding that a dwelling does not comply with the relevant regulation.²⁴⁵² Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.²⁴⁵³

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, in terms of their international obligations to ensure that such responsibilities are properly exercised.²⁴⁵⁴ 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.²⁴⁵⁵

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.²⁴⁵⁶ Any appeal procedure must be effective.²⁴⁵⁷

²⁴⁴⁴ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

²⁴⁴⁵ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

²⁴⁴⁶ [Centre on Housing Rights and Evictions \(COHRE\) v. Italy](#), Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40

²⁴⁴⁷ [European Roma Rights Centre \(ERRC\) v. France](#), Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 38, 39, 49; Conclusions 2019, France

²⁴⁴⁸ [European Roma Rights Center \(ERRC\) v. Portugal](#), Complaint No. 61/2010, decision on the merits of 30 June 2011, §48

²⁴⁴⁹ [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §145

²⁴⁵⁰ [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §145

²⁴⁵¹ Conclusions 2003, France

²⁴⁵² Conclusions 2019, Turkey, Ukraine

²⁴⁵³ Conclusions 2003, France

²⁴⁵⁴ [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §26, citing [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §29

²⁴⁵⁵ [European Roma Rights Center \(ERRC\) v. Italy](#), Complaint No. 27/2004, decision on the merits of 7 December 2005, §26; [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No. 39/2006, decision on the merits of 5 December 2007, §79

²⁴⁵⁶ Conclusions 2003, France

²⁴⁵⁷ Conclusions 2015, Austria, Article 16

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§1.²⁴⁵⁸

Article 31§2 obliges States Parties to gradually reduce homelessness with a view to its elimination.²⁴⁵⁹ Reducing homelessness implies the introduction of measures such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness.²⁴⁶⁰

Preventing homelessness

States Parties must take action to prevent categories of vulnerable people from becoming homeless. This requires States Parties to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances. (cf. Article 31§3).²⁴⁶¹

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.²⁴⁶²

Protection from evictions

Forced eviction can be understood to cover situations involving deprivation of housing which a person occupied due to insolvency or wrongful occupation.²⁴⁶³

States Parties must set up procedural safeguards to limit the risk of eviction.²⁴⁶⁴

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants.²⁴⁶⁵ However, the criteria of illegal occupation must not be unduly wide, and evictions 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.²⁴⁶⁶

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.²⁴⁶⁷ A notice period of one month in case of eviction due to insolvency or wrongful occupation is not reasonable.²⁴⁶⁸

When evictions do take place, they must be carried out under conditions that respect the dignity of the persons concerned.²⁴⁶⁹ The law must prohibit evictions carried out at night or during the winter period.²⁴⁷⁰ When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.²⁴⁷¹

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.²⁴⁷²

²⁴⁵⁸ [Conclusions 2003, Italy; Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on the merits of 1 July 2014, §135

²⁴⁵⁹ [Conclusions 2003, Sweden](#)

²⁴⁶⁰ [Conclusions 2003, Sweden](#)

²⁴⁶¹ [Conclusions 2003, Sweden; Conclusions 2005, Lithuania; Conference of European Churches \(CEC\) v. the Netherlands](#), Complaint No. 90/2013, decision on the merits of 1 July 2014, §136

²⁴⁶² [Conclusions 2007, Italy](#)

²⁴⁶³ [Conclusions 2003, Sweden; Conclusions 2019, Ukraine](#)

²⁴⁶⁴ [Conclusions 2005, Lithuania](#)

²⁴⁶⁵ [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §51

²⁴⁶⁶ [European Roma Rights Centre \(ERRC\) v. Greece](#), Complaint No. 15/2003, decision on the merits of 8 December 2004, §51

²⁴⁶⁷ [Conclusions 2003, Sweden](#)

²⁴⁶⁸ [Conclusions 2019, Ukraine](#)

²⁴⁶⁹ [Conclusions 2003, Sweden](#)

²⁴⁷⁰ [Conclusions 2003, Sweden](#)

²⁴⁷¹ [Conclusions 2003, Sweden](#)

²⁴⁷² [Conclusions 2003, Sweden](#)

Right to shelter

According to Article 31§2, homeless persons must be offered shelter as an emergency solution.²⁴⁷³ 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 clean water and heating and sufficient lighting.²⁴⁷⁴ Another basic requirement is the security of the immediate surroundings.²⁴⁷⁵ Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met.²⁴⁷⁶

States Parties shall foresee sufficient places in emergency shelters²⁴⁷⁷ and the conditions in the shelters should be such as to enable living in keeping with human dignity.²⁴⁷⁸

The temporary supply of shelter, however adequate, cannot be considered satisfactory.²⁴⁷⁹ Individuals who are homeless should be provided with adequate housing within a reasonable period.²⁴⁸⁰ In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.²⁴⁸¹

The right to shelter should be adequately guaranteed for migrants, including unaccompanied migrant children, and asylum-seekers.²⁴⁸² States Parties are required to provide adequate shelter to children unlawfully present in their territory for as long as they are within their jurisdiction.²⁴⁸³ As the scope of Articles 31§2 and 17 overlap to a large extent, the Committee assesses the issue of the right to a shelter of unaccompanied foreign minors under the scope of Article 31§2 when States Parties have accepted both provisions.²⁴⁸⁴ The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.²⁴⁸⁵ States should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families.²⁴⁸⁶

The exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, in view of their specific needs and extreme vulnerability, or otherwise limit or dilute its responsibility under the Charter.²⁴⁸⁷

The Committee considers that eviction from shelters without the provision of alternative accommodation must be prohibited.²⁴⁸⁸

Eviction from shelter of persons irregularly present within the territory of a State Party 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.²⁴⁸⁹

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- 2473 [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §46
2474 [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
2475 [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
2476 [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
2477 [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
2478 [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109
2479 [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No 39/2006, decision on the merits of 5 December 2007, §106
2480 [European Federation of National Organisations Working with the Homeless \(FEANTSA\) v. France](#), Complaint No 39/2006, decision on the merits of 5 December 2007, §106
2481 [Conclusions 2003, Italy](#)
2482 [Conclusions 2019, Greece](#)
2483 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §117
2484 [European Committee for Home-Based Priority Action for the Child and the Family \(EUROCEF\) v. France](#), Complaint No. 114/2015, decision on the merits of 24 January 2018, §173
2485 [Defence for Children International \(DCI\) v. the Netherlands](#), Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
2486 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §121
2487 [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#), Complaint No. 173/2018, decision on the merits of 26 January 2021, §133
2488 [Conclusions 2015, Statement of Interpretation on Article 31§2](#)
2489 [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, §110

States Parties are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation.²⁴⁹⁰

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.²⁴⁹¹

Social housing

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.²⁴⁹² 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 that the affordability ratio of the poorest applicants for housing is compatible with their level of income.²⁴⁹³

States Parties must:

- ▶ adopt appropriate measures for the provision of housing, in particular social housing.²⁴⁹⁴ Social housing should target, in particular, the most disadvantaged;²⁴⁹⁵
- ▶ adopt measures to ensure that waiting periods for the allocation of housing are not excessive;²⁴⁹⁶ judicial or other remedies must be available when waiting periods are excessive;²⁴⁹⁷

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or Travellers wishing to live in mobile homes.²⁴⁹⁸

Housing benefits

Under Article 31§3, States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population.²⁴⁹⁹ Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.²⁵⁰⁰

The right to affordable housing must not be subject to any kind of discrimination on any grounds mentioned by Article E of the Charter.²⁵⁰¹

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.²⁵⁰²

²⁴⁹⁰ [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

²⁴⁹¹ [Conclusions 2003, Sweden](#)

²⁴⁹² [Conclusions 2003, Sweden](#)

²⁴⁹³ [FEANTSA v. Slovenia](#), Complaint No. 53/2008, decision on the merits of 8 September 2009, §72.

²⁴⁹⁴ [Conclusions 2003, Sweden](#)

²⁴⁹⁵ [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100

²⁴⁹⁶ [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §131

²⁴⁹⁷ [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §131

²⁴⁹⁸ [International Movement ATD Fourth World v. France](#), Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155; [Conclusions 2019, France](#)

²⁴⁹⁹ [Conclusions 2003, Sweden](#); [Conclusions 2019, Greece](#)

²⁵⁰⁰ [Conclusions 2003, Sweden](#)

²⁵⁰¹ [Conclusions 2019, Turkey](#)

²⁵⁰² [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

Purpose of Article E

Article E not only prohibits direct discrimination but also all forms of indirect discrimination.²⁵⁰³ 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.²⁵⁰⁴ 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.²⁵⁰⁵ 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.²⁵⁰⁶

Article E does not constitute an autonomous right which could in itself provide independent grounds for a complaint.²⁵⁰⁷ It has no independent existence and has to be combined with a substantive provision of the Charter.²⁵⁰⁸ Nevertheless, a situation which in itself is in conformity with the substantive provision concerned may infringe this provision when read in conjunction with Article E, if that situation is of a discriminatory nature.²⁵⁰⁹

Prohibited grounds for discrimination beyond those expressly listed in Article E

The expression “or other status” means that this is not an exhaustive list.

Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, the Committee considers that it is covered by the reference to “other status”.²⁵¹⁰

The Committee adopted the same approach with respect to grounds of discrimination closely linked together and which constitute ‘overlapping’, ‘intersectional’ or ‘multiple’ discrimination, such as situations where the combined effect of gender, health status, socio-economic status, and the territorial location of women prevent them from having an effective access to abortion services.²⁵¹¹

- ▶ On discrimination on the ground of disability and socio-economic status, see [International Federation for Human Rights \(FIDH\) and Inclusion Europe v. Belgium](#), complaint No. 141/2017, decision on the merits of 9 September 2020, §196;
- ▶ On indirect discrimination in accessing maternity care on the ground of gender, ethnicity, geographical location and other barriers, see [European Roma Rights Centre \(ERRC\) v. Bulgaria](#), complaint No. 151/2017, decision on the merits of 5 December 2018, §§ 85-86;
- ▶ On indirect discrimination in accessing family allowances on the grounds of age and ethnicity, see [Equal Rights Trust v. Bulgaria](#), Complaint No. 121/2016, decision on the merits of 16 October 2018, §95.

In matters relating to discrimination in employment, it is not necessary to combine Article 1§2 with Article E, as Article 1§2 alone prohibits such discrimination.²⁵¹²

Non-discrimination falls within the scope of some provisions of the Charter (for example matters of equal pay under Article 4§3); in such cases, the Committee considers that it is not necessary to examine whether there has been a separate violation of Article E.²⁵¹³

Scope of Article E

The principle of equality underlying Article E means treating equals equally and unequals unequally.²⁵¹⁴ Not only should persons who are in the same situation be treated equally and persons whose situations differ be

²⁵⁰³ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

²⁵⁰⁴ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

²⁵⁰⁵ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §51

²⁵⁰⁶ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §51

²⁵⁰⁷ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §51

²⁵⁰⁸ [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on the merits of 15 June 2005 §34

²⁵⁰⁹ [Syndicat des Agrégés de l'Enseignement Supérieur \(SAGES\) v. France](#), Complaint No. 26/2004, decision on the merits of 15 June 2005 §34

²⁵¹⁰ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §51

²⁵¹¹ [International Planned Parenthood Federation – European Network \(IPPF EN\) v. Italy](#), Complaint No. 87/2012, decision on the merits of 10 September 2013, §§ 190-194

²⁵¹² [Fellesforbundet for Sjøfolk \(FFFS\) v. Norway](#), Complaint No 74/2011, decision on the merits of 2 July 2013, §§ 116-117

²⁵¹³ [University Women of Europe \(UWE\) v. Belgium](#), Complaint No. 124/2016, decision on the merits of 6 December 2019, §109

²⁵¹⁴ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

treated differently, but all responses should show sufficient discernment to ensure real and effective equality.²⁵¹⁵ States Parties fail to respect the Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are significantly different.²⁵¹⁶ 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.²⁵¹⁷

Comparability, justification, proportionality

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.²⁵¹⁸

In the case of discrimination under Article E, the burden of proof must not rest entirely on the requesting party and must be the subject of an appropriate adjustment.²⁵¹⁹

Covid-19 and Article E

In designing and implementing new additional measures to ensure a Charter-compliant response to the challenges presented by Covid-19, States Parties must take due account of all social rights-holders, according special attention and appropriate priority to the most socially vulnerable groups and individuals.²⁵²⁰ States Parties must ensure that measures taken in response to the crisis, including economic and social policy measures, do not result in discrimination in terms of social rights enjoyment, whether direct or indirect (as provided by Article E of the Charter).²⁵²¹

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 State Party has implemented Article F.

If a State Party invoked Article F of the Charter “in time of war or public emergency”, this would allow that State to take measures derogating from its obligations to the extent strictly required by the exigencies of the situation.²⁵²²

Where restrictions imposed on discharge from the armed forces during a period of emergency are prescribed by law with sufficient clarity, pursue a legitimate aim and can be deemed to be necessary in a democratic society for reasons of national security, the Committee considers that the situation is compatible with the Charter.²⁵²³

The Covid-19 pandemic, despite its gravity and profound impacts, has not been regarded by States Parties as constituting a public emergency of a nature such as to justify derogations from Charter rights pursuant to Article F.²⁵²⁴ No State Party has found it necessary to avail itself of the possibility to derogate from its obliga-

²⁵¹⁵ [Equal Rights Trust v. Bulgaria](#), Complaint No. 121/2016, decision on the merits of 16 October 2018, §80

²⁵¹⁶ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

²⁵¹⁷ [Association internationale Autisme-Europe \(AIAE\) v. France](#), Complaint No. 13/2000, decision on the merits of 4 November 2003, §52

²⁵¹⁸ [Confédération française démocratique du travail \(CFDT\) v. France](#), Complaint No 50/2008, decision on the merits of 9 September 2009, §39

²⁵¹⁹ [Mental Disability Advocacy Center \(MDAC\) v. Bulgaria](#), Complaint No. 41/2007, decision on the merits of 3 June 2008, §52

²⁵²⁰ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²⁵²¹ [Statement on Covid-19 and social rights adopted on 24 March 2021](#)

²⁵²² [European Organisation of Military Associations and Trade Unions \(EUROMIL\) v. Ireland](#), Complaint No. 164/2018, decision on the merits of 21 October 2020, §61

²⁵²³ [European Organisation of Military Associations and Trade Unions \(EUROMIL\) v. Ireland](#), Complaint No. 164/2018, decision on the merits of 21 October 2020, §63

²⁵²⁴ [Statement on Covid-19 and social rights](#)

tions under the Charter as provided for by Article F of the Charter.²⁵²⁵ As such, all States Parties have remained fully bound by their Charter obligations.²⁵²⁶

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 of the Revised Charter (which corresponds to and applies in the same way as Article 31 of the 1961 Charter) makes it possible for States Parties to restrict rights enshrined in the Charter.²⁵²⁷ It provides for the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted.²⁵²⁸ This provision corresponds to the second paragraph of Articles 8 to 11 of the European Convention on Human Rights.²⁵²⁹ It cannot lead to a violation as such.²⁵³⁰ However, this provision must be taken into account when assessing the merits of the complaint with regard to a substantive article of the Charter.²⁵³¹

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.²⁵³² Furthermore, as an exception applicable only under extreme circumstances, restrictions under Article G must be interpreted narrowly.²⁵³³

Restrictions must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society for the pursuit of that aim.²⁵³⁴ Any restriction should respond to a pressing social need and be the least restrictive measure in terms of its impact on Charter rights amongst those likely to achieve the aim pursued.²⁵³⁵

(1) prescribed by law

Restrictive measures must have a clear basis in law, i.e. they must have been agreed upon by the democratic legislature, and need to pursue one of the legitimate aims defined in Article G.²⁵³⁶ They must also satisfy the requirements of precision and foreseeability.²⁵³⁷

(2) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals

While, in a democratic society, it is in principle for the legislature to legitimize and define the public interest by striking a fair balance between the needs of all members of society, and while, from the point of view of the Charter, it has a margin of appreciation in doing so, this does not imply that the legislature is totally free of any constraints in its decision-making.²⁵³⁸ 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.²⁵³⁹

²⁵²⁵ Statement on Covid-19 and social rights

²⁵²⁶ Statement on Covid-19 and social rights

²⁵²⁷ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83

²⁵²⁸ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005 §31

²⁵²⁹ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005 §31

²⁵³⁰ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005 §31

²⁵³¹ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005 §33

²⁵³² *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83

²⁵³³ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83

²⁵³⁴ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §38

²⁵³⁵ Statement on Covid-19 and social rights

²⁵³⁶ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83

²⁵³⁷ Statement on Covid-19 and social rights

²⁵³⁸ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §85

²⁵³⁹ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §85

It is for the national legislature to balance the concerns for the public purse with the imperative of adequately protecting social rights.²⁵⁴⁰

States cannot divest themselves of their obligations by surrendering the power to define what is in the public interest to external institutions.²⁵⁴¹

(3) necessary in a democratic society for the pursuance of these purposes

Restrictions must be adopted only in response to a “pressing social need”.²⁵⁴²

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.²⁵⁴³ 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.²⁵⁴⁴

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.²⁵⁴⁵

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 Committee interprets the Charter in the light of the rules set out in the Vienna Convention on the Law of Treaties of 23 May 1969, among which its Article 31§3(c), which indicates that account is to be taken of “any relevant rules of international law applicable in the relations between the parties”.²⁵⁴⁶ Indeed, the Charter cannot be interpreted in a vacuum.²⁵⁴⁷ The Charter should so far as possible be interpreted in harmony with other rules of international law of which it forms part.²⁵⁴⁸

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.²⁵⁴⁹

The Committee 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.²⁵⁵⁰

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.²⁵⁵¹ 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.²⁵⁵²

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.²⁵⁵³

²⁵⁴⁰ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §85

²⁵⁴¹ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §87

²⁵⁴² *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §83

²⁵⁴³ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §87

²⁵⁴⁴ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §87

²⁵⁴⁵ *Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on the merits of 23 March 2017, §90

²⁵⁴⁶ *Defence for Children International (DCI) v. the Netherlands*, Complaint No.47/2008, decision on the merits of 20 October 2009, §35

²⁵⁴⁷ *Defence for Children International (DCI) v. the Netherlands*, Complaint No.47/2008, decision on the merits of 20 October 2009, §35

²⁵⁴⁸ *Defence for Children International (DCI) v. the Netherlands*, Complaint No.47/2008, decision on the merits of 20 October 2009, §35

²⁵⁴⁹ *Conférence of European Churches (CEC) v. the Netherlands*, Complaint No. 90/2013, decision on the merits of 1 July 2014 §§ 68-69

²⁵⁵⁰ *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2006, §33

²⁵⁵¹ *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2006, §33

²⁵⁵² *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2006, §33, see also

Syndicat de défense des fonctionnaires v. France, Complaint No. 73/2011, decision on the merits of 12 September 2012, §29

²⁵⁵³ *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, decision on the merits of 23 June 2006, §38

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.

Article I provides for the means of implementing the different provisions of the Charter.²⁵⁵⁴ It can therefore not as such lead to a violation.²⁵⁵⁵ However, it must be taken into consideration when examining the conformity of national situations with any substantive provision of the Charter.²⁵⁵⁶

The means of fulfilling Charter obligations is left to the discretion of the States Parties, who are free to use all the methods referred to above.

However:

- ▶ 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;²⁵⁵⁷
- ▶ 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.²⁵⁵⁸

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.²⁵⁵⁹ 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.²⁵⁶⁰

2. 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.

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.²⁵⁶¹ However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of Article I§2, even if it affects less than 20% of workers in practice.²⁵⁶²
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.²⁵⁶³

²⁵⁵⁴ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §§ 32-33

²⁵⁵⁵ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §§ 32-33

²⁵⁵⁶ *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §§ 32-33

²⁵⁵⁷ *International Commission of Jurists against Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32

²⁵⁵⁸ *Confederation of Swedish Enterprise v. Sweden*, Complaint No. 12/2002, decision on the merits of 15 May 2003, §§ 27-28

²⁵⁵⁹ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

²⁵⁶⁰ *International Association Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

²⁵⁶¹ *Conclusions XVIII-1 (2006), Croatia, Article 2§2;*

²⁵⁶² *Conclusions XIV-2 (1998), Belgium*

²⁵⁶³ *Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on the merits of 16 November 2001, §§ 39-41.

Appendix: 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

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).

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 certain 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 who are lawfully present in the territory of another state, but not resident or working there. This may apply for example 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 IRREGULARLY 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:

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 States²⁵⁶⁴. 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.²⁵⁶⁵
- ▶ stateless persons as defined in the 1954 New York Convention on the Status of Stateless Persons.²⁵⁶⁶

This exception does not simply confirm States Parties' obligations under these conventions regarding equal treatment for refugees and stateless persons but also invites Parties to go further by offering them treatment as favourable as possible.

Foreigners in an irregular situation²⁵⁶⁷

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 irregularly 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.^{2568 2569}

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 (*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).²⁵⁷⁰

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,

²⁵⁶⁴ Conclusions 2004, Statement of Interpretation

²⁵⁶⁵ Conclusions 2015, Statement of Interpretation: the right of refugees under the Charter

²⁵⁶⁶ Conclusions 2013, Statement of interpretation on the rights of stateless persons under Charter

²⁵⁶⁷ 1408 Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-39

²⁵⁶⁸ International Federation of Human Rights Leagues v. France, *ibid*, §§ 30 and 31.

²⁵⁶⁹ Defence for Children International v. the Netherlands, Complaint No. 47/2008, *ibid*, §19

²⁵⁷⁰ Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §29

equality and solidarity, is to give life and meaning in Europe to the fundamental social rights of all human beings.²⁵⁷¹ 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.²⁵⁷²

The restriction of the personal scope included in paragraph 1 of the Appendix should not be read in such a way as to deprive foreigners in an irregular migration situation 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 their human dignity.²⁵⁷³

With regard to children in an irregular migration situation on the territory of a State Party (whether accompanied or unaccompanied), paragraph 1 of the Appendix should not be interpreted in such a way as to expose these children to serious impairments of their fundamental rights due to a failure to guarantee the social rights enshrined in the Charter.²⁵⁷⁴

The application of the Charter's provisions to foreign migrants in an irregular situation (including accompanied or unaccompanied children) is entirely exceptional and is not applicable to all the provisions of the Charter. Such application is justified solely in the event that excluding foreigners in an irregular migration situation 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 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.²⁵⁷⁵

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 irregularly present, is contrary to the Charter.²⁵⁷⁶
- ▶ Children: Article 17 of the Charter^{2577 2578}, in particular paragraph 1 thereof, requires States Parties to fulfil positive obligations relating to the accommodation, basic care and protection of children and young persons. A failure to do so poses a serious threat to the enjoyment of their most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.²⁵⁷⁹
- ▶ Children: Article 31§2 (prevention and reduction of homelessness)²⁵⁸⁰: 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.

By contrast, the Committee has previously held that children in an irregular migration situation on the territory of a State Party do not come within the personal scope of Article 31§1 (the right to adequate housing). In doing so, it stated that States' immigration policy objectives and their human rights obligations would not

2571 International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27 and 29

2572 World Organisation against Torture v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, §60

2573 European Committee for Home-Based Priority Action for the Child and Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §§ 49-57; Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 28-39; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38, 46-48); International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece Complaint No. 173/2018, decision on the merits 26 January 2021, §75.

2574 European Committee for Home-Based Priority Action for the Child and Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §55); International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece Complaint No. 173/2018, decision on the merits 26 January 2021, §75.

2575 Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §35; International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece Complaint No. 173/2018, decision on the merits 26 January 2021, §76.

2576 International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32.

2577 International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 30-32.

2578 Defence for Children International v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 34-38).

2579 Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §82.

2580 Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 41-45.

be reconciled if children, whatever their residence status, were denied basic care and their intolerable living conditions were ignored.²⁵⁸¹

However, Article 31§1, which guarantees the right to adequate housing in the form of long-term/permanent accommodation and not temporary shelter, applies to asylum-seeking and refugee children. These children, in so far as their presence in the territory cannot be considered irregular, must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard within a reasonable time.²⁵⁸²

²⁵⁸¹ Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§ 46-48.

²⁵⁸² International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece Complaint No. 173/2018, decision on the merits 26 January 2021 §85.

The European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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