European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

May 2025

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

United Kingdom

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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 Parties, 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 after their 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.

The procedure for examining reports on the non-accepted provisions is set out in Article 22 of the European Social Charter of 1961 (ETS No. 35). According to this provision, the States Parties must send to the Secretary General, at appropriate intervals set 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 ratification or by subsequent notification. The Committee of Ministers shall determine from time to time those provisions for which such reports will be requested and the form in which the reports should be provided.

In September 2022, the ECSR adopted a decision to implement the procedure on non-accepted provisions in respect of all State Parties to either Charter, in a reinforced manner. The procedure now provides for the submission of written information by States Parties in accordance with a pre-established calendar, and 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 receipt, and the national and international social partners, non-governmental organisations, national human rights institutions, equality bodies and other stakeholders are given the possibility to provide comments within three months of receiving the written information.

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

The United Kingdom ratified the 1961 European Social Charter (ETS No. 035) on 11 July 1962, accepting 59 (initially 62[1]) out of 72 paragraphs. The United Kingdom has not signed the 1988 Additional Protocol to the European Social Charter (ETS No. 128) or the 1995 Additional Protocol Providing for a System of Collective Complaints (ETS No. 158). The United Kingdom has signed but not yet ratified the 1991 Amending Protocol to the European Social Charter (ETS No. 142) and the revised Charter (ETS No. 163).

The United Kingdom has currently not accepted the following 13 provisions of the 1961 Charter: Article 2§1, Article 4§3, Article 7§§1, 4, 7 and 8, Article 8§§2, 3 and 4, Article 12§§2, 3 and 4 and Article 18§2.

[1] On 26/06/1987 the United Kingdom denounced Article 8§4a. On 21/08/1989 the United Kingdom denounced Article 7§8 and Article 8§4b. On 12/07/2021, the United Kingdom denounced Article 18§2 with effect from 26/02/2022. The denunciation of the acceptance of Article 18§2 of the Charter shall extend to the Isle of Man. See https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=035&codeNature=0

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

Under the 1961 Charter the United Kingdom is currently bound by five of the nine articles that are labelled as hard core articles of Part II of the revised Charter (cf. Article A of the revised Charter): Articles 1, 5, 6, 13 and 16. In total, the United Kingdom under the 1961 Charter is bound by what corresponds to nine full articles and fifty-nine numbered paragraphs of Part II of the revised Charter.

Ratification by the United Kingdom of the revised Charter would thus require considering itself bound by at least one additional core Articles (Articles 7, 12, 19 and 20) and seven additional full articles of the revised Charter or four more numbered paragraphs 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, the United Kingdom was invited on 7 November 2023 to submit written information before 31 March 2024. The requested written information was registered in July 2024, and it was subsequently published on the CoE website.

According to the information in the report, “the UK continues to monitor its policies and keep them under review. The UK does not currently have plans to ratify further provisions”. Furthermore, despite not having ratified the revised Charter, the UK Government provided information on UK provisions which are relevant to individual areas of the revised Charter in its report.

As stated in the report, “the UK does not currently have plans to ratify the revised Charter. The UK’s approach to the ratification of international treaties is to do so only when UK law and practice are compatible with obligations it would undertake”.

The present examination covers the following non-accepted provisions of the 1961 Charter:

- Article 2§1 – The right to just conditions of work
- Article 4§3 – The right to a fair remuneration
- Article 7§§1, 4, 7 and 8 – The right of children and young persons to protection
- Article 8§§2, 3 and 4 – The right of employed women to protection
- Article 12§§2, 3 and 4 – The right to social security
- Article 18§2 – The right to engage in a gainful occupation in the territory of other Contracting Parties

Additionally, the examination covers the following non-accepted provisions of the revised Charter:

- Article 2§§6 and 7 – The right to just conditions of work
- Article 3§4 – The right to safe and healthy working conditions
- Article 8§5 – The right of employed women to protection of maternity
- Article 10§5 – The right to vocational training
- Article 15§3 – The right of persons with disabilities to independence, social integration and participation in the life of the community
- Article 17§2 – The right of children and young persons to social, legal and economic protection
- Article 19§§11 and 12 – The right of migrant workers and their families to protection and assistance
- Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
- Article 21 – The right to information and consultation
- Article 22 – The right to take part in the determination and improvement of the working conditions and working environment
- Article 23 – The right of elderly persons to social protection
- Article 24 – The right to protection in cases of termination of employment
- Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer
- Article 26 – The right to dignity at work
- Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment
- Article 28 – The right of workers' representatives to protection in the undertaking and facilities to be accorded to them
- Article 29 – The right to information and consultation in collective redundancy procedures
- Article 30 – The right to protection against poverty and social exclusion
- Article 31 – The right to housing

After examining the written information submitted by the United Kingdom, the ECSR considers that the following articles could be accepted immediately Articles 7§1, 7§4, 7§8, 8§4, 12§2 and 12§3.

As regards Articles 2§1, 4§3, 8§2, 8§3, 12§4 and 18§2, the ECSR 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 considers that with further changes, acceptance by the United Kingdom of Article 7§7 of the Charter could be envisaged but that currently the situation is not compatible with the Charter.

However the ECSR considers that it would be far more desirable that the United Kingdom ratify the revised Charter as opposed to accepting additional provisions under the 1961 Charter. As noted above the United Kingdom only needs to accept a small number of provisions in order to be in a position to ratify the revised Charter.

As far as the **revised European Social Charter** is concerned, after examining the written information submitted by the United Kingdom, the ECSR considers that Articles 2§6, 2§7 8§4 8§5, and 17§2, 19§11,19§12 and 27§1 and 27§2 could be accepted immediately without any obvious problems.

Other Articles identified that could be accepted without any obvious problem are 3§4,10§5, 15§3, 21, 22, 24, 25 26§, 26§2 27§3 and 29.

As regards Article 20 Article 23, Article 28, Article 30 and Article 31 of the revised Charter, the ECSR 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, 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 ECSR 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
The ECSR encourages the United Kingdom 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 ECSR points out that the revised Charter takes a more modern approach to how the rights 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 ECSR of Ministers of the Council of Europe.[2]

The ECSR notes in this respect that the United Kingdom is already bound by the UN Convention on the Rights of Persons with Disabilities (ratified in 2009) and by the ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation) (ratified in 2029).

In view of the above, the ECSR considers that the United Kingdom could proceed to the ratification of the revised Charter and given that the United Kingdom is already bound by other

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

international obligations, there is no reason why the United Kingdom could not accept several of the new provisions in the revised Charter.

The ECSR also invites the United Kingdom to accept the Collective Complaints Procedure, in order to increase the effectiveness, speed and impact of the implementation of the Charter and strengthen the role of the social partners and non-governmental organisations, as well as 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 ECSR remains at the disposal of the Government for enhanced dialogue[3] on the Charter provisions and the relevant case law and invites the United Kingdom 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 accepted by the United Kingdom appears in Appendix I.

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

II. EXAMINATION OF THE NON-ACCEPTED PROVISIONS OF THE 1961 EUROPEAN SOCIAL CHARTER

Article 2§1 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:
1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.

Situation in the United Kingdom

The UK Government states that its flexible labour market balances worker choice with the need to maintain key services. Under the Working Time Regulations 1998, workers cannot be forced to work more than 48 hours per week unless they opt out voluntarily. Workers must receive at least the National Minimum Wage for total hours worked.

Rest break entitlements include a 20-minute break for shifts over six hours, 11 hours between working days, and at least one full rest day per week. Additional protections exist for young workers, limiting them to 40 hours per week. Employers must ensure worker health and safety, with compensatory rest provided in exceptional cases.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

[3] 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)

ECSR interpretation (DIGEST)

Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime.[4] The aim is to protect worker's safety and health.[5] The ECSR examines the situation of workers "on call" or working discontinuous hours under this provision.[6] Adequate protection must also be afforded to part-time workers in terms of this Article.[7]

A reasonable period of work, including overtime, must be guaranteed through legislation, regulations, collective agreements or any other binding means.[8] In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected.[9] These limits should apply to all categories of workers and can only be exceeded under exceptional circumstances (i.e. natural disasters, situations of *force majeure*).[10]

The Charter does not expressly define what constitutes reasonable working hours.[11] Situations are therefore assessed on a case-by-case basis: the ECSR found that the daily working time should in no circumstances (except for extraordinary situations) exceed 16 hours, even if, in compensation, it entails a limitation to the weekly working time.[12]

In assessing States Parties' compliance with their obligations under Article 2§1, the ECSR considers that in addition to the number of working hours laid down by law in that State, it also has to take into account the effect of collective agreements and the nature and extent of an employer's right to require overtime to be worked.[13]

Working overtime must not simply be left to the discretion of the employer or the employee.[14] The reasons for overtime work and its duration must be subject to regulation.[15] States Parties must set up an appropriate authority to supervise that daily and weekly working time limits are respected in practice.[16]

Article 2§1 provides for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These "other factors" may be the nature of the work and the safety and health risks to which workers are exposed.[17] The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.[18]

For the purpose of protecting the private and family life of workers, the ECSR attaches importance to the fact that they must be clearly and duly informed about any changes to their working hours.[19]

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[4] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[5] *Confédération Générale du Travail (CGT)* v. France, Complaint No. 22/2003, decision on the merits of 7 December 2004, §34
[6] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[7] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[8] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[9] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[10] Conclusions (2014), The Netherlands
[11] Conclusions I (1969), Statement of Interpretation on Article 2§1
[12] Conclusions XIV-2 (1998), Norway; Conclusions (2014), Armenia
[13] Conclusions I (1969), Statement of Interpretation on Article 2§1
[14] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[15] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[16] Conclusions 2018, Georgia
[17] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[18] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[19] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1

Statutory provisions introducing or authorising the flexibility of working time have been adopted in many States Parties.[20] Working hours are calculated as an average over given reference periods.[21] The result of these schemes is that hours worked in excess of the average number are compensated in practice by rest periods in the course of other weeks within the reference period.[22] The ECSR considers that these measures are not as such in breach of the Charter.[23] Flexibility measures regarding working time are not as such in breach of the Charter.[24]

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

(i) they must prevent unreasonable daily and weekly working time.[25]
(ii) they must operate within a legal framework providing adequate guarantees.[26]
(iii) they must provide for reasonable reference periods for the calculation of average working time.[27] Periods that do not exceed four to six months are acceptable in terms of Article 2§1, and periods of up to a maximum of one year may also be acceptable in exceptional circumstances.[28] Objective or technical reasons or reasons concerning the organisation of work must justify such an extension of the reference period.[29]

A total working week (usual hours plus overtime) which, within the framework of "flexibility regulations", may attain up to sixty hours per week or exceed sixty hours per week is unreasonable.[30]

The exclusion of certain categories of workers from statutory protection against unreasonable working hours is a ground of nonconformity.[31] Seafarers' right to reasonable weekly hours must be guaranteed by law.[32]

The ECSR requires more safeguards if the flexible working hours have been agreed upon in collective agreements reached at the enterprise level. [33]

Workers on flexible working time arrangements with long reference periods (i.e. one year) should not be asked to work unreasonable hours or an excessive number of long working weeks.[34]

Periods of on-call duty ("*périodes d'astreinte*") during which the worker has not been required to perform work for the employer, although they do not constitute effective working time, cannot be

[20] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[21] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1and 4§2
[22] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1and 4§2
[23] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[24] Conclusions XIV-2 (1998), Statement of Interpretation on Articles 2§1 and 4§2
[25] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29
[26] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29
[27] *Confédération Française de l'Encadrement CFE-CGC* v. France, Complaint No. 9/2000, decision on the merits of 16 November 2001, §29
[28] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[29] Conclusions XIX-3 (2010), Spain
[30] Conclusions XIV-2 (1998), The Netherlands; Conclusions 2018, Turkey
[31] Conclusions 2018, The Netherlands
[32] Conclusions 2018, Estonia
[33] Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1
[34] Conclusions XX-3 (2014), Germany

regarded as a rest period in the meaning of Article 2 of the Charter.[35] The assimilation of "périodes d'astreinte" to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1.[36]

The absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at their disposal, cannot constitute an adequate criterion for regarding such a period a rest period both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. [37]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the UK has provisions in place that provide for reasonable weekly working hours.

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

- any provisions providing for reasonable daily working hours, i.e. the maximum permissible daily working time (absolute limit), inclusive of overtime.
- details on collective agreement regulation of working time (sectors concerned, proportion of workers covered, content of the regulation, etc.).
- what penalties are imposed on employers who infringe rules on working hours and how the labour inspection authorities operate in this respect (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.), as well as guarantees available to workers in this respect.
- the rules that apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

In view of these requirements, the ECSR 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 its efforts and to continue considering accepting Article 2§1 in the near future.

Article 4§3 – *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:
3. to recognise the right of men and women workers to equal pay for work of equal value.

Situation in the United Kingdom

The UK Government affirms that the Equal Pay provisions in the Equality Act 2010 prohibit pay discrimination between men and women doing the same or equivalent work. Employers must ensure equal terms for both genders.

Since 2017, large employers have been required to publish gender pay gap reports annually, raising awareness and driving progress. As a result, the gender pay gap has decreased from

[35] *Confédération générale du travail (CGT)* v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §64
[36] *Confédération Française de l'Encadrement* CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §53
[37] *Confédération Française de l'Encadrement* CFE-CGC v. France, Complaint No. 16/2003, decision on the merits of 12 October 2004, §§ 50-53

19.8% to 14.3% over the last decade, and the percentage of women in employment has risen from 67.1% to 72.1%.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex.[38] This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case law under Article 20 (see below) applies *mutatis mutandis* to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

Despite the obligations deriving from the Charter and other international and European instruments to recognise and ensure the right to equal opportunities and equal pay for women and men for equal work or work of equal value, the gender pay gap still persists today.[39]

The available statistics reveal both downward and upward trends in gender pay gap indicators in European States as well as insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions.[40]

The obligations of States Parties as regards the recognition and the enforcement of the right to equal pay under Article 4§3 include the following:
- recognition in legislation of the right to equal pay for equal work or work of equal value;[41]
- ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed;[42]
- ensuring pay transparency and enabling job comparisons;[43]
- maintaining effective equality bodies and other relevant institutions.[44]

The principle of equal pay

States must ensure that there is no direct or indirect discrimination between men and women with regard to remuneration.[45] Equal pay for men and women workers is required not only for equal work but also for work of equal value.[46]

[38] Conclusions XII-5 (1997), Statement of Interpretation on Article 1 of Additional Protocol
[39] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §110
[40] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §110
[41] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §115
[42] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §115
[43] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §115
[44] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §115
[45] University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, §164
[46] Conclusions I (1969), Statement of Interpretation on Article 4§3; see also Conclusions VIII (1982), Statement of Interpretation on Article 4§3

In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, educational and training requirements must be taken into account.[47] The notion of equal work or work of equal value has a qualitative dimension and may not always be satisfactorily defined, thus undermining legal certainty.[48] States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law.[49]

The principle of equality should cover all the elements of pay, that is wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.[50] The principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed.[51] Failure to respect this principle could give rise to indirect discrimination since most part-time workers are women.[52]

Guarantees of enforcement and judicial safeguards

Article 4§3 obliges the States Parties who have accepted it to recognise the principle of equal pay for work of equal value, not only in law but also in fact.[53]

Legislative means

Under the Charter, the right of women and men to equal pay for work of equal value must be expressly provided for in domestic legislation.[54] It is not sufficient to merely state the principle in the constitution.[55] The guarantee of equal pay must apply to workers in the public service and private sector.[56]

The principle of equal pay precludes unequal pay irrespective of the mechanism that produces such inequality.[57] The source of discriminatory pay may be the law, collective agreements, individual employment contracts, internal laws of an employer.[58]

Any legislation, regulation or other administrative measure that fails to comply with the principle of equal pay must be repealed or revoked.[59] The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.[60]

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[47] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §156
[48] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §156
[49] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §156
[50] Conclusions XVIII-2 (2007), Malta
[51] Conclusions XVI-2 (2003), Portugal
[52] Conclusions XVI-2 (2003), Portugal
[53] Conclusions I (1969), Statement of Interpretation on Article 4§3
[54] Conclusions XV-2 (2001), Slovak Republic; Conclusions 2014, Georgia
[55] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §115
[56] Conclusions 2018, Georgia
[57] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §141
[58] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §141
[59] University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, §166
[60] University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, §166

It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, individual employment contracts or internal company regulations that is incompatible with the principle of equal pay.[61] As far as setting wage levels is concerned, States Parties are free to choose their own methods and can treat this as a matter to be decided by collective bargaining.

Domestic law must however ensure that violations of the principle of equal pay will be sanctioned and lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the state must intervene using legal wage-fixing methods or any other appropriate means.

Judicial safeguards

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination.[62] Workers who claim that they have suffered discrimination must be able to take their case to court.[63] Effective access to courts must be guaranteed for victims of pay discrimination.[64] Therefore, proceedings should be affordable and timely.[65]

Domestic law should provide for a shift of the burden of proof in favour of the plaintiff in discrimination cases.[66] The shift in the burden of proof consists in ensuring that where a person believes they have suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of non-discrimination.[67]

General statistical data on pay levels may not be sufficient to prove discrimination.[68] Therefore, in the context of judicial proceedings it should be possible to request and obtain information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy.[69]

Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.[70] I

n cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.[71] Any ceiling on compensation that may preclude damages from being commensurate with the loss

[61] University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, §166
[62] Conclusions VIII (1982), Statement of Interpretation on Article 4§3
[63] Conclusions I (1969), Statement of Interpretation on Article 4§3
[64] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §145
[65] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §145
[66] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §147
[67] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §147, citing Conclusions XIII-5, Statement of interpretation on Article 1 of the 1988 Additional Protocol
[68] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §157
[69] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §157
[70] Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[71] Conclusions XVI-2 (2003), Malta

suffered and from being sufficiently dissuasive is contrary to the Charter.[72] This principle applies both to litigation involving equal pay and reprisal dismissals.[73]

If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation).[74]

Article 4§3 of the Charter also requires that all clauses in employment contracts or collective agreements which violate the principle of equal pay must be held to be null and void.[75] Further, a court must have the power to waive the application of the offending clauses.[76]

Pay transparency

The ECSR considers that pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value.[77] Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities.[78]

States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the *European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency*, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender.[79]

The ECSR regards such measures as indicators of compliance with the Charter in this respect.[80]Failure to comply with the obligation to recognise and respect pay transparency in practice can lead to a violation of Article 4§3 and Article 20.[81]

Methods of comparison

The possibility of making job comparisons is essential to ensuring equal pay.[82] Lack of information on comparable jobs and pay levels could render it extremely difficult for a potential victim of pay discrimination to bring a case to court.[83]

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[72] Conclusions XIX-3 (2010), Germany; Conclusions 2018, Armenia; see also University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §146
[73] Conclusions XX-3 (2014), Germany
[74] Conclusions 2018, Turkey
[75] Conclusions XV-2 (2001), Slovak Republic
[76] Conclusions XV-2 (2001), Slovak Republic
[77] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §154
[78] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §154
[79] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §155
[80] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §155
[81] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §182
[82] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §157
[83] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §157

Workers should be entitled to request and receive information on pay levels broken down by gender, including on complementary and/or variable components of the pay package.[84] States Parties should collect reliable and standardised statistics on women's and men's wages.[85]

Usually, pay comparisons are made between persons within the same undertaking/company.[86] However, there may be situations where, in order to be meaningful this comparison can only be made across companies/ undertakings.[87] Therefore, the ECSR requires that it be possible to make pay comparisons across companies.[88] It also considers that national law should not unduly restrict the scope of job comparisons, e.g. by limiting them strictly to the same company.[89]

At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;[90]

- cases in which several companies are covered by a collective work agreement or regulations governing the terms and conditions of employment;[91]

- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.[92]

Pay/job comparisons across companies is important in order to ensure that job appraisal systems are effective, particularly in companies where the workforce is largely, or even exclusively, female.[93]

States Parties must promote positive measures to narrow the pay gap, including:
- measures to improve job classifications and job evaluation as a means of reducing inequalities in pay;[94]

- measures to improve the quality and coverage of wage statistics;[95]

- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment;[96]

- measures combating occupational sex segregation in employment.[97]

Retaliatory action

[84] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §157
[85] Conclusions 2018, Andorra
[86] Conclusions 2014, Georgia
[87] Conclusions 2014, Georgia
[88] Conclusions 2014, Georgia
[89] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §158
[90] Conclusions 2014, Georgia
[91] Conclusions 2014, Georgia
[92] Conclusions 2014, Georgia
[93] Conclusions XVI-2 (2003), Portugal
[94] Conclusions XVII-2 (2005), Czech Republic
[95] Conclusions XVII-2 (2005), Czech Republic
[96] Conclusions XVII-2 (2005), Czech Republic
[97] Conclusions 2018, Latvia

Employees who claim their right to equal pay must be legally protected from all forms of retaliatory action.[98] Where an employee is the victim of retaliatory action, there must be an adequate remedy, which will both compensate the employee and serve as a deterrent to the employer.[99]

When the dismissal is the consequence of a worker's claim for equal wages, the employee must be able to file a complaint for unfair dismissal.[100] In this case, the employer must reintegrate them in the same or a similar post.[101] If this reinstatement is not possible, the employer has to pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.[102]

Courts should be free to decide upon the amount aimed at compensating the damage caused by the termination of the working relationship.[103]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that provisions are in place that prohibit less favourable treatment between men and women in terms of pay and conditions of employment, as well as regulations aimed to address the gender pay gap.

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

- whether the regulations also apply to public service employees.
- whether the principle of equal pay is protected in practice.
- whether access to effective remedies is ensured when the right to equal pay for equal work or work of equal value has not been guaranteed in practice, including judicial safeguards.
- whether there is case law on compensation and discrimination based on gender.
- whether data is collected (concerning job comparison systems).
- whether measures are taken to identify the main causes of the gender pay gap.
- whether effective equality bodies and other relevant institutions exist.

In view of these requirements, the ECSR 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 its efforts and to consider accepting Article 4§3 of the Charter.

Article 7§1 – *The right of children and young persons to protection*

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

1. **to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education.**

Situation in the United Kingdom

[98] Conclusions XV-2 (2001), Slovak Republic
[99] Conclusions XV-2 (2001), Slovak Republic
[100] University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, §148
[101] Conclusions XIX-3 (2010), Iceland
[102] Conclusions XIII-2 (1994), Malta
[103] Conclusions XIX-3 (2010), Germany

The UK Government outlines the minimum school leaving age for different regions. In England, young people can leave school at 16 but must continue education or training until 18. Scotland, Wales, and Northern Ireland have specific rules based on birth dates.

Child employment is regulated nationally and locally, prohibiting work under age 14 and restricting hours and job types for those 14 and over. Children aged 13 to 16 can only do "light work" that does not harm their health, safety, or education. Health and safety laws prohibit employment beyond a child's physical or psychological capacity.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

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

The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households.[104] It also extends to all forms of economic activity, irrespective of the status of the worker (worker, self-employed, unpaid family helper or other).[105]

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised.[106] The Labor Inspectorate has a decisive role to play in this respect.[107]

Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children.[108] States Parties are required to define the types of work which may be considered light, or at least to draw up a list of those which are not.[109]

The definition of light work authorised by legislation must be sufficiently precise.[110] Work considered to be light ceases to be so if it is performed for an excessive duration.[111] States are therefore required to set out the conditions for the performance of “light work” and the maximum permitted duration of such work.[112]

The ECSR considers that children under the age of 15 and those who are subject to compulsory schooling should not perform light work during school holidays for more than 6 hours per day and

[104] Conclusions I (1969), Statement of Interpretation on Article 7§1
[105] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 27-28
[106] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32
[107] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32
[108] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §29
[109] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §29
[110] Conclusions 2019, Albania
[111] International Commission of Jurists against Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §§ 29-31
[112] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3

30 hours per week in order to avoid any risks that the performance of such work might have for their health, moral welfare, development or education.[113]

Children who are still subject to compulsory schooling can carry out light work for two hours on a school day and 12 hours a week in term time outside the hours fixed for school attendance.[114] However a situation in which a child under the age of 15 works for between 20 and 25 hours per week during school term, or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter.[115]

Children should be guaranteed at least two consecutive weeks of rest during the summer holidays.[116] Regarding work done at home, States Parties are required to monitor the conditions under which it is performed in practice.[117]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the provisions in place regarding the minimum age of admission to employment generally conform with the Charter's requirements.

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

- the measures taken by the authorities (e.g. labour inspectorates and social services) to detect child labour, including children working in the informal economy.
- information on the number of children actually working, as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally.
- how enforcement of the legislation in this regard is supervised and the penalties in the event of non-compliance.

Nonetheless, in view of these requirements, the ECSR considers that the United Kingdom is in a position to accept this provision, taking into account the measures which are already in place. The ECSR recommends acceptance of Article 7§1 of the Charter immediately.

Article 7§4 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:
4. to provide that the working hours of persons under 16 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training.

Situation in the United Kingdom

The UK Government enforces legal restrictions on the working hours of individuals under 18 to protect their development and vocational training. Rules vary based on age and whether work occurs during term time or holidays.

[113] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[114] Conclusions 2011, Portugal; Conclusions 2019, Armenia
[115] Conclusions 2019, Armenia
[116] Conclusions 2015, Statement of interpretation on Articles 7§1 and 7§3
[117] Conclusions 2006, General Introduction on Article 7§1

The Government aims to allow children to engage in suitable part-time work while ensuring their education, health, and well-being are not compromised. These provisions seek to balance employment opportunities with educational attainment.

For detailed information, please consult the First Natio can be acceptednal Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Under Article 7§4, domestic law must limit the working hours of persons under 16 years of age who are no longer in compulsory education.[118] The limitation may be the result of legislation, regulations, contracts or practice.[119]

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to Article 7§4.[120] However, for persons over 16 years of age, the same limits are in conformity with Article 7§4.[121]

Opinion of the ECSR

As regards the situation in the United Kingdom with regard to Article 7§4, the ECSR takes note of the measures already in place to restrict the working hours of persons under 18 years of age and it considers that this provision can be accepted immediately.

Article 7§7 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:
7. to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay.

Situation in the United Kingdom

The Government indicates in the written information submitted in July 2023 that children are entitled to a two-week break from any employment in each year. However, children under the age of 18 who are still of compulsory school age do not have a right to paid annual leave because they are required to be in some form of education, including further education courses and apprenticeships. For more information, see the minimum school leaving age under the Government's response on Article 7§1.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

In application of Article 7§7, young persons under eighteen years of age must be given at least three weeks' annual holiday with pay.

[118] Conclusions 2006, Albania
[119] Conclusions 2006, Albania
[120] Conclusions XI-1 (1991), The Netherlands
[121] Conclusions 2002, Italy

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3).[122] Employed persons under 18 should not have the option of waiving their annual paid holiday.[123] They should not have the option of giving up their annual holiday for financial compensation either.[124]

According to Article 7§7, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to secure to them the four weeks' paid annual leave provided for in the Charter.[125]

This principle applies in all circumstances, regardless of whether incapacity begins before or during leave - and also in cases where a company requires workers to take leave at a specified time.[126]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that children under the age of 18 who are still of compulsory school age do not have a right to paid annual leave because they are required to be in some form of education, including further education courses and apprenticeships.

However, children under the age of 18 who are not of compulsory school age (16 and above) do not have a right to a 3-week paid annual leave, as required by the Charter.

On the basis of the information at its disposal, the ECSR takes the view that the situation is not compatible with Article 7§7 of the Charter. The ECSR encourages the Government to take the necessary steps enabling acceptance of this provision.

Article 7§8 – *The right of children and young persons to protection*

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:
8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations.

Situation in the United Kingdom

The UK has different employment rules for children (13–15) and young people (16–17). Children cannot work between 7pm and 7am, preventing night work. Young people generally cannot work between 10pm and 6am (or 11pm to 7am by contract), except in specific industries like agriculture, hospitality, retail, healthcare, and cultural activities.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

[122] Conclusions 2019, Albania
[123] Conclusions 2019, Albania
[124] Conclusions 2019, Azerbaijan
[125] Conclusions 2006, France
[126] Conclusions 2006, France, citing Conclusions XII-2, Article 2§3

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

Laws or regulations must not cover only industrial work.[127] Exceptions can be made as regards certain occupations in very limited cases, if they are: explicitly provided in domestic law; necessary for the proper functioning of the economic sector, and if the number of young workers concerned is low.[128]

It is up to domestic laws or regulations to define the period of time considered as being "night".[129]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that there are provisions in place that restrict the employment of children engaged in night work.

In view of these requirements, the ECSR considers that the United Kingdom is in a position to accept this provision The ECSR recommends acceptance of Article 7§8 of the Charter immediately.

Article 8§2 – *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:
2. to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence.

Situation in the United Kingdom

In the UK, it is unlawful to dismiss or discriminate against a woman due to pregnancy or maternity leave. Employers must follow equality laws that prohibit such discrimination. The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 extends redundancy protections during pregnancy and after returning to work. A Pregnancy and Maternity Discrimination Advisory Board has been established to improve employer and family awareness of maternity rights.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Prohibition of dismissal

Article 8§2 requires that it be unlawful to dismiss employees from the time they notify the employer of their pregnancy to the end of their maternity leave.[130]
Article 8§2 applies equally to women on fixed-term and open-ended contracts.[131]

[127] Conclusions XVII-2 (2005) Portugal, Turkey
[128] Conclusions XVII-2 (2005), Malta
[129] Conclusions I (1969), Statement of Interpretation on Article 7§8
[130] Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
[131] Conclusions XIII-4 (1996), Austria

The notification of the dismissal, by the employer, during the period of protection does not as such amount to a violation of Article 8§2 provided that the period of notice and any procedures are suspended until the end of the leave.[132] The same rules governing suspension of the period of notice and procedures must apply in the event of notice of dismissal prior to the period of protection.[133]

However, the dismissal of a pregnant woman is not contrary to this provision in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract.[134] These exceptions are strictly interpreted.[135] Dismissing a worker during maternity leave on other grounds, such as a collective redundancy, is not compatible with Article 8§2.[136]

Redress in case of unlawful dismissal

In cases of illegal dismissal, domestic law legislation must provide for adequate and effective remedies, workers who consider that their rights in this respect have been violated must be entitled to take their case before the courts.[137]

In the case of dismissal contrary to this provision, the reinstatement of the women should be the rule.[138] Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be ensured.[139] Compensation should be sufficient to deter the employer and compensate the employee.[140]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.[141] Moreover if there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[142]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that there are provisions in place protecting women against discrimination and dismissal during their pregnancy or absence on maternity leave, which generally are compatible with the Charter standards.

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

- whether provisions apply equally to women on fixed-term and open-ended contracts.
- whether any exceptions exist to the rule and, if so, how they are interpreted.
- whether domestic legislation provides for adequate and effective remedies in cases of illegal dismissal.

In view of these requirements, the ECSR 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

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132 Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
133 Conclusions XIII-4 (1996), Statement of Interpretation on Article 8§2
134 Conclusions X-2 (1990), Spain
135 Conclusions XXI-4 (2019), Spain
136 Conclusions XXI-4 (2019), Spain
137 Conclusions XXI-4 (2019), Spain
138 Conclusions 2005, Cyprus; Conclusions I (1969), Statement of Interpretation on Article 8
139 Conclusions XXI-4 (2019), Spain
140 Conclusions 2005, Cyprus
141 Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3
142 Conclusions 2011, Statement of Interpretation on Article 8§2 and Article 27§3

the Government to pursue its efforts and to continue considering accepting Article 8§2 in the near future.

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

Situation in the United Kingdom

The UK's Parental Leave and Pay policies support parents, particularly mothers, in the workforce. All employed women are entitled to 52 weeks of Maternity Leave as a statutory right, with possible entitlement to Statutory Maternity Pay or Maternity Allowance.

Employers must provide suitable resting facilities for breastfeeding employees, including a hygienic, private space and milk storage. Employers must also assess workplace risks for breastfeeding mothers, especially regarding hazardous substances like mercury, radiation, or lead.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

According to Article 8§3, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.[143]

Time off for nursing should in principle be granted during working hours, be treated as normal working time and remunerated as such.[144] However provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.[145]Time off for nursing must be granted at least until the child reaches the age of nine months.[146]

The ECSR assesses States Parties' compliance with Article 8§3 on a case-by-case basis. The following measures have all been found to be in conformity with the Charter: two half–hour breaks where the employer provides a nursery or room for breastfeeding;[147] one–hour daily breaks[148] and legislation providing for two daily breaks for a period of one year for breastfeeding or entitlement to begin or leave work earlier.[149]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that employers must provide somewhere suitable for their employee to rest if they are breastfeeding.

[143] Conclusions XVII-2 (2005), Spain
[144] Conclusions XIII-4 (1996), The Netherlands
[145] Conclusions 2005, Sweden
[146] Conclusions 2005, Cyprus
[147] Conclusions I (1969), Italy
[148] Conclusions I (1969), Germany
[149] Conclusions 2011, France

However, no information has been submitted by the Government on how long employees are entitled to rest if they are breastfeeding, whether time off for nursing in designated places is granted during working hours and if it is treated as normal working time and remunerated as such.

In view of these requirements, the ECSR 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 its efforts and to continue considering accepting Article 8§3 in the near future.

Article 8§4 – *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 the United Kingdom

The UK ensures workplace protections for pregnant women and new mothers. They can work nights if it poses no health risks; otherwise, they must be offered alternative day work or paid leave. Employers must conduct individual risk assessments and implement necessary safety measures.

If risks cannot be controlled, employers must adjust working conditions, offer alternative work, or provide paid leave to protect the worker and their child. The Health and Safety Executive (HSE) guidance provides more detail: Protecting pregnant workers and new mothers - Overview - HSE.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

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

To comply with this provision, States Parties must lay down conditions for night work 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.[150]

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.[151]

[150] Conclusions X-2 (1988), Statement of Interpretation on Article 8§4
[151] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5

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.[152] Further, women should have the right to return to their previous employment.[153] This right should be guaranteed by law.[154]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the measures already in place to protect pregnant women and new mothers at work and it considers that Article 8§4 can be accepted immediately.

Article 12§2 – *The right to social security*

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:
2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security.

Situation in the United Kingdom

The Government indicates in the written information submitted in July 2023 that the UK has ratified both the International Labour Organisation's (ILO) Social Security (Minimum Standards) Convention (No. 102) and the Council of Europe's European Code of Social Security (ETS No. 048).

According to the Government, the ILO ECSR of Experts on the applications of Conventions and recommendations (CEACR) conclusions are that the law and practice in the United Kingdom continue to give full effect to all accepted Parts of the Social Security (Minimum Standards) Convention.
For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 12§2 obliges States Parties to maintain a social security system which is at least equal to that required for the purposes of ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No. 102; six of Parts II to X must be accepted certain branches count for more than one: Part II (medical care) counts as two parts, and Part V (old age) counts as three.[155] Each branch sets minimum levels of personal coverage and minimum levels of benefits.[156]

Where a State Party has ratified the European Code of Social Security, the conclusion under this paragraph is based on the ECSR of Minister's Resolutions under the Code (which are in turn based on the assessment of the ILO ECSR of Experts and the Governmental ECSR of the

[152] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[153] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[154] Conclusions 2019, Albania
[155] Conclusions 2013, Serbia
[156] Conclusions 2013, Serbia

European Social Charter and the European Code of Social Security).[157] Failure to comply with the European Code of Social Security will lead to a conclusion of non-conformity with Article 12§2, where the State is not in compliance with at least the minimum parts for ratification.[158]

When the State concerned has not ratified the European Code of Social Security, the ECSR will assess its social security system in order to decide on the conformity of that system with Article 12§2.[159] In order to examine whether the social security system stands at a level at least equal to that necessary for the ratification of the Code, the ECSR has to be provided with thorough information regarding the branches covered, the personal scope and the level of benefits offered.[160] Findings under Article 12§1 are also taken into account.[161]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the UK's ratification of the International Labour Organisation's (ILO) Social Security (Minimum Standards) Convention (No. 102) and the Council of Europe's European Code of Social Security, and it considers that Article 12§2 can be accepted immediately.

Article 12§3 – *The right to social security*

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:
3. to endeavour to raise progressively the system of social security to a higher level.

Situation in the United Kingdom

The Government indicates that the UK has a comprehensive welfare system aimed at reducing poverty and supporting low-income families, with £276 billion allocated for welfare in 2023-24. The UK is focused on ensuring those of working age have access to a comprehensive employment package and on supporting inactive individuals aged 50+, disabled people, people with long-term health conditions, welfare claimants and parents. More details of the UK welfare system can be found on gov.uk.

Social security and social assistance benefits in the UK are uprated and adjusted annually to reflect changes in the cost of living. Pensions follow the "Triple Lock" system to ensure fair increases. For more information about this, please see the UK's ad hoc report on the cost of living submitted in December 2023.

The total support in 2022-23 and 2023-24 to help households with the cost of living is £94 billion. More information about these and further measures are included in UK's ad hoc report on the Cost of Living submitted to the CoE in December 2023.

Scotland independently reviews and adjusts its social security payments. The 2023 Scottish Programme for Government included a commitment to continuing the Scottish Government's work with the independent Minimum Income Guarantee Expert Group to consider feasible steps towards delivering a Minimum Income Guarantee in Scotland.

[157] Conclusions 2006, Italy
[158] Conclusions 2006, Italy
[159] Conclusions XIV-1 (1998), Finland
[160] Conclusions 2013, Serbia
[161] See, e.g., Conclusions 2017, Andorra

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 12§3 requires States Parties to improve their social security system. A situation of progress may consequently be in conformity with Article 12§3 even if the requirements of Article 12§1 and 12§2 have not been met or if these provisions have not been accepted by the State in question.[162]

The expansion of schemes, protection against new risks, or an increase(s) in the level of benefits are all examples of improvement.[163]

A partly restrictive development in the social security system (which can also be described as a 'restriction' or 'limitation' to 'rights in the area of social security') is not automatically in violation of Article 12§3.[164] It should be assessed under Article G of the revised Charter.[165] The assessment of the situation is based on the following criteria:

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);[166]
- the reasons given for the changes (the aims pursued) and the framework of social and economic policy in which they arise;[167]
- the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);[168]
- the necessity of the reform;[169]
- the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);[170]
- the results obtained by such changes.[171]

Even if specific restrictive measures are, as such, in conformity with the Charter, their cumulative effect could amount to a violation of Article 12§3 of the Charter.[172]

Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. In view of the close relationship between the economy and social rights, the pursuit of economic goals is not incompatible with Article 12.[173]

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[162] Conclusions 2009, Statement of Interpretation on Article 12§3
[163] Conclusions 2013, Georgia
[164] See, e.g., Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012 decision on the merits of 7 December 2012, §70
[165] See, e.g., Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §72
[166] Conclusions XVI-1 (2002), Statement of Interpretation on Article12§1, 12§2, 12§3
[167] Conclusions XVI-1 (2002), Statement of Interpretation on Article12§1, 12§2, 12§3
[168] Conclusions XVI-1 (2002), Statement of Interpretation on Article12§1, 12§2, 12§3
[169] Panhellenic Federation of pensioners of the public electricity corporation (POS-DEI) v. Greece, Complaint No. 79/2012, decision on the merits, 7 December 2012, §67, citing General Introduction to Conclusions XIV-1, p. 11
[170] Conclusions XVI-1 (2002), Statement of Interpretation on Article12§1, 12§2, 12§3
[171] Conclusions XVI-1 (2002), Statement of Interpretation on Article12§1, 12§2, 12§3
[172] Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §§ 78-83
[173] Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §71

However, with regard to such consolidation measures, any such measures should not undermine the core framework of a national social security system or deny individuals the opportunity to enjoy the protection it offers against serious social and economic risk.[174]

Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of worker from the social protection offered by this system.[175] They should not transform the social security system into a basic social assistance system.[176] Financial consolidation measures which fail to respect these limits constitute retrogressive steps which cannot be deemed to be in conformity with Article 12§3.[177]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the Government has provided information on the current increases in the level of pensions and benefits to ensure that the system of social security is progressively raised to a higher level. The ECSR therefore considers that Article 12§3 can be accepted immediately.

Article 12§4 – *The right to social security*

With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
a) equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;

b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.

Situation in the United Kingdom

The UK has reciprocal social security agreements with several countries, including Ireland, EU nations, and others like Norway and Turkey. These agreements allow individuals to combine insurance periods across countries to meet eligibility for benefits like retirement and survivors' benefits, which are paid at pro-rata rates.

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[174] Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece Complaint No. 76/2012, decision on the merits of 7 December 2012, §47
[175] General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on 23 May 2012, §47
[176] Finnish Society of Social Rights v. Finland, Complaint No.88/2012, decision on the merits of 9 September 2014, §85.
[177] General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on 23 May 2012, §47. Note that despite the language used, the Committee does not employ retrogression analysis in the way that a number of UN treaty bodies do, for instance. Rather the Committee assesses the compliance of such restrictions with the Charter by using what would be regarded in international human rights law as 'limitations' analysis in terms of Article 31 of the original Charter and Article G of the revised Charter on 'Restrictions'.

Certain benefits can also be paid abroad, mainly for retirement, survivors, and occupational accidents. For temporary absences, some benefits are limited to up to 4 weeks outside the UK. These agreements also apply to Scottish benefits, ensuring individuals moving between countries are not negatively affected by different social security systems.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Personal scope of Article 12§4

In defining the personal scope of Article 12§4, reference must be made to paragraph 1 of the Appendix to the Charter, which reads: "Without prejudice to Article 12§4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other States Parties lawfully resident or working regularly within the territory of the State Party concerned".

It follows from the Appendix to the Charter that Article 12§4 applies to nationals of other States Parties who no longer reside on the territory concerned but who did reside or worked regularly there in the past and acquired social security rights. The scope of Article 12§4 extends to refugees and stateless persons.[178] Self-employed workers are also covered.[179] Finally, the principle of reciprocity does not apply to Article 12§4.[180]

Material scope of Article 12§4a

In order to ensure the right to social security of persons moving between States Parties the following principles must be guaranteed with respect to all existing branches of the social security system:

Right to equal treatment

The guarantee of equal treatment within the meaning of Article 12§4 requires States Parties remove all forms of discrimination from their social security legislation against foreigners in so far as they are nationals of other States.[181]

Both direct and indirect discrimination are covered. National legislation cannot reserve a social security benefit to nationals only, or impose extra or more restrictive conditions on foreigners.[182] Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree.[183]

However, legislation may require the completion of a period of residence for non-contributory benefits.[184] In this respect, Article 12§4 requires that any such prescribed period of residence is reasonable.[185] A period of five years is considered to be too long.[186]

[178] Conclusions XIV-1 (1998), Turkey
[179] Conclusions XIV-1 (1998), Turkey
[180] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
[181] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
[182] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
[183] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4
[184] Conclusions 2004, Lithuania
[185] Conclusions 2004, Lithuania
[186] Conclusions 2004, Lithuania

As regards child benefit, a condition that the child concerned resides on the territory of the paying state may be compatible with Article 12§4.[187] The question of whether the residence of a child in the territory is required before child benefits will be paid is examined exclusively under Article 12§4, rather than under Article 16.[188]

However since not all countries apply such a system, states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.[189]

Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient.

The level of benefit may in this case be reduced where the cost of living in the child's country of residence is significantly lower, but the reduction must be proportional to the differences of the cost of living in the countries concerned.[190]

Right to retention of accrued rights

Invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained irrespective of whether the beneficiary moves between the territories.[191]

Due to the particular nature of unemployment benefit, which is a short-term benefit closely linked to trends in the labour market, Article 12§4 does not require it to be exported.[192] In order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures.[193]

Material scope of Article 12§4b

Right to maintenance of accruing rights

There should be no disadvantage in terms of accrual of rights for a person who changes their country of employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits.

Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory. In the case of long-term benefits, the pro–rata approach should also be employed.[194]

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative

[187] Conclusions 2006, Italy
[188] Conclusions XVI-1 (2002), Statement of Interpretation on Articles 12§4 and 16
[189] Conclusions 2006, Italy
[190] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
[191] Conclusions XVI-1 (2002), Belgium; see also Conclusions XIV-1 (1998), Finland
[192] Conclusions XIV-1 (1998), Norway
[193] Conclusions XIII-4 (1996), Statement of Interpretation on Article 12
[194] Conclusions 2009, Finland

measures.[195] States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.[196]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the UK has a number of reciprocal social security agreements that include several measures to ensure equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights.

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

- whether these measures also extend to self-employed persons, refugees and stateless persons.
- which acquired benefits are maintained when the beneficiary moves between the territories of States Parties.
- whether the UK has removed all forms of discrimination from its social security legislation against foreigners in so far as they are nationals of other States.
- whether a period of residence is required for non-contributory benefits.

In view of these requirements, the ECSR 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 its efforts and to continue considering accepting Article 12§4 of the Charter.

Article 18§2 – *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 the United Kingdom

The UK Government sets visa fees to ensure that those benefiting from the immigration system contribute to its costs, reducing reliance on general taxation. Under the Immigration Act 2014 (Paragraph 68), fees are determined based on factors like operational costs, economic growth, international comparisons, and potential benefits to applicants.

The Government argues that UK visa fees are competitive globally and balance migration control with attracting valuable migrants. The long-term goal is for the Migration and Borders system to be largely self-funded.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

[195] Conclusions 2009, Finland
[196] Conclusions 2006, Italy

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.[197]

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.[198]

It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.[199] 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.[200]

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.[201]

States Parties are under an obligation to reduce or abolish chancery dues and other charges paid either by foreign workers or by their employers.[202] 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.[203]

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.[204] Fees ranging from €266 to €1536 for work permits are also not in conformity with Article 18§2.[205]

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.[206] States are required to demonstrate that they have taken measures towards achieving such a reduction.[207]

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.[208]

The ECSR 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.[209]

Opinion of the ECSR

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197 Conclusions IX-1 (1990), United Kingdom
198 Conclusions 2016, Armenia; Conclusions XVII-2 (2005), Finland
199 Conclusions XVII-2 (2005), Portugal
200 Conclusions XVII-2 (2005), Portugal
201 Conclusions XXII-1 (2020), Iceland; see also Conclusions 2020, Ukraine
202 Conclusions 2012, Statement of Interpretation of Article 18§2
203 Conclusions 2012, Statement of Interpretation of Article 18§2
204 Conclusions 2020, Armenia
205 Conclusions XXII-1 (2020), United Kingdom
206 Conclusions 2012, Statement of Interpretation of Article 18§2
207 Conclusions 2012, Statement of Interpretation of Article 18§2
208 Conclusions 2012, Statement of Interpretation of Article 18§2
209 Conclusions XXII-1 (2020), Iceland

The ECSR notes that the United Kingdom denounced this provision in 2021.

As regards the situation in the United Kingdom, the ECSR notes the information provided regarding the regulations in place to set visa fees.

However, the Government has not provided information on whether it is possible to complete the relevant formalities in the country of destination as well as in the country of origin and obtain the residence and work permits at the same time and through a single application.

In addition, no information has been submitted on whether visas are delivered within a reasonable time or what the level of visa fees is and whether the fees are set at an excessively high level, that is a level likely to prevent or discourage foreign workers from seeking to engage in a gainful occupation, and employers from seeking to employ foreign workers.

In view of these requirements, the ECSR 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 its efforts and to continue considering accepting Article 18§2 in the near future.

III. EXAMINATION OF THE NON-ACCEPTED PROVISIONS OF THE REVISED EUROPEAN SOCIAL CHARTER

Article 2§6 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship.

Situation in the United Kingdom

The Government indicates that in the UK, an employer must give employees and workers a document stating the main conditions of employment when they start work. This is known as a 'written statement of employment particulars'.

The employer must provide the principal statement on the first day of employment and the wider written statement within 2 months of the start of employment. Employers must tell employees or workers about any changes to the written statement. They must do this within one month of making the change.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 2§6 guarantees the right of workers to written information when starting employment. This information can be included in the employment contract or any other mandatory documents given to workers upon recruitment (employers' and employees' rights and obligations, collective

contracts or company regulations, official appointment orders, pay statement, collective agreement, post descriptions, etc.).[210]

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

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;
- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.[211]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that employers must give workers a document stating the main conditions of employment when they start work and a wider written statement within 2 months of the start of employment. Therefore, the ECSR considers that there are no obstacles to the immediate acceptance of Article 2§6 can be accepted immediately.

Article 2§7 – *The right to just conditions of work*

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Situation in the United Kingdom

The UK Government states that night work is regulated under the Working Time Regulations 1998 (WTR), ensuring protections for nighttime workers. Night workers cannot exceed an average of 8 hours per 24-hour period and receive additional safeguards if their work involves special hazards or strain.

Employers must offer free health assessments before and during night work, keep records of these assessments, and arrange follow-ups if a worker's fitness is in doubt. If a health issue arises, employers should provide alternative suitable work where possible.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

[210] Conclusions 2014, Republic of Moldova; Conclusions 2018, Ukraine
[211] Conclusions 2003, Bulgaria

Article 2§7 guarantees compensatory measures for persons performing night work. Domestic law or practice must define what is considered to be "night work" within the context of this provision, namely what period is considered to be "night" and who is considered to be a "night worker".[212]

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

- regular medical examinations, including a check prior to employment on night work;[213]
- the provision of possibilities for transfer to daytime work;[214]
- continuous consultation with workers' representatives on the introduction of night work, on night work conditions and on measures taken to reconcile the needs of workers with the special nature of night work.[215]

Lack of provision in legislation for workers assigned to night work to be given a compulsory medical check-up prior to taking up their duties or regular check-ups thereafter is a ground of non-conformity with Article 2§7.[216] Such medical examination should be provided free of charge.[217]

Failure to regularly consult employee representatives on the conditions relating to night work and on measures taken to reconcile employees' needs and the special nature of night work is a ground of non-conformity under Article 2§7.[218]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that there are provisions in place that provide protections to workers performing night work, which are compatible with the Charter standards.

The ECSR considers that of Article 2§7 can be accepted immediately.

Article 3§4 – *The right to safe and healthy working conditions*

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

Situation in the United Kingdom

The UK Government prioritizes workplace health through its Occupational Health (OH) reform program, aiming to expand employer led OH services to support disabled employees and those with health conditions. Key initiatives include funding innovation projects, designing financial incentives for SMEs, and expanding the OH workforce.

A 2023 consultation explored national workplace health standards and best practices. In response, the Government plans to establish an expert group for a voluntary OH quality

[212] Conclusions 2014, Bulgaria; Conclusions 2018, Georgia
[213] Conclusions 2003, Romania
[214] Conclusions 2003, Romania
[215] Conclusions 2003, Romania
[216] Conclusions 2018, Andorra
[217] Conclusions 2018, Bosnia and Herzegovina
[218] Conclusions 2018, North Macedonia

framework and explore policy options, including new workplace health standards, an SME group purchasing framework, and a long-term OH workforce strategy.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 3§4 requires States Parties to promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services that are accessible to all workers, in all branches of economic activity and for all enterprises.[219] If those services are not established within all enterprises, public authorities must develop a strategy, in consultation with employers' and workers' organisations, for that purpose.[220]

In terms of Article 3§4, States Parties are required to promote the progressive development of occupational services.[221] This means that a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.[222]

Therefore, If occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.[223] Any strategy to promote the progressive development of occupational health services must include the full national territory, cover nationals of other States Parties, and not only some branches of activity, major enterprises or especially severe risks, but all types of workers.[224]

The number of occupational physicians in the total workforce, the number of enterprises providing occupational health services or who share those services, as well as any increase in the number of workers supervised by those services in comparison to the previous reference period, is relevant on the assessment of State Party conformity to this provision, as is the ratification of ILO Occupational Health Services Convention No. 161 (1985), or the transposition of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.[225]

Occupational health services, which are specialised in occupational medicine, have preventive and advisory functions, beyond mere safety at work.[226] They contribute to conducting workplace-related risk assessment and prevention, worker health supervision, training in matters of occupational safety and health, as well as to assessing working conditions impact on worker health.[227] Occupational health services must be trained, endowed and staffed to identify, measure and prevent work-related stress, aggression and violence.[228]

Opinion of the ECSR

[219] Conclusions 2003, Bulgaria
[220] Conclusions 2003, Bulgaria
[221] Conclusions 2009, Albania
[222] Conclusions 2009, Albania, citing International Association Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53.
[223] Conclusions 2009, Albania
[224] Conclusions 2013, Ukraine
[225] Conclusions 2009, France; Albania, Slovenia; Conclusions 2017, Bulgaria
[226] Conclusions 2009, Andorra
[227] Conclusions 2003, Bulgaria
[228] Conclusions 2013, Statement of Interpretation on Article 3

As regards the situation in the United Kingdom, the ECSR notes the measures in place to promote the progressive development of occupational health services.

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

- whether the measures include the full national territory, cover nationals of other States Parties, and not only some branches of activity, major enterprises or especially severe risks, but all types of workers.
- the number of occupational physicians in the total workforce and the number of enterprises providing occupational health services or who share those services.

On this basis and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 3§4 of the Charter can be accepted.

Article 8§5 – *The right of employed women to protection of maternity*

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:
5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Situation in the United Kingdom

The Government indicates that in the UK, employers are responsible for providing a safe working environment while effectively managing risks to the health and safety of all workers, including women of a childbearing age. Employers must carry out an individual risk assessment that covers the individual needs of a pregnant worker and put any necessary control measures in place.

If a risk cannot be controlled or removed, an employer must adjust the working conditions or hours to remove the risk; give the worker suitable alternative work, and if that is not possible, suspend the worker on paid leave for as long as necessary to protect their health and safety and that of their child. The Health and Safety Executive (HSE) guidance provides more detail: Protecting pregnant workers and new mothers - Overview - HSE.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 8§5 applies to all pregnant women, women who have recently given birth or who are nursing their infant, in paid employment.

This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines.[229] 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;

[229] Conclusions X-2 (1988), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter

- spend brief training periods in underground sections of mines.[230]

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.[231] 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.[232]

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.[233] If this is not possible women should be entitled to paid leave or social security benefit corresponding to 100% of their previous average pay.[234] The employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.[235]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the measures already in place regarding the employment of pregnant women, women who have recently given birth and women nursing their infants. It therefore considers that Article 8§5 can be accepted immediately.

Article 10§5 – *The right to vocational training*

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:
5. 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 arrangements for young workers, and the adequate protection of young workers generally.

Situation in the United Kingdom

The UK Government's Skills for Jobs White Paper aims to provide lifelong learning opportunities through flexible training and career support. Key programs include Skills Bootcamps (free 12–16-week courses), Apprenticeships (work-based training for 16+), and Free Courses for Jobs (Level 3 qualifications for eligible adults). The Adult Education Budget (AEB) funds English, maths, and digital skills training for adults.

From 2025, the Lifelong Loan Entitlement will fund four years of post-18 education, making it easier to access technical courses. The Lifetime Skills Guarantee supports free qualifications and investments in further education. Apprenticeships are protected by minimum wage laws, ensuring fair pay.

[230] Conclusions X-2 (1990), Statement of Interpretation on Article 8§5 (i.e. 8§4b) of the 1961 Charter
[231] Conclusions 2019, Ukraine
[232] Conclusions 2003, Bulgaria
[233] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[234] Conclusions 2019, Statement of Interpretation on Article 8§4 and 8§5
[235] Conclusions 2019, Ukraine

In Scotland, the Modern Apprenticeship (MA) Programme, supported by Skills Development Scotland, funds training with a focus on youth, underrepresented groups, and rural areas. The Skills Development Scotland Modern Apprenticeship Programme Specification promotes inclusive growth and Fair Work Practices, helping individuals of all ages upskill and advance their careers.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Paragraph 5 provides for complementary measures which are fundamental to make access effective in practice.

i. reducing or abolishing any fees or charges;

States Parties must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are progressively reduced.[236] 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.[237]

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.[238]

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.[239]
The situation is not in conformity with Article 10§5 of the Charter where there is a length of residence requirement of three years for eligibility for financial aid for vocational training.[240]

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.[241] 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.[242] All issues relating to financial assistance are covered by Article 10§5, including allowances for training programmes in the context of the labour market policy.[243]

States Parties must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit.[244] In any event, assistance should at least be available for those in need and shall be adequate.[245] It may consist of scholarships or loans at preferential

[236] Conclusions 2020, Malta
[237] Conclusions XVI-2 (2004), United Kingdom
[238] Conclusions XVI-2 (2004), United Kingdom
[239] Conclusions XVI-2 (2004), United Kingdom
[240] Conclusions 2020, Andorra
[241] Conclusions XIII-1 (1993), Turkey
[242] Conclusions XIII-1 (1993), Turkey
[243] Conclusions 2016, Italy
[244] Conclusions XIX-1 (2008), Turkey
[245] Conclusions XIX-1 (2008), Turkey

interest rates.[246] The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.[247]

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.[248]

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.[249] 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.[250] It does not imply any previous training.[251] The term "during employment" means that the worker shall be currently under a working relationship with the employer requiring the training.[252]

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.[253] In particular, the participation of employers' and workers' organisations is required in supervising the effectiveness of training schemes.[254]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes the measures in place to encourage the full utilisation of vocational training facilities.

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

- whether there is a residence requirement to be eligible for financial aid for vocational training of nationals of other States Parties lawfully resident or regularly working on the territory of the UK.
- the number of program beneficiaries and the amount of financial assistance.
- whether the time spent on supplementary training at the request of the employer is included in the normal working hours.
- whether employers' and workers' organisations participate in supervising the effectiveness of training schemes.

On this basis and subject to more detailed information on the situation in law and practice, the ECSR considers that of Article 10§5 can be accepted.

246 Conclusions 2016, Italy
247 Conclusions 2016, Italy; Conclusions XIV-2 (1998), Ireland
248 Conclusions 2003, Slovenia
249 Conclusions 2020, Turkey
250 Conclusions 2020, Turkey
251 Conclusions 2020, Turkey
252 Conclusions 2020, Turkey
253 Conclusions 2020, Lithuania
254 Conclusions XIV-2 (1998), United Kingdom

Article 15§3 – *The right of persons with disabilities to independence, social integration and participation in the life of the community*

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Situation in the United Kingdom

The UK Government upholds disability rights through the Equality Act 2010, ensuring protection against discrimination and requiring reasonable adjustments in employment, services, transport, and housing.

The Inclusive Transport Strategy promotes accessible travel, and new Public Service Vehicles Regulations (2023) mandate audible and visible announcements on buses and coaches. Housing accessibility is supported through Building Regulations (Part M) and the Disabled Facilities Grant.

The British Sign Language Act (2022) legally recognizes BSL, with a BSL Advisory Board guiding implementation. The Accessible Information Standard (AIS) ensures healthcare communication meets disability needs. The Care Act 2014 mandates personal budgets for individuals needing care, allowing them to manage their own support.

In Scotland, the Equality and Human Rights Fund supports initiatives tackling discrimination, while the Independent Living Fund expands support for disabled individuals. The Scottish Government's Affordable Housing Supply Programme prioritizes accessible housing, and new Scottish Accessible Homes Standard are under consultation.

Scotland is also introducing a Human Rights Bill to incorporate international treaties on disability, racial equality, and social rights into Scots Law. Additionally, the British Sign Language (BSL) National Plan for Scotland 2023-2029 aims to address systemic barriers faced by disabled people and reduce disability-related poverty.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).[255] Such measures, including technical aids, must not be pursued in isolation and should be programmed to complement each other, on a clear legislative basis.[256]

[255] Conclusions 2005, Norway
[256] Conclusions 2008, Statement of Interpretation on Article 15§3; Conclusions 2005, Norway

Relevant legal framework and remedies

To this purpose, Article 15§3 requires:

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated.[257] Such legislation may consist of general anti-discrimination legislation, specific legislation or a combination of the two;[258]
- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities.[259] Such measures should have a clear legal basis and be coordinated.[260]

To give meaningful effect to the promotion of the full social integration and participation in the life of the community of persons with disabilities:

- Mechanisms must be established to assess the barriers to communication and mobility faced by persons with disabilities and identify the support measures that are required to assist them in overcoming these barriers;[261]
- Technical aids must be available either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means. Such aids may for example take the form of prostheses, walkers, wheelchairs, guide dogs and appropriate housing support arrangements;[262]
- Support services, such as personal assistance and auxiliary aids, must be available, either for free or subject to an appropriate contribution towards their cost and taking into account the beneficiary's means.[263]

Consultation

Article 15§3 requires that persons with disabilities and their representative organisations should be consulted in the design and ongoing review of positive action measures and that an appropriate forum should exist to enable this to happen.[264]

Persons with disabilities and their organisations must be consulted and participate in the design, implementation and review of disability policies in the context of Covid-19.[265] Covid-19 must not result in increased institutionalisation of persons with disabilities.[266]

Measures to ensure the right of persons with disabilities to live independently in the community

Telecommunications and new information technology must be accessible and sign language must have an official status.[267]

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[257] Conclusions 2005, Norway
[258] Conclusions 2012, Estonia
[259] Conclusions 2007, Slovenia
[260] Conclusions 2007, Slovenia
[261] Conclusions 2008, Statement of Interpretation on Article 15§3
[262] Conclusions 2008, Statement of Interpretation on Article 15§3
[263] Conclusions 2008, Statement of Interpretation on Article 15§3
[264] Conclusions 2020, Serbia; Conclusions 2005, Norway
[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
[267] Conclusions 2016, Austria, citing Conclusions 2005, Estonia and Conclusions 2003, Slovenia

In the context of the Covid-19 pandemic, services for the population specifically set up to cope with the pandemic, including remote and online services, quarantine facilities, personal protective equipment, and public information and guidelines, should be accessible to persons with disabilities on an equal basis to other members of the community.[268] Amongst other things, public health information must be made available in sign language and accessible means, modes and formats.[269]

Mobility and transport
Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.[270]

Housing
The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing.[271] Further, financial assistance should be provided for the adaptation of existing housing.[272]

Financial and personal assistance
The prevalence of poverty amongst people with disabilities in a State Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of State efforts to ensure the right of people with disabilities to enjoy independence, social integration and participation in the life of the community.[273]

The obligation of States to take measures to promote persons with disabilities' full social integration and participation in the life of the community is strongly linked to measures directed towards the amelioration and eradication of poverty amongst people with disabilities.[274] Therefore, the ECSR takes poverty levels experienced by persons with disabilities into account when considering the State's obligations under Article 15§3 of the Charter.[275]

Measures must also focus on combatting discrimination against, and promoting equal opportunities for, people with disabilities from particularly vulnerable groups such as ethnic minorities, Roma, asylum-seekers and migrants.[276]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes the measures in place to promote the full social integration and participation of persons with disabilities in the life of the community, which generally conform with the Charter standards.

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

- the poverty levels experienced by persons with disabilities.

[268] Statement on Covid-19 and social rights adopted on 24 March 2021
[269] Statement on Covid-19 and social rights adopted on 24 March 2021
[270] Conclusions 2016, Latvia, citing Conclusions 2003, Italy
[271] Conclusions 2003, Italy
[272] Conclusions 2003, Italy
[273] Conclusions 2020, Andorra
[274] Conclusions 2020, Andorra
[275] Conclusions 2020, Andorra
[276] Conclusions 2020, Andorra

Nevertheless, taking into account the number of measures which are already in place the ECSR considers that the United Kingdom is in a position to accept Article 15§3.

Article 17§2 – *The right of children and young persons to social, legal and economic protection*

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Situation in the United Kingdom

The UK Government emphasizes the importance of school attendance and has measures in place to ensure children receive a proper education. Children under the age of 18 in England are required to be in some form of education, including further education courses and apprenticeships.

Schools and local authorities monitor attendance, and parents must seek permission for term-time absences. Penalties, including fines or legal action, can be imposed for unauthorized absences. Further information on school attendance can be found on gov.uk[277].

In Scotland, the 'Included, Engaged and Involved Part 1: Promoting and Managing School Attendance' guidance promotes attendance through engagement, collaboration, and removing barriers to learning. Schools work closely with families to support students at risk of poor attendance.

In 2023, in response to concerns about post-pandemic attendance and student disengagement, the Scottish Government is reviewing findings from Education Scotland and the Behaviour in Scottish Schools Research (BISSR), with an action plan expected in 2024 to address these challenges and improve student participation.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 17 requires States Parties to establish and maintain an education system that is both accessible and effective.[278]

Quality of teaching

States Parties must establish and maintain an accessible and effective system of education.[279] A functioning system of primary and secondary education includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas).[280]

[277] School attendance and absence: Overview - GOV.UK (www.gov.uk)
[278] Conclusions 2003, Bulgaria
[279] Conclusions 2003, Bulgaria
[280] Conclusions 2003, Bulgaria

Class sizes and the teacher pupil ratio must be reasonable.[281] There must be a mechanism to control the quality of teaching and the methods used in public as well as private educational institutions.[282] Education must be compulsory until the minimum age for admission to employment.[283]

The Charter provides that the obligations under this provision may be met directly or through the involvement of private actors.[284] In this respect, the ECSR is mindful of the *Abidjan Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*.[285]

It recalls that the requirement that States respect the freedom of parents to choose an educational institution other than a public institution leaves unchanged the obligation under the Charter to provide free quality public education.[286] Similarly, the offer of educational alternatives by private actors must not be to detrimental to the allocation of resources towards, or otherwise undermine the accessibility and quality of, public education.[287]

Moreover, States are required to regulate and supervise private sector involvement in education strictly, making sure that the right to education is not undermined.[288]

Personal scope

Equal access to education must be ensured for all children. In this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage months, children deprived of their liberty, etc.[289]

Where necessary, special measures should be taken to ensure equal access to education for these children.[290] However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.[291]

As regards children with disabilities, their right to education is guaranteed both by paragraphs 1 and 2 of Article 17 as well as by Article 15§1 and Article 10.[292] However, in view of the particularities of these different provisions, Article 15 will apply as a priority. When States Parties have adopted Article 15, the ECSR will examine the issue of access to education for children with disabilities under that provision.[293] Children with disabilities should have access to inclusive education in terms of Article 17[294] (as well as such access required in terms of Article 15).

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[281] Conclusions 2003, Bulgaria
[282] Conclusions 2003, Bulgaria
[283] Conclusions 2003, Statement of interpretation on Article 17
[284] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[285] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[286] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[287] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[288] Conclusions 2019, Statement of Interpretation on Article 17§2 - Private sector involvement in education
[289] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34, citing Conclusions 2003, Bulgaria
[290] Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §34
[291] Conclusions 2011, Slovakia
[292] Conclusions 2003, Bulgaria; European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §25
[293] Conclusions 2019, Andorra
[294] Conclusions 2019, Bosnia and Herzegovina

Access to education is crucial for every child's life and development.[295] The denial of access to education will exacerbate the vulnerability of an irregularly present child.[296] Therefore, children, whatever their residence status, come within the personal scope of Article 17§2.[297]

Furthermore, States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child, even for those over the age of compulsory education.[298]

States Parties are required, under Article 17§2 of the Charter, to ensure that children irregularly present in their territory have effective access to education in keeping with any other child.[299] Access to education is crucial for every child's life and development.[300]

The denial of access to education will exacerbate the vulnerability of an unlawfully present child.[301] The non-formal education arrangements provided by non-state actors (e.g. NGOs) cannot be a substitute to the integration of migrant children in the public education system.[302]

Cost of education

According to Article 17§2, primary and secondary education must be free of charge.[303] This covers the basic education system.[304] In addition, hidden costs such as books or uniforms must be reasonable and assistance must be available to limit their impact on the most vulnerable groups.[305]

School attendance

Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.[306]

States Parties have a margin of appreciation when devising and implementing measures to combat truancy.[307]

The voice of the child in education

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[295] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128
[296] Conclusions 2011, Statement of interpretation on Article 17§2
[297] Conclusions 2011, Statement of interpretation on Article 17§2
[298] *Médecins du Monde* - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, §128; European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §125
[299] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[300] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[301] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §201
[302] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §207
[303] Conclusions 2003, Bulgaria
[304] Conclusions 2003, Bulgaria
[305] Conclusions 2003, Bulgaria
[306] Conclusions 2003, Bulgaria
[307] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §31

Securing the right of the child to be heard within education is crucial for the realisation of the right to education in terms of Article 17§2.[308] This requires States Parties to ensure child participation across a broad range of decision-making and activities related to education, including in the context of children's specific learning environments.[309]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes the measures in place to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

The ECSR considers that Article 17§2 can be accepted immediately.

Article 19§11 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:
11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families.

Situation in the United Kingdom

The UK Government emphasizes the importance of English language skills for integration and employment. In England, the Adult Education Budget (AEB) funds English for Speakers of Other Languages (ESOL) courses for eligible adults, with special provisions for refugees.

Schools receive additional funding to support pupils with English as an additional language. In Scotland, language learning is a key part of refugee integration, with the government committed to accessible ESOL provision. A recent review of Community Learning and Development (CLD) aims to enhance support for vulnerable learners, including non-native English speakers.

The Scottish Government is committed to ensuring that everyone in Scotland whose first language is not English can contribute to Scotland's future and the society they live in.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Under this provision, States Parties should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.[2012] The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into normal employment and society at large.[310]

[308] Conclusions 2019, Andorra
[309] Conclusions 2019, Andorra
[310] Conclusions 2002, France

A requirement to pay substantial fees is not in conformity with the Charter: States Parties are required to provide national language classes free of charge, otherwise for many migrants such classes would not be accessible.[311]

Teaching the language of the host country to primary and secondary school students throughout the school curriculum is not enough to satisfy the obligations laid down by Article 19§11.[312] States Parties must make special efforts to set up additional assistance for children of immigrants who have not attended primary school right from the beginning and who therefore lag behind their fellow students who are nationals of the country.[313]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the information provided regarding the provision of support to adult workers and pupils who are non-native speakers to learn English.

The ECSR considers that Article 19§11 can be accepted immediately.

Article 19§12 – *The right of migrant workers and their families to protection and assistance*

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:
12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Situation in the United Kingdom

The Government indicates in the written information submitted in July 2023 that it has no information to provide on this.

ECSR interpretation (DIGEST)

States Parties should promote and facilitate the teaching of the languages most represented among the migrants present on their territories within their school systems or in other contexts such as voluntary associations or non-governmental organisations.[314]

For a comprehensive assessment of the situation under this provision, the ECSR takes into consideration, in particular, the following detailed information:

- statistics on major migrant groups,[315]
- whether any measures or projects have been put in place in the framework of the school system or other structures to provide education of migrants' mother tongue,[316]

311 Conclusions 2011, Norway
312 Conclusions 2002, France
313 Conclusions 2002, France
314 Conclusions 2002, Italy; Conclusions 2011, Armenia; Conclusions 2011, Statement of Interpretation on Article 19§12
315 Conclusions 2019, Albania
316 Conclusions 2019, Albania

- whether any non-governmental organisations or other bodies, such as local associations, cultural centres or private initiatives that teach migrant workers' children the language of their country of origin, and whether they receive support.[317]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the Government has provided no information on this provision.

The ECSR recalls that this provision does not require the systematic teaching of all languages spoken amongst the migrant population, it is sufficient that NGO's or other bodies are not hindered and receive some type of support.

The ECSR considers that the United Kingdom is in a position to accept this provision

Article 20 – *The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex*

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:
a) access to employment, protection against dismissal and occupational reintegration;
b) vocational guidance, training, retraining and rehabilitation;
c) terms of employment and working conditions, including remuneration;
d) career development, including promotion.

Situation in the United Kingdom

The UK Government is committed to equal opportunities and treating all employees fairly. In March 2022, the UK ratified the ILO Violence and Harassment Convention, and the Equality Act 2010 ensures protection against harassment in the workplace, including sexual harassment.

The 2023 Worker Protection Act strengthens employer responsibilities, requiring them to take reasonable steps to prevent sexual harassment. If employers fail to comply, they may face enforcement from the Equality and Human Rights Commission or an employment tribunal, with compensation uplifts.

In Scotland, the Fair Work First approach encourages public sector employers to adopt inclusive practices and tackle the gender pay gap. The Scottish Government aims to make Scotland a leading Fair Work Nation by 2025, promoting flexible working and addressing barriers faced by women, disabled people, and racial minorities.

To achieve this, Scottish Ministers launched their refreshed Fair Work Action Plan: Becoming a Leading Fair Work Nation by 2025 and their new Anti-Racist Employment Strategy in December 2022. The government is also funding the Close the Gap - an expert civil society organisation, which aims to close the gender pay gap and support women's participation in the workforce.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

[317] Conclusions 2019, Albania

ECSR interpretation (DIGEST)

Equality at work and in social security matters

Definitions and scope
Article 20 guarantees the right to equality of opportunity and equal treatment in the field of employment and occupation, without discrimination based on sex.[318]

Acceptance of Article 20 entails the following obligations for States Parties:

- the obligation to promulgate this right in legislation;[319]
- the obligation to take legal measures designed to ensure the effectiveness of this right.[320] In this regard, such measures must provide for the nullity of clauses in collective agreements and individual contracts which are contrary to the principle; as well as for adequate appeal procedures where the right has been violated and for the effective protection of workers against any retaliatory measures (dismissal or other measures) taken as a result of their demand to benefit from the right.[321]
- the obligation to define an active policy and to take practical measures to implement it.[322]

For States Parties which have accepted both Article 1§2 and Article 20, the ECSR examines under the latter the general framework for guaranteeing equality between women and men (equal rights, specific protection measures, situation of women in employment and training schemes, measures to promote equal opportunities).[323] As a result it does not deal specifically with discrimination based on sex under Article 1§2 with regard to those States Parties.[324]

Obligations to guarantee the right to equal pay for equal work or work of equal value

Legal framework

The right of women and men to equality must be guaranteed by law. The Charter requires States Parties not only to provide for equal treatment but also to protect women and men from discrimination in employment and training.[325] This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.[326] A general ban on all forms of discrimination in the constitution is not sufficient.[327]

Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked.[328] The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.[329] It must be possible to

[318] Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
[319] Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
[320] Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
[321] Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
[322] Conclusions XIII-3 (1995), Statement of Interpretation on Article 1 of the Additional Protocol
[323] Conclusions 2002, Statement of Interpretation on Articles 1§2 and 20
[324] Conclusions 2002, Statement of Interpretation on Article 20
[325] Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[326] Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[327] Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[328] University Women of Europe (UWE) v. Bulgaria, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131
[329] University Women of Europe (UWE) v. Bulgaria, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131

set aside, withdraw, repeal or amend any provision in collective agreements, employment contracts or firms' internal regulations that is incompatible with the principle of equal treatment.[330]

The ECSR considers it advisable for States Parties to introduce measures likely to discourage employers from applying, even inadvertently, clauses which are null and void.[331]

These measures could take the form of the introduction of a statutory legal provision rendering any such stipulation null and void, the possibility for a court to declare this nullity by a decision applicable *erga omnes*, the introduction of a specific right for trade unions to take legal action in these matters, including the right to act as an intervener in individual litigation, or the possibility of class action on the part of persons in whose interest it would be to have this nullity declared.[332]

The right to equal pay without discrimination on the grounds of sex is also guaranteed by Article 4§3 and the issue is therefore also examined under this provision for States Parties which have accepted Article 4§3 only.[333]

Equal opportunities and positive measures

States Parties must take practical steps to promote equal opportunities by removing *de facto* inequalities that affect women's and men's chances.[334] The elimination of potentially discriminatory provisions protecting women must therefore be accompanied by action to promote quality employment for women.[335]

Gender mainstreaming should form part of a strategy covering all aspects of the labour market, including remuneration, career development and occupational recognition, and extending to the education system.[336]

Appropriate measures include:

- adopting and implementing national equal opportunities action plans;[337]
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;[338]
- encouraging employers and workers to deal with equality issues in collective agreements;[339]f setting more store by equality between women and men in national action plans for employment.[340]

Specific protection measures relating to pregnancy, childbirth and the postnatal period, are generally examined under Article 8§4 of the Charter.[341]

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[330] University Women of Europe (UWE) v. Bulgaria, Complaint No. 125/2016, decision on the merits of 6 December 2019, §131
[331] Conclusions XV-2 (2001) Addendum, Slovak Republic, Article 1 of the Additional Protocol
[332] Conclusions XV-2 (2001) Addendum, Slovak Republic, Article 1 of the Additional Protocol
[333] Conclusions 2002, Statement of Interpretation on Articles 1§2 and 20
[334] Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[335] Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[336] Conclusions XVII-2 (2005), Greece, Article 1 of the Additional Protocol
[337] Conclusions 2016, Bosnia and Herzegovina
[338] Conclusions 2016, Bosnia and Herzegovina
[339] Conclusions 2016, Bosnia and Herzegovina
[340] Conclusions 2016, Bosnia and Herzegovina
[341] Conclusions XVII-2 (2005), Greece, Article 1 of the Additional Protocol

Obligations to promote the right to equal pay

Under Articles 4§3 and 20 of the Charter, the concept of remuneration must cover all elements of pay, that is basic pay and all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter's employment.[342]

In order to ensure and promote equal pay, the collection of high-quality pay statistics broken down by gender as well as statistics on the number and type of pay discrimination cases is crucial.[343] The collection of such data increases pay transparency at aggregate levels and ultimately uncovers the cases of unequal pay and therefore the gender pay gap.[344]

The gender pay gap is one of the most widely accepted indicators of the differences in pay that persist for men and women doing jobs that are either equal or of equal value.[345] In addition, to the overall pay gap (unadjusted and adjusted), the ECSR will, where appropriate, have regard to more specific data on the gender pay gap by sectors, by occupations, by age, by educational level, etc.[346]

The ECSR further considers that States Parties are under an obligation to analyse the causes of the gender pay gap with a view to designing effective policies aimed at reducing it.[347] Failure to make measurable progress in reducing the gender pay gap is contrary to Article 20.[348]

Pay transparency and job comparisons

Pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value.[349] Transparency contributes to identifying gender bias and discrimination and it facilitates the taking of corrective action by workers and employers and their organisations as well as by the relevant authorities.[350]

States should take measures in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including measures such as those highlighted in the European Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, notably an obligation for employers to regularly report on wages and produce disaggregated data by gender.[351] The ECSR regards such measures as indicators of compliance with the Charter in this respect.[352]

Under Article 20, equal treatment between women and men includes the issue of equal pay for work of equal value.[353] Usually, pay comparisons are made between persons within the same undertaking/company.[354] However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings.[355]

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[342] Conclusions 2020, North Macedonia, citing University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, §163
[343] Conclusions 2020, Albania
[344] Conclusions 2020, Albania
[345] Conclusions 2020, Albania
[346] Conclusions 2020, Albania
[347] Conclusions 2020, Albania
[348] Conclusions 2020, Andorra
[349] Conclusions 2020, Albania
[350] Conclusions 2020, Albania
[351] Conclusions 2020, Albania
[352] Conclusions 2020, Albania
[353] Conclusions 2012, Statement of Interpretation on Article 20
[354] Conclusions 2012, Statement of Interpretation on Article 20
[355] Conclusions 2012, Statement of Interpretation on Article 20

Therefore, Article 20 requires that it be possible to make pay comparisons across companies.[356] At the very least, legislation should require pay comparisons across companies in one or more of the following situations:

- cases in which statutory rules apply to the working and pay conditions in more than one company;[357]
- cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;[358]
- cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding [company] or conglomerate.[359]

In order to establish whether work performed is equal or of equal value, factors such as the nature of tasks, skills, as well as educational and training requirements must be taken into account.[360] States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law.[361]

In this respect, job classification and evaluation systems should be promoted and where they are used, they must rely on criteria that are gender-neutral and do not result in indirect discrimination.[362]

In equal pay litigation cases, the legislation should allow pay comparisons across companies only where the differences in pay can be attributed to a single source.[363] For example, the ECSR has considered that the situation complied with this principle when, in equal pay cases, comparison can be made with a typical worker (someone in a comparable job) in another company, provided the differences in pay can be attributed to a single source or when pay comparison is possible for employees working in a unit composed of persons who are in legally different situations if the remuneration is fixed by a collective agreement applicable to all entities of the unit.[364]

Effective remedies

Domestic law must provide for appropriate and effective remedies in the event of alleged pay discrimination.[365] Workers who claim that they have suffered discrimination must be able to take their case to court.[366] Effective access to courts must be guaranteed for victims of pay discrimination.[367] Therefore, proceedings should be affordable and timely.[368]

The absence or a low number of wage discrimination cases brought before the courts is likely to indicate the lack of an appropriate legal framework, lack of awareness of rights, lack of confidence

[356] Conclusions 2012, Statement of Interpretation on Article 20
[357] Conclusions 2012, Statement of Interpretation on Article 20
[358] Conclusions 2012, Statement of Interpretation on Article 20
[359] Conclusions 2012, Statement of Interpretation on Article 20
[360] Conclusions 2020, Albania
[361] Conclusions 2020, Albania
[362] Conclusions 2020, Albania
[363] Conclusions 2016, Bosnia and Herzegovina
[364] Conclusions 2016, Bosnia and Herzegovina, citing Conclusions 2012, The Netherlands; and Conclusions 2014, France, Article 4§3
[365] Conclusions 2020, Albania
[366] Conclusions 2020, Albania
[367] Conclusions 2020, Albania
[368] Conclusions 2020, Albania

in the legal remedies available or the absence of such remedies, lack of practical access to procedures or fear of retaliation.[369]

The ECSR assesses compliance with Article 20 in respect of access to effective remedies on the basis of the following indicators:

- the number of gender pay discrimination cases brought before the courts with specific information on their outcome and the sanctions imposed on employers;[370]
- whether there is an upper limit on the amount of compensation which can be granted in the case of gender pay discrimination;[371]
- whether sanctions are imposed on employers in the event of pay discrimination;[372]
- what rules apply in cases of retaliatory dismissal involving equal pay litigation;[373]
- examples of compensation awarded by the courts in cases of gender pay discrimination.[374]

Burden of proof

Article 20 of the Charter implies a modification of the burden of proof in favour of workers who believe that they have been the victims of a discriminatory measure.[375] The shift in the burden of proof consists in ensuring that where a person believes they have suffered discrimination on grounds of sex and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that the apparent discrimination is due to objective factors unrelated to any discrimination based on sex and thus does not constitute any contravention of the principle of equal treatment.[376]

By analogy with the case law in relation to Article 1§2, a number of other legal steps should be taken to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals[377] or setting up an independent body to promote equal treatment and provide legal assistance to victims.

Adequate compensation

States Parties must ensure through legislation that adequate safeguards exist against discrimination and retaliatory measures.[378] Legislation must provide for the rectification of the situation concerned — in the case of dismissal, reinstatement — and compensation for any financial loss incurred during the intermediate period.[379]

Anyone who suffers wage discrimination on grounds of gender must be entitled to adequate compensation.[380] In this connection, the ECSR makes a distinction between compensation that

[369] Conclusions 2020, Georgia
[370] Conclusions XXII-1 (2020), Croatia
[371] Conclusions XXII-1 (2020), Croatia
[372] Conclusions XXII-1 (2020), Croatia
[373] Conclusions XXII-1 (2020), Croatia
[374] Conclusions XXII-1 (2020), Croatia
[375] Conclusions 2004, Romania
[376] Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[377] Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[378] Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[379] Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[380] Conclusions 2020, Andorra

is granted in cases of successful unequal pay claims and compensation/severance pay that is granted in retaliatory dismissal cases, even when the latter are the result of equal pay claims.[381]

In the first case no ceiling can be established by law.[382] In the second case, a ceiling established by law is permissible under the Charter, only if its level is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.[383]

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;[384]
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;[385]
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.[386]

Protection against reprisals

Retaliatory dismissal in cases of pay discrimination must be forbidden.[387] Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers, including not only dismissal, but also downgrading, changes to working conditions and so on.[388]

Where a worker is dismissed on grounds of having made a claim for equal pay, the worker should be able to file a complaint for dismissal without valid reason.[389] In this case, the employer must reinstate them in the same or a similar post.[390] If reinstatement is not possible, the employer must pay compensation, which must be sufficient to compensate the worker (i.e. cover pecuniary and non-pecuniary damage) and to deter the employer.[391]

Access to certain occupations

Exceptionally and subject to strict interpretation, certain jobs and occupational activities may be limited to persons of one sex, if this is due to the nature of such jobs and activities or the context and conditions in which they are carried out. Such a limitation can only be in conformity in respect of jobs/activities where gender constitutes a genuine occupational requirement – (Appendix to Article 20§4).[392]

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[381] Conclusions 2020, Andorra
[382] Conclusions 2020, Andorra
[383] Conclusions 2020, Andorra
[384] Conclusions XVII-2 (2005), Finland, Article 1 of the Additional Protocol
[385] Conclusions XVII-2 (2005), Finland, Article 1 of the Additional Protocol; see also Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[386] Conclusions XVII-2 (2005), Finland, Article 1 of the Additional Protocol
[387] Conclusions 2020, Albania
[388] Conclusions 2020, Cyprus; see also Conclusions XIII-5 (1997), Statement of Interpretation on Article 1 of the Additional Protocol
[389] Conclusions 2020, Albania
[390] Conclusions 2020, Albania
[391] Conclusions 2020, Albania
[392] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163

In determining whether, because of the conditions in which police activities are conducted, sex constitutes a decisive factor in the police force, the army, etc., States Parties may take account of public order or national security-related requirements provided that they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society (Article G).[393] Like any measure that derogates from the rights guaranteed by the Charter, the exception must be interpreted restrictively and not exceed the legitimately pursued aim.[394]

Specific protection measures

According to the Appendix to Article 20 (§1), provisions concerning the protection of women are not deemed to be discrimination. Such provisions must be objectively justified by needs that apply exclusively to women, such as those relating to maternity (pregnancy, childbirth and the post-natal period). These particular rights are also guaranteed by Article 8 of the Charter (right of employed women to protection of maternity).

Prohibiting women from performing night work or underground mining while authorising men to do so is contrary to the principle of equal treatment.[395]

Specific protection measures are examined under Article 8 and 27 of the Charter.[396]

Social security

Article 20 guarantees equal treatment with regard to social security.[397] However, the Appendix authorises States, when they ratify the Charter or accept Article 20, to make a declaration excluding social security matters from the scope of Article 20.[398] Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned.[399]

Discrimination in breach of the Charter is constituted by a difference in treatment between people in comparable situations which does not pursue a legitimate aim and is not based on objective and reasonable grounds.[400]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that the Government has provided minimal information related to the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex under Article 20 of the revised Charter. The information provided relates to harassment and violence against women, which are covered under Article 26 of the revised Charter.

[393] Conclusions XVI-2 (2004), Greece, Article 1 of the Additional Protocol
[394] Conclusions XVI-2 (2004), Greece, Article 1 of the Additional Protocol
[395] Conclusions 2012 Bosnia and Herzegovina; Conclusions XVII-2 (2005), The Netherlands (Aruba), Article 1 of the Additional Protocol
[396] Conclusions 2012, Georgia
[397] Conclusions 2002, Italy
[398] Conclusions 2002, Italy
[399] Conclusions 2012, Russian Federation
[400] *Syndicat national des professions du tourisme* v. France, Complaint No. 6/1999, decision on the merits of 10 October 2000, §25.

In view of these requirements, the ECSR 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 its efforts and to consider accepting Article 20 in the near future.

Article 21 – *The right to information and consultation*

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:
a) to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b) to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Situation in the United Kingdom

Under UK law, trade unions recognized by employers are granted various collective rights. These include the right to receive information necessary for effective collective bargaining (Section 181 of the Trade Union and Labour Relations Act 1992), the right to be consulted in situations of collective redundancy (Section 188 of the same Act), and the right to be informed and consulted regarding potential impacts on employees due to transfers under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Additionally, the Information and Consultation of Employees Regulations (ICE) allow employees in undertakings with 50 or more employees to request formal consultation on significant matters, including information about the company's activities and economic situation, employment prospects, and changes in work organization or contractual relations. These regulations apply when at least 2% of employees, or 15 employees, make the request.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Consultation at the enterprise level is dealt with by Article 6§1 and Article 21 of the Charter.[401] For the States Parties that have ratified both provisions, consultation at enterprise level is examined under Article 21.[402]

Personal scope

Article 21 of the Charter entitles employees and/or their representatives, be they trade unions, staff ECSRs, works councils or health and safety ECSRs, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking.[403]

[401] Conclusions 2018, Latvia, citing Conclusions 2004, Ireland
[402] Conclusions 2018, Latvia, citing Conclusions 2004, Ireland
[403] Conclusions XIX-3 (2010), Croatia

They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.[404]

The national situation is in conformity with the requirements of Article 21 of the Charter if legal provisions governing the information and consultation of workers cover all categories of workers and all undertakings.[405]

States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. For example, undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state may be excluded from the scope of this provision, as per the thresholds established by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002.[406]

All categories of employee (in other words, all employees with an employment contract with an undertaking, whatever their status, length of service or workplace) must be taken into account when calculating the number of employees covered by the right to information and consultation.[407] Even though Article 21 may apply to workers in state-owned enterprises, public employees as a whole are not covered by these provisions.[408]

Material scope

The determination of the material scope of the workers' right to information and consultation within the undertaking is mainly left to collective bargaining.[409]

Enforcement of rules and procedures

In order to effectively guarantee the workers' rights under Article 21, there must be a supervising mechanism such as a Labour Inspectorate that can impose sanctions for the violation of the provisions on access to information and consultation.[410] Administrative and/or judicial procedures must be available to employees or their representatives who consider that their right to information and consultation within the undertaking has not been respected.[411]

In particular, all employees or their representatives must have legal capacity to trigger an administrative action against their employer and have a subsequent right of appeal before a court.[412] There must also be sanctions for employers which fail to fulfil their obligations under this Article.[413]

Opinion of the ECSR

[404] Conclusions XIX-3 (2010), Croatia
[405] Conclusions 2010, Belgium, citing Conclusions XVI-2 (2004), Greece
[406] Conclusions XIX-3 (2010), Croatia
[407] Conclusions XIX-3 (2010), Croatia
[408] European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 40/2007, decision on the merits of 23 September 2008, §42
[409] Conclusions 2003, Romania
[410] Conclusions 2018, Republic of Moldova
[411] Conclusions 2018, Ukraine
[412] Conclusions 2003, Romania
[413] Conclusions 2005, Lithuania

As regards the situation in the United Kingdom, the ECSR notes the provisions in place to ensure the effective exercise of the right of workers to be informed and consulted within the undertaking.

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

- whether legal provisions governing the information and consultation of workers cover all categories of workers and all undertakings.
- whether there is a supervising mechanism such as a Labour Inspectorate that can impose sanctions for the violation of the provisions on access to information and consultation.
- what are the sanctions for employers which fail to fulfil their obligations under this Article.

On this basis and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 21 of the Charter can be accepted

Article 22 – *The right to take part in the determination and improvement of the working conditions and working environment*

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a) to the determination and the improvement of the working conditions, work organisation and working environment;
b) to the protection of health and safety within the undertaking;
c) to the organisation of social and socio-cultural services and facilities within the undertaking;
d) to the supervision of the observance of regulations on these matters.

Situation in the United Kingdom

The Information and Consultation of Employees Regulations (ICE) give employees the right to request a formal agreement for being informed and consulted on significant matters affecting their work, such as the undertaking's activities, economic situation, employment prospects, and any substantial changes in work organization or contractual relations.

These regulations apply to businesses with 50 or more employees, where at least 2% of employees (minimum 15) request such arrangements. Additionally, UK health and safety legislation mandates that employers consult workers or their representatives on health and safety matters, especially when introducing new measures or technologies.

Regulations give workers representatives in both unionised and non – unionised workplaces, rights to facilities and information from employers to enable them to carry out their functions. The right to join a trade union and be represented in collective bargaining with employers is guaranteed for all workers in the UK. Further details can be found on gov.uk[414].

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

[414] Working with trade unions: employers: Collective bargaining - GOV.UK (www.gov.uk)

ECSR interpretation (DIGEST)

The workers' right to take part in the determination and improvement of the working conditions and working environment implies that workers may contribute, to a certain extent, to the employer's decision-making process.[415] The great majority of workers (at least 80%) must be granted a right to participate in the determination and improvement of the working conditions and working environment within the undertaking.[416] This provision applies to all undertakings, whether private or public.[417]

Even though Article 22 may apply to workers in state-owned enterprises, public employees are as a whole not covered by this provision.[418] It follows that the right of police staff to participation in the determination and improvement of their working conditions and working environment does not fall within the scope of application of Article 22 of the Revised Charter.[419]

States Parties may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice and tendency undertakings.[420]

Protection of health and safety

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations regarding the protection of health and safety within the undertaking.[421] The practical means of informing and consulting employers' and workers' organisations about labour inspectorate activities is examined under Article 22 of the Revised Charter.

The organisation of social and socio-cultural services and facilities

The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established.[422] Article 22 of the Charter does not require that employers offer social and socio-cultural services and facilities to their employees but requires that workers may participate in their organisation, where such services and facilities have been established.[423]

Enforcement

Workers must have legal remedies when these rights are not respected.[424] There must also be sanctions for employers who fail to fulfil their obligations under this Article.[425]

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[415] Conclusions 2005, Estonia
[416] Conclusions 2007, Italy
[417] Conclusions 2018, Latvia
[418] European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, decision on the merits of 17 October 2011, §36
[419] European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, decision on the merits of 17 October 2011, §36
[420] Conclusions 2018, Latvia; see also Conclusions 2005, Estonia
[421] Conclusions 2007, Italy
[422] Conclusions 2018, Latvia
[423] Conclusions 2018, Latvia; Conclusions 2007, Italy; Conclusions 2007, Armenia
[424] Conclusions 2003, Bulgaria
[425] Conclusions 2003, Bulgaria, Slovenia

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes the regulations in place to ensure the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking.

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

- whether the regulations apply to all undertakings, whether private or public.
- whether workers may participate in the organisation of social and socio-cultural services and facilities offered by their employees where such services and facilities have been established.
- what legal remedies are available to workers when their rights under this Article are not respected.
- what sanctions exist for employers who fail to fulfil their obligations under this Article.

On this basis and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 22 of the Charter can be accepted.

Article 23 – *The right of elderly persons to social protection*

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:
– to enable elderly persons to remain full members of society for as long as possible, by means of:

a) adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
b) provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
– to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
a) provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
b) the health care and the services necessitated by their state;
– to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Situation in the United Kingdom

The UK Government provides extensive support to older people to help them live dignified and active lives. This includes over £152 billion in State Pension and benefits, with pensions rising by 10.1% in 2023/24. Pensioners also receive additional help through Pension Credit, Attendance Allowance, free bus passes, prescriptions, and Winter Fuel Payments. The introduction of automatic enrolment into workplace pensions has helped millions save for retirement.

In England, Local Authorities (LAs) have a duty under the Care Act 2014 to meet the eligible care and support needs of individuals in their local population, subject to a financial assessment. Local Authorities offer care services and personal budgets, allowing individuals to choose and manage their care, promoting independence and wellbeing.

The Scottish Government has taken several steps to improve the lives of older people. In 2019, they introduced A Fairer Scotland for Older People: A Framework for Action, addressing inequalities faced by older people and celebrating their contributions. The 2023 action plan, Social Isolation and Loneliness: Recovering our Connections, focuses on combating loneliness by empowering communities, fostering positive attitudes, creating connection opportunities, and supporting infrastructure for stronger social bonds.

The Welsh Government's Strategy for an Ageing Society, launched in 2021, focuses on promoting healthy, active lives for people of all ages, with a strong emphasis on prevention. To support this, £1.1 million has been allocated to Local Authorities (LAs) for implementing activities that help older people stay active, access services, and have their voices heard. LAs in Wales provide essential social care services and offer Discretionary Payments (DPs), giving individuals more control over their care needs.

The Department of Health in Northern Ireland has made significant progress through its Active Ageing Strategy (2016-2022) aimed at improving the wellbeing of older people. Key achievements include a marked increase in the confidence of people over 60 and the promotion of age-friendly measures across all council districts.

The UK Government offers various services to support older people, including free pension advice through the Money and Pensions Service. Digital inclusion efforts provide devices and broadband for eligible claimants to assist with employment. The Appointee Process helps protect older people from financial abuse by allowing trusted individuals to manage benefits on their behalf. The Midlife MOT service helps older workers assess their finances, health, and skills to aid career progression.

Scotland's healthcare framework for care home residents, My Health, My Care, My Home, focuses on improving outcomes by ensuring residents have access to equal care and are central to their own care and decision-making. The Health and Social Care Standards, implemented in 2018, outline what individuals should expect from health and social care services. In 2022, new standards were introduced to ensure care home residents could see loved ones and have designated people involved in their care.

In Wales, the Regulation and Inspection of Social Care (Wales) Act 2016 establishes a framework for regulating the social care sector, including care homes. Providers are required to treat individuals with dignity and respect, ensure privacy, involve them in decisions, and maintain safe and suitable environments.

In Northern Ireland, care managers coordinate multi-disciplinary assessments for those needing permanent care, working with the service user and family to create and review personalized care plans. The Regulation and Quality Improvement Authority (RQIA) has introduced an inspection program focusing on the experiences of care recipients and their families, aiming to improve engagement with service users, staff, and the use of feedback in care settings.

In terms of health care in England, the NHS provides GP services with a named accountable GP for each registered patient, including those aged 75 and over, who receive an annual health check on request.

The Self-directed Support (Scotland) Act 2013 in Scotland offers flexible care arrangements, aiming to improve outcomes for care home residents and those receiving hospital-level care at home. The Pension Age Disability Payment will be launched in phases from 2024 to support disabled older people with additional costs.

In Wales, the Social Services and Well-being (Wales) Act 2014 ensures individuals have a voice and control in their care decisions. The Health and Social Care - Regional Integration Fund is funding innovative models, including accommodation solutions to support independent living.

Northern Ireland focuses on assessments to help older people lead independent lives, with services like re-ablement and Self-Directed Support for community care. The government aims to address the needs of an aging population by improving health and wellbeing services across the UK.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of older persons.[426] The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for older persons, obliging States Parties to devise and carry out coherent actions in the different areas covered.[427]

One of the primary objectives of Article 23 is to enable older persons to remain full members of society. The expression "full members" means that older persons must suffer no ostracism on account of their age.[428] The right to take part in society's various fields of activity should be granted to everyone active or retired, living in an institution or not.[429]

The Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, such as in medical care where rationing of scarce resources (e.g. ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age.[430] Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.[431]

Equal treatment calls for an approach based on the equal recognition of the value of older persons' lives.[432]Article 23 overlaps with other provisions of the Charter which protect older persons as members of the general population, such as Article 11 (Right to protection of health),[433] Article 12 (Right to social security),[434] Article 13 (Right to social and medical assistance) and Article 30 (Right to protection against poverty and social exclusion).[435]

Article 23 requires States Parties to make focused and planned provision in accordance with the specific needs of older persons. The focus of Article 23 is on social protection of older persons outside the employment field.[436] Questions of age discrimination in employment are primarily

[426] Conclusions XIII-3 (1995), Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)
[427] Conclusions XIII-3 (1995), Statement of Interpretation on Article 4 of the Additional Protocol (Article 23)
[428] *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §116
[429] *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §116, citing Conclusions XIII-5, Finland
[430] Statement on Covid-19 and social rights adopted on 24 March 2021
[431] Statement on Covid-19 and social rights adopted on 24 March 2021
[432] Statement on Covid-19 and social rights adopted on 24 March 2021
[433] Statement of Interpretation on the right to protection of health in times of pandemic, 20 April 2020
[434] General Introduction to Conclusions 2017
[435] Conclusions 2017, Ukraine
[436] Conclusions 2009, Andorra

examined under Articles 1§2 (non-discrimination in employment) and 24 (right to protection in cases of termination of employment) of the Charter.[437]

Non-discrimination legislation should exist at least in certain domains protecting persons against discrimination on grounds of age.[438]

Legislative framework

Article 23 requires States Parties to combat age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services.[439] Pervasive age discrimination persists in many areas of society throughout Europe, including healthcare, education, services such as insurance and banking products, participation in policy making/civil dialogue, allocation of resources and facilities.[440]

Therefore an adequate legal framework is a fundamental measure to combat age discrimination in these areas.[441] Article 23 must be fully respected during the Covid-19 crisis.[442] Article 23 requires the States Parties to make sure that they have appropriate legislation to, firstly, combat age discrimination outside employment and to, secondly, provide for a procedure of assisted decision making.[443]

Legislation allowing practices leading to a part of the older population being denied access to informal care allowances or other alternative support constitutes a violation of Article 23.[444] Older persons at times may have reduced capacity-making powers or no such powers or capacity at all.[445]

Therefore, there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves.[446] This means that older persons cannot be assumed to be incapable of making their own decision just because they have a particular medical condition or disability, or lack legal capacity.[447]

An older person's capacity to make a particular decision should be established in relation to the nature of the decision, its purpose and the state of health of the elderly person at the time of making it.[448] Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.[449]

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons, including in instances

[437] Conclusions 2009, Andorra
[438] *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §115
[439] Conclusions 2009, Andorra
[440] Conclusions 2009, Andorra
[441] Conclusions 2009, Andorra
[442] Statement on Covid-19 and social rights adopted on 24 March 2021
[443] Conclusions 2017, Andorra
[444] Conclusions 2003, France
[445] Conclusions 2003, France
[446] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making
[447] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making
[448] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making
[449] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making

of reduced decision-making capacity.[450] It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights.[451]

Article 23 also requires States Parties to take appropriate measures against the abuse of older persons.[452] Abuse can take various forms: physical, psychological or emotional, sexual, financial or simply reflect intentional or unintentional neglect.[453] States Parties must therefore take measures to evaluate the extent of the problem, to raise awareness on the need to eradicate abuse and neglect of older persons, and to adopt legislative or other measures.[454]

- **to enable elderly persons to remain full members of society for as long as possible, by means of:**

a. adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow older persons to lead a 'decent life' and play an active part in public, social and cultural life.[455]

However when assessing the adequacy of resources of older persons under Article 23, all social protection measures guaranteed to older persons and aimed at maintaining an income level allowing them to lead a decent life and participate actively in public, social and cultural life are taken into account.[456] In particular, pensions, contributory or non-contributory, and other complementary cash benefits available to older persons are examined.[457]

These resources are then compared with the median equivalised income.[458] The ECSR also takes into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.[459]

b. provision of information about services and facilities available for elderly persons and their opportunities to make use of them.

Although Article 23 only refers to the provision of information about services and facilities, paragraph 1b presupposes the existence of services and facilities.[460] Therefore, it is not only information relating to the provision of information about these services and facilities that is examined but also the services and facilities themselves.[461]

In doing so, the ECSR examines the existence, extent and cost of home help services; community based services; specialised day care provision for persons with dementia and related illnesses; and services such as information, training and respite care for families caring for elderly persons,

[450] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making
[451] Conclusions 2013, Statement of Interpretation Article 23 – assisted decision-making
[452] Conclusions 2009, Andorra
[453] Conclusions 2009, Andorra
[454] Conclusions 2009, Andorra
[455] Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly
[456] Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly
[457] Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly
[458] Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly
[459] Conclusions 2013, Statement of Interpretation Article 23 – adequate resources for the elderly
[460] Conclusions 2003, France
[461] Conclusions 2003, France

in particular, highly dependent persons; as well as cultural leisure and educational facilities available to older persons.[462]

Furthermore, States Parties must have a system for monitoring the quality of services and a procedure for complaining about the standard of services.[463] Insufficient regulation of fees for service housing and service housing with 24-hour assistance may amount to a violation of Article 23.[464]

- **to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:**

a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

The needs of older persons must be taken into account in national or local housing policies.[465] The supply of adequate housing for older persons must be sufficient.[466] Policies should help older persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.[467]

The improvement of housing conditions of older persons requires considerable public funding as the average older person usually cannot afford the costs of modernisation of their apartment or purchasing a new apartment of higher standard.[468] Improvement of housing conditions by moving elsewhere is often not a viable option in that it uproots the older person from their "natural" environment.[469]

b. the health care and the services necessitated by their state;

In the context of the right to adequate health care for older persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist, together with guidelines on healthcare for older persons.[470]In addition, there should be mental health programmes for any psychological problems in respect of older persons, and adequate palliative care services.[471]

- **to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.**

The final part of Article 23 deals with the rights of older persons living in institutions. In this context, it provides that the following rights must be guaranteed: the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to

[462] Conclusions 2003, France
[463] Conclusions 2009, Andorra
[464] The Central Association of Carers in Finland v. Finland, Complaint No 71/2011, decision on the merits of 4 December 2012, §53
[465] Conclusions 2003, France
[466] Conclusions 2003, France
[467] Conclusions 2013, Andorra; International Federation of Associations of the Elderly (FIAPA) v. France, Complaint No. 145/2017, decision on the merits of 25 May 2019, §45
[468] Conclusions 2009, Andorra
[469] Conclusions 2017, Bosnia and Herzegovina
[470] Conclusions 2003, France; Conclusions 2017, Ukraine
[471] Conclusions 2003, France

maintain personal contact with persons close to the older person, and the right to complain about treatment and care in institutions.[472]

There should be a sufficient supply of institutional facilities for older persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions should be licensed, and subject to an independent inspection body.[473]
Older persons of foreign origin in institutional care who unable to communicate in the national language must benefit from measures ensuring that they can express themselves, communicate and be consulted in an appropriate manner.[474]

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.[475]

Older persons and their organisations must be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis.[476] Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.[477]

Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints and sedatives are also examined under this provision.[478]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the detailed information provided regarding the measures in place to ensure the right of elderly persons to social protection.

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

- whether non-discrimination legislation protects, in law and in practice, persons against discrimination outside employment on grounds of age, and in which domains.
- whether there exists a legal framework and a procedure of assisted decision-making for older persons and with which characteristics.
- whether a system exists for monitoring the quality of services and a procedure for complaining about the standard of service.
- whether there exist mental health programmes for any psychological problems in respect of older persons and adequate palliative care services.
- whether there exists a sufficient supply of institutional facilities for older persons (public or private) and which rights are guaranteed therein.

[472] Conclusions 2017, Malta; Portugal
[473] Conclusions 2005, Slovenia; Conclusions XX-2 (2013), Czech Republic
[474] Conclusions 2005, Slovenia
[475] Statement on Covid-19 and social rights adopted on 24 March 2021
[476] Statement on Covid-19 and social rights adopted on 24 March 2021
[477] Statement on Covid-19 and social rights adopted on 24 March 2021
[478] Conclusions 2005, Slovenia; Conclusions 2003, France

In view of these requirements, the ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to continue considering accepting Article 23 of the Charter.

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

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:
a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief. To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

Situation in the United Kingdom

In the UK, employers must provide a valid and justifiable reason for dismissing an employee, ensuring consistency and fairness. If an employee has worked for at least 2 years, they can claim unfair dismissal if there was no fair reason, the reason was insufficient, or the employer failed to follow a fair procedure, as outlined in the Acas Code of Practice on disciplinary and grievance procedures.

Constructive dismissal occurs when an employee resigns due to a serious breach of their contract by the employer, such as non-payment, bullying, or unreasonable changes to working conditions. Employees who feel they have been unfairly dismissed can seek advice from unions or Acas, and may take their claim to an employment tribunal, depending on their circumstances.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Scope of protection

Article 24 relates to termination of employment at the initiative of the employer.[479] A situation where a mandatory retirement age is set by statute, as a consequence of which the employment relationship automatically ceases by operation of law, does not fall within the scope of this provision. However, the termination of employment on the sole ground that the person has reached the pensionable age, which is permitted (but not mandated) by law, is not justified.[480]

Definition of "worker"

All workers who have signed an employment contract are entitled to protection in the event of termination of employment.[481] However, according to the Appendix, the State Party may exclude one or more of the following categories:

[479] Conclusions 2012, Statement of Interpretation on Article 24
[480] Conclusions 2020, Malta ; Conclusions 2012, Statement of Interpretation on Article 24
[481] Conclusions 2003, Italy

- workers engaged under a contract of employment for a specified period of time or a specified task.[482] In the public sector, the non-renewal of fixed-term contracts or the fact that such contracts are not converted into indefinite duration contracts, even though there are vacant positions within the workforce, cannot be regarded as dismissals contrary to Article 24 of the Charter.[483]
- workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration.[484] Under Article 24, exclusion of employees from protection against dismissal for six months during the probationary period is not reasonable if applied indiscriminately, regardless of the employee's qualification.[485] A one year period of exclusion is manifestly unreasonable and therefore not in conformity with the Charter.[486]
- workers engaged on a casual basis for a short period.[487]

This list is exhaustive. Exclusion of any other category of employee, such as employees having reached the normal retiring age, from protection against unfair dismissal is not in conformity with the Charter.[488]

Safeguards must exist to ensure that employers hiring workers in the platform or gig economy do not circumvent labour law as regards protection against dismissal on the grounds that a person performing work for them is self-employed, when in reality, after examination of the conditions under which such work is provided it is possible to identify certain indicators of the existence of an employment relationship.[489]

Definition of valid reasons

Article 24 establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship.[490] Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons).[491]

i. reasons connected with the capacity or conduct of the employee
A prison sentence delivered in court can be a valid ground for termination of an employment contract if such sentence is delivered for employment-related offences.[492] This is not the case with prison sentences for offences unrelated to the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work.[493]

ii. certain economic reasons
Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service.[494] The assessment relies on the domestic courts'

[482] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[483] *Associazione Professionale e Sindacale* (ANIEF) v. Italy, Complaint No. 146/2017, decision on the merits of 7 July 2020, §§ 104-106
[484] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[485] Conclusions 2012, Ireland; Conclusions 2012, Cyprus; Conclusions 2003, Italy
[486] Conclusions 2012, Ireland
[487] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[488] Conclusions 2012, Ireland
[489] Conclusions 2020, Albania
[490] Conclusions 2012, Statement of Interpretation on Article 24
[491] Conclusions 2012, Statement of Interpretation on Article 24
[492] Conclusions 2008, Lithuania
[493] Conclusions 2008, Lithuania
[494] Conclusions 2016, Latvia

interpretation of the law.[495] The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law.[496] Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run their enterprise as they see fit and the need to protect the rights of the employees.[497]

In cases of collective dismissals due to a reduction or change in the company's activities caused by the Covid19 crisis, due respect must be accorded to the Charter requirement that workers' representatives are informed and consulted in good time before redundancies and that the purpose of such consultations is respected in redundancy procedures, namely that the workers are made aware of reasons and scale of planned redundancies and that the position of the workers is taken into account when their employer is planning collective redundancies.[498]

Prohibited dismissals

A series of Charter provisions require increased protection against termination of employment on certain grounds:
- discrimination (Articles 1§2, 4§3, and 20);[499]
- trade union activities (Article 5);[500]
- participation in strikes (Article 6§4);[501]
- maternity (Article 8§2);[502]
- disability (Article 15);[503]
- family responsibilities (Article 27);[504]
- worker representation (Article 28).[505]

Only two reasons are examined under Article 24, namely:

i. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

National legislation or case law must contain express safeguards against retaliatory dismissal.[506] Safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals is essential in any situation in which a worker alleges a violation of the law.[507] In the absence of any explicit statutory ban, States Parties must be able to show how national legislation conforms to the requirement of the Charter.[508]

ii. temporary absence from work due to illness or injury.

[495] Conclusions 2016, Latvia citing Conclusions 2012, Turkey
[496] Conclusions 2012, Turkey
[497] Conclusions 2016, Latvia
[498] Statement on Covid-19 and social rights adopted on 24 March 2021
[499] Conclusions 2016, Latvia
[500] Conclusions 2016, Latvia
[501] Conclusions 2016, Latvia
[502] Conclusions 2016, Latvia
[503] Conclusions 2016, Latvia
[504] Conclusions 2016, Latvia
[505] Conclusions 2016, Latvia
[506] Conclusions 2016, Latvia
[507] Conclusions 2016, North Macedonia
[508] Conclusions 2016, Russian Federation

A time limit can be placed on protection against dismissal in such cases.[509] Absence from work can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee.[510]

As regards dismissal without notice in the event of permanent invalidity, the following factors are taken into consideration for the assessment:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?[511]
- are employers required to pay compensation for termination in such cases?[512]
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?[513]

iii. Dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age

States Parties should take adequate measures to ensure protection for all workers against dismissal on grounds of age.[514]

Dismissal on grounds of age will not constitute a valid reason for termination of employment unless a termination is, within the context of national law, objectively and reasonably justified by a legitimate aim such as a legitimate employment policy, labour market objectives or the operational requirements of the undertaking, establishment or service and provided that the means of achieving that aim are appropriate and necessary.[515]

Legislation which enables dismissal directly on grounds of age and does not, therefore, effectively guarantee the right to protection in cases of termination of employment, is contrary to the Charter.[516] The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.[517]

Adequate compensation

Right of appeal

Any employee who considers themself to have been dismissed without valid reason must have the right to appeal to an impartial body.[518] The burden of proof should not rest entirely on the complainant but should be the subject of an appropriate adjustment between employee and employer.[519]

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[509] Conclusions 2012, Ukraine
[510] Conclusions 2016, Latvia
[511] Conclusions 2008, Azerbaijan
[512] Conclusions 2008, Azerbaijan
[513] Conclusions 2008, Azerbaijan
[514] Conclusions 2007, Statement of Interpretation on Article 24
[515] Conclusions 2008, Lithuania; Conclusions 2007, Statement of Interpretation on Article 24
[516] *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, §§ 86, 89, 97, 99
[517] Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[518] Conclusions 2005, Cyprus, France, Estonia
[519] Conclusions 2008, Statement of Interpretation on Article 24 and Statement of Interpretation on the burden of proof in discrimination cases

Damages

Article 24 of the Charter requires that courts or other competent bodies are able to order adequate compensation, reinstatement or other appropriate relief.[520] In order to be considered appropriate, compensation should include reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body ruling on the lawfulness of the dismissal, the possibility of reinstatement and/or compensation sufficient both to deter the employer and proportionate to the damage suffered by the victim.[521]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive areas in principle contrary to the Charter.[522] If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[523]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the provisions in place regarding unfair and constructive dismissals, as well as the right to appeal and access to remedy.

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

- whether specific categories of employees are excluded from protection against unfair dismissal.
- whether the compensation ordered by the courts or other competent bodies is adequate and appropriate.

The ECSR on the basis of the information received and subject to more detailed information on the situation in law and practice, considers that Article 24 of the Charter can be accepted.

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

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

Situation in the United Kingdom

[520] Conclusions 2016, North Macedonia
[521] Conclusions 2016, North Macedonia, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016
[522] Conclusions 2012, Slovenia; Conclusions 2012, Finland, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016
[523] Conclusions 2012, Slovenia; Conclusions 2012, Finland, Finnish Society of Social Rights v. Finland, decision on the merits of 8 September 2016

In the UK, employees facing employer insolvency have several options for securing payment. According to the Insolvency Act 1986, employees are treated as preferential creditors for unpaid wages (within four months of insolvency) and unpaid holiday pay, subject to statutory caps.

Additionally, the Employment Rights Act 1996 allows employees to apply to the State for payment of certain debts, including unpaid statutory redundancy payments, arrears of pay (up to 8 weeks), statutory notice pay (up to 12 weeks), and holiday pay (up to 6 weeks), all subject to caps.

HM Revenue and Customs may also make payments for statutory sick pay, statutory maternity pay, and statutory paternity pay. Under the Pension Schemes Act 1993, the State can pay unpaid occupational or personal pension contributions from the last 12 months. Lastly, the Pension Protection Fund compensates members of eligible defined benefit pension schemes in the event of employer insolvency, provided specific conditions are met.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer.[524]

The term "insolvency" includes both situations in which formal insolvency proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of their creditors, and situations in which the employer's assets are insufficient to justify the opening of formal proceedings.[525]

In the event of the insolvency of their employer, workers' claims must be guaranteed by a guarantee institution or by any other effective form of protection.[526] States Parties which have accepted this provision benefit from a margin of discretion as to the form of protection of workers' claims; Article 25 does not require the existence of a specific guarantee institution.[527]

The appendix to the Charter stipulates, *inter alia*, the minimum amounts of wages and paid absence that must be covered depending on whether recourse is had to a "privilege system" (three months prior to the insolvency) or a "guarantee system" (eight weeks).[528]

The protection afforded, whatever its form, must be adequate and effective including in situations where the assets of an enterprise are insufficient to cover salaries owed to workers.[529] Guarantees must exist for workers that their claims will be satisfied in such cases.[530]

Employees' claims must take precedence over other creditors both under formal bankruptcy proceedings as well as in those cases when an enterprise closes down without formally being declared insolvent.[531]

[524] Conclusions 2003, France
[525] Conclusions 2012, Statement of Interpretation Article 25
[526] Conclusions 2012, Statement of Interpretation Article 25
[527] Conclusions 2003, France
[528] Conclusions 2012, Statement of Interpretation Article 25
[529] Conclusions 2003, France
[530] Conclusions 2012, Ireland
[531] Conclusions 2012, Albania

A privilege system, on its own, cannot be regarded as an effective form of protection in the meaning of Article 25.[532] While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets.[533]

It serves no purpose to have a privilege system when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations.[534]

Therefore, situations where there is no alternative to the privilege system are not in conformity with the Charter as such a system does not itself provide effective guarantees of protection of workers' claims in situations where the employer no longer has any assets.[535]

A privilege system where workers' claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs does not amount to an effective protection under the Charter.[536]

In order to demonstrate the adequacy in practice of the protection, States Parties must provide information, inter alia, on the average duration of the period from which a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution.[537]

States Parties may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level.[538] Three times the average monthly wage of the employee is an acceptable level.[539] In addition, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system.[540]

Certain categories of employees may, exceptionally, be excluded from Article 25 protection because of the special nature of their employment relationship.[541] However, it is for the ECSR to determine on each occasion whether the nature of the employment relationship warrants such an exclusion.[542] Under no circumstances may this be a reason for the exclusion of part-time employees and employees on fixed-term or other temporary contract.[543]

Exclusion of employees having worked less than one year for the same employer from protection against insolvency of their employer is contrary to the Charter.[544]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that there are provisions in place to ensure the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer.

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[532] Conclusions 2012, Statement of Interpretation Article 25
[533] Conclusions 2012, Statement of Interpretation Article 25
[534] Conclusions 2012, Statement of Interpretation Article 25
[535] Conclusions 2012 and 2020, Albania
[536] Conclusions 2003, Bulgaria
[537] Conclusions 2012, Ireland
[538] Conclusions 2012, Ireland
[539] Conclusions 2012, Slovakia, citing Conclusions 2005, Estonia
[540] Conclusions 2012, Slovakia
[541] Conclusions 2008, Statement of Interpretation on Article 25
[542] Conclusions 2008, Statement of Interpretation on Article 25
[543] Conclusions 2008, Statement of Interpretation on Article 25
[544] Conclusions 2012, Turkey

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

- whether employees' claims take precedence over other creditors in those cases when an enterprise closes down without formally being declared insolvent.
- whether workers' claims are ranked below mortgage obligations, foreclosure on property and bankruptcy costs.
- whether part-time employees and employees on fixed-term or other temporary contract are excluded from the protection offered.

On the basis of the information received and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 25 of the Charter can be accepted.

Article 26 – *The right to dignity at work*

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

Situation in the United Kingdom

The UK Government emphasizes the right to dignity at work, reinforced by laws and guidance to prevent bullying and harassment. In March 2022, the UK ratified the ILO Violence and Harassment Convention (No. 190). Employers have a duty of care to ensure a safe working environment, covering both mental and physical health. Legal protections include the Equality Act 2010, the Protection from Harassment Act 1997, and the Employment Rights Act 1996.

The Worker Protection (Amendment of Equality Act 2010) Act 2023 strengthens safeguards against workplace sexual harassment, requiring employers to take reasonable steps to prevent it. From 26 October 2024, breaches may lead to enforcement by the Equality and Human Rights Commission or employment tribunals, with potential compensation uplifts.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Sexual harassment is not necessarily a form of discrimination based on gender but always qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory attitude, directed towards one or more persons, or by an insistent attitude of other nature, which may undermine those persons' dignity or harm their career.[545]

[545] Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment shall be prohibited and repressed in the same way as acts of discrimination, independently from the fact that not all harassment behaviours are acts of discrimination, except when this is explicitly presumed by law.[546]

The Appendix to Article 26§1 specifies that States Parties have no obligation to enact legislation relating specifically to harassment, provided that the legal framework, as interpreted by the relevant national authorities ensures an effective protection in law and in practice against harassment in the workplace or in relation to work.[547]

The effectiveness of legal protection against sexual harassment depends on how the domestic courts interpret the law as it stands.[548]

Prevention

Article 26§1 requires States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) against sexual harassment.[549] In particular, they should inform workers about the nature of the behaviour in question and the available remedies.[550] Social partners should be consulted on measures to promote awareness, knowledge and prevention measures vis-à-vis sexual harassment in the workplace.[551]

Liability of employers and remedies

There is no need for a State's legislation to make express reference to harassment where that State's law encompasses measures making it possible to afford employees effective protection against the various forms of discrimination.[552]

This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be retaliated against for upholding these rights.[553]

Employers may be held liable towards persons working for them who are not their employees, such as subcontractors, self-employed persons, or customers and visitors, and who have suffered sexual harassment committed on their business premises or by employees answerable to them.[554]

The situation is not in conformity with Article 26§1 of the Charter where it has not been established that, in relation to the employer's responsibility, there are sufficient and effective remedies against sexual harassment in relation to work.[555]

Burden of proof

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[546] Conclusions 2014, Georgia
[547] Conclusions 2014, Georgia
[548] Conclusions 2007, Slovenia
[549] Conclusions 2018, Lithuania; Conclusions 2005, Republic of Moldova
[550] Conclusions 2005, Lithuania; Conclusions 2003, Italy
[551] Conclusions 2018, Ukraine
[552] Conclusions 2003, Bulgaria; Conclusions 2005, Republic of Moldova
[553] Conclusions 2007, Statement of Interpretation on Article 26§2
[554] Conclusions 2014, Finland
[555] Conclusions 2018, Lithuania; Conclusions 2018, Georgia

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.[556] The situation will not be in conformity with Article 26§1 of the Charter where there is no shift in the burden of proof in sexual harassment cases.[557]

Damages

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.[558] These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.[559]

In addition, the right to reinstatement should be guaranteed to employees who have been unfairly dismissed or have been pressured to resign due to the unfriendly environment determined by the sexual harassment.[560]A lack of appropriate and effective redress (compensation and reinstatement) in cases of sexual harassment is not in conformity with Article 26§1.[561]

Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person.[562] States Parties are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.[563]

Irrespective of admitted or perceived grounds, harassment creating a hostile working environment characterized by the adoption towards one or more persons of persistent behaviours which may undermine their dignity or harm their career shall be prohibited and repressed in the same way as acts of discrimination.[564] Harassment should be prohibited and repressed even when the harassing behaviour does not amount to discrimination.[565]

The Appendix to Article 26§2 specifies that States Parties have no obligation to enact legislation relating specifically to harassment.[566] However, States Parties to the Revised Charter having accepted Article 26§2 shall ensure an adequate legal protection of employees against distinctly negative and offensive actions or conduct at work.[567]

This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights.[568]

Prevention

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[556] Conclusions 2018, Azerbaijan; Conclusions 2014, Azerbaijan
[557] Conclusions 2018, Azerbaijan
[558] Conclusions 2018, Turkey; Conclusions 2005, Republic of Moldova
[559] Conclusions 2018, Turkey; Conclusions 2007, Slovenia
[560] Conclusions 2018, Turkey; Conclusions 2003, Bulgaria
[561] Conclusions 2018, Ukraine
[562] Conclusions 2003, Bulgaria
[563] Conclusions 2003, Bulgaria
[564] Conclusions 2007, Statement of Interpretation on Article 26§2
[565] Conclusions 2007, Statement of Interpretation on Article 26§2
[566] Appendix to the European Social Charter (Revised) - European Treaty Series - No. 163
[567] Conclusions 2005, Republic of Moldova
[568] Conclusions 2005, Republic of Moldova

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.[569] Article 26§2 imposes positive obligations on States Parties to take appropriate preventive measures (information, awareness-raising and prevention campaigns in the workplace or in relation to work) in order to combat moral harassment, in particular in situations where harassment is likely to occur.[570] In particular, they should inform workers about the nature of the behaviour in question and the available remedies.[571]

Specific measures to raise awareness about harassment in the workplace may include public education programmes, campaigns, cooperation with NGO's and employers' organisations, provision of online sources of information on harassment, etc.[572] A failure to take any preventative action, training or awareness-raising in such situations may amount to a violation of Article 26§2.[573]

Liability of employers and remedies

It must be possible for employers to be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them (independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator.[574]

The situation is not in conformity with Article 26§2 of the Charter where employers cannot be held liable in case of harassment involving employees under their responsibility, or on premises under their responsibility, when a person not employed by them is the victim or the perpetrator.[575]

Burden of proof

Under civil law, effective protection of employees requires a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.[576]

Damages

Under Article 26§2, victims of harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.[577] These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.[578]

In addition, the persons concerned must have a right to be reinstated in their post when they have been unfairly dismissed or pressured to resign for reasons linked to moral harassment.[579]

Opinion of the ECSR

[569] Conclusions 2018, Andorra; Conclusions 2003, Slovenia
[570] Conclusions 2014, Azerbaijan; Conclusions 2005, Republic of Moldova
[571] Conclusions 2005, Republic of Moldova
[572] Conclusions 2018, Serbia
[573] *Confederazione Generale Italiana del Lavoro (CGIL)* v. Italy, Complaint No 91/2013, decision on the merits of 12 October 2015, §295
[574] Conclusions 2014, Finland
[575] Conclusions 2014, Finland
[576] Conclusions 2007, Statement of Interpretation on Article 26§2
[577] Conclusions 2014, Azerbaijan
[578] Conclusions 2014, Azerbaijan
[579] Conclusions 2014, Azerbaijan

As regards the situation in the United Kingdom, the ECSR takes note of the detailed information regarding the measures in place to ensure the effective exercise of the right of all workers to protection of their dignity at work.

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

- whether there are appropriate preventive measures in place (information, awareness-raising and prevention campaigns in the workplace or in relation to work) against sexual and moral harassment.
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- whether employers may be held liable towards persons working for them who are not their employees, such as subcontractors, self-employed persons, or customers and visitors, and who have suffered sexual or moral harassment committed on their business premises or by employees answerable to them.
- whether there exists a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.

On the basis of the information received and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 26 of the Charter can be accepted.

Article 27§1 – *The right of workers with family responsibilities to equal opportunities and equal treatment*

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:
1. to take appropriate measures:
a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
b) to take account of their needs in terms of conditions of employment and social security;
c) to develop or promote services, public or private, in particular child daycare services and other childcare arrangements.

Situation in the United Kingdom

The UK Government supports workers with families through various measures, including parental leave, flexible working rights, and childcare support. Employees can take up to 18 weeks of unpaid parental leave per child, while Shared Parental Leave allows parents to share up to 50 weeks of leave and 37 weeks of pay.

From April 2024, new Carer's Leave regulations will grant one week of unpaid leave for those caring for dependants with long-term needs. Flexible working rights will also be available from day one of employment.

The UK State Pension has recognised periods of unemployment due to family responsibilities. The new State Pension is based on a person's National Insurance record. State Pension outcomes will equalise for men and women by the early 2040s, over a decade earlier than they would have done under the previous system.

To ease childcare costs, the UK is expanding free childcare provisions, with eligible parents of two-year-olds receiving 15 free hours weekly from April 2024. By September 2025, this will extend to parents of children aged 9 months to school age. Universal Credit childcare support has also increased. Furthermore, all employees have the legal right to request flexible working.

In Scotland, the government prioritizes fair work, family payments, and free early learning and childcare (ELC) to reduce child poverty and support working parents. The Scottish Child Payment and family grants provide financial relief, while 1140 hours of funded ELC helps parents balance work and childcare. The Scottish Government continues to develop policies to support employment and education for parents, especially women.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Under Article 27§1a of the Charter, States Parties should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to their family responsibilities.[580]

Therefore, measures need to be taken by States Parties to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular by means of vocational guidance, training and re-training.[581]

However, when the quality of standard employment services available to everyone is adequate, there is no need to provide extra services for people with family responsibilities.[582] The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security.[583]

Measures need to be taken concerning the length and organisation of working time.[584] Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.[585] These measures should apply equally to men and women.[586]

The type of measures to be taken cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).[587] Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights.[588]

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, that are available and accessible to workers with family

[580] Conclusions 2005, Sweden
[581] Conclusions 2005, Estonia
[582] Conclusions 2003, Sweden
[583] Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia
[584] Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia
[585] Conclusions 2005, Statement of Interpretation on Article 27§1b; see e.g Conclusions 2005, Estonia
[586] Conclusions 2005, Lithuania
[587] Conclusions 2019, Belgium
[588] Conclusions 2003, Sweden

responsibilities.[589] Preschool education should be free of charge and, if it is not, measures must be taken to make it financially accessible for vulnerable families.[590]

Where a State has accepted Article 16, childcare arrangements are dealt with under that provision.[591] In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.[592]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that detailed information has been submitted regarding the existing range of measures available to enable workers with family responsibilities to enter and remain in employment.

The ECSR considers that Article 27§1 can be accepted immediately.

Article 27§2 – *The right of workers with family responsibilities to equal opportunities and equal treatment*

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice.

Situation in the United Kingdom

The Government indicates that the Shared Parental Leave gives both parents the opportunity to spend time with their children in those important early months, and to balance this with their careers and working lives. It enables working parents to share up to 50 weeks of leave and up to 37 weeks of pay in the first year of the child's life.

The UK has launched an online tool, hosted on gov.uk, to make it easier for parents to check if they are eligible for Shared Parental Leave and to plan their leave. Also see the Government's response for Article 8§3 of the 1961 European Social Charter.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Article 27§2 provides for the right to parental leave which is distinct from maternity leave.[593] (Maternity leave is addressed under Article 8 of the Charter). Article 27§2 requires States Parties to provide the possibility for either parent to obtain parental leave, as an important element for the reconciliation of professional, private and family life. The duration and conditions of parental leave should be determined by States Parties.[594]

[589] Conclusions 2005, Statement of Interpretation on Article 27§1c; see e.g Conclusions 2005, Estonia
[590] Conclusions 2019, Armenia
[591] Conclusions 2003, Italy
[592] Conclusions 2003, Italy
[593] Conclusions 2011, Armenia
[594] Conclusions 2011, Armenia

Domestic law should entitle men and women to an individual right to parental leave on the grounds of the birth or adoption of a child.[595] With a view to promoting equal opportunities and equal treatment between men and women, the leave should, in principle, be provided on a non-transferable basis to each parent.[596] The States Parties are under a positive obligation to encourage the use of parental leave by either parent.[597] Remuneration of parental leave plays a vital role in the take up of childcare leave, in particular for fathers or lone parents.[598]

States Parties shall ensure that an employed parent is adequately compensated for their loss of earnings during the period of parental leave.[599] The modalities of compensation is within the margin of appreciation of the States Parties and may be either paid leave (continued payment of wages by the employer), a social security benefit, any alternative benefit from public funds or a combination of such compensations.[600]Regardless of the modalities of payment, the level must be adequate.[601] Unpaid parental leave is not in conformity with Article 27§2.[602]

The Covid-19 crisis must not be allowed to eradicate or roll back progress made in relation to gender equality in the labour market, especially having regard to the fact that such gender equality was far from achieved prior to the onset of the crisis.[603] Indications are that women's employment has been placed at greater risk than men's by the pandemic.[604] Women workers are likely at a greater danger of infection as they make up the vast majority of exposed domestic, health and social care workers.[605]

The need to reconcile family life with teleworking from home, home-schooling of children and childcare, combined with the stresses of potential Covid-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.[606] Faced with this situation, States Parties must take all necessary measures to apply and reinforce as appropriate Charter rights such as Article 27.[607]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the measures already in place to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child and it considers that Article 27§2 can be accepted immediately.

Article 27§3 – *The right of workers with family responsibilities to equal opportunities and equal treatment*

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

595 Conclusions 2011, Armenia
596 Conclusions 2011, Armenia
597 Conclusions 2015, Statement of interpretation on Article 27§2
598 Conclusions 2011, Armenia
599 Conclusions 2015, Statement of interpretation on Article 27§2
600 Conclusions 2015, Statement of interpretation on Article 27§2
601 Conclusions 2015, Statement of interpretation on Article 27§2
602 Conclusions 2019, Ireland, Malta
603 Statement on Covid-19 and social rights adopted on 24 March 2021
604 Statement on Covid-19 and social rights adopted on 24 March 2021
605 Statement on Covid-19 and social rights adopted on 24 March 2021
606 Statement on Covid-19 and social rights adopted on 24 March 2021
607 Statement on Covid-19 and social rights adopted on 24 March 2021

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Situation in the United Kingdom

The Government indicates that an employer must use a fair and reasonable procedure to decide whether to dismiss someone. An employer must put the reasons in writing for an employee who's pregnant or on maternity leave, regardless of how long they have been employed.

Being pregnant or on maternity leave, wanting to take family leave (for example parental, paternity or adoption leave) and making a flexible working request would automatically qualify as unfair reasons for dismissal.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Family responsibilities must not constitute a valid ground for termination of employment. In this context, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children as well as other members of the immediate family who need care and support (for instance elderly parents).[608] The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement for works with family responsibilities.[609]

Workers dismissed on such illegal grounds must be afforded the same level of protection as that afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter.[610] In particular, courts or other competent bodies should be able to order reinstatement of an employee unlawfully dismissed and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim.[611]

Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed.[612] If there is a ceiling on compensation for pecuniary damage, the victim must be able to seek unlimited compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time.[613]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that, according to the information provided, being pregnant or on maternity leave, wanting to take family leave (for example parental, paternity or adoption leave) and making a flexible working request would automatically qualify as unfair reasons for dismissal.

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

[608] Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g Conclusions 2003, Bulgaria
[609] Conclusions 2003, Statement of Interpretation on Article 27§3; see e.g Conclusions 2003, Bulgaria
[610] Conclusions 2007, Finland
[611] Conclusions 2007, Finland
[612] Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3
[613] Conclusions 2011, Statement of Interpretation on Articles 8§2 and 27§3, see also *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No.158/2017, decision on the merits of 11 September 2019, §96

- whether the protection is also extended to workers who are responsible for other members of the immediate family who need care and support apart from their children (for instance elderly parents).
- whether workers dismissed on such illegal grounds are afforded the same level of protection as that afforded in other cases of discriminatory dismissal.
- whether courts or other competent bodies are able to order reinstatement of an employee unlawfully dismissed and/or to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim, and whether there exist ceilings on compensation.

On the basis of the information received and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 27§3 of the Charter can be accepted.

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

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

Situation in the United Kingdom

The Government indicates that the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) provides individual workers with the rights which allow them to join a trade union and to participate in trade union activities.

Under TULRCA, it is automatically unfair for an employer to dismiss an employee on the grounds of trade union membership or for participating in union activities. Where an independent union has been recognised by an employer for collective bargaining purposes, TULRCA requires that the employer provides paid time off to union representatives, to carry out their union duties, and to union members, to participate in union activities.

The Advisory, Conciliation and Arbitration Service Code of Practice states that employers should make facilities available to union representatives.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities.[614] It complements Article 5, which recognises a similar right in respect of trade union representatives.[615]

[614] Conclusions 2003, Bulgaria
[615] Conclusions 2003, Bulgaria

Types of workers' representatives

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.[616] States Parties may therefore recognise different kinds of workers' representatives other than trade union representatives.[617]

However, Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer.[618] Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.[619]

Protection granted to workers' representatives

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against any other detrimental treatment.[620] Prejudicial acts may entail, for instance, denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing lay-offs or assigning retirement options, being subjected to shifts, cut-down or any other taunts or abuse.[621]

The rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical form.[622] To this end, the protection afforded to workers shall be extended for a reasonable period after the effective end of period of their office.[623]

Situations where the protection of worker's representatives against dismissal is limited for the period of performance of their functions, until their mandate expire, are not in conformity with Article 28 of the Charter.[624] Nor are situations where the protection afforded to workers' representatives lasts for three months after the end of their mandate.[625]

The ECSR has found the situation to be in conformity with the requirements of Article 28 in countries where the protection is extended for one year after the end of mandate of workers' representatives[626] or where the protection granted to workers' representatives is extended for six months after the end of their mandate.[627] Remedies must be available to worker representatives who are dismissed unlawfully.[628]

Where discrimination takes place, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.[629] The compensation must at least

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616 Conclusions 2003, Bulgaria
617 Conclusions 2003, Bulgaria
618 Conclusions 2018, Latvia
619 Conclusions 2014, Austria
620 Conclusions 2018, Russian Federation
621 Conclusions 2018, Azerbaijan
622 Conclusions 2010, Statement of Interpretation on Article 28, *citing* International Movement ATD Fourth World v. France, *Complaint No. 33/2006, decision on the merits of 5 December 2007, §59*
623 Conclusions 2010, Statement of Interpretation on Article 28
624 Conclusions 2018, Armenia
625 Conclusions 2018, Austria
626 Conclusions 2018, Austria, citing Conclusions 2010, Estonia, and Conclusions 2010, Slovenia
627 Conclusions 2018, Austria, citing Conclusions 2010, Bulgaria
628 Conclusions 2010, Norway
629 Conclusions 2010, Bulgaria

correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.[630]

Facilities granted to workers' representatives

Protected workers must be granted the following facilities: paid time off to represent employees, financial contributions to work councils, the use of premises and materials for works councils, as well as other facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971 (support in terms of benefits and other welfare benefits because of the time off to perform their functions; access for workers' representatives or other elected representatives to all premises, where necessary; the access without any delay to the undertaking's management board if necessary; the authorisation to regularly collect subscriptions in the undertaking; the authorization to post bills or notices in one or several places to be determined with the management board, the authorization to distribute information sheets, factsheets and other documents on general trade unions' activities).[631]

Moreover, the participation in training courses on economic, social and union issues should not result in a loss of pay.[632] Training costs should not be borne by the workers' representatives.[633]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR notes that there are provisions in place that protect employees who are trade union members or participate in union activities against dismissal. Furthermore, additional protection is envisaged for trade union representatives and members where an independent union has been recognised by an employer for collective bargaining purposes.

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

- whether adequate forms of representation and protection against dismissal are available to workers' representatives (other than trade union representatives) also outside the scope of collective bargaining with the employer.
- whether the protection afforded to workers is extended for a reasonable period after the effective end of period of their office.
- what remedies are available to worker representatives who are dismissed unlawfully.
- whether protected workers are granted the facilities mentioned in the R143 Recommendation concerning protection and facilities to be afforded to workers representatives within the undertaking adopted by the ILO General Conference of 23 June 1971.

In view of these requirements, the ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to consider accepting Article 28 of the Charter.

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

630 Conclusions 2007, Bulgaria
631 Conclusions 2010, Statement of Interpretation on Article 28
632 Conclusions 2010, Statement of Interpretation on Article 28
633 Conclusions 2010, Statement of Interpretation on Article 28

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

Situation in the United Kingdom

The Government indicates that any large-scale redundancies proposed at an establishment over a 90-day period need to be subject to a consultation exercise to identify if there are alternatives to job losses. Where there are more than 20 but fewer than 100 potential losses the minimum consultation period is 30 days, for 100 or more employees it is 45 days.

There is a requirement to notify the Secretary of State for Business and Trade of the proposed collective redundancies prior to the start of statutory consultation. Throughout the redundancy process employers still have obligations to their employees. The Government helps affected parties through the Rapid Response Service, which gives support and advice to employers and their employees when faced with redundancy.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Under Article 29, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies.[634]

Redundancies concerned

Under Article 29 the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.[635] The definition of collective redundancies in domestic law must not be too restrictive.[636]

A situation where collective redundancies are such where the number of employees to be made redundant within 30 days is at least five in undertakings employing between 20 and 50 persons; at least 10 in undertakings employing between 50 and 100 persons; at least 10% of employees in undertakings employing between 100 and 300 persons; or at least 30 employees in undertakings employing 300 or more persons is compatible with the Charter.[637]

Notion of workers' representatives

[634] Conclusions 2003, Statement of Interpretation on Article 29
[635] Conclusions 2003, Statement of Interpretation on Article 29; Conclusions 2018, Latvia
[636] Conclusions 2014, Azerbaijan
[637] Conclusions 2014, Azerbaijan

The appendix to the Charter defines workers' representatives as persons who are recognised as such under national legislation or practice, in accordance with ILO Convention No. 135 on workers' representatives.[638]

When employers implement information and consultation procedures preceding collective redundancies, employees should be represented by persons acting on behalf of all workers employed in the workplace.[639] Such representatives may be either bodies operating in the employer's enterprise (for example, trade unions or workers' councils) or ad hoc representatives appointed to take part in this process.[640]

National law should ensure that employees may appoint representatives even when they are not otherwise represented in the context of a particular workplace by a trade union or other representative body.[641] Such representatives should represent all employees who may be potentially subject to collective redundancies and should not suffer any negative consequences as a consequence of their activities in this regard.[642]

Consultation procedure

Prior information and consultation

Under Article 29, consultation procedures must take place in good time prior to collective redundancies.[643] National law should thus ensure that employers are obliged to provide employees with information about planned collective redundancies sufficiently far in advance of the process, so as to enable employees and their representatives to become familiar with the key aspects of the planned redundancies.[644]

National law should also guarantee the right of employees' representatives to be provided with all relevant information throughout the entire duration of the consultation process.[645] Consultation should be conducted within a time period that is sufficient to ensure that employees' representatives have an opportunity to present suitable proposals with a view to avoiding, limiting or mitigating the effect of the proposed redundancies.[646]

Employers should be required to provide employees' representatives with all the relevant information necessary to ensure the integrity and effectiveness of the information and consultation process.[647] This information should in particular include the reasons for the proposed redundancies, the criteria for determining which employees are to be made redundant, the proposed order and scheduling of such redundancies, the amount of any cash benefits or other forms of compensation and the scope and content of any planned social measures which are designed to mitigate the consequences of this process.[648]

Purpose of the consultation

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[638] Explanatory Report to the European Social Charter (Revised) – European Treaty Series – No. 163; see also Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163
[639] Conclusions 2014, Statement of Interpretation on Article 29
[640] Conclusions 2014, Statement of Interpretation on Article 29
[641] Conclusions 2014, Statement of Interpretation on Article 29
[642] Conclusions 2014, Statement of Interpretation on Article 29
[643] Conclusions 2014, Statement of Interpretation on Article 29
[644] Conclusions 2014, Statement of Interpretation on Article 29
[645] Conclusions 2014, Statement of Interpretation on Article 29
[646] Conclusions 2014, Statement of Interpretation on Article 29
[647] Conclusions 2014, Statement of Interpretation on Article 29
[648] Conclusions 2014, Statement of Interpretation on Article 29

Article 29 requires that States Parties establish an information and consultation procedure which should precede the process of collective redundancies. The provisions of Article 29 are directed – on the one hand – towards ensuring that workers are made aware of reasons and scale of planned redundancies, and – on the other hand – towards ensuring that the position of workers is taken into account when their employer is planning collective redundancies, in particular as regards the scope, mode and manner of such redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.[649]

Article 29 provides for the employer's duty to consult with workers' representatives and the purpose of such consultation. This obligation is not just an obligation to inform unilaterally, but implies that a process will be set in motion, i.e. that there will be sufficient dialogue between the employer and the workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, although it is not necessary that agreement be reached.[650] The failure of the employer to carry out their information and consultation obligations amounts to a violation of Article 29.[651]

Simple notification of redundancies to workers or their representatives is not sufficient.[652] The consultation procedure must cover the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.[653]

As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant, or by providing them with other forms of assistance with a view to obtaining a new job.[654]

Preventive measures and sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice.[655] Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met.[656]

Provision must be made for sanctions after the event, and these must be effective, i.e. a sufficient deterrent for employers.[657] The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.[658]

Opinion of the ECSR

[649] Conclusions 2014, Statement of Interpretation on Article 29
[650] Conclusions 2003, Sweden; Conclusions 2003, Statement of Interpretation on Article 29
[651] Conclusions 2014, Georgia
[652] Conclusions 2014, Georgia
[653] Conclusions 2014, Georgia
[654] Conclusions 2014, Statement of Interpretation on Article 29
[655] Conclusions 2014, Georgia
[656] Conclusions 2003 and 2007, Sweden
[657] Conclusions 2003, Sweden
[658] Conclusions 2003 Statement of Interpretation on Article 29

As regards the situation in the United Kingdom, the ECSR notes that there are measures in place to ensure the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies.

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

- who participates in the consultations, representing the workers employed.
- whether the representatives of the employees have the right to be provided with all relevant information throughout the entire duration of the consultation process.
- whether the consultation procedure covers support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package.
- whether employers cooperate in practice with administrative authorities or public agencies which are responsible for the policy counteracting unemployment.
- whether it is possible to have recourse to administrative or judicial proceedings before the redundancies are made when employers fail to fulfil their obligations.

On the basis of the information received and subject to more detailed information on the situation in law and practice, the ECSR considers that Article 29 of the Charter can be accepted.

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

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:
a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
b) to review these measures with a view to their adaptation if necessary.

Situation in the United Kingdom

The UK Government is committed to a long-term approach to tackling poverty, with £276 billion allocated to welfare in 2023/24, including significant increases in benefits, pensions, and housing allowances. Measures include a 6.7% rise in working-age benefits, an increase in Local Housing Allowance to help low-income renters and expanded childcare support for working parents. Employment is emphasized as a key factor in poverty reduction, with Jobcentres offering targeted support and the National Living Wage rising to £11.44 per hour from April 2024.

Support for disadvantaged children includes increased funding for education through the Pupil Premium and National Funding Formula, expanded free school meal eligibility, and initiatives like the Holiday Activities and Food program. Civil society organizations receive funding for social support services, including a £76 million Community Organisations Cost of Living Fund and investments in tackling loneliness and encouraging volunteering.

In Scotland, human rights legislation underpins efforts to combat poverty, with initiatives focused on increasing social security uptake, reducing fuel poverty, and meeting ambitious child poverty targets. Tackling poverty and protecting people from harm is one of three critical and interdependent missions for the Scottish Government. The Government monitors progress through statutory reports and independent oversight bodies to ensure policies effectively support those in need.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Living in a situation of poverty and social exclusion violates the dignity of human beings.[659]

Personal scope

States Parties are not obliged to apply to migrants in an irregular situation the range of economic, social and cultural measures that are to be taken in order to secure the right to protection against poverty and social exclusion.[660]

The co-ordinated approach required by Article 30 involves the adoption of positive measures, most of which cannot be regarded as being applicable to groups not covered by the personal scope of the Charter. Article 30 is thus not applicable with regard to migrants in an irregular situation.[661] Nor does it apply to unlawfully present foreign minors.[662]

An overall and coordinated approach

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework,[663] a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance.[664]

It must link and integrate public policies in a consistent way, embedding the fight against poverty and social exclusion in all strands of policy and moving beyond a purely sectoral or target group approach.[665] Effective coordination mechanisms should exist at all levels, including at the level of delivery of assistance and services to the end users.[666]

Adequate resources must be made available for the implementation of the measures taken in the context of the overall and coordinated approach under Article 30.[667] In many instances, a significant and enduring expansionary fiscal policy effort by the States Parties will be necessary to prevent an increase in poverty and social exclusion.[668]

Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.[669] The

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[659] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[660] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, para. 211, citing DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147
[661] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, para. 211, citing DCI v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§ 145-147
[662] Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §145
[663] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[664] Conclusions 2013, Statement of interpretation on Article 30
[665] Statement on Covid-19 and social rights adopted on 24 March 2021
[666] Statement on Covid-19 and social rights adopted on 24 March 2021
[667] Statement on Covid-19 and social rights adopted on 24 March 2021
[668] Statement on Covid-19 and social rights adopted on 24 March 2021
[669] Conclusions 2005, Slovenia

measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.[670] As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.[671]

i. Measures to prevent and remove obstacles to access fundamental social rights

The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.[672]

ii. monitoring mechanisms involving all relevant actors

States Parties must also adopt monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.[673]

Further, States' failure to collect reliable data and statistics in respect of groups generally acknowledged to be socially excluded or disadvantaged, including highly dependent adults with disabilities deprived of access to care and accommodation centres, prevents an "overall and co-ordinated approach" to the social protection of these persons and constitutes an obstacle to the development of targeted policies concerning them.[674]

Assessing the effectiveness of policies

When assessing compliance with the Charter, definitions of poverty and social exclusion and measuring methodologies applied at the national level and the main data made available are systematically reviewed.[675]

The ECSR also takes into account a set of indicators in order to assess in a more precise way the effectiveness of policies, measures and actions undertaken by States Parties within the framework of this overall and co-ordinated approach.[676] In doing so, it has made clear that its consideration of state practice in terms of Article 30 reflects an understanding of both income and multi-dimensional understandings of poverty.[677]

i. Resources

One of the key indicators in this respect is the level of resources (including any increase in this level) that have been allocated to attain the objectives of the strategy,[678] in so far as "adequate resources are an essential element to enable people to become self-sufficient".[679]

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[670] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[671] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[672] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[673] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[674] International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision of 18 March 2013, §§ 193, 197
[675] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[676] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France; Conclusions 2013, Statement of interpretation on Article 30
[677] See, e.g., the Committee description of 'the multidimensional poverty and exclusion phenomena' in its Conclusions 2005, Norway and Conclusions 2007, Belgium
[678] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France
[679] Conclusions 2003, Statement of interpretation on Article 30, see e.g. Conclusions 2003, France

ii. Relative poverty rate

In addition, the main indicator used to measure poverty is the relative poverty rate (this corresponds to the percentage of people living under the poverty threshold, which is set at 60% of the equivalised median income).[680]

iii. At-risk-of-poverty-rate

Furthermore, the at-risk-of-poverty rate before and after social transfers (Eurostat) is also used as a comparative value to assess national situations.

These resource-related and income-based indicators are employed without prejudice to the use of other suitable parameters that are taken into account by national anti-poverty strategies or plans (e.g. indicators relating to the fight against the 'feminization' of poverty, the multidimensional phenomena of poverty and social exclusion, the extent of 'inherited' poverty, etc.).[681]

The absence of decisive progress in combating poverty and social exclusion in a context of economic growth is a ground for non-conformity under Article 30.[682]

Poverty and social exclusion in times of crisis

Concerning the repercussions of the economic crisis on social rights, the ECSR held that, by acceding to the Charter, the Parties have accepted to pursue by all appropriate means, the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively realised.[683]

Accordingly, it has concluded that "the economic crisis should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need the protection most".[684]

The human rights approach of poverty has been reaffirmed by the Guiding Principles on extreme poverty and human rights (submitted by the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona and adopted by the United Nations Human Rights Council on 27 September 2012) and which the ECSR takes into consideration.[685]

Social exclusion

In particular, the ECSR has interpreted the scope of Article 30 as relating both to protection against poverty (understood as involving situations of social precarity) and protection against social exclusion (understood as involving obstacles to inclusion and citizen participation), in an autonomous manner or in combination with other connecting provisions of the Charter.[686]

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680 Conclusions 2013, Statement of interpretation on Article 30
681 Conclusions 2013, Statement of interpretation on Article 30
682 See, e.g., Conclusions 2017, Ireland
683 General Introduction to Conclusions XIX-2 (2009)
684 General Introduction to Conclusions XIX-2 (2009)
685 Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2013, §81; Conclusions 2013, Statement of interpretation on Article 30
686 Conclusions 2013, Statement of interpretation on Article 30

Concerning social exclusion, States have the positive obligation to encourage citizen participation in order to overcome obstacles deriving from the lack of representation of minorities in the general culture, media or the different levels of government, so that these groups perceive that there are real incentives or opportunities for engagement to counter the lack of representation.[687]

Further, the reference to the social rights enshrined in Article 30 should not be understood too narrowly. In fact, the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes on a special importance.[688]

In this regard, the right to vote, as with other rights relating to civic and citizen participation, constitutes a necessary dimension in social integration and inclusion and is thus covered by Article 30.[689] Therefore, States must also facilitate access to identification documents that are fundamental to obtaining residency and citizenship in order to exercise civil and political participation.[690]

These two dimensions of Article 30, poverty and social exclusion, constitute an expression of the principle of indivisibility which is also contained in other provisions of the Charter (for example, enjoyment of social assistance without suffering from a diminution of political or social rights, Article 13).[691]

The relationship between Article 30 and other Charter rights

The ECSR has emphasized the very close link between the effectiveness of the right recognized by Article 30 of the Charter and the enjoyment of the rights recognized by other provisions, such as the right to work (Article 1), access to health care (Article 11), social security allowances (Article 12), social and medical assistance (Article 13), the benefit from social welfare services (Article 14), the rights of persons with disabilities (Article 15), the social, legal and economic protection of the family (Article 16) as well as of children and young persons (Article 17), right to equal opportunities and equal treatment in employment and occupation without sex discrimination (Article 20), the rights of the elderly (Article 23) or the right to housing (Article 31), without forgetting the important impact of the non-discrimination clause (Article E), which obviously includes non-discrimination on grounds of poverty.[692]

Consequently, together with the indicators mentioned above, when assessing state compliance with Article 30, the ECSR also takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure).[693]

This approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30; but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.[694]

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[687] Conclusions 2013, Statement of interpretation on Article 30 citing Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §107
[688] Conclusions 2013, Statement of interpretation on Article 30
[689] Conclusions 2013, Statement of interpretation on Article 30 citing European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §99
[690] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 103 and 108
[691] Conclusions 2013, Statement of interpretation on Article 30
[692] Conclusions 2013, Statement of interpretation on Article 30
[693] Conclusions 2013, Statement of interpretation on Article 30
[694] Conclusions 2013, Statement of interpretation on Article 30, citing EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §59

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the information provided regarding the UK's approach as well as measures and strategies in place to protect against poverty.

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

- what efforts are taken to measure and combat social exclusion, as well as any available statistics in this regard.
- how the Government coordinates the efforts in the various policy fields in order to achieve the "overall and coordinated approach" required under Article 30 of the Revised Charter and thus addressing the multidimensional nature of poverty and social exclusion.
- whether persons affected by poverty and social exclusion are involved in the monitoring mechanisms.
- whether minorities are encouraged to participate in society and whether they are represented in the general culture, media or the different levels of government.
- which definitions of poverty and social exclusion are adopted, as well as which measuring methodologies and data are applied at the national level.

In view of these requirements, the ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to conside accepting Article 30 of the Charter.

Article 31§1 – *The right to housing*

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
1. to promote access to housing of an adequate standard.

Situation in the United Kingdom

The UK Government is committed to ensuring that everyone has access to safe and decent housing. In England, various legislative standards regulate rented housing, including requirements for safety inspections, smoke and carbon monoxide detectors, and compliance with the Decent Homes Standard. The Government plans to extend this standard to private rentals and enhance social housing regulations with stricter enforcement measures from April 2024. Additional efforts focus on addressing overcrowding and supporting tenants to maintain stable housing.

In Scotland, the proposed Human Rights Bill will incorporate the right to adequate housing, reinforcing the country's long-term housing strategy. Homes must meet the minimum Tolerable Standard (TS), ensuring structural stability, heating, sanitation, and safety. Different regulations apply to private and social rentals, with strict quality requirements for landlords.

Wales is increasing investment in affordable housing and improving existing homes. Key initiatives include building more social housing, transitioning people from temporary accommodation, and funding housing adaptations for disabled individuals. Policy reforms aim to enhance housing affordability, fair rents, and homelessness support. The Welsh Government also

continues to refine data collection and policy assessment processes to improve housing conditions across the country.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Under Article 31§1 of the Charter, States Parties shall guarantee to everyone the right to housing and shall promote access to adequate housing.[695] States must take the legal and practical measures which are necessary and adequate for the effective protection of the right in question.[696]

States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources.[697]

States Parties must guarantee to everyone the right to adequate housing.[698] They should promote access to housing in particular to different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.[699]

Adequate housing

The notion of adequate housing must be defined in law. “Adequate housing” means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;[700]
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence;[701]
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.[702]

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock.[703] It must also be applied to housing available for rent as well as to housing owner occupied housing.[704]

Positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers. As a result of their history, the

[695] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
[696] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
[697] European Roma and Travellers Forum (ERTF) v. France, Complaint No. 64/2011, decision on the merits of 24 January 2012, §95
[698] Conclusions 2003, France
[699] Conclusions 2003, Italy
[700] Conclusions 2003, France
[701] Conclusions 2003, France
[702] Conclusions 2003, France
[703] Conclusions 2003, France
[704] Conclusions 2003, France

Roma have become a specific type of disadvantaged group and vulnerable minority.[705] They, therefore, require special protection.[706]

Special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.[707] The failure to provide a sufficient number of halting sites for Travellers as well as the poor living conditions and operational failures on such sites have led to findings of non-conformity under this provision.[708]

Likewise, housing policies which have resulted in the spatial and social segregation of Roma (poorly built housing, on the outskirts of towns, segregated from the rest of the population), have also led to breaches of the Charter.[709]

The fact that some refugee and asylum-seeking unaccompanied children may remain for lengthy periods of time in temporary accommodation facilities (emergency hotels and Safe zones) does not satisfy the requirements of long-term accommodation suited to their specific circumstances, needs and extreme vulnerability and violates Article 31§1.[710] These facilities do not offer the quality standards necessary for the long-term accommodation of unaccompanied children.[711]

Effectiveness

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords.[712]

States Parties are expected to demonstrate how the adequacy of the existing housing stock (whether rented or not, privately or publicly owned) is checked, whether regular inspections are carried out and what follow-up is given to decisions finding that a dwelling does not comply with the relevant regulation.[713] Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.[714]

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States Parties to the Charter are responsible, in terms of their international obligations to ensure that such responsibilities are properly exercised.[715]

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[705] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[706] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[707] Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39-40
[708] European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, §§ 38, 39, 49; Conclusions 2019, France
[709] European Roma Rights Center (ERRC) v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, §48
[710] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §145
[711] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §145
[712] Conclusions 2003, France
[713] Conclusions 2019, Turkey, Ukraine
[714] Conclusions 2003, France
[715] European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §26, citing European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29

Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.[716]

Legal protection

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial judicial or other remedies.[717] Any appeal procedure must be effective.[718]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the measures and strategies in place to promote access to housing of an adequate standard.

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

- whether the notion of 'adequate housing' is defined in law.
- measures taken to promote access to different groups of vulnerable persons, including Roma and Travellers, refugees and asylum-seeking persons, especially unaccompanied children.
- whether there is access to affordable and impartial judicial or other remedies.

The ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to consider accepting Article 31§1of the Charter.

Article 31§2 – *The right to housing*

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
2. to prevent and reduce homelessness with a view to its gradual elimination.

Situation in the United Kingdom

The UK Government recognizes that homelessness and rough sleeping are devolved issues across the UK. In England, the Government is committed to ending rough sleeping within this Parliament and fully enforcing the Homelessness Reduction Act 2017 (HRA). Since 2018, over 675,000 households have been prevented from becoming homeless or supported into settled housing.

A £1 billion Homelessness Prevention Grant helps local authorities provide temporary accommodation, assist with rental deposits, and mediate with landlords. The 'Ending Rough Sleeping for Good' strategy invests over £2 billion in tackling homelessness, with initiatives like the Rough Sleeping Initiative funding outreach, housing, mental health, and employment support.

[716] European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §26; European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No. 39/2006, decision on the merits of 5 December 2007, §79
[717] Conclusions 2003, France
[718] Conclusions 2015, Austria, Article 16

Scotland's Ending Homelessness Together Action Plan focuses on prevention, rapid response, and prioritizing settled housing. Housing First and Rapid Rehousing play a key role, supported by a £100 million fund. The Government is also strengthening protections for domestic abuse survivors and former prisoners.

New homelessness prevention legislation, emphasizing early intervention and shared public responsibility, is set to be introduced. All councils have Rapid Rehousing Transition Plans in place since 2019, and the Government continues to refine its strategy through stakeholder collaboration.

Wales' approach is outlined in the Government's previous response under Article 31§1, focusing on increasing affordable housing and improving homelessness prevention and support services.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

Definition

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1.[719]

Article 31§2 obliges States Parties to gradually reduce homelessness with a view to its elimination.[720] Reducing homelessness implies the introduction of measures such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness.[721]

Preventing homelessness

States Parties must take action to prevent categories of vulnerable people from becoming homeless. This requires States Parties to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing and housing allowances. (cf. Article 31§3).[722]

Though State authorities enjoy a wide margin of discretion in measures to be taken concerning town planning, they must strike a balance between the general interest and the fundamental rights of the individuals, in particular the right to housing and its corollary of ensuring individuals do not become homeless.[723]

Protection from evictions

Forced eviction can be understood to cover situations involving deprivation of housing which a person occupied due to insolvency or wrongful occupation.[724] States Parties must set up procedural safeguards to limit the risk of eviction.[725]

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[719] Conclusions 2003, Italy; Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §135
[720] Conclusions 2003, Sweden
[721] Conclusions 2003, Sweden
[722] Conclusions 2003, Sweden; Conclusions 2005, Lithuania; Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on the merits of 1 July 2014, §136
[723] Conclusions 2007, Italy
[724] Conclusions 2003, Sweden; Conclusions 2019, Ukraine
[725] Conclusions 2005, Lithuania

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants.[726] However, the criteria of illegal occupation must not be unduly wide, and evictions should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.[727]

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.[728] A notice period of one month in case of eviction due to insolvency or wrongful occupation is not reasonable.[729]

When evictions do take place, they must be carried out under conditions that respect the dignity of the persons concerned.[730] The law must prohibit evictions carried out at night or during the winter period.[731] When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.[732]

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.[733]

Right to shelter

According to Article 31§2, homeless persons must be offered shelter as an emergency solution.[734] To ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to clean water and heating and sufficient lighting.[735] Another basic requirement is the security of the immediate surroundings.[736] Nevertheless, temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing, once the minimum requirements are met.[737]

States Parties shall foresee sufficient places in emergency shelters[738] and the conditions in the shelters should be such as to enable living in keeping with human dignity.[739]The temporary supply

[726] European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51
[727] European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §51
[728] Conclusions 2003, Sweden
[729] Conclusions 2019, Ukraine
[730] Conclusions 2003, Sweden
[731] Conclusions 2003, Sweden
[732] Conclusions 2003, Sweden
[733] Conclusions 2003, Sweden
[734] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §46
[735] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[736] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[737] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[738] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §107
[739] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109

of shelter, however adequate, cannot be considered satisfactory.[740] Individuals who are homeless should be provided with adequate housing within a reasonable period.[741]

In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.[742] The right to shelter should be adequately guaranteed for migrants, including unaccompanied migrant children, and asylum-seekers.[743] States Parties are required to provide adequate shelter to children unlawfully present in their territory for as long as they are within their jurisdiction.[744]

As the scope of Articles 31§2 and 17 overlap to a large extent, the ECSR assesses the issue of the right to a shelter of unaccompanied foreign minors under the scope of Article 31§2 when States Parties have accepted both provisions.[745]

The housing of people in reception camps and temporary shelters which do not satisfy the standards of human dignity is in violation of the aforementioned requirements.[746] States should develop detailed guidelines on standards of reception facilities, assuring adequate space and privacy for children and their families.[747]

The exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, in view of their specific needs and extreme vulnerability, or otherwise limit or dilute its responsibility under the Charter.[748]

The ECSR considers that eviction from shelters without the provision of alternative accommodation must be prohibited.[749] Eviction from shelter of persons irregularly present within the territory of a State Party should be prohibited as it would place the persons concerned, particularly children, in a situation of extreme helplessness, which is contrary to the respect for their human dignity.[750]

States Parties are not obliged to provide alternative accommodation in the form of permanent housing within the meaning of Article 31§1 for migrants in an irregular situation.[751]

Opinion of the ECSR

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[740] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §106
[741] European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §106
[742] Conclusions 2003, Italy
[743] Conclusions 2019, Greece
[744] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §117
[745] European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §173
[746] Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §62
[747] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §121
[748] International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §133
[749] Conclusions 2015, Statement of Interpretation on Article 31§2
[750] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §110
[751] European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §60

As regards the situation in the United Kingdom, the ECSR notes that there are provisions and strategies in place to prevent and reduce homelessness.

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

- measures taken to limit the risk of eviction and protect from forced eviction.
- whether sufficient places exist in emergency shelters and what are the conditions in the shelters.
- whether adequate shelter is provided to children unlawfully present in the territory for as long as they are within the jurisdiction.

The ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to consider accepting Article 31§2 of the Charter.

Article 31§3 – *The right to housing*

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
3. to make the price of housing accessible to those without adequate resources.

Situation in the United Kingdom

Housing affordability is a devolved issue in the UK. In England, the Government is investing £1.2 billion from April 2024 to restore Local Housing Allowance (LHA) rates to cover the 30th percentile of local market rents, benefiting 1.6 million low-income households with an average of £800 in additional annual support.

Discretionary Housing Payments (DHPs) provide further assistance to those facing shortfalls in rent, with local authorities granted flexibility in distributing funds. Since 2010, over 696,100 affordable homes have been built, and the £11.5 billion Affordable Homes Programme continues to expand affordable housing options. The Government also supports institutional investment in the private rental sector and the Build to Rent initiative to improve housing supply and quality.

In Scotland, the Government allocated £83.7 million in 2023/24 for DHPs to help over 92,000 households sustain their tenancies, with additional funds supporting families and children. In 2024/25, this budget will increase to £90.5 million.

Wales' approach to housing affordability is covered under Article 31§1, focusing on increasing affordable housing and financial support for those in need.

For detailed information, please consult the First National Report on the non-accepted provisions presented by the United Kingdom.

ECSR interpretation (DIGEST)

An adequate supply of affordable housing must be ensured for persons with limited resources.[752]

[752] Conclusions 2003, Sweden

Social housing

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.[753]

In order to establish that measures are being taken to make the price of housing accessible to those without adequate resources, States Parties to the Charter must show that the affordability ratio of the poorest applicants for housing is compatible with their level of income.[754]

States Parties must:

- adopt appropriate measures for the provision of housing, in particular social housing.[755] Social housing should target, in particular, the most disadvantaged;[756]
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive;[757] judicial or other remedies must be available when waiting periods are excessive;[758]

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or Travellers wishing to live in mobile homes.[759]

Housing benefits

Under Article 31§3, States Parties are required to adopt comprehensive housing benefit systems to protect low-income and disadvantaged sections of the population.[760] Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.[761]

The right to affordable housing must not be subject to any kind of discrimination on any grounds mentioned by Article E of the Charter.[762]

Opinion of the ECSR

As regards the situation in the United Kingdom, the ECSR takes note of the measures in place to make the price of housing accessible to those without adequate resources.

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

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[753] Conclusions 2003, Sweden
[754] FEANTSA v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §72.
[755] Conclusions 2003, Sweden
[756] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 98-100
[757] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §131
[758] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §131
[759] International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §§ 149-155; Conclusions 2019, France
[760] Conclusions 2003, Sweden; Conclusions 2019, Greece
[761] Conclusions 2003, Sweden
[762] Conclusions 2019, Turkey

- whether the affordability ratio of the poorest applicants for housing is compatible with their level of income.
- whether there exist measures to ensure that waiting periods for the allocation of housing are not excessive and that judicial or other remedies are available when waiting periods are excessive.
- what legal remedies are available in case the application for housing benefits is rejected.

The ECSR considers that further information is necessary to assess whether the situation in law and practice is compatible with the Charter. It encourages the Government to pursue its efforts and to consider accepting Article 31§3 of the Charter.

APPENDIX I

— The United Kingdom and the European Social Charter —

Signatures, ratifications and accepted provisions

The United Kingdom ratified the European Social Charter on 11/07/1962 and has accepted 60 of the Charter's 72 paragraphs.

It has not signed the Additional Protocol to the European Social Charter or the Additional Protocol Providing for a System of Collective Complaints.

The United Kingdom has signed but not yet ratified the Amending Protocol to the European Social Charter and the Revised Charter.

The Charter in domestic law

The United Kingdom is a dualist State.

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			

*On 26/06/1987 the United Kingdom denounced Article 8§4a. On 21/08/1989 the United Kingdom denounced Article 7§8 and Article 8§4b.

** On 12/07/2021, the United Kingdom denounced Article 18§2 with effect from 26/02/2022. The denunciation of the acceptance of Article 18§2 of the Charter shall extend to the Isle of Man.

Update: April 2024
Factsheet – UNITED KINGDOM

Department of the European Social Charter
Directorate General Human rights and Rule of Law

Monitoring the implementation of the European Social Charter [763]

I. Reporting system [764]

Reports submitted by the United Kingdom

Between 1965 and 2024, the United Kingdom has submitted 43 reports on the application of the 1961 Charter.

The 42nd report, which was submitted on 11/04/2023, 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 19 December 2023, an ad hoc report on the cost-of-living crisis was submitted by the United Kingdom[765].

[763] 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.

[764] 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.

[765] 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 [766]

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

► *Article 18§2 – right to engage in a gainful occupation in the territory of other Parties-Simplifying existing formalities and reducing dues and taxes*
The fees charged for work permits are excessive.

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

► *Article 3§1 – right to safe and healthy working conditions - Safety and health regulations*
Not all self-employed and domestic workers are covered by the occupational health and safety regulations.

► *Article 12§1 – right to social security – existence of a social security system*
- The level of the Statutory Sick Pay (SSP) is inadequate;
- The minimum levels of the Employment Support Allowance (ESA) are inadequate;
- The level of long-term incapacity benefits is inadequate;
- The level of unemployment benefits is inadequate.

► *Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need*
- The level of social assistance benefits is not adequate;
- The granting of social assistance benefits to non-nationals is subject to an excessive length of residence requirement.

Thematic Group 3 "Labour rights" - Conclusions XXII-3 (2022)

► *Article 2§2 – right to just conditions of work – public holidays with pay*
The right of all workers to public holidays with pay is not guaranteed.

► *Article 2§4 – right to just conditions of work – reduced working hours or additional holidays in dangerous or unhealthy occupations*
Workers exposed to residual occupational health risks are not entitled to appropriate compensatory measures.

► *Articles 2§5 – right to just conditions of work – weekly period of rest*
There are insufficient safeguards to prevent workers from working for more than twelve consecutive days without a rest period.

► *Articles 4§1 – right to a fair remuneration – decent remuneration*
The minimum wage does not ensure a decent standard of living.

► *Article 4§2 – right to a fair remuneration – increased remuneration for overtime work*
Workers do not have adequate legal guarantees to ensure increased remuneration for overtime.

► *Article 4§4 – right to a fair remuneration – reasonable notice of termination of employment*
Notice periods are manifestly unreasonable for workers with less than three years of service.

► *Article 4§5 - right to a fair remuneration – Limits to wage deductions*
The absence of adequate limits on deductions from wages equivalent to the National Minimum Wage may result in depriving workers who are paid the lowest wage and their dependents of their means of subsistence.

► *Article 5 – right to organise*
- The right to organise is not guaranteed to members of the armed forces;

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

- Legislation which makes it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and which severely restricts the grounds on which a trade union may lawfully discipline members, represents an unjustified incursion into the autonomy of trade unions.

► *Article 6§2 – right to bargain collectively – negotiation procedures*
Workers and trade unions do not have the right to bring legal proceedings in the event that employers offer financial incentives to induce workers to exclude themselves from collective bargaining.

► *Article 6§4 – right to bargain collectively – collective action*
- Lawful collective action is limited to disputes between workers and their employer;
- The requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking action, is excessive;
- The protection of workers against dismissal when taking industrial action is insufficient.

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

► *Article 7§3 – right of children and young persons to protection – Prohibition of employment of young persons subject to compulsory education*
The daily and weekly duration of light work permitted to children who are still subject to compulsory education during school holidays is excessive and may deprive them of the full benefit of education.

► *Article 7§5 – right of children and young persons to protection – fair pay*
The minimum wage of young workers aged 16 and 17 is not fair.

► *Article 7§10 – right of children and young persons to protection – special protection against physical and moral dangers*
Child victims of sexual exploitation can be criminally prosecuted.

► *Article 8§1 – right of employed women to protection of maternity – maternity leave*
The minimum amount of maternity benefit is inadequate.

► *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;
- - The amount of child benefits is insufficient.

► *Article 17 – right of mothers and children to social and economic protection*
- The rate of children at risk of poverty is too high;
- Not all forms of corporal punishment are prohibited in all settings;
- Children in an irregular migration situation placed in hotels are not adequately protected from negligence, violence or exploitation;
- The age of criminal responsibility is too low;
- Pain inducing restraint techniques are used in young offender institutions;
- The length of pre-trial detention of children in England is excessive.

► *Article 19§6 – right of migrant workers and their families to protection and assistance – Family reunion* and *Article 19§10 – right of migrant workers and their families to protection and assistance – equal treatment for the self-employed*
- Social benefits are excluded from the calculation of the income of a migrant worker who has applied for family reunion;
- The level of means required to bring in the family or certain family members are so restrictive as to prevent family reunion;
- The fees applicable in the United Kingdom concerning family reunification are prohibitive and may deprive the right guaranteed under article 19§6 of its substance;
- The family members of a migrant worker are not granted an independent right to remain after exercising their right to family reunion.

► *Article 19§8 - Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation*

The ground of expulsion based solely on the length of prison sentence (12 months) goes beyond the grounds for expulsion permitted by Article 19§8 of the Charter.

► *Article 19§10 – Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed*
The grounds of non-conformity under Articles 19§6 and 19§8 apply also to self-employed migrants.

The ECSR also considered that the failure to provide requested information on Articles 7§5 and 16 amounts to a breach by the United Kingdom of its reporting obligations under Article 21 of the 1961 Charter.

The ECSR 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 10§1 - Conclusions XXII-1 (2020)
► Article 10§3 - Conclusions XXII-1 (2020)
► Article 10§4 - Conclusions XXII-1 (2020)
► Article 15§1 - Conclusions XXII-1 (2020)
► Article 18§3 - Conclusions XXII-1 (2020)

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

► Article 3§2 - Conclusions XXII-2 (2021)
► Article 11§3 - Conclusions XXII-2 (2021)
► Article 14§2 - Conclusions XXII-2 (2021)

Thematic Group 3 "Labour rights"

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Thematic Group 4 "Children, families, migrants"

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II. Examples of progress achieved in the implementation of rights under the Charter
(non-exhaustive list)

Thematic Group 1 "Employment, training and equal opportunities"

► Access to a court and recognition of the right of appeal against the certifications provided for under section 79 of the Equal Treatment in Employment Act (Northern Ireland) to justify refusing employment on grounds of safeguarding national security or public order.

► Adoption of the Equality Act on 8 April 2010. This Act, inter alia, requires the Government, when making strategic decisions about the exercise of their functions, to have regard to the desirability of reducing socioeconomic equalities; reforms and harmonises equality law and restates in one text the enactments relating to discrimination and harassment linked to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in areas such as employment, access to services, education; enables certain employers to be required to publish information about the differences in pay between male and female employees.

► An agreement adopted on 6 June 2005 has removed inequalities between spouses with regard to matrimonial property in Northern Ireland.

► Protection against discrimination on grounds of disability was strengthened (Disability Discrimination Act 1995).

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

► The Control of Asbestos Regulations came into force on 6 April 2012, updating previous asbestos regulations to take into account of the European Commission's view that the UK had not fully implemented the EU Directive 2009/148/EC on exposure to asbestos. According to Article 2 of these Regulations, the control limit of the concentration of asbestos on the atmosphere is 0.1 f/cm3 of air averaged over a continuous period of 4 hours.

Thematic Group 3 "Labour rights"

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Thematic Group 4 "Children, families, migrants"

► A comprehensive review of Gypsy and Traveller accommodation policy has been undertaken. An informed and strategic approach is taken to accommodation needs, and the planning system identifies land to meet these needs. Government funding for socially rented sites is available, and the security of tenure of those residing on such sites has been strengthened.

► Corporal punishment has been abolished in both State schools and grant-maintained schools in the United Kingdom (Education Act 1986 (No. 2)).

► The protection of children from sexual exploitation and trafficking for economic exploitation strengthened (Sexual Offences Act 2003 Asylum and Immigration Act 2004).

► An appeal may be brought before the Immigration Appeals Tribunal against deportation orders made by the Home Secretary on grounds of national security or for political reasons (1997 Act governing the Special Immigration Appeals Commission).

► Nationals of States Parties to the Charter are no longer prevented from having access to public funds even if they happen to be subject to immigration control. They may claim means tested social assistance benefits on an equal footing with United Kingdom nationals (Social Security (immigration and Asylum) Consequential Amendments regulations 2000).

► Eligibility for housing benefit (in the United Kingdom, the Isle of Man, Scotland and Northern Ireland), long tenancies for local authority housing and the right to occupy housing (in Scotland and in Northern Ireland) has been extended to foreign nationals who are citizens of States that are Contracting Parties to the Charter provided that they are habitually resident (orders of 1997, 1998 and 1999 on housing and the homeless).

► The Children and Families Act 2014 received Royal Assent on 13 March 2014. Part 3 of the Act applies to England only and sets out a new framework for children and young people who have special educational needs and disabilities.

► Scotland and Wales abolished all forms of corporal punishment in all settings.

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 ECSR 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 ECSR of Social Rights and the Governmental ECSR of the European Social Charter and European Code of Social Security (“the Governmental ECSR”), 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 ECSR 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 ECSR of Ministers to improve the implementation of the Charter system and its monitoring arrangements. This includes an invitation to the European ECSR 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 ECSR 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 ECSR 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 ECSR of Social Rights and related ECSR 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 ECSRs 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.