

EXTRACT FROM THE DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS (01/09/2008)

<https://rm.coe.int/168049159f>

Article 23

Every elderly person has the right to social protection.

Appendix : For the purpose of the application of this paragraph, the term « for as long as possible » refers to the elderly person's physical, psychological and intellectual capacities.

Article 23 of the Charter is identical to Article 4 of the Additional Protocol.

Article 23 of the Charter is the first human rights treaty provision to specifically protect the rights of the elderly. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for elderly persons, obliging the Parties to devise and carry out coherent actions in the different areas covered. It is a dynamic provision in the sense that "the appropriate measures it calls for may change over time in line with a new and progressive notion of what life should be for elderly persons."⁵⁹⁹

Article 23 overlaps with other provisions of the Charter which protect elderly persons as members of the general population, such as Article 11 (Right to protection of health), Article 13 (Right to social and medical assistance) and Article 12 (Right to social security). Article 23 requires states to make focused and planned provision in accordance with the specific needs of elderly persons.

One of the primary objectives of Article 23 is to enable elderly persons to remain full members of society. The expression "full members" means that elderly persons must suffer no ostracism on account of their age. The right to take part in society's various fields of activity should be granted to everyone active or retired, living in an institution or not. The effects of restrictions to the legal capacity should be limited to the purpose of the measure.

On a general level, the Committee has examined national policies for the elderly and the level and development of national expenditure for social protection and services for the elderly, as well as measures to allow/encourage elderly persons to remain in the labour force.⁶⁰⁰

Non-discrimination legislation (or similar legislation) should exist at least in certain domains protecting persons against discrimination on grounds of age.⁶⁰¹

Elderly persons at times may have reduced capacity making powers or no such powers or capacity at all. Therefore, there should exist a procedure for 'assisted decision making' for the elderly.⁶⁰²

⁵⁹⁹ Conclusions XIII-5, Statement of Interpretation on Article 23, p. 455.

⁶⁰⁰ Conclusions XIII-5, Finland, p. 305

⁶⁰¹ Conclusions 2003, France, p. 186; Conclusions 2005, Sweden, p. 711.

⁶⁰² Conclusions 2003, France, p. 186.

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;

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a 'decent life' and play an active part in public, social and cultural life. The Committee compares pensions with the average wage levels and the overall cost of living. Pensions must be index-linked.⁶⁰³

The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer's allowance for family members looking after an elderly relative.

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

Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers that 1§b of Article 23 presupposes the existence of services and facilities and that elderly persons have the right to certain services and facilities. Therefore, the Committee examines not only information relating to the provision of information about these services and facilities but also these services and facilities themselves. In particular, information is required on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.^{604 605}

⁶⁰³ Conclusions 2003, France, p. 186.

⁶⁰⁴ Conclusions 2003, France, p. 186.

⁶⁰⁵ Conclusions 2005, Slovenia, p. 659.

- 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 elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. Policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.⁶⁰⁶

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

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for any psychological problems in respect of the elderly, and adequate palliative care services.⁶⁰⁷

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

The final part of Article 23 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.^{608 609}

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the

cost. All institutions should be licensed, subject to a declaration regime, to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate.⁶¹⁰

⁶⁰⁶ Conclusions 2003, Slovenia, p. 530.

⁶⁰⁷ Conclusions 2003, France, p. 189.

⁶⁰⁸ Conclusions 2003, Slovenia, p. 530.

⁶⁰⁹ Conclusions 2005, Slovenia, p. 659.

⁶¹⁰ Conclusions 2005, Slovenia, p. 659.

Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.⁶¹¹

⁶¹¹ Conclusions 2003, Slovenia, p. 530.