EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

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FIRST REPORT
ON THE NON-ACCEPTED PROVISIONS OF
THE EUROPEAN SOCIAL CHARTER

Czechia

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I. OVERVIEW AND EXECUTIVE SUMMARY

1. Overview of the adjusted procedure on the non-accepted provisions of the European Social Charter

The European Social Charter is based on a ratification system, which enables States, subject to certain minimum requirements, to choose the provisions they are willing to accept as binding international legal obligations. This system is provided for by Article A of the revised European Social Charter (Article 20 of the 1961 Charter) and it allows states, at any time subsequent to ratification of the treaty, to notify the Secretary General of their acceptance of additional articles or paragraphs.

It is in the spirit of the Charter for States Parties to progressively increase their commitments, tending towards acceptance of additional and eventually all provisions of the Charter where possible, as opposed to an *à la carte* stagnancy.[1]

The procedure on examination of reports on non-accepted provisions is provided for by Article 22 of the European Social Charter of 1961 (ETS No. 35). According to this provision, the States Parties shall send to the Secretary General, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of Part II of the Charter which they did not accept at the time of their ratification or by subsequent notification. The Committee of Ministers shall determine from time to time in respect of which provisions such reports shall be requested and the form of the reports to be provided.

The Charter initially involved traditional reporting by States Parties. In 2002, following the decision of the Committee of Ministers[2], it shifted to periodic reporting every five years on non-accepted provisions of the revised Charter.

Noting that the exercise was not yielding the expected results, considering the objective of strengthening the impact of the European Social Charter, the Committee of Ministers decided in December 2019 to invite "the ECSR to make full use of the opportunities for dialogue offered by Article 22 and to include in this exercise a dialogue with the member States that are not yet Party to the revised Charter, with a view to encouraging them to ratify it".[3]

On this basis, in September 2022, the ECSR decided to henceforth implement the procedure on non-accepted provisions in respect of all States Parties to either Charter, in a reinforced manner. The procedure now provides for submission of written information by States Parties in accordance with a pre-established calendar, and for additional bilateral meetings when it is deemed to represent an added value. The written information submitted by the States Parties shall be made public upon its reception, and the national and international social partners, non-governmental organisations, national human rights institutions, equality bodies and other stakeholders shall be given the possibility to provide comments within three months after receipt of the written information.

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[1] The opening paragraph of Part I reads "The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised", followed by the heading of all rights contemplated by the European Social Charter. Part III, Article A, provides that "each of the Parties undertakes [...] to consider Part I of the Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part", followed by the rules on the choices available as regards provisions that Parties can declared to be bound by and which determine the modalities of monitoring under Part IV of the Charter. (See CM(2022)196-final)

[2] Committee of Ministers Decision of 11 December 2002

[3] Committee of Ministers Decision of 11 December 2019

In this context, the European Committee of Social Rights (ECSR) took the opportunity to underline that the objective of improving the implementation of social rights as a whole also entails a progressive strengthening of member States' commitments under the Charter. As implied by the Committee of Ministers in its decision of 15 March 2023, non-acceptance of provisions should be an exception, not the rule. Moreover, the binding scope of the accepted provisions relates to the modalities and extent of monitoring under the Charter, which does not detract from their nature as human rights. Consistent with the tenet that social rights are human rights and therefore universal, indivisible and interdependent, the ECSR emphasised that the ultimate goal is for the member States to commit to all the provisions of the Charter and that not accepting certain provisions should on no account be seen as a permanent state of affairs.

2. The situation of Czechia in the context of the non-accepted provisions of the European Social Charter

Czechia ratified the 1961 European Social Charter on 3 November 1999, accepting 51 paragraphs (initially 52) out of 72. Article 8§4, initially accepted, was denounced on 25 March 2008. It ratified the 1988 Additional Protocol to the Charter on 17 November 1999, accepting all its four articles. The 1991 Amending Protocol to the European Social Charter was also ratified on 17 November 1999. On 4 November 2000, Czechia signed the revised European Social Charter (RESC) but has not yet ratified it. On 4 April 2012, it ratified the 1995 Additional Protocol providing for a system of collective complaints.

Czechia has currently not accepted the following provisions of the 1961 Charter: Article 1§4, Article 4§1, Article 8§4 (RESC 8§§4 and 5), Article 9, Article 10§§ 1-3 and Article 10§4 (RESC 10§5), Article 15§1, Article 18§§1-3, Article 19§§1-8 and Article 19§10.

With reference to the revised Charter, which is a more recent treaty and offers an improved protection of social rights, Czechia would benefit by not further delaying its ratification of this treaty in view of the the enhanced protection offered by the updated and new articles as follows: Article 2§§3 and 4 (advanced in RESC), Articles 2§§ 6 and 7 (new in RESC), Article 3§§1 and 4 (new in RESC), Article 7§§ 2, 4 and 7 (advanced in RESC), Article 8 (advanced in RESC and 8§4a becomes 8§4, respective 8§4b becomes 8§5), Article 11§3 (advanced in RESC), Article 12§2 (advanced in RESC), Article 12§4a (advanced in RESC), Article 15§§1 and 2 (advanced in RESC), Article 15§3 (new in RESC), Article 17 (advanced in RESC), Article 19§§11 and 12 (new in RESC), Articles 24 to 31.

The ratification system of the revised European Social Charter (Part III of the revised Charter) also enables States, under certain circumstances, to choose the provisions they are willing to accept as binding international legal obligations. Under this system, each Party undertakes:

- to consider Part I of the 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.

Considering the four articles of the 1988 Additional Protocol, Czechia is currently bound by seven of the nine hard-core articles of Part II of the revised Charter (cf. Article A of the revised Charter): Articles 5, 6, 7,12,13, 16 and 20. In total, Czechia under the 1961 Charter and the

1988 Additional Protocol is bound by what corresponds to 12 full articles (Articles 5, 6, 7, 11, 12, 13, 14, 16, 20, 21, 22 and 23) and 55 numbered paragraphs of Part II of the revised Charter.

Ratification of the revised Charter would thus require Czechia to consider itself bound by at least four additional full articles of the revised Charter (Articles 2, 3 and 17 that are fully accepted under the 1961 Charter have additional provisions under the revised Charter) or eight additional numbered paragraphs provisions in addition to those already accepted under the 1961 Charter.

The ratification of the revised Charter by the States that are still bound by the 1961 Charter is of particular importance for the Council of Europe to show unity in its mission to defend social rights and to reduce the (treaty law) complexity that arises from the existence of two social charters.

Current examination

This first examination of the non-accepted provisions is based on the adjusted procedure for non-accepted provisions. In terms of this procedure, Czechia was invited to submit written information. The requested written information was registered in July 2023, and it was subsequently published on the CoE website.

The Czech-Moravian Confederation of Trade Unions (ČMKOS) submitted the following comment on 16 October 2023: “The Czech-Moravian Confederation of Trade Unions has long been intensively participating in the social dialogue concerning labour market regulation in Czechia. We warmly welcome the opportunity to comment and supplement the national report on the implementation of the non-accepted provisions of the European Social Charter. In general, we can agree with the wording of the report. However, we would like to stress (in connection with the commentary on Art. 4.1) the need for the prompt introduction of a minimum wage indexation mechanism and, at the same time, provisions that support the position of the social partners in ensuring decent working and living conditions (e.g. promotion of sectoral collective bargaining and elimination of the problem of trade union plurality). Currently, we are concerned about the negative effects of the so-called consolidation package, which reduces employees' non-wage entitlements (e.g. benefits).”

The present examination covers the following non-accepted provisions of the Charter:

- The right to work – vocational guidance, training and rehabilitation (Article 1§4)
- The right to a fair remuneration - decent remuneration (Article 4§1)
- The right of employed women to protection - a. regulation of night work for women workers, b. prohibition of employment of women workers in dangerous, unhealthy, or arduous work (Article 8§4 a. and b. corresponding RESC Article 8§§4 and 5 respectively)
- The right to vocational guidance (Article 9)
- The right to vocational training - technical and vocational training; access to higher technical and university education (Article 10§1)
- The right to vocational training – apprenticeship (Article 10§2)
- The right to vocational training - vocational training and retraining of adult workers (Article 10§3)
- The right to vocational training - measures to ensure full use of vocational training facilities (Article 10§4 corresponding RESC Article 10§5)
- The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement - vocational training for persons with disabilities (Article 15§1)

- The right to engage in a gainful occupation in the territory of other Contracting Parties - liberal application of existing regulations (Article 18§1)
- The right to engage in a gainful occupation in the territory of other Contracting Parties - simplification of formalities (Article 18§2)
- The right to engage in a gainful occupation in the territory of other Contracting Parties - liberalisation of regulations (Article 18§3)
- The right of migrant workers and their families to protection and assistance - assistance and information (Article 19§1)
- The right of migrant workers and their families to protection and assistance - departure, journey and reception (Article 19§2)
- The right of migrant workers and their families to protection and assistance - co-operation between social services of emigration and immigration states (Article 19§3)
- The right of migrant workers and their families to protection and assistance - equal treatment in employment conditions, right to organise, accommodation (Article 19§4)
- The right of migrant workers and their families to protection and assistance - equal treatment in taxes and contributions (Article 19§5)
- The right of migrant workers and their families to protection and assistance - family reunion (Article 19§6)
- The right of migrant workers and their families to protection and assistance - legal proceedings (Article 19§7)
- The right of migrant workers and their families to protection and assistance - deportation (Article 19§8)
- The right of migrant workers and their families to protection and assistance - self-employed migrant workers (Article 19§10)

After examining the written information submitted by Czechia as well as the comments received, the ECSR considers that there are no obstacles to the immediate acceptance of Article 19§§5 and 7, and no major obstacles to the acceptance of Article 9, Article 10§§2 and 4, and Article 19§§3 and 4.

As regards the other examined articles - Article 1§4, Article 4§1, Article 8§4 a) and b), Articles 10§§1 and 3, Article 15§1, Articles 18§§1 to 3, Articles 19§1, 2, 6, 8 and 10 - the Committee considers that further clarification on the situation in law and practice is necessary in order to evaluate whether there are obstacles to the acceptance of these provisions.

The ECSR points out that acceptance of the provisions of the Charter provisions, especially those provisions which are considered particularly difficult to realise, such as, for example, Article 4§1, does not always have to be based on the full legal conformity of the situation at the time of acceptance, but instead acceptance may be the subject of a political decision to signal the aspiration of the State Party to realise the rights in question, given their crucial importance.

Furthermore, the Committee draws the attention to the fact that in the revised Charter Article 8 has undergone significant change in the scope of protection, limiting it to pregnancy and maternity, so as to remove the possible involuntarily facilitating barriers to the labour market for women, therefore encouraging the Government to accept the revised Charter. The Committee also noted that Czechia is bound by the EU law related to this Article, including EC Directive 92/85 (Pregnant Workers Directive) and the Directive (EU) 2019/1158 on work-life balance for parents and carers. The Committee encourages Czechia to consider accepting the revised Charter including Article 8§§4 and 5 without delay, as this would correspond to societal developments and the contemporary view of women's participation in the labour market.

As regards Article 15, the Committee points out that the revised Charter takes a more modern approach to how the protection of persons with disabilities shall be achieved, with the provision of services whenever possible in the framework of general schemes rather than in specialised institutions, an approach which corresponds to that of Recommendation No. R (92) 6 of the Committee of Ministers of the Council of Europe.[4] The Committee notes in this respect that Czechia is already bound by the UN Convention on the Rights of Persons with Disabilities, by the ILO Convention No.11 (1958) on Discrimination (Employment and Occupation) and ILO Convention No.159 (1983) on Vocational Rehabilitation and Employment (of the Disabled), but also by related EU law.

In view of the above, the Committee considers that Czechia could proceed to the ratification of the revised Charter and given that Czechia is already bound by other EU and international obligations, there is no reason why Czechia could not accept several of the new provisions in the revised Charter.

The Committee also invites Czechia to make a declaration enabling national NGOs to submit collective complaints, as a step to meet the high interest of domestic NGOs to continuously strengthen the social standards at the national level.

The Committee remains at the disposal of the Government for enhanced dialogue[5] on the Charter provisions and the relevant case law and invites Czechia to ratify the revised Charter and to undertake further commitments under the Charter as soon as possible so as to consolidate the paramount role of the Charter in achieving social and economic progress and ultimately a greater unity among the Council of Europe member States by guaranteeing and promoting common social human rights standards.

A table showing the provisions of the 1961 Charter and the 1988 Additional Protocol accepted by the Czech Republic appears in Appendix I.

The next examination of the provisions not yet accepted by Czechia will take place in 2028.

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS

Article 1§4 – *The right to work*

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

4. to provide or promote appropriate vocational guidance, training and rehabilitation.

[4] Explanatory Report to the European Social Charter (Revised)

[5] In the light of the latest Charter system reform, States Parties to the Charter can benefit from enhanced dialogue with the Charter's monitoring bodies - constructively and in a spirit of cooperation - as a tool to reach a common understanding of problematic issues that may permit to identify possible solutions to such issues which are suitable for and acceptable to the State Party concerned. Enhanced dialogue may also serve as a means of enabling technical assistance. (CM(2022)114 final - Implementation of the Report on Improving the European Social Charter system)

Situation in Czechia

The Government indicates in the written information submitted in July 2023 that in the area of active employment policy the Labour Office of Czechia provides and ensures (through the external purchase of services) career counselling, vocational training (through retraining) and rehabilitation (in the area of vocational rehabilitation).

There is a qualification profile of a "careers counselling provider" defined in the National Qualifications System of Czechia, as well as an examination defined in the evaluation standard of National Qualifications System, whereby a candidate can obtain a Career Counsellor Certificate of Professional Qualification. The holder of this professional qualification is qualified to provide careers counselling in a lifelong perspective.

The Government points out that the current system of providing retraining is sufficiently flexible. In addition to providing retraining to jobseekers and persons interested in job, according to the Government, the Labour Office of Czechia can also cover the cost of the so-called selected retraining when, under the conditions set out in the Act No. 435/2004 Coll., Employment Act, it is possible for a jobseeker or a person interested in job to choose independently a specific retraining course and the relevant retraining facility.

Furthermore, it is also possible, on the basis of a written agreement, to fully or partially reimburse the costs of retraining to the employer who carries out the retraining in the interest of the further employment of his/her employees or to the retraining establishment which provides this activity for the employer.

The implementation of active employment policy instruments and measures is fully within the competence of the Labour Office of Czechia, which is responsible for the appropriateness of their use in relation to the effective use of allocated funds from the state budget and ESF funds (application of the 3E criteria). Finally, as the Government states, access to active employment policy instruments is also guaranteed to foreigners – third-country nationals, provided that the conditions laid down by law are met.

As regards vocational rehabilitation, according to the Act No. 435/2004 Coll., Employment Act, it belongs to persons with disabilities, i.e. persons defined in the provisions of Section 67(2) to (6) of this Act, namely persons who are recognised as disabled under Czech legislation.

ECSR case law (DIGEST)

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.[6] 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.[7]

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.[8]

[6] Conclusions 2003, Bulgaria
[7] Conclusions 2012, Georgia ; Conclusions XII-1 (1991), Statement of Interpretation on Article 1§4
[8] Conclusions 2008, Albania

The indicators allowing an assessment of the effectiveness of vocational guidance services are: funding, staffing and the number of beneficiaries.[9]

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.[10] 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.[11]

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.[12]

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.[13] Since these provisions set out a broader range of rights than Article 1§4, a conclusion of non-conformity under one of them is taken up under Article 1§4 only where the ground of non-conformity is linked specifically to the general aspects covered by Article 1§4.[14] 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.[15]

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.[16] 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.[17] The right of persons with disabilities to mainstream training must be effectively guaranteed.[18]

According to the Committee, in order to satisfy the requirements of Article 1 para. 4, a State must not only have institutions providing vocational guidance, training and rehabilitation, but must also ensure access to the institutions for all those interested, including foreigners, nationals of the States parties to the Charter, and the disabled.[19]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that nationals of other States Parties to the Charter lawfully resident or working regularly on the territory are provided with vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities. However, no information has been submitted by the Government on the following:

[9] Conclusions XX-1 (2012), Iceland
[10] Conclusions 2008, Bulgaria
[11] Conclusions 2008, Bulgaria
[12] Conclusions 2008, Bulgaria
[13] Conclusions I (1969), Statement of Interpretation on Article 1§4
[14] Conclusions 2008, Statement of Interpretation on Article 1§4
[15] Conclusions 2003, Bulgaria
[16] Conclusions 2020, Azerbaijan
[17] Conclusions 2020, Malta
[18] Conclusions 2020, Montenegro
[19] Conclusions XII-2 - Statement of interpretation - Article 1-4

- funding, staffing and the number of beneficiaries of these services;
- whether there exists legislation explicitly prohibiting discrimination on the ground of disability in the field of training;
- whether the right of persons with disabilities to mainstream training is effectively guaranteed;
- whether a length of residence requirement exists for foreigners wishing to receive vocational guidance, training or rehabilitation;
- whether the legislation provides for individual leave for training of employed persons.

In light of the information provided by the Government and in view of the requirements under this provision, the Committee considers that further information is necessary to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 1§4 in the near future.

Article 4§1 – *The right to a fair remuneration*

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

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.

Situation in Czechia

The Government indicates in the written information submitted in July 2023 that, in Czechia, there are legal regulations on the lowest levels of guaranteed wages, which set additional minimums graded according to the complexity, responsibility and difficulty of the work performed.

At the same time, Czechia is currently preparing for the transposition of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, which sets out a framework for adequate legal minimum wages in order to ensure decent living and working conditions for employees.

One of the basic criteria (but not absolutely decisive and sufficient) for determining the threshold of a decent wage is the attainment of 60% of the net average national wage. In 2022, the net minimum wage was CZK 14,269 and the net average wage was CZK 32,424. Thus, the net minimum wage in that year reached 44% of the net average national wage.

ECSR case law (DIGEST)

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

The concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.[20]

[20] Conclusions 2010 - Statement of interpretation - Article 4§1

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

To be considered fair within the meaning of Article 4§1, the minimum wage paid in the labour market must not fall below 60% of the net average national wage.[21] The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions.[22] Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of this amount.[23]

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, but otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.[24] This may be the lowest wage in a representative sector, for example, the manufacturing industry.[25] If the lowest wage in a given State Party does not satisfy the 60% threshold, but does not fall very far below (in practice between 50% and 60%), the government in question will be invited to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold.[26] In particular, consideration will be given to the costs of having health care, education, transport, etc.

In extreme cases, for instance where the lowest wage is less than half the average wage the situation is held to be in breach of Charter independently of such evidence.[27]

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.[28] 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.[29]

Opinion of the Committee

As regards the situation in Czechia, the Committee notes that the net minimum wage in 2022 was under 50% of the net average national wage, which cannot be considered fair within the meaning of Article 4§1 of the Charter. Furthermore, no information has been submitted by the Government on the following:

- whether workers are exempt from the co-payment in respect of health care or have the right to increased family allowances;
- whether wages ensure a decent living standard in real terms for a worker, i.e. they are clearly above the poverty line for the country;
- whether regulations apply to all workers;

[21] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[22] Ibid.
[23] Conclusions XVI-2 - Denmark - Article 4§1
[24] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[25] Ibid.
[26] Conclusions XXI-3 - Denmark - Article 4§1
[27] Conclusions XIV-2 - Statement of interpretation - Article 4§1
[28] General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Collective Complaint No. 66/2011, decision on the merits of 23 May 2012, §§ 60, 68
[29] Ibid.

- whether a lower minimum wage is provided to younger workers under 25 years of age and under what conditions.

In light of the information provided by the Government and in view of the requirements under this provision, the Committee considers that further information is necessary to assess if the situation in law and practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to continue considering the acceptance of Article 4§1 in the near future.

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

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

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

Situation in Czechia

Regarding Article 8§4(a), the Government indicated that night work is regulated in Section 94 of the Act No. 262/2006 Coll., Labour Code, whether for men or women, as follows:

1. The length of a night worker's shift may not exceed 8 hours within 24 consecutive hours; if this is not possible for operational reasons, the employer shall be obliged to distribute the fixed weekly working time so that the average length of the shift does not exceed 8 hours in a period of no more than 26 consecutive weeks, the average length of the night worker's shift being calculated on the basis of a five-day working week.
2. The employer shall ensure that an employee working at night is examined by an occupational health service provider in the cases and under the conditions laid down for occupational health services by the Act No. 373/2011 Coll., Specific Health Services Act. Reimbursement for the health services provided may not be claimed from the employee.
3. The employer shall be obliged to provide adequate social security, in particular refreshments, for night workers.
4. The employer shall equip the workplace where night work is carried out with first aid facilities, including the provision of means to summon emergency medical assistance.

Regarding Article 8§4(b), the Government pointed out that the working conditions of female employees are regulated in Section 238 of the above-mentioned Labour Code as follows:

1. Female employees shall not be employed in work that endangers their maternity. The Ministry of Health shall determine by decree the jobs and workplaces that are prohibited for pregnant employees, employees who are breastfeeding and employees who are mothers until the end of the ninth month after childbirth.
2. It shall be prohibited to employ a pregnant employee, an employee who is breastfeeding and a female employee who is a mother until the end of the ninth month after childbirth in work for which they are not medically fit.

ECSR case law (DIGEST)

Article 8§4 (corresponding to Article 8§4a in the 1961 Charter) 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.[30]

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;[31]
- 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.[32]

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.[33] 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.[34] Further, women should have the right to return to their previous employment.[35] This right should be guaranteed by law.[36]

Article 8§5 of the revised Charter (corresponding to Article 8§4 b of the 1961 Charter) 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.[37]

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.[38]

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.[39]

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[30] Conclusions X-2 (1988), Statement of Interpretation on Article 8§4
[31] Conclusions 2003, France
[32] Conclusions X-2 (1988), Statement of Interpretation on Article 8§4
[33] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[34] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[35] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[36] Conclusions 2019, Albania
[37] Conclusions X-2 (1988), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
[38] Conclusions X-2 (1990), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
[39] Conclusions 2019, Ukraine

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.[40]

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.[41] If this is not possible women should be entitled to paid leave or social security benefit corresponding to 100% of their previous average pay.[42] The employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.[43]

Opinion of the ECSR

As regards the situation in Czechia, the Committee noted that there exist regulations applying without distinction to workers of both sexes in all sectors, as well as regulations prohibiting employment of pregnant and other female employees.

However, no information has been submitted by the Government on the following:

- whether the regulations allow night workers with family responsibilities to transfer to a day work and whether they preclude employers from obliging such workers to move to night work;
- whether women have the right to return to their previous employment, guaranteed by law.

In light of the information provided by the Government and requirements under this provision, the Committee considers that further information is necessary to assess if the situation in law and practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to continue considering the acceptance of Article 8§4 in the near future.

Article 9 – *The right to vocational guidance*

With a view to ensuring the effective exercise of the right to vocational guidance, the Contracting 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 school children, and to adults.

Situation in Czechia

The Government indicates that the right to professional career guidance can be effectively exercised on the basis of:

- Act No. 435/2004 Coll., Employment Act,
- Decree No 518/2004 Coll., implementing the Employment Act.

In the public employment services, in accordance with the above-mentioned legal regulations, the Labour Office of Czechia provides free of charge career counselling, which focuses in particular on providing information on occupations, prerequisites and eligibility for a particular occupation, study options, preparation for a profession and job opportunities.

[40] Conclusions 2003, Bulgaria
[41] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[42] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[43] Conclusions 2019, Ukraine

The availability of guidance is currently ensured mainly by the network of Information and Guidance Centres for Choice and Change of Occupation (IPS), which are an integral part of the regional branches of the Labour Office of Czechia and are located in every district of Czechia. IPS provide free services to primary school pupils, students and school leavers, the parental public, school establishments and other interested parties. This is without prejudice to the provision of advisory services by institutions of the Ministry of Education, with which the Labour Office of Czechia works in close cooperation.

Career counselling is provided by the Labour Office of Czechia not only to individuals on the register of job seekers and persons interested in job, but also to clients from the general public, including persons with disabilities. The Labour Office of Czechia provides its clients with expert career counselling not only during the initial choice of a career, but also throughout their professional career as part of lifelong learning.

ECSR case law (DIGEST)

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.[44] Article 9 provides for 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.[45]

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.[46] 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.[47] 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.[48]

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned.[49] This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training.[50] 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.[51] 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.[52]

The right to vocational guidance must be guaranteed:

- within the school system (information on training and access to training);[53]
- 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.[54]

[44] Conclusions I (1969), Statement of interpretation on Article 9
[45] Conclusions XIV-2 (1998), Statement of interpretation on Article 9
[46] Conclusions IV (1975), Statement of interpretation on Article 9
[47] Conclusions I (1969), Statement of interpretation on Article 9
[48] Conclusions 2020, Bosnia and Herzegovina
[49] Conclusions 2020, Montenegro
[50] Ibid.
[51] Conclusions XVI-2 (2003), Poland
[52] Conclusions 2012, Montenegro
[53] Ibid.
[54] Ibid.

The indicators taken into consideration when assessing vocational guidance are: objectives, organisation, operation, overall expenditure, number of staff and number of beneficiaries.[55]

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.[56]

During times of economic recession vocational guidance is of great importance.[57]

Situations where only 50% of schools offer consistent vocational services are not in conformity with Article 9 of the Charter.[58]

Where States Parties have accepted Article 9 and Article 15, vocational guidance of persons with disabilities is dealt with under Article 15.[59] 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.[60]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that there exists a service that helps persons, free of charge, to solve their problems relating to vocational guidance.

However, no information has been submitted by the Government on the following:

- whether foreigners and stateless persons also enjoy access to vocational guidance on an equal footing both within the education system and in the labour market;
- whether length of residence requirements or employment requirements apply;
- the objectives, organisation, operation, overall expenditure and number of staff and beneficiaries of the services provided, also including those offered to persons with disabilities.

Nevertheless, in light of the information provided by the Government and subject to more detailed information on the situation in practice, the Committee considers that there are no major obstacles to the acceptance by Czechia of Article 9 of the Charter.

Article 10 – *The right to vocational training*

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

1. 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.

Situation in Czechia

[55] Ibid.
[56] Conclusions 2020, Lithuania
[57] Conclusions IV (1975), Statement of interpretation on Article 9
[58] Conclusions 2020, Lithuania
[59] Conclusions 2003, France
[60] Conclusions 2020, Azerbaijan

The Government states that in Czechia further education is provided under the unqualified trade regime and the State does not directly influence the supply of further education. The supply just corresponds to demand.

Adults can take a retraining course accredited under Act No. 435/2004 Coll., Employment Act, by the Ministry of Education, Youth and Sports or by another ministry in accordance with a specific legal regulation.

Retraining courses are covered by the State Active Employment Policy. There is also a possibility to receive support up to CZK 50,000 in the framework of so-called selected retraining, whereby the individuals can choose the course provider if they are approved for such a retraining.

As a part of the implementation of the National Recovery Plan, there is massive support for digital learning provided as well.

ECSR case law (DIGEST)

The right to vocational training must be guaranteed to everyone.[61]

Article 10§1 covers all kind of higher education.[62] 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).[63] 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.[64]

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.[65]

In order to provide for vocational training States Parties must:

- ensure general and vocational secondary education, university and non-university higher education, as well as apprenticeships and continuing education;[66]
- build bridges between secondary vocational education and university and non-university higher education;[67]
- 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;[68]
- take measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market.[69]

[61] Conclusions I (1969), Statement of Interpretation on Article 10§1
[62] Conclusions 2003, France
[63] Ibid.
[64] Ibid.
[65] Conclusions IV (1975), Statement of Interpretation on Article 10
[66] Conclusions 2007, Ireland
[67] Conclusions 2016, Russian Federation
[68] Ibid.
[69] Ibid.

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 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.[70]

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.[71]

Equal treatment with respect to access to vocational training must also be guaranteed to nationals of other States Parties lawfully resident or regularly working on the territory of the State Party concerned in accordance with the Appendix to the Charter.[72] Measures must be taken to integrate migrants and refugees into vocational education and training.[73] 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.[74]

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.[75]

Vocational training of persons with disabilities is dealt with under Article 15 of the Charter for States Parties having accepted Article 15.[76]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that the Government provides information on continuing education, but no information has been submitted on the following:

- general and vocational secondary education, university and non-university higher education, apprenticeships and continuing education;
- bridges built between secondary vocational education and university and non-university higher education;
- existing 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;
- measures taken to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- statistical data, such as the total spending on education and training as a percentage of the GDP or the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job;
- measures taken to integrate migrants and refugees into vocational education and training.

[70] Conclusions 2012, Cyprus
[71] Conclusions 2020, Ukraine
[72] Conclusions 2003, Slovenia
[73] Conclusions 2020, Estonia
[74] Conclusions XXII-1 (2020), Poland
[75] Conclusions 2007, Ireland
[76] Conclusions 2003, Slovenia

In light of the information provided by the Government and in view of the above, the Committee considers that further information is necessary in order to assess whether the situation in law and practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting of Article 10§1 in the near future.

Article 10 – *The right to vocational training*

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

2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments

Situation in Czechia

The Government points out that vocational education prepares pupils for future career in line with the labour market needs and it is provided free of charge. Education is provided in accordance with the curriculum issued for each field of education.

Vocational education is divided into categories of educational attainment. That reflects the abilities and skills of pupils who follow the respective field of education. In particular, the curriculum determines the specific objectives, forms, duration, and compulsory content of education for respective field of education.

The curriculum also contains the organizational structure, the professional profile, the conditions for the course and for completion of education, the conditions for the education of pupils with special needs, as well as the necessary material, personnel, organizational, health and safety conditions.

Before the issuance of the curriculum for vocational training, the curriculum is discussed by the Ministry of Education, Youth and Sports together with the relevant trade unions and the regions as well as with the relevant employers' organisations with a national scope.

ECSR case law (DIGEST)

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.[77]

"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.[78] Apprenticeship must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.[79]

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. [80] In addition, the main indicators for assessing compliance with this provision are the existence of the

[77] Conclusions I (1969), Statement of Interpretation on Article 10§2
[78] Conclusions XIX-1 (2008), Slovak Republic
[79] Conclusions XVI-2 (2003), Malta
[80] Ibid.

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.[81]

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.[82]

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.[83] 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 Party concerned before starting training.[84] 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.[85] 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.[86]

Opinion of the ECSR

As regards the situation in Czechia, the Committee noted that no information has been submitted by the Government on the following:

- 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.

Nevertheless, in light of the information provided by the Government, and subject to more detailed information on the situation in practice, the Committee considers that there are no major obstacles to the acceptance by Czechia of Article 10§2 of the Charter.

Article 10 – *The right to vocational training*

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

3. to provide or promote, as necessary:

a) adequate and readily available training facilities for adult workers;

b) special facilities for the re training of adult workers needed as a result of technological development or new trends in employment;

[81] Conclusions 2020, Georgia
[82] Conclusions III (1973), Statement of Interpretation on Article 10§2
[83] Conclusions 2003, Slovenia
[84] Ibid.
[85] Ibid.
[86] Ibid.

Situation in Czechia

Regarding Article 10§3(a), the Government indicated that regional branches of the Labour Office of Czechia provide retraining in cooperation with retraining institutions. Act No. 435/2004 Coll., Employment Act, stipulates in the provisions of Section 108(2) which facilities may carry out retraining:

- establishments which have received accreditation from the Ministry of Education and Science for a training programme;
- an establishment with an accredited training programme under a special legal regulation - e.g. accreditation by the Ministry of Labour and Social Affairs for courses for social services workers;
- a school within the field of education that is registered in the register of schools and educational establishments or a higher education institution with an accredited study programme according to a special legal regulation;
- an establishment with an educational programme according to a special legal regulation.

Regarding Article 10§3(a), the Government indicates that the Directorate General of the Labour Office of Czechia has the competence to establish training and retraining centres under the provisions of Section 8(j) of Act No. 435/2004 Coll., Employment Act.

ECSR case law (DIGEST)

The right to continuing vocational training must be guaranteed to employed and unemployed persons, including young unemployed people.[87] Self-employed persons are also covered by this provision.[88] Article 10§3 takes into consideration only those of the activation measures for unemployed people that strictly concern training, while Article 10§1 deals with general activation measures for unemployed people.[89] Specific measures for long-term unemployed people are dealt with under Article 10§4.[90] 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.[91]

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.[92] 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.[93]

[87] Conclusions 2012, Serbia
[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] Ibid.
[92] Conclusions XIX-1 (2008), Spain
[93] Ibid.

With respect to unemployed persons, vocational training must be available to them.[94] 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.[95]

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;[96]
- 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.[97]

Any length of residence or employment requirement is contrary to the Charter.[98]

Opinion of the ECSR

As regards the situation in Czechia, the Committee noted that no information has been submitted by the Government on the following:

- statistical information, such as the overall participation rate of persons in training and the gender balance, as well as the percentage of employees participating in continuing vocational training, and the total expenditure;
- whether the legislation provides for individual training leave and what its main characteristics and effects on employment are.

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 10§3 in the near future.

Article 10 – *The right to vocational training*

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

4. to encourage the full utilisation of the facilities provided by appropriate measures such as:

a) reducing or abolishing any fees or charges;

b) granting financial assistance in appropriate cases;

c) including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;

d) ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training

[94] Conclusions XIX-1 (2008), Hungary
[95] Conclusions 2012, Serbia
[96] Ibid.
[97] Ibid.
[98] Conclusions XVI-2 (2004), Ireland

arrangements for young workers, and the adequate protection of young workers generally.

Situation in Czechia

Regarding Article 10§4(a), the Government states that retraining is completely exempt from VAT under Act No. 235/2004 Coll., on value added tax. Regarding Article 10§4(b), the Government indicates that the conditions of entitlement for support for retraining are regulated in Section 40 of the Act No. 435/2004 Coll., Employment Act.

The Labour Office of Czechia may provide a contribution to cover the proven necessary costs associated with retraining to a jobseeker if he/she participates in retraining carried out pursuant to Section 109 of the aforesaid Employment Act. The types of such costs are set out in Section 3 of Decree No. 519/2004 Coll.

In accordance with Section 110 of the Employment Act and Decree No. 519/2004 Coll., the Labour Office of Czechia may cover the costs of retraining employees if the employer requests a financial contribution.

Regarding Article 10§4(c), the Government explains that retraining of workers consisting in the acquisition, increase or extension of qualifications shall take place during working hours and shall constitute an obstacle to work on the part of the worker; the worker shall be entitled to wage compensation for this period in the amount of average earnings. Outside working hours, retraining shall take place only if this is necessary because of the way in which it is provided.

Regarding Article 10§4(d), the Government pointed out that, in Czechia, further education is provided under the unqualified trade regime and the state does not directly influence the supply of further education. The supply just corresponds to demand.

Before the issuance of the curriculum for vocational training, the curriculum is discussed by the Ministry of Education, Youth and Sports together with the relevant trade unions and the regions as well as with the relevant employers' organisations with a national scope.

ECSR case law (DIGEST)

Article 10§5 of the revised Charter (corresponding to Article 10§4 of the 1961 Charter) 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.[99] 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.[100] 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.[101]

[99] Conclusions 2020, Malta
[100] Conclusions XVI-2 (2004), United Kingdom
[101] Conclusions XVI-2 (2004), United Kingdom

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.[102]
The situation is not in conformity with Article 10§4 of the Charter where there is a length of residence requirement of three years for eligibility for financial aid for vocational training.[103]

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.[104] 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.[105] All issues relating to financial assistance are covered by Article 10§4, including allowances for training programmes in the context of the labour market policy.[106] States Parties must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit.[107] In any event, assistance should at least be available for those in need and shall be adequate.[108] It may consist of scholarships or loans at preferential interest rates.[109] The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.[110]

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.[111]

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.[112] 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.[113] It does not imply any previous training.[114] The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.[115] (YES)

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.[116] In particular, the participation of employers’ and workers’ organisations is required in supervising the effectiveness of training schemes.[117]

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[102] Conclusions XVI-2 (2004), United Kingdom
[103] Conclusions 2020, Andorra
[104] Conclusions XIII-1 (1993), Turkey
[105] Conclusions XIII-1 (1993), Turkey
[106] Conclusions 2016, Italy
[107] Conclusions XIX-1 (2008), Turkey
[108] Conclusions XIX-1 (2008), Turkey
[109] Conclusions 2016, Italy
[110] Conclusions 2016, Italy Conclusions XIV-2 (1998), Ireland
[111] Conclusions 2003, Slovenia
[112] Conclusions 2020, Turkey
[113] Conclusions 2020, Turkey
[114] Conclusions 2020, Turkey
[115] Conclusions 2020, Turkey
[116] Conclusions 2020, Lithuania
[117] Conclusions XIV-2 (1998), United Kingdom

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that vocational training is not provided free of charge, but the fact that retraining is completely exempt from VAT shows a documented effort of the Government to reduce fees. Furthermore, financial assistance may be provided for retraining employees, but no further information has been submitted, such as the number of beneficiaries. Finally, time spent on supplementary training is included in the normal working hours and employers' and workers' organisations participate in supervising the effectiveness of training schemes, although further information in that regard would be beneficial.

In light of the information provided by the Government and subject to more detailed information on the situation in practice, the Committee considers that there are no major obstacles to the acceptance by Czechia of Article 10§4 of the Charter.

Article 15 – *The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement*
With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;

Situation in Czechia

The Government states that education of disabled persons in accordance with the curriculum is provided free of charge to all prospective pupils or students.
Pupils or students with special needs are provided with support measures during their studies in order to set the conditions for their education in such a way that they are properly prepared for their future profession, but also for successful completion of their education.

Vocational rehabilitation is defined by the Act No. 435/2004 Coll,. Employment Act (Sections 69 to 74) and Decree No.518/2004 Coll., implementing the Employment Act. This decree specifies in Sections 1 to 5 the content of the Individual Plan for Vocational Rehabilitation (hereinafter referred to as "IPPR"), the types of costs covered by the Labour Office of Czechia and the method of their payment.

Every person with a disability who applies for vocational rehabilitation is legally entitled to it. Entry into vocational rehabilitation is voluntary. The scope of persons who are considered disabled for employment purposes is defined in the provisions of Section 67(2) to (6) of the abovementioned Employment Act.

On the basis of a recommendation from the attending physician, natural persons who are recognised as temporarily unable to work and, on the basis of a recommendation from the district social security administration, natural persons who have ceased to be disabled may also be included in vocational rehabilitation. Even in these cases, the application shall be submitted for vocational rehabilitation by the individual himself, so it is always his/ her own decision.

Vocational rehabilitation is provided by the regional branch of the Labour Office of Czechia locally competent according to the residence of the disabled person on the basis of the submitted application and covers the costs associated with it.

Vocational rehabilitation is carried out according to the IPPR, which is drawn up by the Labour Office of Czechia in cooperation with the disabled person.

The IPPR contains, among other things, the selected forms of vocational rehabilitation (individual activities), which are chosen with regard to the possibilities, abilities and health capacity of the disabled person and with regard to the situation on the labour market.

The individual forms of vocational rehabilitation can be provided by the Labour Office of Czechia in cooperation with other entities authorised to provide them.

Vocational rehabilitation includes:

- counselling activities focused on the choice of a profession, employment or other gainful activity;
- theoretical and practical preparation for employment or other gainful activity;
- activities aimed at facilitating, maintaining and changing employment or occupation; and
- the creation of suitable conditions for the pursuit of employment or other gainful activity.

The Labour Office of Czechia covers all costs associated with the provision of vocational rehabilitation.

Participants in vocational rehabilitation are reimbursed by the Labour Office of Czechia for proven travel expenses, accommodation expenses, food and insurance against damage caused by the participant in vocational rehabilitation within the framework of vocational rehabilitation.

In addition, persons with disabilities are also entitled to support for retraining during the period of participation in the preparation for work and during the period of a specialised retraining course (keeping of disabled persons in the register of job seekers is not the condition), provided that the statutory conditions are met.

The Labour Office of Czechia also reimburses the costs of a health assessment to a participant in vocational rehabilitation if the participant undergoes said assessment at the request of the regional branch of the Labour Office of Czechia.

ECSR case law (DIGEST)

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

Definition of disability

The Committee has previously stressed the importance of moving away from a medical definition of disability towards a social definition.[118] 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

[118] Conclusions 2020, Statement of Interpretation on Article 15§1

and personal factors.[119] 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.[120] 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').[121]

Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.[122] 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.[123]

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.[124] As under Article 10 of the Charter, vocational training, under Article 15, encompasses all types of higher education, including university education.[125] The Committee examines Article 15§1 issues as they apply to all persons with disabilities (not just as they apply to children).[126]

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.[127] 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.[128] Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education.[129] Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.[130]

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.[131] The priority to be given to education in mainstream establishments, which is referred to explicitly in the

[119] Conclusions 2020, Statement of Interpretation on Article 15§1
[120] Conclusions 2020, Statement of Interpretation on Article 15§1
[121] Conclusions 2020, Statement of Interpretation on Article 15§1
[122] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48
[123] Conclusions XIV-2 (1998), Statement of Interpretation on Article 15
[124] Conclusions 2020, Andorra
[125] Conclusions 2012, Ireland
[126] Conclusions 2020, Statement of Interpretation on Article 15§1
[127] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §48
[128] Conclusions 2007, Statement of Interpretation on Article 15§1
[129] Conclusions 2007, Statement of Interpretation on Article 15§1
[130] Conclusions 2007, Statement of Interpretation on Article 15§1
[131] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78

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.[132] 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.[133]

States Parties are required to provide the human assistance needed for the school career of the persons concerned.[134] 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.[135] 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.[136] 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.[137]

Measures aimed at promoting inclusion and quality in education
'Integration' and 'inclusion' are two different notions: integration does not necessarily lead to inclusion.[138] 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.[139]

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."[140]

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.[141]1 It also serves as a basis for

[132] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78
[133] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §78
[134] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81
[135] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81
[136] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81
[137] Conclusions 2020, Serbia
[138] Conclusions 2020, Statement of Interpretation on Article 15§1
[139] Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint No. 109/2014, decision on the merits of 16 October 2014, §66
[140] Conclusions 2020, Andorra
[141] International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, §181

establishing an inclusive society protecting a child with intellectual disability from exclusion and isolation.[142] States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.[143]

Inclusive education implies the provision of support and reasonable accommodations which persons with disabilities are entitled to expect in order to access schools effectively.[144] Such reasonable accommodations relate to an individual and help to correct factual inequalities.[145] 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.[146] Assistance at school is a particularly important means of being able to keep children and adolescents with autism in mainstream schools.[147]

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.[148] Young persons with disabilities with an education below the upper secondary level are per se subject to various disadvantages on the employment market.[149] States Parties must take measures in order to enable integration and guarantee that both mainstream and special schools ensure adequate teaching.[150] Furthermore, States Parties must demonstrate that tangible progress is being made in setting up inclusive and adapted education systems.[151]

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).[152]

The Committee has made the point that it would not be able to decide whether a State Party which had accepted this paragraph was, in fact, complying with the relevant requirements, unless that State included in its two-yearly reports adequate information on:

1. actual steps taken to implement the paragraph;
2. the type and number of the main specialised institutions providing the appropriate training in the country in question;
3. the number of persons receiving such training;
4. the number of staff engaged in such work.[153]

Access to education

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[142] International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, §181
[143] Conclusions 2020, Statement of Interpretation on Article 15§1
[144] Conclusions 2020, Andorra
[145] Conclusions 2020, Andorra
[146] Conclusions 2020, Andorra
[147] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §85
[148] Conclusions XX-1 (2012), Austria
[149] Conclusions XX-1 (2012), Austria
[150] Conclusions XX-1 (2012), Austria
[151] Conclusions XX-1 (2012), Austria
[152] European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §§ 111 and 116
[153] Conclusions 2012, Russian Federation

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;[154]
- 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;[155]
- the number and proportion of children with disabilities out of education;[156]
- the percentage of students with disabilities entering the labour market following mainstream or special education or/and training;[157]
- the number of persons with disabilities (children and adults) living in institutions;[158]
- 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;[159]
- 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;[160]
- 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;[161]
- the drop-out rates of children with disabilities compared to the entire school population.[162]

Article 15§1 is one of the rights protected by the Charter which is exceptionally complex and particularly expensive to resolve.[163] 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.[164]

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.[165]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that broad support measures for the rehabilitation of disabled persons are in place to ensure vocational training and rehabilitation

[154] Conclusions 2012, Russian Federation
[155] Conclusions 2020, Andorra
[156] Conclusions 2020, Andorra
[157] Conclusions 2012, Russian Federation
[158] Conclusions 2008, Lithuania
[159] Conclusions 2008, Lithuania
[160] Conclusions 2020, Andorra
[161] Conclusions 2020, Andorra
[162] Conclusions 2020, Andorra
[163] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53
[164] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53
[165] International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53

for individuals with disabilities. In particular, the Committee notes that persons with disabilities have access to education and training, including primary, general, and vocational secondary education, in mainstream establishments, provision of tailored vocational rehabilitation activities as well as equal access to education and training for persons with disabilities.

However, no information has been submitted by the Government on the following:

- the current legal definition of disability, in the light of the definition adopted in the UN Convention on the Rights of Persons with Disabilities, which has been ratified by Czechia;
- whether anti-discrimination legislation exists as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes;
- whether systemic reforms have been undertaken, showcasing inclusive and adapted education systems;
- statistical information, such as the number of persons receiving such training, the number of staff engaged in such work, the number and proportion of children with disabilities out of education, the percentage of students with disabilities entering the labour market following mainstream or special education or/and training, or the drop-out rates of children with disabilities compared to the entire school population.

In light of the information provided by the Government and in view of the requirements under this provision, the Committee considers that further information is necessary to assess if the situation in law and practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to continue considering the acceptance of Article 15§1 in the near future.

Article 18 – *The right to engage in a gainful occupation in the territory of other Contracting Parties*

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

1. to apply existing regulations in a spirit of liberality.

Situation in Czechia

The Government indicates that the employment of foreign nationals as employees in the territory of Czechia is governed by Act No. 435/2004 Coll., Employment Act and Act No. 326/1999 Coll., on the Residence of Foreigners in the Territory of Czechia. Pursuant to Section 85 of the Employment Act, a citizen of the European Union and his/her family member and a family member of a Czech citizen are not considered foreigners for the purposes of employing employees from abroad.

An EU citizen and his/her family member, as well as a family member of a Czech citizen, have the same legal status as Czech citizens in legal relations under the Employment Act, i.e. these persons have free access to the Czech labour market.

An EU national or his/her family member does not need a work permit, employee card, blue card or intra-corporate transferee card to work in Czechia if he/she proves the above status.

A foreigner who has been granted permanent residence permit, have also free access to the Czech labour market. A foreigner (i.e. a third-country national who is not a family member of

an EU/Czech citizen) may be employed and employed pursuant to Sections 89(1) and 89(2) of the Employment Act if he/she holds a valid Employee Card or an Intra-Company Transferred Employee Card or a Blue Card, unless otherwise provided for in this Act.

Furthermore, a foreigner may be recruited and employed if he/she holds a valid employment permit issued by a regional branch of the Labour Office of Czechia and a valid residence permit in the territory of Czechia.

The Employee Card, Intra-Corporate Transferred Employee Card and Blue Card are types of dual long-term residence (i.e., they entitle foreigners to stay and work in the territory of Czechia) issued to foreigners under the Act on Residence of Foreigners by the Ministry of the Interior.
The employment permit is issued by a regional branch of the Labour Office of Czechia and can be issued to a foreigner for up to two years on the basis of a submitted employment contract, employment agreement or future contract in which the parties undertake to conclude an employment contract or employment agreement within a specified period of time.

The employment permit contains the foreigner's identification data, the place of work, the type of work, the identification data of the employer with whom the foreigner will be employed, the period for which it is issued, or other data necessary for the performance of employment.

However, an employment permit alone is not sufficient for the legal performance of work in Czechia, and it is necessary that the foreigner also possess a valid residence permit.

Section 98 of the Employment Act also provides an exhaustive list of categories of foreigners who do not need an employment permit, an Employee Card, an Intra-Corporate Transferred Employee Card or a Blue Card to work in the territory of Czechia - e.g. foreigners with permanent residence (as mentioned above), foreigners who are continuously training for a future profession in the territory etc.

Access to the Czech labour market is granted to all third-country nationals who obtain one of the types of work and residence permits.

ECSR case law (DIGEST)

Article 18§1 applies to employees and the self-employed who are nationals of States which are party to the Charter.[166] It also covers members of their family allowed into the country for the purposes of family reunion.[167]

Article 18§1 is concerned with administrative practice rather than legal aspects.[168] 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.[169]

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.[170]

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

[166] Conclusions 2012, Serbia
[167] Ibid.
[168] Ibid.
[169] Ibid.
[170] ibid., citing Conclusions XIII-1 (1993), Sweden

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.[171]

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.[172]

To tie an employed person to an enterprise by the threat of being obliged to leave the host country if they of “a spirit of liberality” or of liberal regulations.[173] 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.[174]

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.[175] 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.[176]

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.[177] 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.[178]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that, while the Government has submitted detailed information on the status of nationals of EU countries, no information has been submitted on non-EU/EEA foreign nationals and the members of their family. Furthermore, no information has been submitted on self-employed persons who are nationals of States which are party to the Charter. Finally, the report lacks figures showing the rejection rates for work permits for both first-time and renewal applications, which would enable the Committee to assess the degree of liberality in applying existing regulations.

In view of these requirements, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 18§1 in the near future.

[171] Conclusions III (1973), Statement of Interpretation on Article 18
[172] Conclusions II (1971), Statement of interpretation on Article 18
[173] Ibid.
[174] Ibid.
[175] Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3
[176] Ibid.
[177] Conclusions XXII-1 (2020), Germany
[178] Conclusions 2012, Serbia

Article 18 – *The right to engage in a gainful occupation in the territory of other Contracting Parties*

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers.

Situation in Czechia

The Government points out that long-term visas and long-term stays are issued to foreigners by the Ministry of the Interior. Short-term visas for up to 90 days are issued abroad by the Czech embassies. However, in the long term, the majority of foreign workers in Czechia are foreign workers with free access to the labour market.

Foreigners who are allowed to enter the labour market are dominated by holders of employment cards. In 2022, out of a total of 793,290 foreign workers, the registry reported 407,257 information cards of citizens of EU/EEA Member States and Switzerland, including their family members, and 265,214 information cards of third-country nationals with free access to the labour market (such as those who have permanent residence permit).

Among foreign workers who enter the labour market on the basis of a work permit, 111,287 holders of Employee Cards, 7,822 holders of work permits, and 1,710 holders of Blue Cards were registered as of 31 December 2022 out of a total of 120,819.

The application submission fee for an employment permit is CZK 500; the application submission fee for an extension of an employment permit is CZK 250.

ECSR case law (DIGEST)

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.[179]

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.[180] It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.[181] 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.[182]

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.[183]

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[179] Conclusions IX-1 (1990), United Kingdom
[180] Conclusions 2016, Armenia; Conclusions XVII-2 (2005), Finland
[181] Conclusions XVII-2 (2005), Portugal
[182] ibid.
[183] Conclusions XXII-1 (2020), Iceland; see also Conclusions 2020, Ukraine

States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers.[184] 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.[185]

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.[186]

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.[187] Fees ranging from €266 to €1536 for work permits are also not in conformity with Article 18§2.[188]

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.[189] States are required to demonstrate that they have taken measures towards achieving such a reduction.[190]

Otherwise, they will have failed to demonstrate that they serve the goal of facilitating the effective exercise of the right of foreign workers to engage in a gainful occupation in their territory.[191] 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.[192]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that dues and other charges paid either by foreign workers or by their employers for employment permits and for their extension are not excessively high. However, no information has been submitted on the following:

- whether it is possible to complete the relevant 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;
- the average time for the granting of both work/residence visa for employees as well as self-employed.

In view of the above, the Committee considered that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 18§2 in the near future.

[184] Conclusions 2012, Statement of Interpretation on Article 18§2
[185] Ibid.
[186] Conclusions XXII-1 (2020), Iceland
[187] Conclusions 2020, Armenia
[188] Conclusions XXII-1 (2020), United Kingdom
[189] Conclusions 2012, Statement of Interpretation of Article 18§2
[190] Conclusions 2012, Statement of Interpretation of Article 18§2
[191] Conclusions 2012, Statement of Interpretation of Article 18§2
[192] Conclusions XXII-1 (2020), Iceland

Article 18 – *The right to engage in a gainful occupation in the territory of other Contracting Parties*

With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

3. to liberalise, individually or collectively, regulations governing the employment of foreign workers.

Situation in Czechia

The Government states that access to the Czech labour market is available to all third-country nationals who obtain one of the types of work and residence permits. Czechia does not restrict in any way the performance of work by foreigners on the basis of job position or geographical location. Exceptions are jobs related to the protection of human rights, public interest or national security and involving the exercise of public functions of public authority.

When applying for an employment permit, the foreigner is obliged to submit, inter alia, documents certifying professional competence for the performance of the requested employment (teaching certificate, matriculation certificate, diploma of completion of university studies, etc.), or other documents, if this results from the nature of the employment or if it is stipulated by a declared international treaty. Documents certifying professional competence to perform the required job must be super legalised (or apostilled) and nostrified.

According to the Employment Act, a jobseeker is a natural person who applies for mediation of suitable employment to the regional branch of the Labour Office of Czechia in whose territorial district he/she resides, one of the conditions being that the person is not in an employment relationship or in a service relationship.

The residence of a foreigner who is not a family member of a Czech citizen is the address of permanent residence in the territory of Czechia. The residence of a foreigner who holds a long-term residence permit for the purpose of employment in a highly skilled position (Blue Card) is the address indicated as the place of residence in the agency information system for foreigners.

However, it is not a legal requirement that an unemployed person must become a jobseeker. A foreigner may use the services of the Labour Office of Czechia as a person interested in job if he/she applies for inclusion in the register of persons interested in job. Cancellation of residence permits is the responsibility of the Ministry of the Interior.

ECSR case law (DIGEST)

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.[193]

[193] Conclusions V (1977), Germany

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.[194] 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.[195] The restrictions initially imposed with regard to access to employment must therefore be gradually lifted.[196]

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.[197] 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.[198]

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.[199]

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.

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.[200] 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.[201]

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 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.[202] For this reason, States Parties must make efforts to liberalise regulations governing the recognition of foreign certificates,

[194] Conclusions 2012, Ireland
[195] Ibid.
[196] Ibid.
[197] Conclusions 2012, Statement of Interpretation on Article 18§1 and 18§3
[198] Ibid.
[199] 1899 Conclusions XXII-1 (2020), Iceland
[200] Conclusions 2020, Turkey, citing Conclusions 2016, Turkey
[201] Conclusions 2012, Statement of interpretation on Article 18§3
[202] Conclusions 2012, Statement of interpretation on Article 18§3

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.[203]

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.[204]

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.[205]
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.[206] The validity of the residence permit should in fact be extended to give them enough time to find a new job.[207]

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.[208]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that no information has been submitted on the following:

- regulations governing access to self-employment of foreign workers;
- regulations governing the recognition of foreign certificates, professional qualifications and diplomas, considering that such qualifications and certifications are necessary to engage in a gainful occupation as employees or self-employed workers in Czechia;
- whether and, if so, under what circumstances the premature loss of employment could lead to a residence permit being revoked.

In view of the above, the Committee considers that further information is necessarry to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 18§3 in the near future.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

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[203] Conclusions 2012, Statement of interpretation on Article 18§3
[204] Conclusions 2012, Statement of interpretation on Article 18§3
[205] Conclusions 2012, Statement of interpretation on Article 18§3
[206] Conclusions XXII-1 (2020), Germany
[207] Conclusions XXII-1 (2020), Germany, citing Conclusions XVII-2, (2005), Finland
[208] 1909 Conclusions 2020, The Netherlands

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration.

Situation in Czechia

That Government indicates that in Czechia the portal www.cizinci.cz has been established as a key source of information on the integration of foreigners and is regularly updated. The portal provides information in a comprehensible form on the basic areas of life in Czechia, helps to connect users with relevant organisations and institutions, and provides specific information on housing, education, employment, residence permits, health and social services, all with direct contact to the relevant institutions. This portal is available in Czech, English, Ukrainian and Russian.

In addition, information phone lines or mobile application Smart Migration are being set up, and information spots are being filmed and published. The aim of these activities is to further make verified information available in a comprehensible form so as to further reduce the threshold of accessibility.

In addition to providing information on its own website, the Labour Office of Czechia provides individual counselling to foreigners and employers at its regional branches. In accordance with Act No. 251/2005 Coll., on Labour Inspection, the State Labour Inspection Office (hereinafter referred to as "SUIP") and the regional labour inspectorates provide basic information and advice to employees and employers free of charge regarding the protection of labour relations and employment.

Advice is provided in person, by telephone or by e-mail. Information on the contact points where advice is provided is given on the website of the SUIP (www.suip.cz/web/en). The public can find a range of information on labour relations, occupational safety and employment on the website of SUIP, which includes, for example, outputs from inspection activities, press releases and news. The 'Information leaflets' section of the aforesaid website provides the public with basic practical information on labour relations and occupational safety, which is regularly updated and available in several languages. Employees and citizens can also submit a complaint for inspection via an electronic form available on the website. This form is available in English too. In addition to the public administration's own activities, projects of NGOs where foreigners are the target group are also supported.

These projects aim e.g. at increasing the availability of employment for foreigners, at the integration of foreigners and at improving the qualifications or the use of qualifications of foreigners.

ECSR case law (DIGEST)

Article 19§1 guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other States Parties who wish to immigrate.[209] 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).[210]

[209] Conclusions I (1969), Statement of Interpretation on Article 19§1

[210] Conclusions III (1973), Cyprus; Conclusion XV-1 (2000), Austria

Free information and assistance services for migrants must be accessible in order to be effective.[211] 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.[212]

Another obligation under this provision is that States Parties must take measures to prevent misleading propaganda relating to immigration and emigration.[213] 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.[214]

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking.[215] 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.[216] 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.[217]

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.[218]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that, while the Government has submitted detailed information for persons wishing to immigrate, no information has been submitted on assistance provided to nationals wishing to emigrate. Furthermore, no information has been submitted on the evolution of migration trends and on measures taken to combat negative attitudes and prejudice, as well as misleading propaganda relating to migrant workers.

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 19§1 in the near future.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey.

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[211] Conclusions 2015, Armenia; Conclusions 2019, Albania
[212] Conclusions 2015, Armenia; Conclusions 2019, Albania
[213] Conclusions XIV-1 (1998), Greece
[214] Conclusions 2019, Estonia, citing Conclusions XIV-1 (1998), Greece
[215] 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
[216] Conclusion XV-1 (2000), Austria
[217] Conclusions 2019, Albania
[218] Conclusions 2019, Albania

Situation in Czechia

The Government states that the rights of third-country migrant workers depend on their residence status. With regard to migrant workers, persons who are employed in the territory of Czechia by an employer with its registered office or permanent residence in Czechia are insured under the public health insurance system. This group of persons has guaranteed access to health services to the same extent and under the same conditions as insured citizens can enjoy. Family members accompanying the migrant worker must also be provided with some form of health insurance.

Given that the public health insurance system does not provide for a derivative entitlement to insurance, it is necessary to have this right separately or to have commercial health insurance, which is a compulsory part of the application for a residence permit in Czechia. This is usually the case for a non-working spouse and minor children.

The Parliament of Czechia recently adopted an amendment to Act No. 48/1997 Coll., on Public Health Insurance, which introduces compulsory public health insurance for minor children granted long-term residence. By this step, the legislator has resolved the situation of children who were not entitled to public health insurance and who have been living in Czechia for a long time with their parents (mostly children of migrant workers). Again, the scope of covered health services is the same as for insured persons here. The amendment is currently awaiting the signature of the President of the Republic.

ECSR case law (DIGEST)

Article 19§2 requires States Parties to adopt special measures for the benefit of migrant workers to facilitate their departure, journey and reception.[219]

'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.[220] 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.[221]

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.[222] 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.[223] However, in that case, the need for reception facilities is all the greater.[224]

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;

[219] Conclusions III (1973), Cyprus
[220] Conclusions IV (1975), Statement of interpretation on Article 19§2
[221] Conclusions IV (1975), Germany
[222] Conclusions IV (1975), Statement of interpretation on Article 19§2
[223] Conclusions IV (1975), Statement of interpretation on Article 19§2
[224] ibid.

- 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.[225]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that, while the Government has submitted detailed information on measures taken for the health insurance of migrant workers, no information has been submitted on special measures taken to facilitate their placement and integration in the workplace, but also on assistance, financial or otherwise, in overcoming problems that may arise following their arrival (e.g. food, clothing, accommodation).

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 19§2 in the near future.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

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

Situation in Czechia

The Government explains that the provision of social services is regulated in Czechia primarily by Act No. 108/2006 Coll, Social Services Act (hereinafter referred to as "Social Services Act"). This Act regulates the provision of social services not only to citizens of Czechia but also to various groups of foreigners, including migrants, residing in Czechia.

If foreigners residing in the territory of Czechia, who have been granted a residence status issued by the Ministry of the Interior, apply for the provision of a social service and at the same time they meet the conditions for its provision (they are in an unfavourable social situation to which the given social service responds), the social service will be provided to them in accordance with Article 4(2)(a) of Social Services Act.

Such persons fall within the category of persons referred to in Section 4(1)(i) of Social Services Act, i.e. foreigners without permanent residence in the territory of Czechia, whose entitlement is guaranteed by an international treaty that is part of the Czech legal order (European Social Charter). The persons in question thus clearly fall within the circle of eligible persons defined by Social Services Act.

With regard to the question of the operation of social services registered under Social Services Act, in accordance with the existing legal regulation, it can be stated that the scope of social services, regardless of the legal form of their provider or the nature of their founder, is limited "only" to the territory of Czechia.

It follows that social service providers perform their activities (place of service provision) in the territory of Czechia, not outside this territory. This does not mean, however, that they cannot contact institutions or persons abroad in the framework of providing social services and in

[225] Conclusions 2019, Armenia

situations where it is necessary with regard to assessing the needs of the user or establishing decisive facts for the assessment of his/her adverse situation. However, the place of provision of the social service as such still remains on the territory of Czechia.

It follows from the above that Social Services Act does not in itself prevent public administration entities or social service providers themselves from contacting institutions or persons located abroad in the course of their activities (such cooperation is also facilitated by the possibility of using ICT resources), but in fact it is limited only to the exchange or sharing of information.

ECSR case law (DIGEST)

The scope of Article 19§3 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.[226] Formal arrangements are not always necessary, especially if there is little migratory movement in a given country.[227] In such cases, the provision of practical co–operation on a need basis may be sufficient.[228]

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.[229]

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.[230]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that, while it is possible, in principle, for social service providers to contact institutions or persons abroad in the framework of providing social services for purposes of exchange or information sharing, no specific information has been submitted, inter alia, on the form and nature of contacts and information exchanges established by social services in emigration and immigration countries, or on

[226] Conclusions XIV-1 (1998), Belgium
[227] Conclusions 2019, Albania
[228] Ibid.
[229] Conclusions XV-1 (2000), Finland
[230] Conclusions 2019, Albania

measures taken to establish such contacts and to promote the cooperation between social services in other countries.

In the light of the information provided by the Government, and subject to more detailed information on the situation in practice, the Committee considers that there are no major obstacles to the acceptance by Czechia of Article 19§3 of the Charter.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
a) remuneration and other employment and working conditions;
b) membership of trade unions and enjoyment of the benefits of collective bargaining;
c) accommodation.

Situation in Czechia

Regarding Article 19§4(a), the Government indicates that, pursuant to the Czech labour legislation, employers are obliged to ensure equal treatment of all employees with regard to their working conditions, remuneration for work and the provision of other benefits and benefits of monetary value, training and the opportunity to achieve promotion or other advancement in employment.

For example, an employer cannot make pay differentials between workers if they perform the same work or work of equal value. An employer also cannot make distinctions in the provision of benefits to workers (e.g. in the provision of meal vouchers, contributions to various insurances, etc.).

Any discrimination in employment relationships is prohibited. Employees have the right to be treated equally with other workers in their employment and not to be discriminated against, in particular, on grounds of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social origin, descent, language, health, age, religion or belief, property, marital or family status and family relationships or obligations, political or other opinion, membership and activity in political parties or political movements, trade unions or employers' organisations; discrimination on the grounds of pregnancy, maternity, paternity or gender identification shall be deemed to be discrimination on grounds of sex.

The remuneration of migrant workers is governed by the same conditions as for all other employees, including minimum wages or minimum levels of guaranteed pay.

Less favourable conditions of remuneration for migrant workers would be considered a violation of the principle of equal treatment of employees (Article 16(1) of the Act No. 262/2006 Coll., Labour Code) and could also constitute discrimination (Article 16(2) of the Labour Code).

Regarding Article 19§4(b), the Government states that there are no obstacles to his/her membership in a trade union and enjoyment of the benefits of collective bargaining if the migrant worker is in an employment relationship. Czechia treats all workers equally on this issue, regardless of whether they are migrants or not.

Regarding Article 19§4(c), the Government explains that the current version of the Labour Code expressly provides for the obligation to ensure accommodation conditions (in terms of a certain standard) only in the context of the regulation of the posting of employees of an employer from another Member State of the European Union to perform work within the framework of the transnational provision of services in the territory of Czechia.

ECSR case law (DIGEST)

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.[231] Equality in law does not always and necessarily ensure equality in practice.[232] Hence, additional action becomes necessary owing to the different situation of migrant workers as compared with nationals.[233] States Parties should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.[234]

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 other than the State in which they usually work.[235] States must respect the principles of non-discrimination laid down by the Charter in respect of all persons subject to their jurisdiction.[236]

States Parties are also responsible for the regulation in national law of the conditions and rights of workers in cross-border postings.[237]

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 promotion as well as vocational training.[238]

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.[239]

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

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231 Conclusions III (1973), Statement of Interpretation on Article 19§4
232 Conclusions V (1977), Statement of interpretation on Article 19
233 Ibid.
234 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
235 Conclusions 2015, Statement of interpretation on Article 19§4
236 Ibid.
237 Ibid.
238 Conclusions VII (1981), United Kingdom; Conclusions 2019, Albania
239 Conclusions XIII-3 (1995), Turkey; Conclusions 2011, Statement of interpretation on Article 19§4b; Conclusions XIX-4 (2011), Luxembourg

from legitimate collective action in support of such an agreement, in accordance with domestic laws or practice.[240]

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.[241] 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.[242]

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.[243] Irregularly present immigrants, however, do not fall within the scope of Article 19§4(c).[244]
There must be no legal or de facto restrictions on home–buying,[245] access to subsidised housing or housing aids, such as loans or other allowances.[246]

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.[247]

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.[248]

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.[249]
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.[250]

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[240] 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
[241] 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
[242] 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
[243] 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)
[244] 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)
[245] Conclusions IV (1975), Norway; Conclusions 2019, Albania
[246] Conclusions III (1973), Italy; Conclusions 2019, Albania
[247] 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, §204, citing Conclusions XV-1 (2000), Finland
[248] Conclusions 2015, Slovenia
[249] Conclusions III (1973), Statement of interpretation on Article 19§4; Conclusions 2019, Albania
[250] Conclusions XX-4 (2015), Germany; Conclusions 2019, Albania

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.[251] The Committee considers that existence of such review is important for all aspects covered by Article 19§4.[252]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that, while non-discrimination legislation exists for all employment-related matters, no information has been submitted on any practical measures taken to remedy cases of discrimination against migrant workers, either in the context of remuneration and other employment and working conditions or in the contexts of collective bargaining, accommodation and monitoring and judicial review.

In light of the information provided by the Government and subject to more detailed information on the situation in practice, the Committee considers that there are no major obstacles to the acceptance by Czechia of Article 19§4 of the Charter.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions
payable in respect of employed persons.

Situation in Czechia

The Government points out that Act No. 586/1992 Coll., on Income Taxes, does not make any distinction (not only for the purposes of taxation of employee income) on the basis of citizenship. Moreover, Czechia currently implements almost 100 international treaties on the avoidance of double taxation, the vast majority of which contain provisions prohibiting discrimination (i.e. different or more burdensome treatment) in the area of income taxation on the basis of nationality. In other words, if a foreigner is in the same situation as a citizen of Czechia, including, of course, tax domicile, there is no difference between them in income taxation. Furthermore, within the EU, the fundamental freedoms of the internal market and the resulting prohibition of discrimination are binding on Czechia as a Member State as well.

ECSR case law (DIGEST)

Article 19§5 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.[253]

This includes contributions such as mandatory pension payments, unemployment insurance payments and social insurance contributions derived from employment.[254]

The Committee found situations to be in non-conformity with the Charter where non-residents who are cross-border workers are not entitled to personal income tax allowances (for

[251] Conclusions XV-1 (2000), Finland
[252] Conclusions 2019, Albania
[253] Conclusions 2019, Albania, citing Conclusions XIX-4 (2011), Greece
[254] Conclusions 2019, Austria

dependant persons and additional allowances of personal income tax)[255] or to supplementary financial benefits.[256]

Opinion of the ECSR

The Committee notes the measures already in place. The Committee considers that the Government demonstrates a commitment to non-discriminatory tax treatment for migrant workers, which is in line with the principles laid down by Article 19§5 of the Charter. The incorporation of international treaties and adherence to EU fundamental freedoms are positive indicators.

In light of the information provided by the Government and requirements of this provision, the Committee considers that there are no obstacles to the immediate acceptance of Article 19§5 of the Charter.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

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

Situation in Czechia

The Government indicates that the employment of foreign nationals as workers in the territory of Czechia is governed by Act No. 435/2004 Coll., Employment Act.

Residence and residence permits of foreign nationals in the territory of Czechia are governed by Act No. 326/1999 Coll., on the Residence of Foreigners in Czechia and on Amendments to Certain Acts.

Section 3(2) of the Employment Act provides that a national of another Member State of the European Union and a member of his or her family have the same legal status in legal relations governed by this Act as a citizen of Czechia, unless this Act provides otherwise.

Section 3(3) of the Employment Act further provides that family members of a citizen of Czechia who are not nationals of Czechia or another Member State of the European Union have the same legal status as a citizen of Czechia in legal relations governed by this Act, unless this Act provides otherwise.

According to Section 98(1) of the Employment Act, an employment permit, an Employee Card, an Intra-Corporate Transferred Employee Card or a Blue Card is not required for employment of a foreigner who is staying in the territory of Czechia on the basis of a long-term residence permit for the purpose of family cohabitation, if the family cohabitation is performer with a foreigner who has been granted permanent residence or who has been granted asylum or subsidiary protection, or who is carrying out continuous educational or scientific activities in Czechia as a teaching staff member or academic staff member of a university or a scientific, research or development worker in a public research institution or other research organisation pursuant to a special legal regulation (Act No. 341/2005 Coll., on Public Research Institutions),

[255] Conclusions 2015, Latvia
[256] Conclusions XX-4 (2015), Poland

or with a foreigner who is staying in the territory of Czechia on the basis of a valid long-term residence permit.

ECSR case law (DIGEST)

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.*[257]

Scope

Article 19§6 requires States Parties to allow the families of migrants legally established in State Party territory to join them.[258] 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.[259]

"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.[260]

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.[261]

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.[262]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.[263]

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.[264]

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.[265] 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.[266]

i. Refusal on health grounds

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[257] Appendix to the Revised European Social Charter, European Treaty Series - No. 163

[258] Conclusions 2019, Albania

[259] Appendix to the Revised European Social Charter, European Treaty Series - No. 163

[260] Conclusions VIII (1984) Statement of Interpretation on Article 19§6

[261] Conclusions XVI-1 (2002), The Netherlands

[262] Conclusions XVI-1 (2002), The Netherlands

[263] Conclusions XVI-1 (2002), The Netherlands

[264] Conclusions 2019, Albania, citing Conclusions 2015, Statement of Interpretation on Article 19§6 – housing requirements

[265] Statement on Covid-19 and social rights adopted on 24 March 2021

[266] Statement on Covid-19 and social rights adopted on 24 March 2021

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.[267] 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.[268] 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.[269]

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.[270] Thus, for example, a period of eighteen months or more is not in conformity with this provision of the Charter.[271]

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.[272] States are entitled to impose such accommodation requirements in a proportionate manner so as to protect the interests of the family.[273] 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.[274]

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.[275] Social benefits shall not be excluded from the calculation of the income of a migrant worker who has applied for family reunion.[276]

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.[277]

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.[278] They are therefore contrary to Article 19§6 of the Charter where they:

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[267] Conclusions XVI-1 (2002), Greece
[268] Conclusions XV-1 (2000), Finland
[269] Conclusions XV-1 (2000), Finland
[270] Conclusion 2011, Statement of Interpretation on Article 19§6
[271] Conclusions I (1969), Germany; Conclusions 2011, France; Conclusions 2011, Cyprus
[272] Conclusions IV (1975), Norway
[273] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements
[274] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements
[275] Conclusions XVII-1 (2004), The Netherlands
[276] Conclusions 2011, Statement of Interpretation on Article 19§6
[277] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests
[278] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests

- 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.[279]

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.[280] 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.[281]

The conformity of the expulsion of family members of a migrant worker with the Charter is assessed under Article 19§6.[282]

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.[283]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that the Government provided no information on important requirements of this provision, including information about age requirements, conditions governing family reunion, independent right to stay and remedies in case of restrictions.

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 19§6 in the near future.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

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

[279] Conclusions 2015, Statement of Interpretation on Article 19§6 – language and integration tests
[280] Conclusions XVI-1 (2002), The Netherlands, Article 19§8
[281] Conclusions XVI-1 (2002), The Netherlands, Article 19§8
[282] Conclusions 2015, Statement of interpretation on Article 19§6 and 19§8
[283] Conclusions 2015, Statement of interpretation on Article 19§6 – housing requirements

Situation in Czechia

The Government explains that it is already clear from the Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms, that everyone – without distinction as to nationality, citizenship, colour, religion, etc. – has the right to access to an independent and impartial court and to a review of the legality of a decision of a public authority (Article 36(1) and (2)).

At the same time, everyone has the right to legal aid (Article 37(2)), and emphasis is placed on the equality of all parties before the court (Article 37(3)).

Finally, in order to achieve de facto equality, the right to an interpreter is guaranteed, should a particular party not be able to speak Czech (Article 37(4)).

Sub-constitutional legislation is built on the aforesaid constitutional principles. Act No. 99/1963 Coll., Civil Procedure Code, which regulates the procedure of courts in private law cases, as well as Act No. 150/2002 Coll., Administrative Procedure Code, regarding the review of decisions of public administration bodies, establish general rules that apply to all proceedings and all claimants, regardless of whether they are Czech citizens or foreigners.

These laws therefore do not provide for less favourable rules for foreign workers who are legally present in Czechia.

What is more, the laws in question take into account a certain handicap that migrant workers may face. This is the risk of a language barrier. For these purposes, Section 18 of the Civil Procedure Code confirms that the parties have equal status in civil proceedings and, in order to achieve this equality, they have the right to act before the court in their mother tongue. If a party's mother tongue is a language other than Czech, the court is obliged to appoint an interpreter for him/her at the moment when this circumstance comes to light in the proceedings (ex officio).

Since the rules of the Code of Civil Procedure apply subsidiary to administrative proceedings under the Administrative Procedure Code (pursuant its Section 64), these requirements apply *mutatis mutandis* to proceedings before administrative courts.

ECSR case law (DIGEST)

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.[284] This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).[285]

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 Charter.[286] 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

[284] Conclusions I (1969), Italy, Norway, United-Kingdom; Conclusions I (1969), Germany; Conclusions 2019, Albania
[285] Conclusions I (1969), Germany
[286] Conclusions 2011, Statement of Interpretation on Article 19§7

language used in the proceedings and have any necessary documents translated.[287] Such legal assistance should be extended to obligatory pre-trial proceedings.[288]

Opinion of the ECSR

The Committee notes the non-discriminatory access of migrant workers to legal proceedings, lawyers, legal aid, and interpreter services equivalent to the own nationals, thus promoting fairness and justice within the legal system.

In light of the information provided by the Government and requirements of this provision, the Committee considers that there are no obstacles to the immediate acceptance of Article 19§7 of the Charter.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality.

Situation in Czechia

The Government indicated that residence and residence permits of foreign nationals in the territory of Czechia are governed by Act No. 326/1999 Coll., on the Residence of Foreigners in Czechia and on Amendments to Certain Acts.

Cancellation of residence permits is the responsibility of the Ministry of the Interior.

By its decision, the Ministry of Interior revokes the validity of a foreign national's visa for a stay of over 90 days only if:

a. he/she was legitimately sentenced to over three years of imprisonment for committing a deliberate criminal act,
b. he/she did not meet the purpose for which the visa was issued,
c. the foreign national requests the visa's validity be cancelled,

and also if:

a. the foreign national gave false data in the visa application or submitted forged or modified documents or documents in which the data essential for appraising the application did not correspond to the facts,
b. the foreign national no longer meets some of the conditions for granting the visa,
c. during a residence control the police discover that the foreign national does not have a valid travel document or submits a forged or modified travel document and

    1. within a set deadline the foreign national did not submit confirmation that he/she has requested a new travel document be issued, or

[287] Ibid.
[288] Ibid.

2. although there is a reason for issuing a foreign passport or travel identity card, the foreign national did not request this travel document to be issued,

d. the foreign national's travel document was declared invalid or stolen by the authority of the state that issued it and the foreign national does not submit a certificate pursuant to (c),
e. the foreign national did not meet the obligation to submit an application on granting a visa for a foreign national born in Czechia within 60 days of birth,
f. another European Union or Schengen state implementing a common expulsion procedure has decided to expel the foreign national due to sentencing the foreign national to at least one year of imprisonment or for reasonable suspicion that he/she has committed a serious criminal act or is preparing such an act in the territory of a European Union or Schengen state implementing a common expulsion procedure, and further for reasons of infringing the legal regulations governing the entry and stay of foreign nationals in their territories, or
g. during a residence control, the foreign national fails to submit a document on travel medical insurance, corresponding to the set conditions, within the deadline set by the police,

on condition that the results of this decision on revoking the visa's validity are adequate to the reason for revoking the visa's validity, taking into account the impacts on the foreign national's private or family life.

In the decision to revoke the visa's validity, the Ministry of Interior sets a deadline for departing Czechia and issues a departure order. The foreign national is obliged to depart from Czechia within the deadline. At the same time, the Ministry of Interior invalidates the visa as its validity has ended.

ECSR case law (DIGEST)

Article 19§8 requires 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.[289]

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.[290]

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.[291] 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.[292] 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.[293] The individual's connection or ties with both the host state and the state of origin, as well as

[289] Conclusions VI (1979), Cyprus; Conclusions 2011, Statement of Interpretation on Article 19§8; Conclusions 2015, Statement of interpretation on Article 19§8
[290] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §114
[291] Conclusions 2015, Statement of interpretation on Article 19§8
[292] Conclusions 2015, Statement of interpretation on Article 19§8
[293] Conclusions 2015, Statement of interpretation on Article 19§8

the strength of any family relationships that they may have formed during this period, must also be considered to determine whether expulsion is proportionate.[294]

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.[295]

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.[296]

States Parties must ensure that foreign nationals served with expulsion orders have a right of appeal to a court or other independent body.[297]

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.[298]

National legislation should reflect the legal implications of Articles 18§1 and 19§8 as well as the case law of the European Court of Human Rights: foreign nationals who have been resident for a sufficient length of time in a State, either legally or with the tacit acceptance of their illegal status by the authorities in view of the host country's needs, should be covered by the rules protecting from deportation.[299]

Opinion of the ECSR

As regards the situation in Czechia, the Committee noted that the Government provided no information on the following:

- whether 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 are considered to determine whether expulsion is proportionate;
- whether a right to appeal is effectively guaranteed to foreign nationals served with expulsion orders.

In view of the above, the Committee considers that further information is necessary to assess whether the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 19§8 in the near future.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Contracting Party, the Contracting Parties undertake:

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294 Conclusions 2015, Statement of interpretation on Article 19§8
295 Conclusions V (1977), Germany
296 Conclusions V (1977), Italy
297 Conclusions V (1977), United Kingdom; Conclusions 2015, Statement of interpretation on Article 19§8
298 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
299 Conclusions 2011, Statement of Interpretation on Article 19§8

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

Situation in Czechia

The Government stresses that the licensed trade of foreigners is generally regulated by Act No. 455/1991 Coll., on Licensed Trade (Trade Licensing Act).

To extend the protection of all licensed traders irrespective of their nationality or citizenship, Ministry of Industry and Trade posted on its website a specific manual called “The Trade Licensing Guide“ whose aim is to introduce to both the starting and existing businesses the basic requirements set forth by Czech legislation in relation to application for trade licenses/authorization to carry out business in Czechia.

This guide details what are the prerequisites of applications for trade license or a concession which must be met by a foreign natural person who is not a citizen of one of the European Union member states, or of other party states to the Agreement on the European Economic Area or of the Swiss Confederation.

The guides specifically provide information on terms of carrying out notification—only trades and concessions, what documentation is submitted by the applicant for trade license or concession to the Trade Licensing office, what forms are used for such applications as well as what is the amount of the pertinent administrative or other fees and what are the methods of their payment.

A person who does not have permanent residence in Czechia may carry on a trade in Czechia under the same conditions and to the same extent as a Czech person, unless the Trade Licensing Act or a specific act provides otherwise (hereinafter “doing business as a foreign natural person”). The conditions for obtaining and carrying on a trade authorisation are laid down differently for citizens of the Member States of the European Union and citizens of third countries, i.e. for countries whose citizens are not considered citizens of a Member State of the European Union.

In addition to citizens of the Member States, the following will also be considered to be citizens of a Member State of the European Union:

- A citizen of another country that is a party to the Agreement on the European Economic Area and a citizen of the Swiss Confederation,
- A family member of a citizen of the European Union, a citizen of another country that is a party to the Agreement on the European Economic Area and a citizen of the Swiss Confederation,
- A family member of a person who has been granted permanent residence in Czechia,
- A third-country national who has been granted the legal status of a long-term resident of Czechia or another European Union Member State, or a family member of such a person, if they have been granted long-term residence in Czechia,
- A third-country national who has been granted residence in Czechia or another European Union Member State for the purpose of scientific research, studies, training or voluntary service in the European Voluntary Service, or a family member of such a person, if they have been granted long-term residence in Czechia,
- A third-country national who is a victim of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration, who is cooperating with the competent authorities, if they have been granted residence in Czechia or another European Union Member State for this purpose,

- The holder of a European Union Blue Card.

A natural person who has been granted international protection and their family members may carry on a trade under the same conditions as a citizen of Czechia. Detailed information is available on Licensed Trades Portal.

ECSR case law (DIGEST)

Under Article 19§10, States Parties must extend the rights provided for in paragraphs 1 to 9, 11 and 12 to self-employed migrant workers and their families.[300]

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.[301] In addition equal treatment between self-employed migrants and self-employed nationals must be guaranteed in the areas covered by this provision.[302]

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.[303] Such finding of non-conformity prevents discrimination or difference in treatment.[304]

As this provision relates solely to extending the protection and assistance embodied in the other paragraphs of Article 19 to self-employed workers, it is important that the following comments should be considered not in isolation, but together with those made on each of the other paragraphs of Article 19. Hence, any statement that a particular state has fulfilled its obligations deriving from Paragraph 10 is valid only in so far as the Committee has been able to reach a like conclusion in respect of the other paragraphs also.[305]

Opinion of the ECSR

As regards the situation in Czechia, the Committee notes that due to lack of necessary information it has been unable to properly assess the situation in Czechia with respect to other paragraphs of Article 19. Therefore, for the same reasons, the Committee considers that further information is necessary to properly assess if the situation in law and in practice is in line with the standards of the Charter. It encourages the Government to pursue their efforts and to consider accepting Article 19§10 in the near future.

[300] Conclusions I (1969), Norway
[301] Conclusions 2002, France
[302] Conclusions XVIII-1 (2006) Luxembourg
[303] Conclusions 2019, Albania
[304] Ibid.
[305] Statement of interpretation on Article 19§10

APPENDIX I

— Czechia and the European Social Charter —

Signatures, ratifications and accepted provisions

1961 European Social Charter: ratified on 03/11/1999, 51 paragraphs (initially 52) accepted out of 72 (Article 8, paragraph 4, initially accepted, was denounced on 25/03/2008).

1988 Additional Protocol to the Charter: ratified on 17/11/1999, all 4 articles accepted.
1991 Amending Protocol to the European Social Charter: ratified on 17/11/1999.
1995 Additional Protocol providing for a system of Collective complaints: ratified on 04/04/2012.

1996 Revised European Social Charter: signed on 04/11/2000, not ratified yet.

The Charter in domestic law

Article 10 of the Constitution: “The ratified and promulgated international treaties on human rights and fundamental freedoms, by which Czech Republic is bound, shall be applicable as directly binding regulations having priority before the law.”

Table of accepted provisions

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3
4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	6.4	7.1	7.2
7.3	7.4	7.5	7.6	7.7	7.8	7.9	7.10	8.1	8.2	8.3	8.4
9	10.1	10.2	10.3	10.4	11.1	11.2	11.3	12.1	12.2	12.3	12.4
13.1	13.2	13.3	13.4	14.1	14.2	15.1	15.2	16	17	18.1	18.2
18.3	18.4	19.1	19.2	19.3	19.4	19.5	19.6	19.7	19.8	19.9	19.10
AP1	AP2	AP3	AP4	AP= Additional Protocol				Grey = Accepted provisions			

Update: April 2024
Factsheet – CZECHIA
Department of the European Social Charter
Directorate General Human Rights and Rule of Law

Monitoring the implementation of the European Social Charter[306]

I. Collective complaints procedure [307]

Collective complaints (under examination)

European Roma Rights Centre (ERRC) v. Czech Republic (Complaint No. 220/2023)
The Committee declared the complaint admissible on 12 September 2023.

European Federation of National Organisations working with the Homeless (FEANTSA) v. Czech Republic (Complaint No. 191/2020)
The Committee declared the complaint admissible on 9 December 2020.

European Roma Rights Centre (ERRC) v. Czech Republic (Complaint No. 190/2020)
The Committee declared the complaint admissible on 9 September 2020.

Collective complaints (proceedings completed)

1. Complaints inadmissible or where the Committee has found no violation

a. Inadmissibility

/

b. No violation

Validity v. Czech Republic (Complaint No. 188/2019)
The Committee declared the complaint admissible on 9 September 2020.

- No violation of Article 11§1 of the 1961 Charter;
- No violation of Article 4§3 of the 1988 Additional Protocol.

Decision on the merits of the Complaint No. 188/2019 on 17 October 2023.
Resolution CM/ResChS(2024)1 adopted by the Committee of Ministers on 14 February 2024

2. Complaints where the Committee has found a violation which has been remedied

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3. Complaints where the Committee has found a violation and where progress has been made but not yet examined by the Committee

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[306] The European Committee of Social Rights ("the Committee") monitors compliance with the Charter under two procedures, the reporting system and the collective complaints procedure, according to Rule 2 of the Committee's 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 through the framework of the reporting procedure and decisions under the collective complaints procedure".
Further information on the procedures may be found on the HUDOC database and in the Digest of the case law of the Committee.
[307] Detailed information on the Collective Complaints Procedure is available on the relevant webpage.

4. Complaints where the Committee has found a violation and where progress has been made but which has not yet been remedied.

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5. Complaints where the Committee has found a violation which has not yet been remedied

International Commission of Jurists (ICJ) v. Czech Republic (Complaint No. 148/2017)

- Violation of Article 17 (right of children and young persons to social, legal and economic protection) Decision on the merits of 20 October 2020.

Follow up:
Recommendation CM/RecChS(2021)15 of the Committee of Minister of 16 June 2021

European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic (Complaint No. 157/2017)
The Committee declared the complaint admissible on 23 January 2018. Decision on the merits of 17 June 2020.
Follow up:
Recommendation CM/RecChS(2021)16 of the Committee of Ministers of 16 June 2021.

University Women of Europe (UWE) v. Czech Republic (Complaint No. 128/2016)

- Violation of Article 4§3 (right to a fair remuneration - non-discrimination between women and men with respect to remuneration)
- Violation of Article 1 of the 1988 Additional Protocol (right to equal opportunities and treatment in employment and occupation without sex discrimination) Decision on the merits of 6 December 2019.

Follow up:
Recommendation CM/RecChS(2021)5 (Adopted by the Committee of Ministers on 17 March 2021 at the 1399th meeting of the Ministers' Deputies).
Assessment of the European Committee of Social Rights on the follow up (February 2023).

Transgender-Europe and ILGA-Europe v. Czechia (Complaint No. 117/2015)

- Violation of Article 11 of the 1961 Charter (the right to protection of health).

Decision on the merits of 15 May 2018.
Follow up:
Resolution CM/ResChS(2018)9 of 24 October 2018.
Assessment of the European Committee of Social Rights on the follow up (February 2023).

European Roma and Travellers Forum (ERTF) v. Czechia (Complaint No. 104/2014)

- Violation of Article 11 of the 1961 Charter (the right to protection of health)
- Violation of Article 16 of the 1961 Charter (right of the family to social, legal and economic protection)
- No violation of Article 11 of the 1961 Charter (the right to protection of health)

Decision on the merits of 17 May 2016.
Follow up:
Resolution Res / CM ChS (2017) 2 du 22 February 2017.
Assessment of the European Committee of Social Rights on the follow-up (31 January 2020).
2nd Assessment of the European Committee of Social Rights on the follow up (February 2023).

Association for the protection of All Children (APPROACH) ltd. v. Czechia (Complaint No. 96/2013)

- Violation of Article 17 of the 1961 Charter (the right of mothers and children to social and economic protection)

Decision on the merits of 20 January 2015.
Follow up:
Resolution Res/CM ChS (2015)11 on 17 June 2015 of the Committee of Ministers.
Assessment of the European Committee of Social Rights on the follow-up (20 May 2016).
2nd Assessment of the European Committee of Social Rights on the follow-up (19 September 2017).
3rd Assessment of the European Committee of Social Rights on the follow-up (31 January 2020).
4th Assessment of the European Committee of Social Rights on the follow up (February 2023).

II. Reporting system [308]

Reports submitted by Czechia

Between 2001 and 2024, Czechia has submitted 21 reports on the application of the 1961 Charter.

The 20th report, which was submitted on 30/12/2022, concerns the accepted provisions relating to thematic group 4 "Children, families and migrants" (Articles 7, 8, 16, 17 and 19).

Conclusions with respect to these provisions have been published in March 2024.

On 4 January 2024, an ad hoc report on the cost-of-living crisis was submitted by Czechia[309].

[308] Detailed information on the Reporting System is available on the relevant webpage. The reports submitted by States Parties may be consulted in the relevant section.
[309] In accordance with the decision of the Ministers' Deputies adopted on 27 September 2022 concerning the new system for the presentation of reports under the European Social Charter, the European Committee of Social Rights and the Governmental Committee have decided to request an ad hoc report on the cost-of-living crisis to all State parties.

Situations of non-conformity [310]

Thematic Group 1 "Employment, training and equal opportunities" - Conclusions XXII-1 (2020)

► *Article 1 of the 1988 Additional protocol – Right to equal opportunities and treatment in employment and occupation without sex discrimination*
The obligation to make measurable progress in reducing the gender pay gap has not been fulfilled.

Thematic Group 2 "Health, social security and social protection" - Conclusions XXII-2 (2021)

► *Article 12§1 – Right to social security - Existence of a social security system*
The minimum level of pension benefit is manifestly inadequate.

► Article 13§1 – *Right to social and medical assistance - Adequate assistance for every person in need*
- The right to social assistance to all persons in need is not guaranteed as it can be withdrawn as penalty for having refused a job offer or not registering with an employment office;
- The level of social assistance is manifestly inadequate.

► *Article 14§1 - Right to benefit from social welfare services - Promotion or provision of social services*
It has not been established that equal access to social services is guaranteed to nationals of all States Parties lawfully residing on Czech territory.

► *Article 4 of the 1988 Additional Protocol – Right of the elderly to social protection*
The level of the minimum pension is inadequate.

Thematic Group 3 "Labour rights" - Conclusions XXI-3 (2018)

According to the applicable rules, Conclusions XXII-3 (2022) only refer to the information submitted by the Government of Czechia on the follow-up given to the relevant decisions of the European Committee of Social Rights in the framework of the collective complaints procedure (see above).
For the most recent Conclusions adopted concerning the relevant Articles, see Conclusions XXI-3 (2018).

► *Article 2§1 - Right to just conditions of work - Reasonable working time*
The daily working hours may be extended up to 16 hours in a number of activities.

► *Article 2§5 - Right to just conditions of work - Weekly rest period*
Agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest, resulting in an excessive number of consecutive working days.

► *Article 4§2 - Right to a fair remuneration - Increased remuneration for overtime work*

[310] Further information on the situations of non-conformity is available on the HUDOC database.

An increased compensatory time-off for overtime hours is not guaranteed.

► *Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment*
- The two months' notice period provided for dismissals on grounds of long-term incapacity, unsuitability for the post and breach of obligations related to the prescribed regime for temporary incapacity and permitted leave, is not reasonable for employees with more than 10 years of service;
- No notice period is provided for dismissals during the probationary period or in case of termination of employment upon death of the employer if the business is discontinued.

► *Article 5 – Right to organise*
Members of the SIS are prohibited from forming any type of professional association for the protection of their economic interests.

► *Article 6§2 - Right to bargain collectively – Negotiation procedures*
The promotion of collective bargaining is not sufficient.

► *Article 6§4 - Right to bargain collectively - Collective action*
- The percentage required for calling a strike in disputes regarding the conclusion of collective agreements is too high;
- There is an absolute prohibition on the right to strike for members of the police, fire and rescue service, prison service and the Office for Foreign Relations and Information.

Thematic Group 4 "Children, families, migrants" - Conclusions XXII-4 (2023)

► *Article 7§4 – Right of children and young persons to protection – Working time for young persons under 16*
The duration of working time for young workers under 16 years of age is excessive.

►*Article 7§5 –Right of children and young persons to protection – Fair pay*
The apprentices' allowances are not gradually increased throughout the contract period.

► *Article 16 – Right of the family to social, legal and economic protection*
- Equal treatment of nationals of other States Parties regarding the payment of family benefits is not ensured due to the excessive length of residence requirement (one year);
- Family benefits do not constitute a sufficient income supplement for a significant number of families;
- The housing conditions of Roma families are not adequate.

► *Article 17 – Right of mothers and children to social and economic protection*
- Not all forms of corporal punishment are prohibited at home and in institutions;
- The measures taken to deinstitutionalise the system of early childhood care are inadequate;
- Children below the age of criminal responsibility do not benefit from alternatives to formal judicial proceedings.

The Committee also considered that the failure to provide requested information on Articles 8§1, 8§2, 16 and 17 amounts to a breach by Czechia of its reporting obligations under Article 21 of the 1961 Charter.

The Committee has been unable to assess compliance with the following provisions:

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§2 - Conclusions XXII-1 (2020)
► Article 15§2 - Conclusions XXII-1 (2020)

Thematic Group 2 “Health, social security and social protection”

► Article 3§2 - Conclusions XXII-2 (2021)
► Article 11§1 - Conclusions XXII-2 (2021)
► Article 11§2 - Conclusions XXII-2 (2021)
► Article 11§3 - Conclusions XXII-2 (2021)
► Article 12§4 - Conclusions XXII-2 (2021)
► Article 13§4 - Conclusions XXII-2 (2021)

Thematic Group 3 “Labour rights”

► Article 2§3 - Conclusions XXI-3 (2018)
► Article 4§3 - Conclusions XX-3 (2018)
► Article 4§5 - Conclusions XX-3 (2018)

Thematic Group 4 “Children, families, migrants”

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III. Examples of progress achieved in the implementation of rights under the Charter

(non-exhaustive list)

Thematic Group 1 "Employment, training and equal opportunities"

► Adoption of an anti-discrimination legislation on 17 June 2009, which bans discrimination in areas including access to employment, business, education, healthcare and social security on the grounds of sex, age, disability, race, ethnic origin, nationality, sexual orientation, religious affiliation and faith.

Thematic Group 2 "Health, social security and social protection"

► Adoption of legislation (Act No 89/2012), explicitly prohibiting discrimination on the ground of old age in the area of social security, access to health care and its delivery, access to education and its provision and access to goods and services, including housing, if they are offered to the public.

► Since 2019, the Ministry of Health has been implementing the project "Expanding Access and Creating Healthcare Opportunities for the Homeless" (abbreviated as "Doctor's Office for the Homeless") aimed at people living on the streets who are at risk of losing their refuge or living in socially excluded communities. Its main purpose is to provide medical assistance to target groups who do not seek medical and social care and who do not participate in preventive check-ups and programmes.

► Legislation prohibiting discrimination on grounds of age outside of employment was adopted.

Thematic Group 3 "Labour rights"

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Thematic Group 4 "Children, families, migrants"

► Restrictions on the activities prohibited to protect pregnant and nursing mothers (Order No. 261/1997 replaced by Order No. 288/2003, which lists only the activities prohibited to protect mothers).

► Amendments of the Criminal Code (in force in 2004) introducing protection from acts of domestic violence.

► Measures taken to strengthen the economic protection of the family: tax allowances concerning married couples (tax reform which came into effect in 2005), increase of the number of beneficiaries of the parental allowance for children up to the age of four (reform of the calculation's basis of the allowance).

► Amendment of the Criminal Code, increasing protection of young persons aged between 15 and 18 from sexual acts or other defined acts.

► Entry into force (1/01/2007) of a new Labour Code, which prohibits employment of children of either the age of 15, or older than 15 until completion of their compulsory school attendance.

This prohibition applies to any and all types of work in any economic sector, performed within or outside the scope of employment relationships.

► Amendment of the Criminal Code (Article 192, Act No. 40/2009 Coll., in force in January 2010) sanctioning the possession (i.e. any type of holding) of child pornography for one's own purposes with a term of imprisonment from two to six years.

► An amendment to the Penal Code was adopted in 2014, which increases the protection of children against sexual assaults.

► Through an amendment to the School Act, which entered into force on 1 January 2012, conditions have been created for developing and subsidising company childcare facilities;

► Through an amendment to the Trade Act, other forms of childcare facilities have been promoted.

► The Mediation Act entered into force on 1 September 2012.

► New provisions governing interim measures – such as preliminary proceedings in cases of domestic violence – entered into force on 1 January 2014. The Victims of Crime Act, which entered into force on 1 August 2013, added new provisions to regulate interim measures with a view to protecting the aggrieved party, persons closely related to her, preventing the accused party from committing a crime and ensuring effective implementation of criminal proceedings.

► The new Article 971(3) of the Civil Code explicitly stipulates that “inadequate housing conditions and material situation of parents of the child cannot per se be a reason for the court’s decision on institutional care.

► Amendment No. 401/2012 also made significant changes to the Family Act No. 94/1963 (it is now explicitly prohibited for a court to order institutional care of a child solely for inadequate housing conditions or financial situation of his/her parents).

► Amendment No. 134/2006 of 14 March 2006 of the Act on Social and Legal Protection of Children imposed on the competent public authorities a duty to provide parents, after a removal of children from their care, immediate and comprehensive assistance with a view to effectively reunifying the family.

► The Labour Code provision which authorised a dismissal notice to be served on an employee on maternity leave in certain cases of relocation of all or part of the business was amended with effect from 1 January 2012 in order to align it with the requirements of the Social Charter. As a result, Section 54 of the Labour Code henceforth explicitly provides for a prohibition of dismissal on the grounds of organisational changes of pregnant employees, employees on maternity leave as well as male employees on parental leave taken within the period during which a woman employee is entitled to be on maternity leave.

APPENDIX II

High-Level Conference on the European Social Charter
"a step by member States to take further commitments under the Charter"
3-4 July 2024, Vilnius, Lithuania

VILNIUS DECLARATION

1. In the Reykjavik Declaration (May 2023), the Heads of State and Government of the Council of Europe confirmed that "[s]ocial justice is crucial for democratic stability and security" and "reaffirm[ed their] full commitment to the protection and implementation of social rights as guaranteed by the European Social Charter system". They proposed the holding of a high-level conference on the European Social Charter (ETS No. 35, (revised) ETS No. 163, "the Charter") "as a step to take further commitments under the Charter where possible".

2. At the 133rd Ministerial Session on 17 May 2024, the Committee of Ministers reiterated that social justice and the Council of Europe's action on social rights play a crucial role for democratic stability and security. The Ministers restated their commitment to the European Social Charter system and, in their decisions, underlined the importance of the Charter and its monitoring procedures, and welcomed the organisation of a high-level conference.

3. Following the principles set out in the Vienna Declaration and Programme of Action (adopted in 1993 at the World Conference on Human Rights), all "human rights are universal, indivisible, interdependent and interrelated". These rights include social rights, such as rights related to work, education, housing, social protection, health and well-being, and the human rights aspects of the environment. Combating inequality and social exclusion is vital for all, especially for disadvantaged individuals. It is also crucial for the implementation of the Sustainable Development Goals as defined by the United Nations 2030 Agenda for Sustainable Development.

4. The Council of Europe was established in the belief "that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". Social progress was enshrined in the Statute of the Council of Europe (ETS No. 1) as a cornerstone of lasting peace. The Russian Federation's ongoing war of aggression against Ukraine has had both immediate and lasting fallout as regards the enjoyment of human rights, including social rights for Ukrainians and all persons affected, and, very significantly, for women and children. The repercussions were and continue to be felt across Europe and throughout the world, including on the global economy and trade, particularly with increases in the cost of living and worsening food insecurity.

5. Social justice and the respect for, and the protection and implementation of social rights, as guaranteed in particular by the European Social Charter system, are crucial for promoting democratic security and stability. It is also very important to respond to new or emerging challenges and avoid the risk of further erosion of social rights protection and increasing inequalities, in order to maintain social cohesion in our societies.

6. Through its monitoring, reporting and collective complaints mechanisms, the Charter provides effective governance inputs, through both the European Committee of Social Rights and the Governmental Committee of the European Social Charter and European Code of Social Security ("the Governmental Committee"), in the pursuit of social justice and the protection of social rights.

7. On the occasion of this High-Level Conference, which coincides with the 25th anniversary of the entry into force of the revised European Social Charter and the 75th anniversary of the Council of Europe, the representatives of Council of Europe member States:

a. underline the importance of having a robust and responsive social rights framework across Europe, underpinned in particular by relevant treaty law, including the European Social Charter system. It is the collective duty of member States to promote respect for, and the continuing development of, social rights, both as human rights and also as vectors of economic growth, social progress and social cohesion, peace, security and stability;

b. affirm that military aggression and breaches of peace are incompatible with States' human rights obligations in general, and, in particular, with their social rights obligations; in this context, welcome the solidarity shown towards the people of Ukraine and the social protection offered by Council of Europe member States to those who are temporarily displaced;

c. acknowledge the possibility offered by the Charter for States Parties to increase progressively their commitments aimed at respecting, protecting and implementing social rights, a process that can and should be further strengthened through constructive and enhanced dialogue between the competent national authorities and the organs of the Charter, together with social partners;

d. welcome the commitment of member States of the Council of Europe to promote social justice and, in particular, the efforts made by member States to accept a high level of commitment to social rights, and the effective action taken by the States Parties to the European Social Charter to address the findings and conclusions of the European Committee of Social Rights when necessary;

e. recall that the Council of Europe Development Bank, in line with its unique social mandate, contributes to strengthening social cohesion through projects with social value in its member countries;

f. welcome the decisions adopted by the Council of Europe Committee of Ministers to improve the implementation of the Charter system and its monitoring arrangements. This includes an invitation to the European Committee of Social Rights to apply, where possible, the existing Charter provisions to new and emerging social policy challenges and to strengthen the role of the Governmental Committee in respect of follow-up and reflection;

g. acknowledge the crucial role of national executives and legislatures in strengthening the protection of social rights through legislative action, in particular the part parliaments play in the ratification process of international treaties, and the acceptance of additional commitments under the Charter.

8. Consequently, the representatives of Council of Europe member States:

a. commit to respect, protect and implement social rights in general and, for the States Parties to the Charter, to pay continued attention to the challenges and opportunities to implement the Charter's requirements and, to this end, encourage States Parties to make full use of all available possibilities for enhanced dialogue between the organs of the Charter, States Parties and social partners;

b. encourage member States to consider ratifying the revised European Social Charter (1996) in an effort, alongside the policy approaches of member States, to support the Council of Europe's stated aim of facilitating economic and social progress;

c. propose to keep under review the possibilities for acceptance of additional commitments under the Charter, including the collective complaints procedure;

d. invite the Committee of Ministers of the Council of Europe to:

i. enable further discussions with national as well as competent local and regional authorities, and social partners, in order to promote a rights-based approach to social policy and the sharing of knowledge and good practice in responding to persistent and emerging common problems and challenges. The following areas might be covered:

- inequalities, low incomes and social exclusion, housing and demographic change;
- any form of discrimination having an impact on the full enjoyment of social rights;
- the social rights dimension related to the Reykjavik Declaration commitment "to [strengthen the] work on the human rights aspects of the environment";
- persistent and emerging challenges in the area of work, with the necessary attention being paid to freedom of association and collective bargaining, new forms of employment, the transition to a green economy, digitalisation, including the advent of artificial intelligence, technological change, work-life balance and, very significantly, the questions of participation and dignity (such as the protection against all forms of harassment, including sexual harassment) in the workplace;

ii. give increased priority to co-operation activities in the field of social rights with a view to improving the implementation of the Charter in the light of the monitoring outcomes of the European Committee of Social Rights and related Committee of Ministers recommendations. The "social rights" component of the Council of Europe Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026, is an inspiring example of such activities;

iii. ensure co-operation among Council of Europe entities and committees in the area of social rights, and continue to work together while exploring possibilities to increase co-operation with other international organisations as well as with the European Union in promoting social rights as guaranteed by the European Social Charter and its protocols;

iv. remain open to considering possible measures for further optimising the Charter system;

v. explore regularly the need to convene this High-Level Conference to address contemporary social policy challenges, also taking into account the expected outcomes.