Manual for the Labour Inspection Office on the European Social Charter and relevant standards

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Manual for the Labour Inspection Office on the European Social Charter and relevant standards

August 2025

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This publication is developed within the framework of the Council of Europe Project "Further Enhancement of Social and Economic Rights in Georgia."

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Cover design and layout:
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I. Introduction and legal framework

This Manual for the Labour Inspection Office of Georgia (LIO) on the European Social Charter (the ESC)[1] and relevant standards is designed to provide Georgian labour inspectors with an understanding of the ESC itself and the main standards embodied in it, the case law of the European Committee of Social Rights (ECSR) and the European Court of Human Rights (ECtHR), and the influence of the ESC on national legal norms, the effective application of which falls within the competence of LIO. The manual aims to equip labour inspectors with the knowledge and tools necessary to ensure compliance with labour standards with a view to promoting workers' rights and addressing violations effectively.

1. A brief description of LIO's mandate and relevant social rights enshrined in the ESC

LIO is a key governmental body responsible for monitoring and enforcing labour rights and occupational safety and health standards in workplaces across the country. It plays a crucial role in protecting workers' rights, ensuring safety at workplaces and promoting fair employment practices.[2]

LIO's mandate covers a wide range of labour-related areas:

- occupational health and safety (ensuring compliance with workplace safety measures, risk prevention and protective regulations);
- labour rights (monitoring working conditions, employment contracts, fair remuneration, etc.);
- equal treatment and non-discrimination (enforcing anti-discrimination laws and gender equality in the workplace);
- forced labour and human trafficking (identifying and addressing cases of forced labour and exploitation).

In accordance with its mandate, LIO has the authority to:

- conduct unannounced workplace inspections to assess compliance with labour rights and occupational safety standards;
- investigate violations related to employment contracts, working hours, wages and occupational health and safety;
- issue binding recommendations and sanctions in case of non-compliance;
- provide the public with information promoting the observance of labour norms and take care of the raising of public awareness through information campaigns and other effective actions;
- collaborate with international organisations and national institutions to improve labour conditions in Georgia.[3]

LIO operates under national legislation and international labour standards, including those established by the ESC, the International Labour Organization (ILO) and other relevant international treaties. By aligning with European and international labour standards, LIO contributes to strengthening Georgia's labour market and harmonising national policies with EU and Council of Europe requirements.

The ESC is a pivotal instrument safeguarding social and economic rights across Europe, guaran-

1 European Social Charter (revised) (https://www.coe.int/en/web/european-social-charter).
2 Art. 5 of Law of Georgia on the Labour Inspection Service, No. 7178-Iს, 2020 (https://www.matsne.gov.ge/ka/document/view/5003057?publication=4).
3 Art. 5 of Law of Georgia on the Labour Inspection Service.

teeing a broad spectrum of rights related to employment, housing, health, education and social protection. For labour inspectorates, understanding the ESC and its associated case law is essential to ensure compliance and uphold workers' rights.

The ESC contains key provisions pertinent to labour inspection such as the right to just conditions of work (Art. 2), the right to safe and healthy working conditions (Art. 3), the right to fair remuneration (Art. 4), the right to organise (Art. 5), the right to bargain collectively (Art. 6), all of which are the foundation of labour rights and set the standards that labour inspectorates must enforce.

The ECSR monitors compliance with the ESC by interpreting its provisions and providing guidance on their implementation.[4] The ECtHR, which primarily addresses civil-political and socio-economic rights under the European Convention on Human Rights (the ECHR) in order to achieve harmonious protection of those rights, relies on the values established by the ESC in its case law.[5] A thorough understanding of the practices of these international bodies is indispensable for LIO.

2. Important aspects of legal regulation

The ratification of the ESC is based on an *à la carte* principle.[6] Georgia, which ratified the ESC on 22 August 2005, accepted 63 of its 98 paragraphs,[7] including labour rights-related regulations relevant to LIO's activities, such as the right to work (Art. 1), the right to reasonable working hours and rest periods (Art. 2.1 and 2.5), the right to public holidays with pay (Art. 2.2), the right to additional guarantees for workers performing night work (Art. 2.7), the right to an increased rate of remuneration for overtime work (Art. 4.2), the right of men and women to equal pay for work of equal value (Art. 4.3), the right to a reasonable period of notice for termination of employment (Art. 4.4), the right to organise (Art. 5), the right to bargain collectively (Art. 6), the right of children and young persons to protection (Art. 7), the rights of employed women to protection of maternity, with regard to both working time and unsafe working conditions (Art. 8.3–8.5), the right to equal opportunities and equal treatment without discrimination on the grounds of sex (Art. 20), the right to dignity at work (Art. 26) and the right of workers with family responsibilities to equal opportunities and equal treatment (Art. 27).

On the other hand, some relevant provisions remain unaccepted by Georgia, e.g. the right to annual holiday with pay (Art. 2.3), the right to reduced working hours or additional holidays in dangerous or unhealthy occupations (Art. 2.4), the right to information on the employment contract (Art. 2.6), the right to safe and healthy working conditions (Art. 3), the right to decent remuneration (Art. 4.1), the right to limits on deductions from wages (Art. 4.5), the right to maternity leave (Art. 8.1), the right to employment of persons with disabilities (Art. 15.2), the right of workers to be informed and consulted (Art. 21) and the right of workers to take part in the determination and improvement of working conditions and working environment (Art. 22).

It should be noted that the ECSR assesses both the compliance of national regulations with the ratified provisions of the ESC and the progress made in areas regulated by provisions of the ESC that have not been accepted in a particular country.[8] This type of assessment, where individual provisions of national legal regulation are evaluated in the context of the ESC and the standards established therein, should be viewed not only as a message to decision-makers, but also as a valuable source of interpretation of legal regulation for legal practitioners, including labour inspectors.

Bearing in mind that Art. 77.1 of the Labour Code of Georgia[9] excludes the right of LIO to impose

4 https://www.coe.int/en/web/european-social-charter/european-committee-of-social-rights.
5 https://www.echr.coe.int/.
6 Under Art. A of the ESC, the State parties undertakes: to consider Part I of the ESC 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 the ESC: Art. 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 ESC 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.
7 https://www.coe.int/en/web/european-social-charter/georgia-and-the-european-social-charter.
8 The last report for Georgia was prepared in 2021; ECSR considered that there are no major obstacles to the acceptance by Georgia of Arts. 2.3, 2.4, 2.6, 3.1, 3.2, 3.3, 21, 22, 24 (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
9 Labour Code of Georgia, No. 4113-რს, 2020 (https://matsne.gov.ge/en/document/view/1155567?publication=21).

sanctions for the violation of rights provided for in Arts. 47–50 of the Labour Code, which regulate the termination of employment, it is important, at the same time, to emphasise that, as mentioned above, the mandate of LIO includes not only organising inspections and imposing sanctions for violations, but also providing information and consultation, along with having the right of legislative initiative. Therefore the standards established by the ESC regarding the legal regulation of the termination of employment relationships[10] cannot be considered irrelevant to LIO's activities.

3. General aspects

Before discussing the specific standards of legal regulation established by the ESC, it is important to note that the adequacy of legal regulation, as well as its implementation in practice, is taken into account when assessing how those standards are incorporated into national law. The concept of adequacy, in the context of Art. H of the ESC, according to which the provisions of the ESC must not prejudice the provisions of national law under which more favourable treatment would be accorded to the persons protected, allows those provisions to be viewed as the minimum threshold, the necessary guarantees for the protection of workers' rights.

At the same time, the mere fact of having a rule in national legal system, which prohibits certain conduct or establishes certain rights, is insufficient for implementing the ESC standard. Measures must also be taken to ensure the practical implementation of such a rule and labour inspectorates have a decisive role to play in effectively implementing it.[11] For example, the ECSR has stated that a ban on employing children under 15 years of age cannot in itself be considered an effective measure if, in the presence of data on non-compliance with the requirement and numerous examples of younger children being employed, no practical measures are taken to ensure the proper implementation of the legal norm.[12]

Another extremely important aspect for legal practitioners is the interpretation and application of national legal norms. In the event of a gap in legal regulation or a doubt as to how an existing legal norm should be applied in a specific situation, it is important to refer to the ESC standards and their interpretation in the ECSR and ECtHR case law, especially in cases where the state has ratified relevant ESC provisions. It is important to note that the ECSR has interpreted the standards of the ESC with a view to being able to respond to present situations and problems. The purpose of the ESC, as a living instrument dedicated to the values of dignity, equality and solidarity, is to give life and meaning to the fundamental social rights of all human beings. A teleological approach should be adopted when interpreting the ESC, i.e. it is necessary to seek the interpretation that is most appropriate to realise the aim and achieve the object of the ESC, not that which would restrict obligations to the greatest possible degree.[13]

From a labour inspectorate's perspective, effective procedural safeguards and deterrent sanctions are of the utmost importance as a tool both to deter violations and to create conditions for effective investigation and sanctioning. On the other hand, an equally significant part of LIO's mandate relates to disseminating information and providing consultations, as well as preparing proposals to initiate changes in legal regulation in those areas where the ESC standards are not ensured at the national level. Such a comprehensive mandate enables LIO to effectively pursue its statutory goals and the standards established by the ESC can become a guiding source.

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10 Including the right to protection in case of dismissal (Art. 24), the right to protection from illegal maternity related dismissals (Art. 8.2) (both non-accepted by Georgia) and the right to information and consultation in collective redundancy procedures (Art. 29) (accepted by Georgia).

11 Art. I of ESC; International Commission of Jurists v. Portugal, Complaint No. 1/1998, ECSR decision on the merits of 9 September 1999 (par. 32) (https://hudoc.esc.coe.int/eng/?i=cc-01-1998-dmerits-en); European Federation of National Organisations working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53, ECSR decision on the merits of 8 September 2009 (par. 28) (https://hudoc.esc.coe.int/eng/?i=cc-53-2008-dmerits-en); International Association Autism-Europe v. France, Complaint No.13/2002, ECSR decision on the merits of 4 November 2003 (par. 53) (https://hudoc.esc.coe.int/eng/?i=cc-13-2002-dmerits-en).

12 International Commission of Jurists v. Portugal, Complaint No. 1/1998, ECSR decision on the merits of 9 September 1999 (https://hudoc.esc.coe.int/eng/?i=cc-01-1998-dmerits-en).

13 World Organisation against Torture v. Ireland, Complaint No. 18/2003, ECSR decision on the merits of 7 December 2004 (par. 60) (https://hudoc.esc.coe.int/eng?i=cc-18-2003-dmerits-en); Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, ECSR decision on the merits of 23 October 2012 (par. 30) (https://hudoc.esc.coe.int/eng?i=cc-69-2011-dmerits-en).

II. General standards:

1. Scope of application

The effectiveness of the protection of rights enshrined in the ESC depends significantly on the scope of protection applicable and the absence of the possibility of unjustified circumvention of the legal regulations. The right of the worker to earn his or her living in an occupation freely entered upon (Art. 1.2), assessed by the ECSR as including the prohibition of forced labour,[14] determines the need to broadly interpret the concept of "employee", commonly understood as a person working under an employment contract. As can be seen from the ESC text, the term "worker" is used instead of the term "employee". From the ECSR case law, it is quite clear that this choice is not accidental, and the mere fact that a person works without an employment contract cannot serve as a basis for concluding that he or she is not entitled to the guarantees arising from the employment relationship.

When discussing regulating the platform or gig economy, the ECSR examines whether, according to national legal regulations, workers in the platform or gig economy are generally regarded as employees, self-employed workers or an intermediary category, their rights in terms of working hours, paid holiday and minimum wage, whether the powers of the labour inspection services include preventing exploitation and unfair working conditions in this particular sector, and any existing remedies workers have access to, in particular to challenge their employment status.[15] The ECSR welcomes the legal framework under which employers are obliged to check whether the contracts that they conclude involve an employment relationship or a self-employed activity, and the labour inspectorate is authorised to conduct inspections and, in the event of inadequate legal regulation, to retrospectively apply the rules governing employment relations.[16]

This trend is also evident in the ECSR's assessment of the other ESC provisions. For example, in its conclusions on Art. 24 of the ESC, which regulates protection in cases of the termination of employment, the ECSR has stated that dismissal protection for workers (labour providers) should include safeguards 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, having examined the conditions under which such work is provided, it is possible to identify certain indicators that an employment relationship exists.[17] In addition, the provisions of Art. 3 of the ESC on the right to safe and healthy working conditions, which are interpreted as designed to guarantee the right to safe and healthy working conditions not only for employed persons but also for the self-employed, ought to apply to all sectors of the economy if only on account of the technical advances and the increasing mechanisation manifest in every branch of activity.[18]

In this respect, it is important to note that the Labour Code of Georgia provides a narrow concept of beneficiaries of protection in the field of labour rights, specifying only those performing under employment contract,[19] whereas the Organic Law of Georgia on Occupational Health and Safety[20] provides a broader one, by including both employees, who carry out certain work on the basis of an employment agreement, and "other persons", who are defined as those who perform work or activity with the employer's permission or based on another agreement.[21]

14 Conclusions I – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=I_Ob_-3/Ob/EN).
15 Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/?i=2020/def/GEO/1/2/EN); Conclusions 2020 – Lithuania – Art. 1-2 (https://hudoc.esc.coe.int/?i=2020/def/LTU/1/2/EN).
16 Conclusions XXII-1 – Germany – Art. 1-2 (https://hudoc.esc.coe.int/?i=XXII-1/def/DEU/1/2/EN).
17 Conclusions 2020 – Albania – Art. 24 (https://hudoc.esc.coe.int/?i=2020/def/ALB/24/EN).
18 Conclusions II – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/?i=II_Ob_-3/Ob/EN).
19 Art. 3.3 of the Labour Code of Georgia.
20 Organic Law of Georgia on Occupational Health and Safety, No. 4283-IIს, 2019 (https://shroma.ge/wp-content/uploads/2021/10/Organic-Law-of-Georgia-on-Occupational-Health-and-Safety-EN.pdf).
21 Art. 3 of the Organic Law of Georgia on Occupational Health and Safety.

In the context of the interpretation of the ESC provisions discussed above, it can be concluded that LIO's mandate must include not only the right to assess the compliance of the working conditions of all persons with safety and health requirements, but also to determine an employment relationship by law, emphasising the substance of the relationship instead of the form (the title) of the contract. In other words, if a person with whom a civil contract (provision of services, authorship, etc.) has been concluded demands rights arising from an employment relationship (e.g. the right to a minimum wage, the right to dismissal only on the statutory grounds applicable to the termination of employment contracts, etc.) and provides arguments that the relationship in question complies with the concept of employment relations,[22] both the court hearing a labour dispute and LIO assessing the situation within its mandate must have the authority to establish that the parties were bound by an employment relationship, and apply labour law norms and the standards for protection of workers' rights enshrined therein. Noteworthy examples of such an interpretation are given in the recommendations provided by the Public Defender's Office (PDO) regarding the rights of platform workers (Bolt[23] and Wolt[24] couriers), noting that the main characteristics of employment relationships are the orientation towards the process (performance of work functions), subordination (when the procedure for performing work is determined by the employer) and remuneration (reward is paid for the work functions performed), upon the determination of which the fact of employment relationships is established regardless of how the contractual relationship is formalised, and the person performing the work is assessed as an employee to whom the guarantees arising from the employment relationship apply, since treating such a person differently would result in discrimination. In providing the opinion that the platform workers in question must be regarded as employees instead of independent contractors and/or self-employed persons, the PDO highlighted, among other things, the performance of work under the conditions established in advance by the platform, under strict instructions and supervision; the necessity for the courier to be registered on the platform; the fact that reward, the method of its calculation and its payment are established by the platform; the right of the platform to cancel orders on behalf of the courier, to evaluate the quality of services provided and apply the consequences associated with it, including the right to temporarily or permanently suspend the use of the platform; and the control of all the information related to provision of services (the geographical location, number of deliveries, their duration, customer feedback, etc.).

2. Non-discrimination

According to Art. E of the ESC, the enjoyment of rights set forth in the ESC must be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. In addition, to assess the practice of the ECtHR, it is important to mention that the principles in question are also enshrined in Art. 14 and Protocol 12 of the ECHR. These provisions have no independent existence and must be combined with one of the substantive provisions.[25] For example, when deciding whether a trade union of workers in a certain field has been subject to discriminatory restrictions, the assessment must be made by applying Art. E of the ESC in conjunction with Art. 5 of the ESC, which regulates the right to organise.[26]

The ESC provisions relating to equal opportunities and non-discrimination are further enshrined in Art. 1.2 (the right of the worker to earn his or her living in an occupation freely entered upon),

22 According to Art. 2.1 of the Labour Code of Georgia, labour relations comprise the performance of work by an employee for an employer under organised labour conditions in exchange for remuneration.

23 https://ombudsman.ge/eng/qvela-rekomendatsia/sakhalkho-damtsvelma-boltis-gafitsuli-kuriere-bis-sakmeze-diskriminatsia-daadgina.

24 https://ombudsman.ge/eng/191127024215ganskhvavebuli-politikuri-mosazreba/sakhalkho-damtsvelma-voltis-kurieris-mimart-shromit-urtiertobashi-ganskhvavebuli-mosazrebis-nishnit-diskriminatsia-daadgina.

25 Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, ECSR decision on the merits of 15 June 2005 (par. 34) (https://hudoc.esc.coe.int/eng/?i=cc-26-2004-dmerits-en); Van Der Mussele v. Belgium, Application no. 8919/80, ECtHR judgment on the merits of 23 November 1983 (par. 43) (https://hudoc.echr.coe.int/eng?i=001-57591).

26 Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France, Complaint No. 26/2004, ECSR decision on the merits of 15 June 2005 (https://hudoc.esc.coe.int/eng/?i=cc-26-2004-dmerits-en).

Art. 4.3 (the right to equal pay for work of equal value), Art. 15.2 (the rights of disabled workers) and Art. 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex).[27]

Discrimination may arise either by treating people in the same situation differently or by treating people in different situations identically. Discrimination may also arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all.[28]

A difference in treatment between people in comparable situations constitutes discrimination in breach of the ESC if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.[29] The notion of discrimination includes cases where a person or group is treated less favourably than another without proper justification.[30] For example, when the ECSR analysed a situation where the right to provide official guide services in some museums and art institutions was associated with approval by specific bodies, it found that the restrictions imposed on non-approved interpreter guides and national lecturers with a state diploma unreasonably restricted their right to work, since there are no such differences between these categories of workers that would justify the application of different standards.[31] A similar conclusion is presented in the PDO's recommendations discussed above.

The principle of equal opportunities envisages the provision of specific rights to groups of persons who are, in reality, in different situations and thus need specific rights to allow them to enjoy equal opportunities with other groups of persons. In cases of discrimination, the reason that discrimination is found to occur is because the same rule is applied to everyone without consideration being made for relevant differences. Failing to take positive account of all relevant differences or failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all may amount to discrimination.[32] For example, the situations discussed below can be used, where the application of more favourable regulation to groups of persons, such as persons with disabilities, pregnant women or young workers, has been assessed as a positive measure to combat discrimination. This is because it is more difficult for representatives of these groups to enter the labour market or to remain in it, i.e. their status is distinguished by special characteristics due to which the application of general regulation in their regard may lead to discrimination.

a. *Grounds for discrimination*

The list of grounds for discrimination is open-ended.[33] It allows, among other things, the inclusion of grounds that are expressly protected by non-discrimination directives,[34] namely disabili-

27 All of those provisions except Art. 15.2 have been ratified by Georgia.

28 International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, ECSR decision on the merits of 21 March 2012 (par. 49) (https://hudoc.esc.coe.int/eng/?i=cc-62-2010-dmerits-en); Equal Rights Trust v. Bulgaria, Complaint No. 121/2016, ECSR decision on the merits of 16 October 208 (par. 80) (https://hudoc.esc.coe.int/eng?i=cc-121-2016-dmerits-en); Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, ECSR decision on the merits of 25 June 2010 (par. 35) (https://hudoc.esc.coe.int/eng/?i=cc-58-2009-dmerits-en); Thlimmenos v. Greece, Application no. 34369/97, ECtHR judgment on the merits of 6 April 2000 (par. 44) (https://hudoc.echr.coe.int/eng?i=001-58561).

29 Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, ECSR decision on the merits of 10 October 2000 (par. 25) (https://hudoc.esc.coe.int/eng/?i=cc-06-1999-dmerits-en).

30 Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, ECSR decision on the merits of 9 September 2009 (par. 42) (https://hudoc.esc.coe.int/eng?i=cc-50-2008-dmerits-en); Abdulaziz, Cabales and Balkandali v. The United Kingdom, Application no. 9214/80; 9473/81; 9474/81, ECtHR judgment on the merits of 28 November 1984 (par. 82) (https://hudoc.echr.coe.int/eng?i=001-57416).

31 Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, ECSR decision on the merits of 9 September 2009 (par. 42) (https://hudoc.esc.coe.int/eng?i=cc-50-2008-dmerits-en).

32 International Association Autism-Europe v. France, Complaint No. 13/2002, ECSR decision on the merits of 4 November 2003 (https://hudoc.esc.coe.int/eng/?i=cc-13-2002-dmerits-en).

33 Conclusions XVI-1 – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=XVI-1_035_02/Ob/EN).

34 International Association Autism-Europe v. France, Complaint No. 13/2002, ECSR decision on the merits of 4 November 2003 (par. 51) (https://hudoc.esc.coe.int/eng/?i=cc-13-2002-dmerits-en).

ty,[35] age[36] and sexual orientation.[37] As can be seen from Art. 4.1 of the Labour Code of Georgia, a broader list of grounds for discrimination is used which includes those mentioned above.

Concrete measures have to be taken to increase the employment of persons with disabilities in the labour market in general and to ensure that employers provide reasonable accommodation for employees with disabilities.[38] According to the ECSR, it is not enough to have a statutory requirement on the right to reasonable accommodation. Its effective application in practice is of fundamental importance,[39] with specific emphasis on the obligation of labour inspectorates to monitor compliance with this requirement and to issue orders where employers fail to respect their duties.[40] Authorities must collect and evaluate information on the total number of persons with disabilities of working age, specifying how many of them are active and in work (in the public and private sector, and in the open labour market or in sheltered employment) and how many are unemployed.[41]

The measures that were positively assessed by the ECSR include:

- information campaigns to encourage employers to focus on people skills and abilities rather than barriers and disabilities;[42]
- priority to disabled applicants in job interviews for vacant positions in the public sector;[43]
- obligation for employers to have a minimum quota for persons with disabilities;[44]
- obligation on employers, within reason, to individually adapt workplaces and tasks to ensure that employees or job-seekers with disabilities can obtain or retain a job;[45]
- introduction of follow-up methods and a rehabilitation allowance, including a right for users to a systematic assessment of their need for assistance regarding employment;[46]
- obligation to put in place "workplace integration management" based on the principle of "prevention and rehabilitation instead of dismissal or pension payments" (if an employee is unable to work for more than six consecutive weeks or if he or she is repeatedly ill within one year, various relevant actors – employer, employee or his/her representative, doctor – have to examine how the incapacity to work can be overcome and identify which benefits or kinds of assistance are necessary to support the employee).[47]

Persons with disabilities should be employed in an ordinary working environment. Sheltered employment facilities must be reserved for those persons who, because of their disability, cannot be integrated into the open labour market (usually persons with intellectual disabilities). These persons should nonetheless be assisted to enter the open labour market. People working in sheltered employment facilities where production is the main activity must enjoy the usual benefits of labour law, including the terms and conditions of employment.[48]

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35 Conclusions 2008 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/AZE/1/2/EN); Glor v. Switzerland, Application no. 13444/04, ECtHR judgment on the merits of 30 April 2009 (https://hudoc.echr.coe.int/eng?i=001-92525).

36 Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, ECSR decision on the merits of 2 July 2013 (https://hudoc.esc.coe.int/eng/?i=cc-74-2011-dmerits-en); Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN).

37 Conclusions 2008 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/AZE/1/2/EN); Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN); E.B. v. France, Application No. 43546/02, ECtHR judgment on the merits of 22 January 2008 (https://hudoc.echr.coe.int/eng?i=001-84571); Identoba and Others v. Georgia, Application No. 73235/12, ECtHR judgment on the merits of 12 May 2015 (https://hudoc.echr.coe.int/eng?i=001-154400).

38 Conclusions 2020 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/AZE/1/2/EN); Art. 9 of the Labour Code of Georgia.

39 Conclusions 2012 – Netherlands – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/NLD/15/2/EN).

40 Conclusions 2012 – Norway – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/NOR/15/2/EN).

41 Conclusions XXII-1 – Iceland – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=XXII-1/def/ISL/15/2/EN).

42 Conclusions 2020 – Sweden – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2020/def/SWE/15/2/EN).

43 Conclusions XX-1 – Denmark – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=XX-1/def/DNK/15/2/EN).

44 Conclusions XIX-1 – Germany – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=XIX-1/def/DEU/15/2/EN).

45 Conclusions 2012 – Norway – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/NOR/15/2/EN).

46 Conclusions 2012 – Norway – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/NOR/15/2/EN).

47 Conclusions XIX-1 – Germany – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=XIX-1/def/DEU/15/2/EN).

48 Conclusions 2007 – Estonia – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2007/def/EST/15/2/EN).

The refusal of employment may not be based on the assumption that a disabled person would not be able to fulfil his or her duties without thoroughly assessing whether the disability status would prevent him or her from fulfilling the duties imposed. For example, a person with visual impairment who applied for an internship at a nursing home for people with mental illness and substance abuse problems, was denied the internship because of his disability. It was found that no discrimination had taken place, since the applicant's disability meant that he would not be able to perform the tasks necessary in a nursing home.[49] Another person with visual impairment, who applied for administrative work, was denied employment on the grounds of her disability. No discrimination was found because the employer in question would have had to have made extensive adjustments to the computer system to enable the applicant to perform the work.[50]

Unlike for other grounds for non-discrimination, the law allows for several grounds for derogation from the principle of non-discrimination in the case of age. It allows a derogation not only because of essential occupational requirements, but also a general derogation if there is a legitimate aim (such as social or employment policy) and the measures are proportionate. The ECSR has recognised that exceptions to the ban on discrimination on the grounds of age may be authorised for an essential occupational requirement or to permit positive action.[51] While the less favourable treatment of younger workers (e.g. by paying them a lower minimum salary) may be designed to give effect to a legitimate aim of employment policy, namely to integrate younger workers into the labour market at a time of serious economic crisis, it must not be disproportionate.[52] Age as a ground for dismissal is discussed in more detail in the section "Protection in cases of termination of employment".

In its assessment on sexual orientation as a ground for discrimination at work, the ECtHR has concluded that the absolute ban on homosexuals in the armed forces and their discharge because of homosexuality is a violation of Art. 8 of the ECHR.[53] The ECSR has also noted the importance of awareness-raising measures in the field of discrimination on the grounds of sexual orientation.[54]

Employers may place unnecessary restrictions on their employees' freedom of action. These include interference in their personal – or non-working – lives, even though the activities included in this autonomous sphere may be viewed as "public" because they occur in public. Examples include dismissing employees for attending a political rally or for buying a make of car in competition with that sold by their employer.[55]

b. *Effective safeguards*

The principle of non-discrimination is applicable with regard to all aspects of employment, such as access to employment, employment and working conditions (including dismissals and pay), membership of employee organisations.[56] For example, a ban on stating a preference for a particular sex when advertising a job vacancy is in line with the standard in question.[57]

Conformity with the ESC cannot be ensured solely by legislation; measures to actively promote equal opportunities and specific steps aimed at removing *de facto* inequalities must be taken.[58]

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49 Conclusions 2012 – Sweden – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/SWE/15/2/EN).
50 Conclusions 2012 – Sweden – Art. 15-2 (https://hudoc.esc.coe.int/eng?i=2012/def/SWE/15/2/EN).
51 Conclusions 2006 – Bulgaria – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2006/def/BGR/1/2/EN); Conclusions 2008 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/AZE/1/2/EN); Conclusions 2008 - Lithuania – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/LTU/1/2/EN); Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, ECSR decision on the merits of 2 July 2013 (https://hudoc.esc.coe.int/eng/?i=cc-74-2011-dmerits-en).
52 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, ECSR decision on the merits of 23 March 2017 (par. 135) (https://hudoc.esc.coe.int/eng/?i=cc-111-2014-dmerits-en).
53 Beck, Copp and Bazeley v. The United Kingdom, Applications no. 48535/99, 48536/99, 48537/99, ECtHR judgment on the merits of 22 October 2002 (https://hudoc.echr.coe.int/eng?i=001-60697).
54 Conclusions 2012 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2012/def/AZE/1/2/EN).
55 Conclusions 2006 – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2006_Ob_1-2/Ob/EN).
56 Conclusions 2008 – Azerbaijan – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/AZE/1/2/EN).
57 Conclusions XVI-1 – Iceland – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=XVI-1/def/ISL/1/2/EN).
58 University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, ECSR decision on the merits of 6 December 2019 (par. 204) (https://hudoc.esc.coe.int/fre/?i=cc-124-2016-dmerits-en); Conclusions XIII-3 – Statement of interpretation – Art. 1 Additional Protocol (https://hudoc.esc.coe.int/fr/?i=XIII-3_Ob_-2/Ob/EN).

The legislation must ensure that the prohibition of discrimination is effective and must, at least:

> a) grant the power to set aside, withdraw, repeal or amend any provisions contained in collective agreements, employment contracts or internal company rules that are contrary to the principle of equal treatment;
>
> b) ensure that employees who lodge complaints or bring actions in court are protected from dismissal or other reprisals by employers;
>
> c) provide for appropriate and effective remedies in the event of alleged discrimination.[59]

In the event of discrimination, compensation must be effective, proportionate and sufficiently dissuasive.[60] The notion of effective remedies encompasses judicial or administrative procedures available in the event of an allegation of discrimination that are able to provide reinstatement and compensation, as well as appropriate penalties that can be effectively enforced by labour inspection.[61] Effective measures to combat discrimination include granting trade unions the right to take action in cases of discrimination in employment, including action on behalf of individuals, allowing collective action by groups with an interest in obtaining a ruling that the anti-discrimination regulation has been violated, and setting up a specialised body to promote equal treatment independently, especially by providing discrimination victims with the support they need to take proceedings.[62]

In disputes relating to an allegation of discrimination in matters covered by the ESC, the burden of proof should not rest entirely on the complainant; rather, it should be the subject of an appropriate adjustment. Shared burden of proof means that once the claimant can provide evidence from which it can be presumed that discrimination may have occurred, the burden of proof falls on the perpetrator to prove otherwise. This shift in the burden of proof is particularly helpful in claims of indirect discrimination where it is necessary to prove that particular rules or practices have a disproportionate impact on a particular group. To create a presumption of indirect discrimination, a claimant may need to rely on statistical data that prove general patterns of differential treatment.[63]

A recommended additional resource on discrimination-related issues is the Handbook on European non-discrimination law,[64] prepared by the European Union Agency for Fundamental Rights (FRA), together with the Council of Europe and the ECtHR.

In conclusion, it is important to note that LIO plays a significant role not only in conducting inspections regarding possible cases of discrimination, but also in awareness raising, collecting statistical data, sharing information and providing consultations regarding situations that should be considered discriminatory, and regarding the rights of individuals who have encountered discrimination.

3. Dignity (protection against harassment)

The principle of the protection of dignity is central to the ESC and underpins various rights that promote human well-being, fairness and equality in society. It reflects the idea that every individual should be treated with respect, free from degrading conditions, discrimination and exploitation. Several articles in the ESC directly or indirectly protect and promote human dignity, including: Art. 1 recognising the right to engage in meaningful employment under just conditions, thus

59 Conclusions 2008 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/GEO/1/2/EN); Conclusions XVI-1 – Iceland – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=XVI-1/def/ISL/1/2/EN).

60 Conclusions XIII-3 – Statement of interpretation – Art. 1 Additional Protocol (https://hudoc.esc.coe.int/fr/?i=XIII-3_Ob_-2/Ob/EN); Conclusions XVIII-1 – Austria – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=XVIII-1/def/AUT/1/2/EN); Conclusions 2020 – Georgia – Art. 20 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/20/EN).

61 Conclusions 2020 – Cyprus – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/CYP/1/2/EN).

62 Conclusions 2008 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2008/def/GEO/1/2/EN).

63 SUD Travail Affaires Sociales, SUD ANPE and SUD Collectivité Territoriales v. France, Complaint No. 24/2004, ECSR decision on the merits of 8 November 2005 (par. 33) (https://hudoc.esc.coe.int/eng/?i=cc-24-2004-dmerits-en); Syndicat de Défense des fonctionnaires v. France Complaint No. 73/2011, ECSR decision on the merits 13 September 2012 (par. 59) (https://hudoc.esc.coe.int/eng/?i=cc-73-2011-dmerits-en); Conclusions 2020 – Georgia – Art. 20 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/20/EN).

64 Handbook on European non-discrimination law (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_en.pdf).

ensuring that individuals can maintain a life of dignity through decent work; Art. 4 guaranteeing fair wages that enable workers and their families to live in dignity; Arts. 5 and 6 protecting the dignity of workers by allowing them to form trade unions and negotiate fair working conditions; and Art. 7, preventing child labour and ensuring that young people are not subjected to conditions that undermine their dignity, and others. In other words, the ESC sets a standard by which workers' rights should be assessed and interpreted precisely through the prism of dignity, as one of the main personal values. The failure to ensure adequate and decent working conditions, including wages and working time, as well as the absence of effective collective means to demand the establishment of such conditions (through trade unions, collective agreements, etc.), is to be assessed as incompatible with the principle of dignity.

At the same time, Art. 26 of the ESC is specifically dedicated to the protection of personal dignity. It specifically addresses the right to be protected from sexual harassment and other forms of abuse in the workplace or in relation to work, when insistent preferential or retaliatory conduct is directed towards one or more persons which may harm those persons' dignity or their career.[65]

Art. 26 of the ESC applies to harassment in all places and circumstances related to work. These include a worker's usual workplace as well as in situations in which a worker is working remotely (including at home) or where the worker works at a client's or a contractor's workplace or home. It also applies where a worker is engaging in work-related activities such as conferences, training, work trips, work-related corporate events or social activities. The rights and obligations deriving from Art. 26 of the ESC apply to incidents of online harassment. Online harassment may occur via a range of different media, including digital technologies/information and communication technologies, such as e-mails, text messages, chats/instant messages, as well as video conferencing and social media platforms, and virtual spaces. Online harassment may result in the very speedy propagation of information, mass dissemination and the availability of information for a long period of time. Art. 26 of the ESC imposes positive obligations on States parties to take appropriate preventive measures against online harassment and to take all appropriate measures to protect workers from such conduct.[66]

The ECSR, when assessing whether the situation in a particular country meets the standards enshrined in Art. 26 of the ESC, has pointed to the need for States parties to take appropriate preventive measures, including information, awareness raising, and prevention campaigns, consultations with social partners, effective remedies, including 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, as well as a shift in the burden of proof.[67] For example, the ECSR has stated that States Parties should, after consulting employers' and workers' organisations, provide information, carry out awareness-raising and training programmes in order to help workers identify, understand and be aware of work-related harassment and its manifestations and effects, as well as of their rights and responsibilities in this regard. Furthermore, information should be provided to workers on how to report and respond to online harassment (such as reporting harassment to their employer, the online platform, the labour inspection or the police, or blocking/closing accounts). Moreover, workers should be informed about the procedure to follow and the remedies available. There must be protection from retaliation where workers report incidents of harassment.[68] The legal framework which does not allow for the employers to be held liable in cases of harassment involving employees under their responsibility, or who are on premises under their responsibility, or when a person not employed by them (an independent contractor, self-employed worker, visitor, client, etc.) is the victim or the perpetrator, is not in line with the standard in question.[69]

The ECtHR in its case law has considered sexual harassment in the workplace to be a matter

65 Conclusions 2005 – Lithuania – Art. 26-1 (https://hudoc.esc.coe.int/eng?i=2005/def/LTU/26/1/EN).
66 Conclusions 2022 – Interpretative statement 2022 – Art. 26 (https://hudoc.esc.coe.int/?i=2022_163_03/EN).
67 Conclusions 2022 – Interpretative statement 2022 – Art. 26 (https://hudoc.esc.coe.int/?i=2022_163_03/EN); Conclusions 2022 – Georgia – Art. 26-1 (https://hudoc.esc.coe.int/?i=2022/def/GEO/26/1/EN); Conclusions 2022 – Georgia – Art. 26-2 (https://hudoc.esc.coe.int/?i=2022/def/GEO/26/2/EN).
68 Conclusions 2022 – Interpretative statement 2022 on Art. 26 (https://hudoc.esc.coe.int/?i=2022_163_03/EN).
69 Conclusions 2014 – Finland – Art. 26-2 (https://hudoc.esc.coe.int/?i=2014/def/FIN/26/2/EN).

of health and safety and acknowledges that it should be treated and prevented as such. It has called for further measures to effectively prevent and end sexual harassment in the workplace and elsewhere. The applicant in the case was employed in a cleaning company which provided services to a railway station belonging to a state-owned railway company. She accused the station manager of sexual harassment. Although the railway company had been informed of the applicant's sexual harassment allegations, it had done little in response, and no internal inquiry had taken place. The ECtHR noted that a lack of mechanisms put in place at an employer's level to deal with sexual harassment may run counter to the requirements of Art. 8 of the ECHR.[70]

It is important to note that the ECSR, although it found non-compliance in Georgia due to inadequate remedies, in 2022, gave a generally positive assessment of the efforts made to take preventive measures, which fall within the mandate of the LIO. These include the dissemination of information through social media and by campaigns on Georgian TV channels to raise awareness about the protection of dignity at work. There was also an awareness-raising campaign called "Labour Dictionary", aimed at disseminating information about the updated Labour Code, providing information on the activities and role of labour inspection, and promoting the adoption of new standards in labour culture. Other activities conducted sought to raise awareness of equality issues, including by training and information meetings, videos for employees, private companies, labour inspectors, representatives of employers' associations, trade unions and various public agencies.[71] Developing these measures, together with effectively identifying violations, are considered to be core tasks of LIO.

4. Family responsibilities

According to paragraph 1 of Art. 27 of the ESC, all persons with family responsibilities who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities. These provisions ensure that individuals who have childcare or dependent-care duties are not disadvantaged in the workplace and can effectively balance work and family life. Family obligations should not be an obstacle to economic participation. Employers must therefore adopt family-friendly policies to ensure fairness. Legislation must provide for workers with family responsibilities to engage in employment without being subject to discrimination whether direct (e.g. a refusal to hire parents with young children) or indirect (e.g. rigid work schedules that make it impossible for parents to meet obligations). Measures need to be developed or promoted to assure equal opportunities for workers with family responsibilities in respect of entering, remaining and re-entering employment since these persons may face difficulties on the labour market due to these responsibilities.[72] Measures also need to be in place to allow workers with family responsibilities: to work part time or return to full employment;[73] to ensure that parental leave can be used by both parents;[74] to allow such workers with family responsibilities to work flexible working hours or remotely; and to set the relevant social support arrangements in place. Workers' family responsibilities also need to be taken into account when determining dismissals or employment conditions.[75]

From the perspective of LIO's activities, the provisions of Art. 27 of the ESC have to be interpreted in the context of Art. E. and Art. 20. Taken together, these lay down the conditions for recognising employees with family responsibilities as a special group whose participation in the labour market requires additional guarantees (positive discrimination). Positive examples of legal regulation in-

70 C. v. Romania, Application no. 47358/20, ECtHR judgment on the merits of 30 August 2022 (par. 71) (https://hudoc.echr.coe.int/eng?i=001-218933).

71 Conclusions 2022 – Georgia – Art. 26-1 (https://hudoc.esc.coe.int/?i=2022/def/GEO/26/1/EN); Conclusions 2022 – Georgia – Art. 26-2 (https://hudoc.esc.coe.int/?i=2022/def/GEO/26/2/EN).

72 Conclusions 2005 – Sweden – Art. 27-1 (https://hudoc.esc.coe.int/eng?i=2005/def/SWE/27/1/EN).

73 Conclusions 2011 – Georgia – Art. 27-1 (https://hudoc.esc.coe.int/eng?i=2011/def/GEO/27/1/EN); Conclusions 2005 – Estonia – Art. 27-1 (https://hudoc.esc.coe.int/eng?i=2005/def/EST/27/1/EN).

74 Conclusions 2015 – Statement of interpretation – Art. 27-2 (https://hudoc.esc.coe.int/eng?i=2015_163_08/EN); Conclusions 2023 – Georgia – Art. 27-2 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/27/2/EN).

75 Conclusions 2003 – Bulgaria – Art. 27-3 (https://hudoc.esc.coe.int/eng?i=2003/def/BGR/27/3/EN).

clude arrangements enabling parents to reduce or cease their professional activity because of the serious illness of a child or a closely connected person,[76] the employer's obligation to get the consent of a woman or a single father raising a disabled child or child under 3 years of age to be sent on a business trip, or a consent of a person raising a child under 12 years of age or a disabled child or caring for a person with total incapacity for work to work overtime, night time or on days off.[77]

5. Right to privacy

While the right to privacy is not explicitly stated in the ESC,[78] it is indirectly protected through various provisions related to personal freedoms, human dignity, and data protection, including Art. 1 (the right to work) ensuring protection against unjustified surveillance or discrimination in the workplace, or Art. 26 (the right to dignity at work) protecting individuals from harassment, which can include privacy violations in professional settings.

The right to privacy is relevant when evaluating job advertisements and recruitment practices. Employers may only collect those personal data that are strictly necessary for evaluating a candidate's suitability for the position required. Any information obtained must be relevant, proportionate and lawful. Sensitive data, such as health status, political views or trade union membership, cannot be processed unless legally justified. Employers often check candidates' social media profiles (LinkedIn, Facebook, Twitter). However, such monitoring must be transparent and must not infringe on the individual's privacy. Information that is not job-related should not be used to assess a candidate.

With regard to the conduct of employment relationships, the evidence collected by employers when assessing an employee's behaviour, and the decisions made on the basis of such evidence, it is important to note that a data protection issue common in today's typical working environment relates to the extent to which the monitoring of employees' electronic communications is legitimate.

National authorities must ensure that any measures introduced by employers to monitor employees' correspondence and other communications, irrespective of their extent and duration, are accompanied by adequate and sufficient safeguards against abuse. In the ECtHR case *Bărbulescu v. Romania,*[79] the applicant was dismissed for using the internet at his place of employment during working hours, in breach of internal regulations. His employer monitored his communications. The records, showing messages of a purely private nature, were produced during domestic court proceedings. The ECtHR raised relevant factors such as a reasonable expectation of privacy; the extent of monitoring; the degree of intrusion into employee's privacy; the consequences for the employee; and the adequacy of safeguards provided. The ECtHR found that the employer's internal regulations strictly prohibited employees from using the company's computers and resources for personal purposes. The employer acted within its disciplinary powers since it had accessed the e-mail account on the assumption that the information contained therein had been related to professional activities. The domestic courts relied on the transcript only to the extent that it proved the applicant's disciplinary breach and did not attach particular weight to the content of communications. While it is true that it had not been claimed that the applicant had caused actual damage to his employer, it is not unreasonable for an employer to want to verify that employees are completing their professional tasks during working hours. Other data and documents that were stored on his computer were not examined. However, the national courts failed to establish whether the applicant had been given notice of the monitoring and had not examined the question of the scope of the monitoring and the degree of intrusion into the applicant's privacy, or the legitimate reasons to justify monitoring. The ECtHR decided that, notwithstanding the wide margin of appreciation, the domestic authorities had not afforded adequate protection of the

76 Conclusions 2005 – Sweden – Art. 27-1 (https://hudoc.esc.coe.int/eng?i=2005/def/SWE/27/1/EN).
77 Conclusions 2005 – Estonia – Art. 27-1 (https://hudoc.esc.coe.int/eng?i=2005/def/EST/27/1/EN).
78 Unlike in the General Data Protection Regulation (GDPR) (https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng) or Art. 8 of ECHR.
79 Bărbulescu v. Romania, Application no. 61496/08, ECtHR judgment on the merits of 5 September 2017 (https://hudoc.echr.coe.int/fre?i=001-177082).

applicant's right to respect for his private life and correspondence, and had consequently failed to strike a fair balance between the interests at stake.

Video surveillance has also a significant impact on privacy at the workplace. Overly intrusive measures can cause unnecessary stress and erode internal trust. In the case of *López Ribalda and others v. Spain*[80], the ECtHR emphasised that the use of video surveillance to monitor how staff members carry out their work should be avoided, apart from exceptional cases. Factors such as the notification of employees regarding the possibility of video-surveillance measures, the extent of monitoring and the degree of intrusion into employee's privacy, the legitimate reasons to justify monitoring and the extent thereof, the lack of a possibility to use less intrusive methods, the consequences of monitoring, as well as the provision of appropriate safeguards should all be taken into account. The case concerned the covert video surveillance of a supermarket's employees after suspicions of theft were raised. The applicants were dismissed mainly on the basis of the video material, which they alleged had been obtained by breaching their right to privacy. National courts accepted the recordings in evidence and upheld the dismissal decision. The ECtHR found no violation of Art. 8 of the ECHR on the basis of following facts: a) the installation of the video-surveillance had been justified by the suspicion, put forward by the supermarket manager on account of the significant losses recorded over several months, that thefts had been committed (the employer had legitimate interest in taking measures in order to discover and punish those responsible for the losses, with the aim of ensuring the protection of its property and the smooth functioning of the company); b) the measure was limited as regards the areas and staff being monitored (the cameras only covered the checkout area, which was likely to be where the losses occurred; in the light of the protection of privacy, the expectation is very high in places which are private by nature, such as toilets or cloakrooms, where heightened protection, or even a complete ban on video-surveillance is justified, remains high in closed working areas such as offices, and is manifestly lower in places that are visible or accessible to colleagues or, as in the present case, to the general public) and its duration had not exceeded what was necessary in order to confirm the suspicions of theft (it lasted for ten days and ceased as soon as the employees responsible had been identified); c) the intrusion into the applicants' privacy did not attain a high degree of seriousness (the supermarket manager, the company's legal representative and the union representative viewed the recordings obtained through the impugned video-surveillance before the applicants themselves were informed); d) the video-surveillance and recordings were not used by the employer for any purposes other than to trace those responsible for the recorded losses of goods and to take disciplinary measures against them; and e) there were no other means by which to fulfil the legitimate aim pursued and the measure should therefore be regarded as "necessary" (the extent of the losses identified by the employer suggested that thefts had been committed by a number of individuals and the provision of information to any staff member might well have defeated the purpose of the video-surveillance, which was to discover those responsible for the thefts but also to obtain evidence for use in disciplinary proceedings against them).

The case of *Antović and Mirković v. Montenegro*[81] concerned an invasion of privacy complaint by two professors after video surveillance was installed in areas where they taught. They stated that they had had no effective control over the information collected and that the surveillance had been unlawful. The domestic courts rejected the compensation claim finding that the question of private life had not been at issue since the auditoriums where the applicants taught were public areas. The ECtHR found a violation of Art. 8 of the ECHR on account of insufficient grounds for installing video surveillance equipment: the surveillance of teaching is not provided for by the law at all as a ground for video surveillance; there was no evidence that either property or people had been in jeopardy, to justify their safety as the reason for the introduction of video surveillance.

80 López Ribalda and others v. Spain, Applications no. 1874/13, 8567/13, ECtHR judgment on the merits of 17 October 2019 (https://hudoc.echr.coe.int/fre?i=001-197098).

81 Antović and Mirković v. Montenegro, Application no. 70838/13, ECtHR judgment on the merits of 28 November 2017 (https://hudoc.echr.coe.int/fre?i=001-178904).

III. Occupational safety and health

1. Right to safe and healthy working conditions

The right to safe and healthy working conditions and the obligation to eliminate risks in inherently dangerous or unhealthy occupations, as a constituent part of the right to just working conditions, are enshrined in Arts. 2.4 and 3 of the ESC. It is a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights.[82] It applies to the whole economy, covering both the public and private sectors, employees and the self-employed, regardless of the nature of their contracts or their working status (e.g. interim, temporary, seasonal workers and those on fixed-term contracts) without any exceptions.[83] Specific right, related to the protection of young persons and women, are enshrined in Art. 7 and 8 of the ESC.

The structure of Art. 3 of the ESC reveals three essential directions of legal regulation that relate to LIO's activities: the creation, implementation and continuous development of a prevention-oriented national policy (Art. 3.1); the implementation of safety and health regulations (Art. 3.2); and the enforcement of such regulations by measures of supervision (Art. 3.3). A country can only be regarded as fulfilling the undertaking deriving from Art. 3 of the ESC if it can prove that safety and health regulations have been enacted for all economic sectors, that such regulations are adequately enforced through inspection and civil and criminal sanctions, and, lastly, that any necessary consultations on safety and health matters between governments and both sides of industry have been arranged and actually take place.[84]

2. Prevention

According to Art. 3.1 of the ESC, the primary aim of national policy in the field of occupational safety shall be to improve occupational health and safety and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment. A culture of prevention in respect of occupational health and safety must be fostered and preserved, incorporating the priority of occupational risk prevention into the public authorities' activities at all levels and in all areas, regularly assessing and reviewing policies and strategies in the light of changing risks.[85] New technology, organisational constraints and psychological demands favour the development of psychosocial factors of risk leading to work-related stress, aggression, violence and harassment, all of which are aspects that must be addressed by implementing preventive measures.[86]

All the interested parties must be actively involved in occupational risk prevention and the labour inspectorate plays a particularly important role in this area, sharing the knowledge about risks and risk prevention acquired during inspections and investigations through information, training and other prevention activities.[87] To comply with this provision, programmes in areas such as training (qualified staff), information (statistical systems and the dissemination of knowledge),

82 Conclusions I – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-11/Ob/EN).
83 Conclusions XX-2 – Statement of interpretation – Article 3 (https://hudoc.esc.coe.int/fre/?i=XX-2_035_01/Ob/EN); Conclusions 2017 – Lithuania – Art. 3-2 (https://hudoc.esc.coe.int/eng/?i=2017/def/LTU/3/2/EN); Conclusions XXI-2 – Greece – Art. 3-2; https://hudoc.esc.coe.int/eng/?i=XXI-2/def/GRC/3/2/EN.
84 Conclusions I – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-11/Ob/EN).
85 Conclusions 2009 – Armenia – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2009/def/ARM/3/1/EN); Conclusions 2005 – Lithuania – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2005/def/LTU/3/1/EN).
86 Conclusions 2017 – Portugal – Art. 3-1 (https://hudoc.esc.coe.int/?i=2017/def/PRT/3/1/EN).
87 Conclusions 2003 – Bulgaria – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2003/def/BGR/3/1/EN).

quality assurance (professional qualifications, certification systems for facilities and equipment), and, where appropriate, research (scientific and technical expertise) must be launched and further developed.[88] Individual employers must ensure they assess work-related risks, introduce a range of preventive measures taking account of the particular risks concerned, monitor the effectiveness of those measures and provide information and training for employees.[89]

Among the measures implemented by labour inspectorates that were positively assessed by the ECSR, are: a) the development of the system and database of compulsory in-service training for occupational health and safety professionals focused on a prevention-conscious approach, so that the basic materials for occupational safety training and education are drawn up by sector and also by occupation within each sector;[90] b) the definition of the minimum content of the training modules which serves as a reference for the design and implementation of training by training entities for occupational safety specialists and senior occupational safety specialists and the services provided by either the employer or a worker designated by the employer;[91] c) the provision of professional assistance to employers and workers in relation to the implementation of laws and other regulations, collective agreements and general acts within the labour inspectorate's competence, cooperation with the media through which knowledge of risks and risk prevention are shared;[92] d) the publication of specific information on risk prevention, providing links to sites of interest on the inspectorate's website;[93] e) the development of online interactive risk assessment tools for specific sectors;[94] and f) the creation of a website dedicated to the challenges of remote work related to substance abuse indicating the steps to be taken by employees in that regard.[95]

Although Georgia has not accepted Art. 3.1 of the ESC, the ECSR has recognised that there has been significant progress recently made in adopting legislative changes and implementing policy reforms to promote safety at work.[96]

3. Legal regulation

The obligation to ensure the right to safe and healthy working standards of the highest possible level entails issuing safety and health regulations providing for preventive and protective measures against workplace risks recognised by the scientific community and laid down in international regulations and standards (Art. 3.2).[97] The positive obligation to take all appropriate steps to safeguard life is also enshrined in Art. 2 of the ECHR, entailing, above all, a primary duty to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.[98]

The main areas of risk, bearing in mind recent economic and social trends, are as follows: a) psychosocial risks, work-related stress, aggression, violence and harassment in the workplace;[99] b) workplaces and equipment, particularly aspects such as protection with regard to machines, the manual handling of loads, work with display screen equipment; hygiene (shops and offices); max-

88 Conclusions 2003 – Bulgaria – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2003/def/BGR/3/1/EN); Conclusions 2007 – Cyprus – Art. 3-1 (https://hudoc.esc.coe.int/eng/?i=2007/def/CYP/3/1/EN).

89 Conclusions 2009 – Armenia – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2009/def/ARM/3/1/EN); Conclusions 2003 – Bulgaria – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2003/def/BGR/3/1/EN).

90 Conclusions 2021 – Hungary – Art. 3-1 (https://hudoc.esc.coe.int/?i=2021/def/HUN/3/1/EN).

91 Conclusions 2017 – Portugal – Art. 3-1 (https://hudoc.esc.coe.int/?i=2017/def/PRT/3/1/EN).

92 Conclusions 2021 – Slovenia – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2021/def/SVN/3/1/EN).

93 Conclusions 2021 – Romania – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2021/def/ROU/3/1/EN).

94 Conclusions 2021 – Lithuania – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2021/def/LTU/3/1/EN).

95 Conclusions 2021 – Norway – Art. 3-2 (https://hudoc.esc.coe.int/?i=2021/def/NOR/3/2/EN).

96 Third report of ECSR on the non-accepted provisions of the European social charter (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).

97 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, ECSR decision on the merits of 6 December 2006 (par. 224) (https://hudoc.esc.coe.int/eng/?i=cc-30-2005-dmerits-en).

98 Öneryildiz v. Turkey, Application no. 48939/99, ECtHR judgment on the merits of 30 November 2004 (par. 89) (https://hudoc.echr.coe.int/eng?i=001-67614); Budayeva and others v. Russia, Applications no. 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, ECtHR judgment on the merits of 20 March 2008 (par. 129) (https://hudoc.echr.coe.int/fre?i=001-85436).

99 Conclusions XX-2 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/fre/?i=XX-2_035_01/Ob/EN).

imum weight; air pollution, noise and vibration; personal protective equipment; safety and/or health signs at work;[100] c) hazardous agents and substances, such as chemical, physical and biological agents, particularly carcinogens, including: white lead (in paint); benzene, asbestos; vinyl chloride monomer; metallic lead and its ionic compounds, and ionising radiation, and the control of major accident hazards involving dangerous substances;[101] and d) sectoral risks, including the indication of weight on packages to be transported by boat; the protection of dockers against accidents; dock handling; building safety rules, temporary or mobile construction sites; mines, extractive industries using drilling and opencast or underground mining; ships and fishing vessels; the prevention of major industrial accidents; agriculture, and transport.[102]

Psychosocial risks, stress, aggression and violence in the workplace, especially for workers in atypical working relationships, must be covered under Art. 3.2 of the ESC. Regulations have to be adopted to improve health and safety in evolving new situations such as in the gig and platform economy by, for example, strictly limiting and regulating the electronic monitoring of workers, by recognising their right to disconnect, their right to be unavailable outside agreed working and standby time, and their right to mandatory digital disconnection from the work environment during rest periods. Being connected outside normal working hours increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.[103]

The exposure limit values to dangerous agents and substances must be reviewed and updated in light of technological progress and developments in technical and scientific knowledge. There is an obligation to pay particular attention with regard to protection of workers against asbestos and ionising radiation.

The following aspects of national legal regulations, among others, were evaluated by the ECSR as complying with the standard in question: a) the obligation of an employer to systematically plan, direct and monitor activities in a manner that ensures that the work environment meets the prescribed requirements for a good work environment, to investigate work-related injuries, to continuously investigate the risks involved in the activities and take the measures required, to set a schedule for measures that cannot be taken immediately, and to report serious and work-related injuries to the labour inspectorate;[104] b) the obligation of each employer to assess occupational risks irrespective of the activities performed, organising and performing assessments and recording their outcomes in accordance with the procedure laid down in national level legal regulation;[105] c) the obligation of an employer to ensure that work equipment is suitable for the work to be carried out and corresponds to the dimensions of the body and the physical and mental abilities of its operator, to prepare safety instructions for the work to be carried out and for the work equipment used and to organise training for employees;[106] d) the obligation of an employer to ensure that each employee – irrespective of the nature and duration of the employment relationship – receives adequate and appropriate training and instructions in performing the work safely on recruitment, in the event of a transfer or a change of job, in the event of the introduction of new work equipment or of a change in equipment, and in the event of the introduction of any new technology;[107] and e) the obligation of an employer to draft occupational safety and health instructions and to instruct employees provisionally posted by employers' agreement from one enterprise to another.[108]

Legal regulation must also include additional protection for the most vulnerable groups, as well as compensatory measures for workers exposed to increased risk.

100 Conclusions XIV-2 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng/?i=XIV-2_Ob_V1-4/Ob/EN).
101 Conclusions XIV-2 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng/?i=XIV-2_Ob_V1-4/Ob/EN); Conclusions 2013 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng/?i=2013_163_01/Ob/EN).
102 Conclusions XIV-2 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/eng/?i=XIV-2_Ob_V1-4/Ob/EN).
103 Conclusions 2021 – Austria – Art. 3-2 (https://hudoc.esc.coe.int/?i=2021/def/AUT/3/2/EN).
104 Conclusions 2021 – Sweden – Art. 3-2 (https://hudoc.esc.coe.int/?i=2021/def/SWE/3/2/EN).
105 Conclusions 2017 – Lithuania – Art. 3-2 (https://hudoc.esc.coe.int/?i=2017/def/LTU/3/2/EN).
106 Conclusions 2021 – Estonia – Art. 3-2 (https://hudoc.esc.coe.int/?i=2021/def/EST/3/2/EN).
107 Conclusions XVIII-2 – Denmark – Art. 3-1 (https://hudoc.esc.coe.int/?i=XVIII-2/def/DNK/3/1/EN).
108 Conclusions 2017 – Lithuania – Art. 3-2 (https://hudoc.esc.coe.int/?i=2017/def/LTU/3/2/EN).

According to Art. 7.2 and 7.9 of the ESC, in order to protect the interests of children, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy, create an adequate statutory framework to identify potentially hazardous work – which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise during the course of that work –[109] and provide for compulsory regular medical check-ups for persons under 18.[110] When assessing the situation in Georgia, the ECSR has recalled that effective protection of the rights guaranteed by the ESC cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. This points to the decisive role the Labour Inspectorate has in effectively implementing Art. 7 of the ESC.[111] Furthermore, the ECSR has noted, the adoption of domestic legal regulation which provided for a list of heavy, harmful and dangerous work that may not be performed by persons under the age of 18, defined the employers' responsibilities towards young workers, established the procedure for conducting medical examinations and defined the requirements as to training. It also notes that the mandatory obligation for initial and regular medical examinations as a prerequisite for work has been established and is in line with the standard in question.[112]

To protect pregnant women, women who have recently given birth or who are nursing their infant, Art. 8.5 of the ESC sets an extremely restrictive standard of their employment in various dangerous activities, including underground work in mines[113] and those involving exposure to lead, benzene, ionising radiation, high temperatures, vibration or viral agents.[114] Domestic law must make provision for the re-assignment of women who are pregnant or breastfeeding if their work is unsuitable to their condition, with no loss of pay; if this is not possible, women should be entitled to paid leave or a social security benefit corresponding to 100% of their previous average pay; the employees' right to return to their previous employment at the end of their maternity/nursing period should be provided for by law.[115] In Georgia, pregnant women, women who have recently given birth or are breastfeeding are prohibited from performing heavy, harmful or hazardous work and measures have been introduced to promote their safety and health at work. The law defines work that is harmful and/or carries a particular risk for the health of pregnant women and women who have recently given birth or are breastfeeding and, for this purpose, establishes and identifies factors and agents, and describes work processes that may have a negative impact on the health and development of a pregnant woman, a woman who has recently given birth or is breastfeeding, as well as of the child. When it assessed the situation, the ECSR concluded that Georgia is still not in conformity with Article 8.5 on the ground that pregnant women, women who have recently given birth or who are nursing, whose ordinary employment has been deemed unsuitable due to their condition and who cannot be offered suitable alternative employment and are obliged to take leave, are not entitled to 100% of their previous salary.[116]

Whilst eliminating dangerous and unhealthy occupations is an ideal to strive for, Art. 2.4 of the ESC requires that specific measures be taken for as long as such occupations still exist.[117] There are two forms of compensation mentioned in Art 2.4 of the ESC, namely reduced daily working hours and additional paid holidays. The importance of reducing working hours and providing additional holidays is related both to the need for workers in hazardous situations to be alert and in order to limit the period of exposure to safety and health risks.[118] Although other approaches to reducing exposure to risks may also ensure conformity with the ESC,[119] under no circumstances can financial compensation, early retirement, wage increases or food supplements be considered a rele-

109 Conclusions 2006 – France – Art. 7-2 (https://hudoc.esc.coe.int/eng?i=2006/def/FRA/7/2/EN).
110 Conclusions IV – Statement of interpretation – Art. 7-9 (https://hudoc.esc.coe.int/fre/?i=IV_Ob_-8/Ob/EN).
111 Conclusions 2019 – Georgia – Art. 7-2 (https://hudoc.esc.coe.int/eng?i=2019/def/GEO/7/2/EN).
112 Conclusions 2023 – Georgia – Art. 7-9 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/7/9/EN).
113 Conclusions X-2 – Statement of interpretation – Art. 8-5 (https://hudoc.esc.coe.int/fre/?i=X-2_Ob_-1/Ob/EN).
114 Conclusions 2019 – Ukraine – Art. 8-5 (https://hudoc.esc.coe.int/eng?i=2019/def/UKR/8/5/EN).
115 Conclusions 2019 – Statement of Interpretation – Art. 8-4 and 8-5 (https://rm.coe.int/general-intro-2019-rev-en-/16809e09f3).
116 Conclusions 2023 – Georgia – Art. 8-5 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/8/5/EN).
117 Conclusions V – Statement of interpretation – Art. 2-4 (https://hudoc.esc.coe.int/fre/?i=V_Ob_-2/Ob/EN).
118 Conclusions III – Ireland – Art. 2-4 (https://hudoc.esc.coe.int/eng?i=III/def/IRL/2/4/EN).
119 Conclusions XVIII-2 – Statement of interpretation – Art. 2-4 (https://hudoc.esc.coe.int/fre/?i=XVIII-2_035_02/Ob/EN).

vant and appropriate measure to achieve the aims of Art. 2.4.[120] The aim of the compensation must be to offer those concerned sufficient and regular time to recover from the associated stress and fatigue, and thus to be able to maintain their vigilance.[121] Although Art. 2.4 has not been accepted by Georgia, having assessed the situation, the ECSR positively evaluated the domestic legislation, according to which extra paid leave of 10 calendar days is granted annually and a limitation of up to 8 hours within 24 hours is set.[122]

4. Supervision

According to Art. 3.3 of the ESC, to ensure the effective exercise of the right to safe and healthy working conditions, States parties must guarantee the enforcement of legal regulations by measures of supervision. This implies monitoring trends in the number of injuries at work and occupational diseases, checking the application of regulations and consulting employers' and workers' organisations on this subject.[123]

The frequency of and trends in occupational injuries (including fatal occupational accidents), their number in relation to the workforce as a whole and compared with the number of workers in each economic sector, are decisive factors in assessing the effective implementation of the rights set out in Art. 3.3 of the ESC.[124] A situation is considered incompatible with the ESC where the frequency of industrial accidents and fatalities is clearly too high to conclude that the exercise of the right to health and safety at work is being effectively secured, when assessed on the basis of absolute figures[125] or compared with the situation in other countries (e.g. average figures in European Union Member States). A fatal accident rate of more than double the European Union average indicates that measures taken to reduce fatal accidents are inadequate and the situation is therefore not in conformity with the ESC.[126]

The enforcement of safety and health regulations by measures of supervision is carried out in accordance with Art. A.4 of the ESC, which requires States parties to maintain a system of labour inspection appropriate to national conditions. The development of an appropriate public monitoring system to maintain standards and ensure they apply in the workplace is one of the main responsibilities of labour inspectorates.[127] Measures have to be taken, therefore, to address increasingly complex and multidimensional demands on the competence, resources and institutional capacity of labour inspection systems.[128] Sufficient resources must be allocated to labour inspectors to enable them to conduct a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Art. 3 and that the risk of accidents is reduced to a minimum.[129] The following criteria constitute the content of the standard in question: a) the number and frequency of inspections; b) the number of enterprises subject to inspections by sector of activity; c) the number and percentage of workers covered by inspections in each sector of activity; d) the number of staff employed in labour inspectorates on occupational safety and health for each sector of activity; and e) the measures taken with a view to maintaining the professional capability of inspectors, taking account of technological and legal developments.[130]

120 Conclusions XIII-3 – Greece – Art. 2-4 (https://hudoc.esc.coe.int/eng?i=XIII-3/def/GRC/2/4/EN); Conclusions 2007 – Romania – Art. 2-4 (https://hudoc.esc.coe.int/eng?i=2007/def/ROU/2/4/EN).
121 Conclusions V – Statement of interpretation – Art. 2-4 (https://hudoc.esc.coe.int/fre/?i=V_Ob_-2/Ob/EN); Conclusions III – Ireland – Art. 2-4 (https://hudoc.esc.coe.int/eng?i=III/def/IRL/2/4/EN).
122 Third report of ECSR on the non-accepted provisions of the European social charter (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
123 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, ECSR decision on the merits of 6 December 2006 (par. 231) (https://hudoc.esc.coe.int/eng/?i=cc-30-2005-dmerits-en).
124 Conclusions 2017 – France – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2017/def/FRA/3/3/EN); Conclusions 2013 – Lithuania – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2013/def/LTU/3/3/EN).
125 Conclusions 2003 – Slovenia – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2003/def/SVN/3/3/EN).
126 Conclusions 2013 – Lithuania – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2013/def/LTU/3/3/EN).
127 Conclusions 2003 – Bulgaria – Art. 3-1 (https://hudoc.esc.coe.int/eng?i=2003/def/BGR/3/1/EN).
128 Conclusions XX-2 – Statement of interpretation – Art. 3 (https://hudoc.esc.coe.int/fre/?i=XX-2_035_01/Ob/EN).
129 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, ECSR decision on the merits of 6 December 2006 (par. 229) (https://hudoc.esc.coe.int/eng/?i=cc-30-2005-dmerits-en).
130 Conclusions XIII-1 – Statement of interpretation – Art. 3-2 (https://hudoc.esc.coe.int/fre/?i=XIII-1_Ob_-3/Ob/EN).

There is also an obligation to combat possible non-reporting and/or the concealment of accidents and diseases.[131]

The enforcement of safety and health regulations in law and in practice must be done in consultation with employers' and workers' organisations with regard to labour inspectorates' activities, apart from participation in company inspections, which is included in the "right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking", guaranteed by Art. 22 of the ESC.[132]

Although Georgia has not accepted Art. 3.3 of the ESC, the ECSR has welcomed the positive developments in the country regarding the enforcement of safety and health regulations and, in particular, the setting up of LIO with legal means to monitor working conditions from a health and safety perspective.[133]

5. Enforcement

The effectiveness of the right to safe and healthy working conditions is directly related not only to the rights of the labour inspectorate to initiate inspections, but also to the system of penalties which, in the event of breaches of the regulations, must be efficient and dissuasive. The main aspects of such a penalties system which permits the effectiveness of the labour inspectorate's activities in the area in question to be assessed include: a) the number of offences recorded in relation to the number of penalties imposed; b) the frequency of offences in relation to the severity of penalties; c) the types of penalty imposed and their administrative or criminal nature; d) the number and total value of administrative fines levied, and whether the value of these fines is proportionate to the number of workers concerned; and e) the number of fines imposed, the amounts involved and their dissuasive effect.[134]

The ECSR has found non-conformity with Art. 3.3 of the ESC on the following grounds: a) where both the number of labour inspectors and the number of inspection visits decreased;[135] b) although the number of enterprises consistently increased, especially in the field of construction, which is the sector with highest risk concerning occupational accidents, the number of inspected entities and the total number of the labour inspectors remained the same;[136] c) the number of fines imposed and the amounts involved remain too low to have a dissuasive effect: despite the high maximum fines set out in the legislation to motivate employers to be more diligent in complying with occupational health and safety requirements, the average amount of fine imposed in practice is relatively low. Penalisation based on misdemeanour proceedings has never been the aim of the labour inspectorate; instead, fines are imposed if the violation has been ongoing for a long period of time, affects many employees, or has put to risk the life or health of a person and it is no longer possible to eliminate the violation. The labour inspectorate had been proceeding from the principle that if an issue in the working environment can be eliminated by applying other measures, no penalties are imposed.[137]

On the other hand, the following serve as examples of measures that have been assessed as meeting the standard in question:

- the coverage of all establishments;
- measures to restore the balance between the capacity required to conduct accident investigations and that required to carry out proactive – more preventive – inspections, i.e. expanding the capacity of the labour inspectorate, raising the proportion of reactive inspections in the total number of health and safety inspections;

131 Conclusions 2013 – Albania – Art. 3-3 (https://hudoc.esc.coe.int/eng/?i=2013/def/ALB/3/3/EN).
132 Conclusions 2005 – Norway – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2005/def/NOR/3/3/EN).
133 Third report of ECSR on the non-accepted provisions of the European social charter (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
134 Conclusions 2017 – Estonia – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2017/def/EST/3/3/EN); Conclusions 2005 – Lithuania – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2005/def/LTU/3/3/EN).
135 Conclusions 2021 – Turkey – Art. 3-3 (https://hudoc.esc.coe.int/?i=2021/def/TUR/3/3/EN); Conclusions 2017 – Portugal – Art. 3-3 (https://hudoc.esc.coe.int/?i=2017/def/PRT/3/3/EN).
136 Conclusions 2021 – Lithuania – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2021/def/LTU/3/3/EN).
137 Conclusions 2021 – Estonia – Art. 3-3 (https://hudoc.esc.coe.int/?i=2021/def/EST/3/3/EN).

- confirmation in writing of the sanctions to be imposed, the remedial measures to be taken and the timescale within which the breach or breaches must be rectified;
- carrying out spot checks to determine whether the required measures have been implemented and, if this is not the case, applying a tougher sanction;
- in addition to enforcement under administrative law, some breaches of health and safety legislation could be prosecuted under criminal law;
- in the event of fatal accidents, the mandatory consultation with a public prosecutor to determine whether a criminal investigation should be launched.[138]

At the level of redress, the ECtHR has issued several judgments on work-related accidents or diseases. The right to life imposes a primary duty on the State to put in place effective criminal-law provisions to deter the commission of offences against the person. These provisions must be backed up by adequate law-enforcement machinery to prevent, suppress and punish breaches of law.[139]

138 Conclusions 2021 – Netherlands – Art. 3-3 (https://hudoc.esc.coe.int/eng?i=2021/def/NLD/3/3/EN). https://ks.echr.coe.int/documents/d/echr-ks/guide_art_2_eng page 34/58

139 Pereira Henriques v. Luxembourg, Application no. 60255/00, ECtHR judgment on the merits of 9 May 2006 (https://hudoc.echr.coe.int/fre-press?i=003-1664745-1747191); Sidika Imren v. Turkey, Application no. 47384/11, ECtHR judgment on the merits of 13 September 2016 (par. 58) (https://hudoc.echr.coe.int/eng?i=001-166683);

IV. Individual labour rights

1. Prohibition of forced or compulsory labour

A worker's right to earn their living in an occupation freely entered upon, as enshrined in Art. 1.2 of the ESC, is interpreted by the ECSR as covering the prohibition of forced labour.[140] The prohibition of forced labour is also enshrined in Art. 4 of the ECHR. Since forced labour and labour exploitation are closely related to human trafficking, Art. 4 of the ECHR must be interpreted in light of the Council of Europe's Anti-Trafficking Convention,[141] and its interpretation by Group of experts on action against trafficking in human beings (GRETA).[142] For this reason, labour inspectorates should also use the GRETA Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation[143] as a source of effective implementation of the standard in question.

The definition of forced or compulsory labour is based on the interpretation given by the ECtHR of Art. 4.2 of the ECHR: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".[144] The coercion of any worker to carry out work against their wishes and without their freely expressed consent is contrary to the ESC. This also applies to the coercion of any worker to carry out work they had previously freely agreed to do, but which they subsequently no longer want to carry out.[145]

Extremely bad working and living conditions on their own do not prove the existence of forced labour since people may sometimes "voluntarily" accept bad conditions because of the lack of any alternative jobs. However, abusive conditions should represent an alert to the possible existence of coercion that is preventing the exploited workers from leaving the job. Indicators that are relevant for detecting signs of labour exploitation include abusive (degrading) living conditions for on-site workers (e.g. "live-in" domestic workers and agricultural workers housed on or near a farm, factory workers locked in their workplace, agricultural workers surrounded by armed guards (whose presence is justified, for example, as "workers need defending against animals")), induced or inflated indebtedness (by the falsification of accounts, inflated prices for goods/services said to be purchased by a worker, reduced value of goods/services produced by the worker, excessive interest rates on loans, etc.).

Consent is irrelevant for the assessment of exploitation if the adult victim accepted the situation because of deception, false promises, threats, abuse of authority or other forms of unacceptable pressure. Deception may include the nature of work or working or living conditions (including remuneration), debt bondage (when a worker is told he or she cannot leave a job until they have repaid a debt to the employer, contractor or trafficker), undeclared work or failure to respect a range of employment procedures, falsifying records (e.g. pay slips), providing workers with accommodation that is unfit for habitation or amounts to living conditions contrary to human dignity, supplying people with food that is unfit to eat, failure to pay workers or failure to pay the minimum wage (or remunerating by piecework with the result that the minimum wage is not received) and excessive hours of work.

140 Conclusions I – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=I_Ob_-3/Ob/EN).
141 Convention on Action against Trafficking in Human Beings, No. 197, 2005 (https://rm.coe.int/168008371d).
142 Chowdury and Others v. Greece, Application no. 21884/15, ECtHR judgment on the merits of 30 March 2017 (par. 104) (https://hudoc.echr.coe.int/tur?i=001-172701).
143 Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation (https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c).
144 Conclusions 2020 – Albania – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/ALB/1/2/EN); Van Der Mussele v. Belgium, Application no. 8919/80, ECtHR judgment on the merits of 23 November 1983 (par. 32) (https://hudoc.echr.coe.int/eng?i=001-57591); Siliadin v. France, Application no. 73316/01, ECtHR judgment on the merits of 26 July 2005 (par. 115-116) (https://hudoc.echr.coe.int/eng?i=001-69891); S.M. v. Croatia, Application no. 60561/14, ECtHR judgment on the merits of 25 June 2020 (par. 281-285) (https://hudoc.echr.coe.int/eng?i=001-203503).
145 Conclusions III – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng/?i=III_Ob_-2/Ob/EN).

The absolute dependence of a victim on someone who controls them (particularly in the case of a child or youth victim) outweighs any apparent freedom of movement. The fact that someone is paid (or otherwise remunerated) does not mean they have not been trafficked. Nor does the fact that they possess some money mean that "they could have escaped" and therefore were not a trafficking victim.

In case *Siliadin v. France,*[146] the ECtHR found there was a violation and expressed dismay that, although slavery was officially abolished more than 150 years ago, "domestic slavery" persisted in Europe and concerned thousands of people, the majority of whom were women. A 15 year-old girl worked for a family without respite, against her will, and without being paid. She was unlawfully present in a foreign country and was afraid of being arrested by the police. The couple she worked for maintained that fear and led her to believe that her status would be regularised. The forced labour imposed on her lasted almost 15 hours a day, seven days a week. Brought to France by a relative of her father, she had not chosen to work for the family in question. As a minor, she had no resources, was vulnerable and isolated, and had no means of subsistence other than in the home of work providers, where she shared the children's bedroom. She was entirely at the mercy of work providers, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which had never occurred. Nor did she, who was afraid of being arrested by the police, have any freedom of movement or free time. In addition, as she had not been sent to school, despite the promises made to her father, she could not hope that her situation would improve and was completely dependent on work providers. The ECtHR decided that it was a form of servitude.

The non-application in practice of legislation which is contrary to the prohibition of forced labour is not sufficient.[147] There is a positive obligation on States parties to put in place a legal and regulatory framework enabling the prevention of forced labour and other forms of labour exploitation, the protection of victims and the investigation of arguable allegations of these practices, together with the characterisation as a criminal offence and effective prosecution of any act aimed at maintaining a person in a situation of severe labour exploitation.[148]

It is not enough to adopt criminal law provisions to combat forced labour and other forms of severe labour exploitation; measures to enforce them must be taken. The authorities must act of their own motion once the matter has come to their attention; the obligation to investigate shall not depend on a formal complaint by the victim or a close relative. This obligation is binding on the law-enforcement and judicial authorities.[149] For an investigation to be effective, it must be capable of leading to the identification and punishment of the individuals responsible, this being an obligation not of result but of means. A requirement of promptness and reasonable expedition is implicit in all cases, but where the possibility of removing the individual from a harmful situation is available, the investigation must be undertaken as a matter of urgency.[150] As to what form the investigation should take in order to achieve the aforementioned aims, it may vary according to the circumstances. However, once the matter has come to the attention of the authorities, they must act of their own motion.[151] The obligation to investigate effectively is binding, in such matters, on the law-enforcement and judicial authorities. Where those authorities establish that an employer has had recourse to human trafficking and forced labour, they should act accordingly, within their respective spheres of competence, pursuant to the relevant criminal-law provisions.[152]

In the case *Chowdury and Others v. Greece,*[153] the ECtHR found a violation due to ineffective pros-

146 Siliadin v. France, Application no. 73316/01, ECtHR judgment on the merits of 26 July 2005 (https://hudoc.echr.coe.int/eng?i=001-69891).
147 Conclusions V – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng/?i=V_Ob_-1/Ob/EN).
148 Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN).
149 Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN).
150 Rantsev v. Cyprus and Russia, Application no. 25965/04, ECtHR judgment on the merits of 7 January 2010 (par. 288) (https://hudoc.echr.coe.int/eng?i=001-96549).
151 C.N. v. the United Kingdom, Application no. 4239/08, ECtHR judgment on the merits of 13 November 2012 (par. 69) (https://hudoc.echr.coe.int/eng?i=001-114518).
152 Chowdury and Others v. Greece, Application no. 21884/15, ECtHR judgment on the merits of 30 March 2017 (par. 116) (https://hudoc.echr.coe.int/tur?i=001-172701).
153 Chowdury and Others v. Greece, Application no. 21884/15, ECtHR judgment on the merits of 30 March 2017 (https://hudoc.echr.coe.int/tur?i=001-172701).

ecution. The applicants were 42 Bangladeshi nationals. With neither work permits nor residence permits for Greece, they were recruited as seasonal agricultural workers. Having been promised a wage of €22 per day and housed in deplorable conditions, they worked extremely long hours under the supervision of armed foremen. As strikes had broken out after several months of unpaid wages, the employers responded with threats and recruited new Bangladeshi migrants. One day, one of their guards opened fire on about a hundred workers who were demanding their wages, seriously injuring some of the applicants. Proceedings were brought against the employers, the guard who had opened fire and a foreman. In addition to a charge of grievous bodily harm, the prosecutor brought the charges of trafficking in human beings. One group of applicants (all of whom had been injured) was recognised by the prosecutor's office as victims of human trafficking and took part in the trial. The court imposed prison sentences in respect of grievous bodily harm but dismissed the trafficking charge on the grounds that the applicants had signed up willingly and without losing the freedom of movement enabling them to leave the employer. The other group of applicants (those who had not been injured) were not involved in the proceedings. Although they had also lodged a complaint, requesting that they too be recognised as victims of trafficking, the prosecutor refused to institute proceedings, on the grounds that the applicants' delay in coming forward cast doubt on the reality of their presence at the time of the events. The ECtHR emphasised that the applicants had begun working while they were in a vulnerable situation, as illegal immigrants without resources who ran the risk of being arrested, detained and deported. They undoubtedly realised that if they stopped working, they would never receive their salary arrears, which were accumulating on a daily basis. Even supposing that when they were recruited the applicants had offered their labour voluntarily and had believed in all good faith that they would be paid their wages, the conduct of their employers (threats and violence, especially in response to requests for payment of wages) showed that the situation had subsequently changed. Thus, while the applicants were not in a situation of servitude, their working conditions clearly allowed the conclusion that their situation amounted to forced labour and human trafficking.

While the most important function of labour inspectors is to ensure compliance with national labour law, they can play a crucial preventative, advisory and enforcement role in the fight against human trafficking. In carrying out their functions, labour inspectors are likely to come across situations of trafficking or forced labour at workplaces or situations that indicate a risk of exploitation. The mandate of labour inspectorates should be expanded to explicitly cover human trafficking for the purpose of labour exploitation. It should include the detection and reporting of such cases in any place where work is performed, including domestic households, as well as in the informal sector.[154]

Inspection methods and techniques of relevance to labour exploitation and that should be used by labour inspectors, both independently and in collaboration with other actors, include interviews and direct observation, the verification of documents, the enforcing of posting of notices, and the inspection of materials and substance used in the workplace. All inspections and actions taken by labour inspectors, the police, or any other entity or organisation, should consider – and be balanced against – the possible risk of reprisals that workers could face from their employers once the inspection is completed.[155]

Preventative measures, such as data collection and research on the prevalence of forced labour and labour exploitation, awareness-raising campaigns, the training of professionals, law-enforcement agencies, employers and vulnerable population groups, are also of vital importance in this field, the effectiveness of which depends crucially on the mandate and capacity of the labour inspectorate.[156] Domestic legislation should include measures designed to force companies to report on action taken to investigate forced labour and the exploitation of workers among their supply chains. It should also require that every precaution be taken in public procurement processes to guarantee that funds are not used unintentionally to support various forms of modern slavery.[157]

154 Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation (https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c).

155 Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation (https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c).

156 Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN).

157 Conclusions 2020 – Georgia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/GEO/1/2/EN).

Protection measures should include the identification of victims by qualified persons, assistance to victims in their physical, psychological and social recovery and rehabilitation, access to effective remedies designed to provide compensation for all damage incurred, including lost wages and unpaid social security contributions.[158]

Areas (by worker groups or type of work) where threats are most pronounced and which require special attention include persons working under a special regime (e.g. prisoners, army officers, seafarers, etc.),[159] cases where employment relationships are not formalised or are artificially formalised as civil relationships (domestic work, the gig and platform economy, etc.),[160] migrant workers[161] and children[162] and their social status-related limitations to defend their rights and legitimate interests.

The possibility to conclude oral employment agreements under Art. 12.1-12.3 of the Labour Code of Georgia, although limited in terms of duration and by certain conditions relating to the duration of the employment relationship, may also be seen as hampering the capacity of LIO in the fight against both illegal work and forced labour. A crucial function of LIO to be mentioned here is the submission of proposals to improve Georgia's labour legislation, bringing to the notice of the competent authority defects or abuses resulting from the unsuitability of, or omissions from, the existing provisions. A systematic approach, addressing shortcomings or limitations emerging while performing other functions, is paramount.

2. WORKING AND REST TIME

Working time must be reasonable with regard to its duration, organisation and distribution. The right to rest periods (daily breaks, daily rest periods, weekly rest periods, and the right to paid annual leave) are mutually connected with the right to reasonable working time. The right to reasonable working time and rest periods forms the basis for human dignity of working people.

Art. 2 of the ESC covers different aspects of the regulation of working and rest time, including reasonable daily and weekly working hours and the progressive reduction of the working week (Art. 2.1), public holidays with pay (Art. 2.2), paid annual leave (Art. 2.3), reasonable accommodation of working time (preventive measures) for dangerous or unhealthy occupations (Art. 2.4), weekly rest periods (Art. 2.5) and special measures in the case of night work (Art. 2.7). In addition, Art. 4.2 of the ESC guarantees an increased rate of remuneration for overtime work.

a. *Reasonable (maximum) working time*

Two aspects of the right to just working conditions are embedded in Art. 2.1 of the ESC: reasonable daily and weekly working hours as well as the progressive reduction of working week. The main aim of regulating working time is to protect workers' safety and health.[163] Every worker must therefore benefit from rest periods that are adequate for recovering from the fatigue of work and of a preventive value in reducing risks of health impairment which could result from accumulation of periods of work without the necessary rest.[164]

158 Conclusions 2020 – Armenia – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/ARM/1/2/EN).

159 International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, ECSR decision on the merits of 5 December 2000 (par. 21-22) (https://hudoc.esc.coe.int/eng/?i=cc-07-2000-dmerits-en); European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland, Complaint No. 164/2018, ECSR decision on the merits of 21 October 2020 (par. 48-49) (https://hudoc.esc.coe.int/eng?i=cc-164-2018-dmerits-en); Conclusions 2012 – Statement of interpretation – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2012_163_01/Ob/EN).

160 These workers not only do not acquire the guarantees arising from the employment relationship, but often face abusive, degrading and inhuman living and working conditions; Conclusions 2012 – France – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2012/def/FRA/1/2/EN); Conclusions 2020 – Albania – Art. 1-2 (https://hudoc.esc.coe.int/eng?i=2020/def/ALB/1/2/EN).

161 Art. 19 of the ESC.

162 Art. 7.10 of the ESC; Conclusions V – Statement of interpretation – Art. 7-10 (https://hudoc.esc.coe.int/eng?i=V_Ob_-13/Ob/EN).

163 Conclusions XIV-2 – Statement of interpretation – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-1/Ob/EN).

164 Confédération Générale du Travail v. France, Complaint No. 22/2003, ECSR decision on the merits of 8 December 2004 (par. 34) (https://hudoc.esc.coe.int/eng/?i=cc-22-2003-dmerits-en).

There is no definition in the ESC as to what constitutes reasonable working hours; this must be assessed on a case-by-case basis, since it varies from place to place and from time to time. However, examples of non-conformity, highlighted by the ECSR, include weekly working time exceeding 60 hours[165] and daily working time of up to 16 hours.[166]

As with the vast majority of rights embedded in the ESC, to ensure that legal regulation is effectively applied in practice, the appropriate authority (labour inspectorate) must verify whether the limits are being respected,[167] taking proactive actions to ensure the respect of reasonable working hours.[168]

As to the scope of the application of the provision in question, it is vital that all categories of workers are covered and exclusions are only permitted in exceptional cases. For example, the application of an exception to sports professionals, scientists, performing artists, military personnel and the police cannot in itself be justified.[169] Other examples of non-conformity were identified in the cases of workers in health care, child care institutions, specialised electricity and gas companies, specialised communications services and specialised services for the elimination of the effects of accidents.[170] On the other hand, exceptions were made for directors, managers and other employees occupying a position with special responsibilities, as well as for workers with a "special" nature of work requiring their continuous presence at the work place so long as the obligation to respect the minimum daily and weekly rest hours is maintained, was assessed as not to be in conflict with the standard in question.[171]

Some further specific cases related to the regulation of working time are discussed below, including overtime, flexibility measures and on-call duty.

b. *Overtime*

Working hours are assessed by taking into account not only normal working hours but also overtime, which should therefore also be regulated in the sense that it should not be left to the discretion of the employer or the worker. The utilisation and/or the duration of overtime should be limited to avoid exposing the worker to the risks of accidents at the end of a working day.[172]

Limiting working hours has frequently caused workers to do overtime or to seek a second job and the protection originally intended was thus rendered futile. Aware of the fact that it was not competent to solve this problem, the ECSR has drawn attention to the need to find ways of offsetting the adverse effects of such situations with regard to the effective protection of workers.[173]

Teleworking or remote working may lead to excessive working hours. It is necessary to fully enable the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect"). Employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform.[174]

c. *Flexible working arrangements*

For flexible working time arrangements where average weekly working hours are calculated over a period of several months as an average over given reference periods[175] to conform with the ESC, national laws or regulations must fulfil three criteria: a) they must provide for reasonable reference

165 Conclusions 2022 – Türkiye – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/TUR/2/1/EN); Conclusions 2022 – Albania – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/ALB/2/1/EN).
166 Conclusions 2018 – Norway – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2018/def/NOR/2/1/EN).
167 Conclusions XIV-2 – Statement of interpretation – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-1/Ob/EN); Conclusions 2022 – Georgia – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/1/EN).
168 Conclusions 2022 – Georgia – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/1/EN).
169 Conclusions 2018 – Netherlands – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2018/def/NLD/2/1/EN).
170 Conclusions 2014 – Armenia – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2014/def/ARM/2/1/EN).
171 Conclusions 2014 – Andorra – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2014/def/AND/2/1/EN).
172 Conclusions XIV-2 – Statement of interpretation – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-1/Ob/EN).
173 Conclusions IV – Statement of interpretation – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=IV_Ob_-2/Ob/EN).
174 Conclusions 2022 – Georgia – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/1/EN).
175 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.

periods for the calculation of average working time, which must not exceed six months and may be extended to a maximum of one year in exceptional circumstances; b) they must operate within a legal framework providing adequate guarantees; a precise legal framework must clearly circumscribe the discretion left to employers and employees to vary, by means of a collective agreement, working time; and c) they must prevent unreasonable daily and weekly working time; the maximum daily and weekly hours (up to 16 hours a day and 60 hours a week) must not be exceeded in any event.[176]

d. *On-call duty*

Periods of on-call duty during which the employee is not required to perform work for the employer (but to be at their disposal), although they do not constitute effective working time, cannot be regarded as a rest period within the meaning of Art. 2 of the ESC, except in the context of certain occupations or particular circumstances and pursuant to appropriate procedures. The absence of effective work cannot constitute an adequate criterion for regarding such a period as a rest period.[177] The assimilation of on-call duty periods to rest periods constitutes a violation of the right to reasonable working time provided for in Art. 2.1.[178] 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 and for the on-call time spent at home.[179] In other words, if an employee's rights to rest are significantly restricted due to the fact that, even when not working, he or she must always be ready to start work immediately upon the employer's instruction, the mere fact that the employee is not required to be at the workplace until there is work is not a basis for the employer to recognise such on-call time as the employee's rest time without pay. The court and/or the labour inspectorate must have the mandate to recognise such time as working time and apply the related guarantees to employees.

e. *Night work*

Art. 2.7 of the ESC 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".[180] The measures which take account of the special nature of the work must at least include the following: a) regular medical examinations, including a check prior to employment on night work; b) the provision of possibilities for transfer to daytime work; and c) 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.[181]

The 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 Art. 2.7.[182] This medical examination should be provided free of charge.[183] Another ground of non-conformity is related to legal regulation, according to which medical examinations prior to the beginning of night work and regularly thereafter are conditional on night

176 Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, ECSR decision on the merits of 16 November 2001 (par. 29-38) (https://hudoc.esc.coe.int/eng/?i=cc-09-2000-dmerits-en); Conclusions XIV-2 – Statement of interpretation – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-1/Ob/EN).

177 Confédération française de l'Encadrement -"CFE-CGC" v. France, Complaint No.16/2003, ECSR decision on the merits of 12 October 2004 (par. 41) (https://hudoc.esc.coe.int/eng?i=cc-16-2003-dmerits-en).

178 Confédération générale du travail (CGT) v. France, Complaint No. 55/2009, ECSR decision on the merits of 23 June 2010 (par. 66) (https://hudoc.esc.coe.int/eng/?i=cc-55-2009-dmerits-en); Conclusions 2022 – Serbia – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=2022/def/SRB/2/1/EN); Conclusions 2022 – France – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/FRA/2/5/EN).

179 Confédération française de l'Encadrement -"CFE-CGC" v. France, Complaint No.16/2003, ECSR decision on the merits of 12 October 2004 (par. 52) (https://hudoc.esc.coe.int/eng?i=cc-16-2003-dmerits-en).

180 Conclusions 2018 – Ukraine – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2018/def/UKR/2/7/EN); Conclusions 2016 – Georgia – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2016/def/GEO/2/7/EN).

181 Conclusions 2003 – Romania – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2003/def/ROU/2/7/EN).

182 Conclusions 2022 – Andorra – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2022/def/AND/2/7/EN).

183 Conclusions 2018 – Bosnia and Herzegovina – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2018/def/BIH/2/7/EN).

workers having requested them, instead of their being compulsory.[184]

According to Art. 7.8 of the ESC, domestic law must provide that persons under eighteen years of age are not employed in night work. Exceptions can be made as regards certain occupations in very limited cases, if they are: a) explicitly provided in domestic law; b) necessary for the proper functioning of the economic sector, and c) if the number of young workers concerned is low.[185] Strict restrictions and exceptional cases where inspections have identified illegal night work of minors were assessed by the ECSR as meeting the standard in question.[186] On the other hand, the failure to provide information to the ECSR, which could have been due to insufficient control (a low number of inspections), and a high number of violations,[187] as well as legal regulation, according to which a prohibition on night work does not apply to the great majority of young workers under 18 years of age[188] were assessed as not in conformity with Art. 7.8 of the ESC.

Art. 8.4 of the ESC requires night work for pregnant women, women who have recently given birth and women nursing their infants to be regulated in order to limit the adverse effects on the health of the women in question. The regulations must allow night workers with family responsibilities to transfer to day work, preclude employers from obliging such workers to move to night work[189] and lay down conditions for the night work of pregnant women, e.g. prior authorisation by the labour inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in the event of health problems linked to night work.[190] The regulation, according to which the night work is allowed when the woman expressly declares her willingness to do it, if there is no medically certified reason to stop her working and, in particular, there is no risk to the pregnant woman (or her child) from working has been assessed as being in conformity with the standard in question.[191] On the other hand, the ECSR has declared non-conformity in a situation when, in the event of temporary leave from employment, the renumeration payable to the woman is decided by agreement of the employer and the employee, since it considered that this does not amount to a guarantee that women exempted from night work due to maternity are entitled to their average previous salary.[192]

f. *Special guarantees*

The ESC provides additional guarantees for young workers regarding the regulation of working time. According to Art. 7.6 of the ESC, time spent on vocational training by young people during normal working hours must be treated as part of the working day. Training time must thus be remunerated as normal working time (by either the employer or by public funds, as the case may be), and there must be no obligation to make up for the time spent in training, which would effectively increase the total number of hours worked. This right also applies to training followed by young people with the consent of their employer and which is related to the work carried out, but which is not necessarily financed by the latter.[193]

According to Art. 8.3 of the ESC, all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose.[194] Time off for nursing should in principle be granted during working hours and be treated as normal working time and remunerated as such.[195]

184 Conclusions 2022 – Georgia – Art. 2-7 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/7/EN).
185 Conclusions XVII-2 – Malta – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=XVII-2/def/MLT/7/8/EN).
186 Conclusions 2023 – Andorra – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/AND/7/8/EN); Conclusions 2023 – Sweden – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/SWE/7/8/EN).
187 Conclusions 2023 – Armenia – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/ARM/7/8/EN); Conclusions 2023 – Georgia – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/7/8/EN); Conclusions 2023 – Germany – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/DEU/7/8/EN).
188 Conclusions 2023 – Norway – Art. 7-8 (https://hudoc.esc.coe.int/eng?i=2023/def/NOR/7/8/EN).
189 Conclusions 2003 – France – Art. 8-4 (https://hudoc.esc.coe.int/eng?i=2003/def/FRA/8/4/EN).
190 Conclusions X-2 – Statement of interpretation – Art. 8-4 (https://hudoc.esc.coe.int/fre/?i=X-2_Ob_-1/Ob/EN).
191 Conclusions 2023 – Germany – Art. 8-4 (https://hudoc.esc.coe.int/eng?i=2023/def/DEU/8/4/EN).
192 Conclusions 2023 – Georgia – Art. 8-4 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/8/4/EN).
193 Conclusions 2023 – Georgia – Art. 7-6 (https://hudoc.esc.coe.int/eng?i=2023/def/GEO/7/6/EN).
194 Conclusions XVII-2 – Spain – Art. 8-3 (https://hudoc.esc.coe.int/eng?i=XVII-2/def/ESP/8/3/EN).
195 Conclusions XIII-4 – Pays-Bas – Art. 8-3 (https://hudoc.esc.coe.int/eng?i=XIII-4/def/NLD/8/3/EN).

g. *Minimum rest time periods*

Under the ESC, "rest periods" are regarded as those periods during which employees can pursue activities of their own choosing, planned within the limits of the time available before the beginning of work at a fixed time and not subject to any lack of certainty resulting from the exercise of an occupation or from the situation of dependency inherent in that exercise.[196]

Periods during which an employee must be granted rest time are divided into daily and weekly periods. The ESC does not expressly define the length of daily rest periods. The ECSR assesses the adequacy of daily rest periods on a case-by-case basis, indicating that a rest period may not be reduced to a minimum period of 8 hours within 24 consecutive hours for workers in various occupations[197] or even to 7 hours for some categories of workers.[198]

Art. 2.5 of the ESC concerns the weekly rest period. The aim of this provision is to protect the health and safety of workers by guaranteeing a weekly rest period which corresponds as far as possible with the day of the week recognised as a rest day by tradition or custom (the day traditionally or normally recognised as a day of rest is Sunday). However, the rest period can be taken on a day other than Sunday, either when the type of activity requires it, or for reasons of an economic nature. Another day of rest during the week must be provided for.[199] Although the rest period should be "weekly", it may be deferred to the following week, as long as no worker works more than twelve days consecutively before being granted a two-day rest period.[200] Derogations to this rule might be in conformity with Art. 2.5 when the postponement is truly exceptional and accompanied by strict safeguards (an authorisation by the labour inspectorate, an agreement with trade unions or workers' representatives, etc.).[201]

It would be inconsistent with the ESC to allow a worker to substitute a weekly uninterrupted rest period for financial compensation or to waive it.[202] However, where a weekly rest is postponed, the situation is not in breach of the ESC in the event that two days' rest are provided for the twelve consecutive days' work that follow. Twelve consecutive working days before a rest period is a maximum.[203] The ECSR has also concluded that the situation is not in conformity with Art. 2.5 in cases where different groups of workers (e.g. domestic workers,[204] agricultural workers) are not covered by the legislation guaranteeing a weekly rest period.

h. *Annual leave*

Art. 2.3 of the ESC guarantees the right to a minimum of four weeks (or 20 working days) annual leave with pay. The right of persons under 18 to a minimum of four weeks annual leave with pay is also enshrined in Art. 7.7 of the ESC. A worker must take at least two weeks uninterrupted annual holidays during the year the holidays are due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.[205] The taking of annual holiday may be subject to the requirement that the twelve working months for which it is due have fully elapsed.[206]

196 Confédération française de l'Encadrement -"CFE-CGC" v. France, Complaint No.16/2003, ECSR decision on the merits of 12 October 2004 (par. 51) (https://hudoc.esc.coe.int/eng?i=cc-16-2003-dmerits-en).
197 Conclusions XXI-3 – Czech Republic – Art. 2-1 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/CZE/2/1/EN).
198 Conclusions 2022 – Finland – Art. 2-1, https://hudoc.esc.coe.int/eng?i=2022/def/FIN/2/1/EN).
199 Conclusions XIV-2 – Statement of interpretation – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=XIV-2_Ob_V1-2/Ob/EN).
200 Conclusions 2022 – Hungary – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/HUN/2/5/EN); Conclusions 2022 – Bosnia and Herzegovina – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/BIH/2/5/EN); Conclusions 2022 – Slovak Republic – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/SVK/2/5/EN).
201 Conclusions 2010 – Romania – Art. 2-5 (https://hudoc.esc.coe.int/eng?i=2010/def/ROU/2/5/EN); Conclusions 2014 – Sweden – Art. 2-5 (https://hudoc.esc.coe.int/eng?i=2014/def/SWE/2/5/EN); Conclusions XX-3 – Denmark – Art. 2-5 (https://hudoc.esc.coe.int/eng?i=XX-3/def/DNK/2/5/EN).
202 Conclusions I – Statement of interpretation – Art. 2-5, (https://hudoc.esc.coe.int/eng/?i=I_Ob_-70/Ob/EN); Conclusions 2016 – Armenia – Art. 2-5 (https://hudoc.esc.coe.int/eng?i=2016/def/ARM/2/5/EN).
203 Conclusions XIV-2 – Statement of interpretation – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=XIV-2_Ob_V1-2/Ob/EN); Conclusions 2022 – Latvia – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/LVA/2/5/EN); Conclusions 2022 – North Macedonia – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/MKD/2/5/EN).
204 Conclusions 2022 – Greece – Art. 2-5 (https://hudoc.esc.coe.int/eng/?i=2022/def/GRC/2/5/EN).
205 Conclusions 2007 – Statement of interpretation – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=2007_Ob_1/Ob/EN).
206 Conclusions I – Statement of interpretation – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-8/Ob/EN).

Annual leave may not be replaced by financial compensation and workers must not have the option of giving up their annual leave. However, the payment of a lump sum to a worker at the end of the employment in compensation for the paid holiday to which he or she was entitled but which he or she had not taken is in conformity with the ESC.[207]

Art. 2.3 of the ESC requires that a worker who is incapacitated for work by reason of illness or injury during all or part of their annual holiday must be entitled to take at some other time the days thereby lost, at least insofar as is necessary to guarantee the worker the two week annual holiday provided for by the ESC. This requirement applies in all cases, whether the incapacity commences before or during the holiday period, as well as in cases of employment in which there is a fixed holiday period for all workers in an enterprise.[208] Examples of non-conformity also include legal regulation, according to which workers may relinquish annual leave in return for increased remuneration[209] or where it is allowed for all annual leave to be carried over to the following year.[210]

Although Art. 2.3 has not been accepted by Georgia, having assessed the situation, the ECSR positively evaluated its domestic legislation.[211]

i. *Maternity leave*

The rights of employed women to maternity leave, which shall be not less than 14 weeks, and employment benefits are recognised by Art. 8.1 of the ESC. This right is designed both to grant employed women protection in the event of maternity and to reflect a more general interest in public health, i.e. the health of the mother and child. The guarantee provided, on the one hand, allows women the right to use all or part of their recognised entitlement to cease work for a period of at least 14 weeks, allowing them the freedom of choice by means of a scheme of benefits set at an adequate level, and, on the other hand, obliges the employer to respect the free choice of women.[212]

Domestic law may permit women to opt for a shorter period of maternity leave. The requirement of six weeks postnatal leave is a means of achieving the protection provided for by Art. 8.1. Where compulsory leave is less than six weeks, the rights guaranteed may be realised through the existence of adequate legal safeguards that fully protect the right of employed women to choose freely when to return to work after childbirth – in particular, an adequate level of protection for women having recently given birth who wish to take the full maternity leave period (e.g. legislation against discrimination at work based on gender and family responsibilities); an agreement between social partners protecting the freedom of choice of the women concerned; and the general legal framework surrounding maternity (for instance, whether there is a parental leave system whereby either parent can take paid leave at the end of the maternity leave).[213]

The modality of compensation is within the margin of appreciation of the national legislator and may be a paid leave (the continued payment of wages by the employer), social security maternity benefit, any alternative benefit from public funds or a combination of these. Regardless of the form of the payment, the level must be adequate. It should not be substantially reduced compared with the previous wage and cannot be less than 70% of that wage. The minimum rate of compensation must not fall below the poverty threshold defined as 50% of median equivalised income, calculated based on the Eurostat at-risk-of-poverty threshold value. The right to compensation may be subject to entitlement conditions such as a minimum period of employment or contribution. However, such conditions shall not be excessive; in particular, qualifying periods should allow for some interruptions in the employment record.[214]

207 Conclusions I – Statement of interpretation – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-8/Ob/EN).
208 Conclusions XII-2 – Statement of interpretation – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=XII-2_Ob_-2/Ob/EN); Conclusions 2022 – Greece – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=2022/def/GRC/2/3/EN).
209 Conclusions 2022 – Greece – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=2022/def/GRC/2/3/EN).
210 Conclusions 2022 – Ireland – Art. 2-3 (https://hudoc.esc.coe.int/eng?i=2022/def/IRL/2/3/EN).
211 Third report of ECSR on the non-accepted provisions of the European social charter (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
212 Conclusions XIX-4 – Statement of interpretation – Art. 8-1 (https://hudoc.esc.coe.int/eng?i=XIX-4_035_02/Ob/EN).
213 Conclusions XIX-4 – Statement of interpretation – Art. 8-1 (https://hudoc.esc.coe.int/eng?i=XIX-4_035_02/Ob/EN).
214 Conclusions 2015 – Statement of interpretation – Art. 8-1 (https://hudoc.esc.coe.int/eng?i=2015_163_02/EN).

Although Art. 8.1 has not been accepted by Georgia, having assessed the situation, the ECSR positively evaluated the country's domestic regulation.[215]

j. *Annual holidays*

Art. 2.2 of the ESC provides the right to public holidays with pay, in addition to weekly rest periods and annual leave. The ESC does not stipulate the number of public holidays. The number of public holidays varies and there has been no finding of non-conformity with this provision due to the granting of too few public holidays. As a rule, work should be prohibited during public holidays. In the case of work on public holidays, two conditions must be met to comply with the ESC: specific circumstances set either by law or collective agreements,[216] and adequate compensation.

In view of the varied approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence in this regard, national legislators enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday.[217] Work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a higher remuneration than that usually paid. Accordingly, in addition to the paid public holiday, work carried out on that holiday must be paid at least double the usual wage. The remuneration may also be provided as compensatory time-off, in which case it should be at least double the days worked.[218]

Examples of non-conformity include legal regulation, according to which:

- there were no sufficiently precise regulations to ensure that work performed during public holidays is compensated in an appropriate manner;[219]
- no compulsory salary increase was granted for work carried out on a public holiday other than 1 May, although the social partners could introduce one;[220]
- in the private sector, work performed on a public holiday was not adequately compensated;[221]
- staff regularly working on public holidays at enterprises that were not required to close or suspend operations on those days were entitled to compensatory rest equal to half the hours so worked, or to a 50% pay increase for those hours, with the choice between the two formats pertaining to the employer.[222]

3. Fair remuneration

Whereas remuneration is one of the essential characteristics of employment relationships, the right to fair remuneration, which in most cases is the ultimate source of a worker's livelihood, is an integral part of the workers' rights protection regime. Standards of fair remuneration, achieved by freely concluded collective agreements, statutory wage-fixing machinery, or other means appropriate to national conditions, are enshrined in Art. 4 of the ESC, including the right to a remuneration such as will give them and their families a decent standard of living (Art. 4.1), the right to an increased rate of remuneration for overtime work (Art. 4.2), the right of men and women workers to equal pay for work of equal value (Art. 4.3), the right to a reasonable period of notice for termination of employment (Art. 4.4), and the exceptional character of deductions from wages (Art. 4.5). Additionally, Art. 7.5 secures the right of young workers and apprentices to a fair wage or other appropriate allowances.

215 Third report of ECSR on the non-accepted provisions of the European social charter – Georgia (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
216 Conclusions 2018 – Latvia – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2018/def/LVA/2/2/EN).
217 Conclusions 2014 – Andorra – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2014/def/AND/2/2/EN).
218 Conclusions 2010 – Statement of interpretation – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2010_163_01/Ob/EN); Conclusions 2022 – Georgia – Art. 2-2; https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/2/EN).
219 Conclusions 2022 – Georgia – Art. 2-2; https://hudoc.esc.coe.int/eng?i=2022/def/GEO/2/2/EN).
220 Conclusions 2022 – France – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2022/def/FRA/2/2/EN).
221 Conclusions 2022 – Greece – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2022/def/GRC/2/2/EN).
222 Conclusions 2022 – Portugal – Art. 2-2 (https://hudoc.esc.coe.int/eng?i=2022/def/PRT/2/2/EN).

a. *Decent standard of living*

The concept of decent standard of living is used to guide what remuneration can be considered fair. It goes beyond merely material basic necessities, such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. Guaranteeing a decent standard of living means ensuring a minimum wage (and supplemented by any additional benefits where applicable) the level of which should be sufficient to meet these needs.[223]

The ECSR defines remuneration for the purposes of the assessment under Art. 4.1 of the ESC as the net value, i.e. taking into account any redistributive effects of contributions and taxes. Where net figures are difficult to establish, it is for the States parties concerned to conduct the necessary enquiries or to provide estimates.[224] The ECSR considers the net statutory minimum wage for those countries as the lowest wage where such a wage has been established. For countries with no statutory minimum wage, information on the net value of minima agreed upon in collective agreements and/or actually paid in the labour market is taken into consideration. The reference wage is the national net average wage for a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.[225]

It is presumed by the ECSR that wages amounting to at least 60% of the net national average wage provide the wage earners concerned with a decent standard of living. The ECSR nevertheless underlines that a wage does not meet the requirements of the ESC, irrespective of the percentage, if it does not ensure a decent living standard in real terms.[226] If the lowest wage does not satisfy the 60% threshold, but does not fall very far below it (between 50% - 60% of the net national average wage), the ECSR will not immediately reach a negative conclusion, but will ask the government in question to furnish it with detailed evidence that the lowest wage is sufficient to give the worker a decent living standard. In particular, account will be taken of the costs of health care, education, transport, etc. Any lower wage which deviates from the representative wage to an excessive extent cannot be considered as sufficient to permit a "decent standard of living in the society under consideration".[227] Remuneration must in any event be above the poverty line in a given country. To ensure that this is in fact the case, the ECSR refers to a minimum threshold, set at 50% of the net national average wage. In extreme cases where the lowest wage is less than half the average wage, the ECSR considers the situation to be in breach of the ESC and will therefore deliver a negative conclusion.[228]

To ensure real, comprehensive protection, the standard applies to all workers in private and public sectors,[229] including atypical jobs, such as part-time work, temporary work, fixed-term work, casual and seasonal work,[230] domestic work, the gig or platform economy, and workers with zero-hour contracts,[231] seasonal agricultural workers, unskilled shipyard workers, unskilled construction workers,[232] migrant workers.[233] There is also an obligation on the labour inspectorate or other relevant body to perform enforcement activities as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for exam-

223 Conclusions XIX-3 – Statement of interpretation – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=XIX-3_035_02/Ob/EN).
224 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, ECSR decision on the merits of 23 March 2017 (par. 187) (https://hudoc.esc.coe.int/eng?i=cc-111-2014-dmerits-en).
225 Conclusions XIV-2 – Statement of interpretation – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-6/Ob/EN).
226 Conclusions XIV-2 – Statement of interpretation – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-6/Ob/EN).
227 Conclusions V – Statement of interpretation – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=V_Ob_-5/Ob/EN).
228 Conclusions XXI-3 – Germany – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/DEU/4/1/EN); Conclusions 2022 – Serbia – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2022/def/SRB/4/1/EN); Conclusions 2022 – Lithuania – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2022/def/LTU/4/1/EN); Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014 (2017), ECSR decision on the merits of 23 March 2017 (par. 187-193) (https://hudoc.esc.coe.int/eng?i=cc-111-2014-dmerits-en).
229 Conclusions 2014 – Norway – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2014/def/NOR/4/1/EN).
230 Conclusions 2022 – Andorra – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2022/def/AND/4/1/EN).
231 Conclusions 2022 – Greece – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GRC/4/1/EN).
232 Conclusions 2014 – Norway – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2014/def/NOR/4/1/EN).
233 Conclusions 2014 – Andorra – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2014/def/AND/4/1/EN).

ple, agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).[234]

Since Art. 4.1 has not been accepted by Georgia, the ECSR invited the Georgian authorities to take its case law on the standard in question into account.[235]

b. *Rate of remuneration for overtime work*

Work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be compensated by a rate higher than the normal wage or additional time off. The ECSR has noted that most contracting parties that have accepted this provision have adopted schemes providing for flexible working hours, according to which working hours are calculated as an average over given reference periods (Art. 4.2 of the ESC).[236] The compensation of overtime work can be made on a flat-rate basis,[237] granting leave to compensate for overtime that is longer than the overtime worked,[238] as well as by means of mixed systems for compensating overtime, e.g. where an employee is paid the normal rate for the overtime worked but also receives time off *in lieu*, or where the extra time worked is "banked".[239]

In its recent case law, the ECSR declared non-conformity with Art. 4.2 of the ESC in situations where the right to increased remuneration for overtime work is not guaranteed to all workers, especially those in the public sector.[240] Moreover, Art. 27.2 of the Labour Code of Georgia only states that overtime work shall be compensated by the hour based on an increased pay rate, allowing the amount of the compensation to be determined by agreement between the parties, which cannot be seen as regulation ensuring the real protection of the employee's right in question.

c. *Equal pay*

The right of men and women workers to equal pay for work of equal value, enshrined in Art. 4.3 of the ESC, is closely related to the principles of non-discrimination and equal treatment (Arts. E and 20 of the ESC).

Despite the obligations deriving from the ESC 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 persists. The available statistics reveal both downward and upward trends in gender pay gap indicators in European states as well as the insufficient results of States' efforts to ensure a balanced representation of women in decision-making positions. The obligations as regards recognising and enforcing the right to equal pay under Art. 4.3 include the following: a) recognising the right to equal pay for equal work or work of equal value in legislation; b) ensuring access to effective remedies when the right to equal pay for equal work or work of equal value has not been guaranteed; c) ensuring pay transparency and enabling job comparisons; and d) maintaining effective equality bodies and other relevant institutions. When considered in the context of Art. 20 of the ESC, this implies an obligation to collect reliable and standardised data with a view to measuring the gender pay gap and adopting measures to promote equal opportunities through gender mainstreaming.[241]

234 Conclusions 2022 – Greece – Art. 4-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GRC/4/1/EN).
235 Third report of ECSR on the non-accepted provisions of the European social charter – Georgia (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
236 Conclusions XIV-2 – Statement of interpretation – Arts. 2-1, 4-2; (https://hudoc.esc.coe.int/eng?i=XIV-2_Ob_V1-3/Ob/EN).
237 Conseil Européen des Syndicats de Police (CESP) v. France, Complaint No. 68/2011, ECSR decision on the merits of 23 October 2012 (Pars. 76, 77, 86-88) (https://hudoc.esc.coe.int/eng/?i=cc-68-2011-dmerits-en).
238 Conclusions XVI-2 – Belgium – Art. 4-2 (https://hudoc.esc.coe.int/eng?i=XVI-2/def/BEL/4/2/EN).
239 European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 60/2010, ECSR decision on the merits of 17 October 2011 (par. 21) (https://hudoc.esc.coe.int/eng/?i=cc-60-2010-dmerits-en).
240 Conclusions 2022 – France – Art. 4-2 (https://hudoc.esc.coe.int/eng?i=2022/def/FRA/4/2/EN); Conclusions 2022 – Ireland – Art. 4-2 (https://hudoc.esc.coe.int/eng?i=2022/def/IRL/4/2/EN); Conclusions 2022 – North Macedonia – Art. 4-2 (https://hudoc.esc.coe.int/eng?i=2022/def/MKD/4/2/EN); Conclusions 2022 – Türkiye – Art. 4-2 (https://hudoc.esc.coe.int/eng?i=2022/def/TUR/4/2/EN).
241 University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, ECSR decision on the merits of 6 December 2019 (par. 110, 115) (https://hudoc.esc.co e.int/fre/?i=cc-124-2016-dmerits-en).

Equal pay for men and women workers is required not only for equal work but also for work of equal value.[242] 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. 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. States should therefore seek to clarify this notion in domestic law as necessary, either through legislation or case law. 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. Moreover, such systems must consider the features of the posts in question rather than the personal characteristics of the workers.[243] Criteria such as willingness to work overtime or the emphasis on muscular effort alone to the exclusion of factors that put pressure on workers, such as mental strain and stress, can prove discriminatory in practice.[244] Situations where women still have worse career opportunities and are under-represented in management positions, or where role stereotypes and gender-specific attributions continue to have an effect on job evaluation, performance assessment and job placement, cannot be considered to meet the standard in question.[245]

The principle of equal pay for work of equal value must be recognised not only in law but also in fact.[246] Pay transparency is instrumental in the effective application of the principle of equal pay for work of equal value. 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. Measures should be taken in accordance with national conditions and traditions with a view to ensuring adequate pay transparency in practice, including an obligation for employers to regularly report on wages and produce disaggregated data by gender.[247] The possibility of making job comparisons is essential to ensuring equal pay. The 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. 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.[248]

Positive measures to narrow the pay gap should be promoted, including: a) measures to improve job classifications and job evaluation as a means of reducing inequalities in pay; b) measures to improve the quality and coverage of wage statistics; c) steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment; and d) measures combating occupational sex segregation in employment.[249]

It should be emphasised that assessments relating to the right to initiate legal proceedings, the shift in the burden of proof, appropriate sanctions for violations or the illegality of retaliatory actions that are also applicable to equal pay for work of equal value, are all discussed in detail in the section on non-discrimination. Addressing the specifics of Art. 4.3 of the ESC, it is also important to note that it should be possible to make pay comparisons across companies in equal pay litigation cases, and the possibility to challenge unequal remuneration resulting from the internal pay system within a company or a holding company, if remuneration is set centrally for several companies belonging to such a holding company, must be provided.[250]

Another aspect related to non-discrimination in the field of pay is enshrined in Art. 7.5 of the ESC:

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242 Conclusions VIII – Statement of interpretation – Art. 4-3 (https://hudoc.esc.coe.int/eng?i=VIII_Ob_-1/Ob/EN).

243 University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, ECSR decision on the merits of 6 December 2019 (par. 156) (https://hudoc.esc.coe.int/fre/?i=cc-124-2016-dmerits-en); Conclusions XV-2 – Poland – Art. 4-3 (https://hudoc.esc.coe.int/eng?i=XV-2/def/POL/4/3/EN).

244 Conclusions XV-2 – Poland – Art. 4-3 (https://hudoc.esc.coe.int/eng?i=XV-2/def/POL/4/3/EN).

245 Conclusions XXII-3 – Germany – Art. 4-3 (https://hudoc.esc.coe.int/eng?i=XXII-3/def/DEU/4/3/EN).

246 Conclusions I – Statement of interpretation – Art. 4-3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-18/Ob/EN).

247 University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, ECSR decision on the merits of 6 December 2019 (par. 154-155) (https://hudoc.esc.coe.int/fre/?i=cc-124-2016-dmerits-en).

248 University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, ECSR decision on the merits of 6 December 2019 (par. 157) (https://hudoc.esc.coe.int/fre/?i=cc-124-2016-dmerits-en).

249 Conclusions XVII-2 – Czech Republic – Art. 4-3 (https://hudoc.esc.coe.int/?i=XVII-2/def/CZE/4/3/EN); Conclusions 2018 – Latvia – Art. 4-3 (https://hudoc.esc.coe.int/?i=2018/def/LVA/4/3/EN).

250 Conclusions 2022 – Slovak Republic – Art. 4-3 (https://hudoc.esc.coe.int/?i=2022/def/SVK/4/3/EN); Conclusions 2022 – Georgia – Art. 4-3 (https://hudoc.esc.coe.int/?i=2022/def/GEO/4/3/EN).

the right of young workers and apprentices to a fair wage or other appropriate allowances. The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults.[251] It is permissible to pay a lower minimum wage to younger persons in certain circumstances (e.g. when they are taking part in an apprenticeship scheme or are otherwise engaged in a form of vocational training). Such a reduction in the minimum wage may enhance access to the labour market for younger workers and may also be justified on the basis that it reflects a statistical tendency for them to incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs. However, any such reduction in the minimum wage should not fall below the poverty level of the country concerned. It is open to a State to demonstrate an objective justification for the payment of a lower minimum wage to younger workers, if this can be shown to further a legitimate aim of employment policy and be proportionate to achieve that aim. The less favourable treatment of younger workers at issue is designed to give effect to a legitimate aim of employment policy, namely, to integrate younger workers into the labour market at a time of serious economic crisis.[252]

The effective protection of the rights guaranteed by the ESC cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The labour inspectorate has a decisive role to play in effectively implementing Art. 7 of the ESC.[253]

d. *Notice period in case of dismissal*

According to Art. 4.4 of the ESC, the right of all workers to a reasonable period of notice for termination of employment must be recognised. Although the wording chosen may give the impression that this provision is more closely related to the standard of protection against unlawful dismissal, enshrined in Art. 24 of the ESC, or the standards of the right to working and rest time, established in Art. 2 of the ESC, it forms part of Art. 4 on remuneration, since the main purpose of giving reasonable notice is to allow the person concerned a certain time to look for other work while they are still receiving wages and before their current employment ends.

The standard implies a positive obligation to regulate in the national laws all aspects of notice of termination. Due to the explicit requirement above, the lack of any provision for notice (or severance payment) in the event of dismissal is not in conformity with the ESC. Examples of non-conformity include no notice periods in general,[254] in cases of changed economic, technological or organisational circumstances,[255] termination based on a judicial decision preventing the performance of work; the withdrawal of administrative licenses required for the performance of work; a request from bodies or officials authorised by the law; and the unfitness for work certified by authorised bodies,[256] probationary period,[257] death, incapacity,[258] or the winding up[259] of an employer.

The right to a reasonable notice period must be guaranteed for all workers, including civil servants,[260] employees of self-employed persons, religious organisations, home workers,[261] temporary employees with less than one year of service,[262] absent due to a long-term illness or an occupational accident,[263] etc.

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251 Conclusions XI-1 – United Kingdom – Art. 7-5 (https://hudoc.esc.coe.int/?i=XI-1/def/GBR/7/5/EN).
252 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, ECSR decision on the merits of 23 March 2017 (https://hudoc.esc.coe.int/eng?i=cc-111-2014-dmerits-en).
253 International Commission of Jurists v. Portugal, Complaint No. 1/1998, ECSR decision on the merits of 9 September 1999 (par. 32) (https://hudoc.esc.coe.int/eng/?i=cc-01-1998-dmerits-en); Conclusions 2023 – Georgia – Art. 7-5 (https://hudoc.esc.coe.int/?i=2023/def/GEO/7/5/EN).
254 Conclusions 2018 – Serbia – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/SRB/4/4/EN).
255 Conclusions 2018 – Malta – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/MLT/4/4/EN).
256 Conclusions 2018 – Lithuania – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/LTU/4/4/EN).
257 Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, ECSR decision on the merits of 23 March 2017 (par. 199-201) (https://hudoc.esc.coe.int/eng?i=cc-111-2014-dmerits-en).
258 Conclusions XXI-3 – Spain – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/ESP/4/4/EN).
259 Conclusions 2018 – Romania – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/ROU/4/4/EN); Conclusions 2022 – Georgia – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/4/4/EN).
260 Conclusions 2018 – Latvia – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/LVA/4/4/EN).
261 Conclusions 2018 – Russian Federation – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/RUS/4/4/EN).
262 Conclusions 2018 – Norway – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/NOR/4/4/EN).
263 Conclusions XXI-3 – Poland – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/POL/4/4/EN).

Since the ESC does not contain a general definition of a "reasonable" period of notice, the assessment of what constitutes "reasonable" is made on a case-by-case basis. A reasonable notice period is one which takes account of: a) employees' length of service; b) the need to not deprive them abruptly of their means of subsistence; and c) the need to inform them of the termination in good time to enable them to seek a new job, and during which employees are entitled to their regular remuneration.[264]

The ECSR has concluded the following periods of notice were not in conformity: five days' notice after less than three months of service, even during the probationary period;[265] one week's notice after less than six months of service; two weeks' notice after more than six months of service;[266] less than one month' notice after one year of service;[267] one month' notice for workers with three to five years' of service;[268] two months' notice for workers with five to ten years' of service;[269] four months' notice after at least ten years of service.[270]

Payment of wages *in lieu* of notice is permitted, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice.

e. *Exceptional nature of deductions from wages*

The worker's right to receive his or her wages in full has been the subject of long battles in the history of the labour movement. The ESC was therefore bound to establish the principle that deductions from wages can be authorised only "under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards" (Art. 4.5 of the ESC).[271]

Remuneration can be seriously affected by various deductions made by the employer. If such deductions from wages are not regulated and limited, workers cannot dispose of the wages they have earned and use them to pay living costs. Wages are usually workers' only regular source of income and they are highly dependent on this income. The purpose of Art. 4.5 of the ESC is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their basic means of subsistence.[272] Wages after deductions that workers actually receive must be such as to allow them to provide for themselves and their family.

National laws or regulations, collective agreements or arbitration awards must define the grounds for deductions from wages in a clear and precise manner and the protection must include all forms of deductions from wages.[273] All forms of deductions from wages should be taken into account and combined, including trade union dues, disciplinary fines, maintenance payments, repayment or wage advances, tax debts, compensation for benefits in kind, wage assignments or transfers, etc.[274]

Workers should not be allowed to waive their right to limitation of deductions from their wage and the way in which such deductions are determined should not be left at the disposal of the sole parties to the employment contract.[275] While negotiations are not prohibited *per se*, they must be subject to rules established by statutory provisions, case law, regulations or collective agreements.[276]

Deductions must be subject to reasonable limits to ensure that the remaining wage after authorised deductions do not deprive workers and their dependents of their means of subsistence. The absence of limit on deductions from wages upon the employee's consent is not in conformity with Art. 4.5 of the ESC, since as a result such deductions may deprive employees and their dependents

264 Interpretative statement on Art. 4-4 (https://hudoc.esc.coe.int/fr/?i=2018_163_01/EN); Conclusions 2022 – Georgia – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/4/4/EN).
265 Conclusions 2007 – Albania – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2007/def/ALB/4/4/EN).
266 Conclusions XXI-3 – Iceland – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/ISL/4/4/EN).
267 Conclusions XXI-3 – United Kingdom – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/GBR/4/4/EN).
268 Conclusions 2014 – Bulgaria – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2014/def/BGR/4/4/EN).
269 Conclusions 2018 – Slovak Republic – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2018/def/SVK/4/4/EN).
270 Conclusions 2014 – Norway – Art. 4-4 (https://hudoc.esc.coe.int/eng?i=2014/def/NOR/4/4/EN).
271 Conclusions I – Statement of interpretation – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=I_Ob_-20/Ob/EN).
272 Conclusions XX-3 – Germany – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=XX-3/def/DEU/4/5/EN).
273 Conclusions 2014 – Ireland – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2014/def/IRL/4/5/EN).
274 Conclusions 2014 – Estonia – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2014/def/EST/4/5/EN).
275 Conclusions 2018 – Malta – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2018/def/MLT/4/5/EN).
276 Conclusions 2014 – Ireland – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2014/def/IRL/4/5/EN).

of their means of subsistence.[277] The minimum wage can only be seized due to maintenance claims up to 50%. A debtor with low income may be entitled to social benefits, which are not attachable. When the debtor is responsible for the maintenance of another person, the unattachable amount of the wage is increased by one third of the minimum monthly wage for every dependent. The situation is not in conformity with Art. 4.5 of the ESC on the grounds that after maintenance payments and other authorised deductions, the wages of workers with the lowest pay do not allow them to provide for themselves or their dependents.[278] On the other hand, wage deductions must be limited to the part of the claim that exceeds the employee's reasonable needs for supporting himself/herself and his/her household. Any regulation is intended to ensure a common point of departure in the assessment of how much is reasonably needed to support the debtor and the debtor's household.[279]

Although Georgia has not accepted Art. 4.5 of the ESC, having assessed the situation in the country, the ECSR stressed the importance of having a legal regime according to which, after all the authorised deductions of up to 50% of the wage, the lowest paid workers will be guaranteed to have sufficient resources to provide for themselves and their dependents.[280]

4. Protection in cases of termination of employment

As mentioned previously, Georgia has not accepted Art. 24 of the ESC, which governs the rights of an employee in the event of dismissal, and LIO's competence in this area is limited to providing information and consultation and to taking legislative initiatives – but does not extend to imposing sanctions for breaches of the Labour Code – the standards established by the ESC regarding the legal regulation of the termination of employment relationships cannot therefore be considered irrelevant.

a. *Scope of application*

Art. 24 of the ESC provides protection for all employees against the unlawful termination of their employment contract at the initiative of their employer. However, according to the Appendix to the ESC,[281] the following three categories of employed persons may be excluded from the protection provided:

a) workers engaged under a contract of employment for a specified period or a specified task;

b) workers undergoing a period of probation or a qualifying period of employment, if this is determined in advance and is of a reasonable duration; and

c) workers engaged on a casual basis for a short period.

Although the legal provision in question uses the concept of "employee" and offers protection in the event of termination of the employment contract, 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 examining the conditions under which such work is provided, it is possible to identify certain indicators of the existence of an employment relationship.[282] For further details, see Section 1 of Part II of this manual.

Workers undergoing a probation period may be excluded if this is determined in advance and is of reasonable duration. The ECSR found legal regulation to be in conformity with Art. 24 of the ESC where:

a) the probation period is specified in the employment contract;
b) the term does not exceed three months;

277 Conclusions 2018 – Serbia – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2018/def/SRB/4/5/EN).
278 Conclusions 2018 – Estonia – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2018/def/EST/4/5/EN).
279 Conclusions 2018 – Norway – Art. 4-5 (https://hudoc.esc.coe.int/eng?i=2018/def/NOR/4/5/EN).
280 Third report of ECSR on the non-accepted provisions of the European social charter – Georgia (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).
281 Appendix to the European Social Charter (Revised) – European Treaty Series – No. 163 (https://rm.coe.int/168007cde4).
282 Conclusions 2020 – Albania – Art. 24 (https://hudoc.esc.coe.int/?i=2020/def/ALB/24/EN).

c) notice is given in writing three days prior to termination; and
d) an employer does not have a duty to indicate the cause for such notice.[283]

Both the advance designation of the term and the limitation of its maximum duration are related not only to the transparency of employment relationships, but also to eliminating the possibility of limiting the protection of employee rights for an unreasonably long period of time. Probation periods of 6 months or longer are not adequate.[284] The situation is not in conformity with Art. 24 of the ESC on the grounds that employees undergoing probation or training for one year or apprentices during the first six months are excluded from protection against termination of employment, which is not reasonably justified.[285]

b. *Grounds for dismissals*

Art. 24 of the ESC establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, firstly, those that relate to the employee's capacity or conduct and, secondly, those based on the operational requirements of the enterprise (economic reasons).[286] Although the national legal regulation, which provides for a non-exhaustive (open-ended) list of grounds for termination of an employment contract,[287] cannot in itself be considered a violation of the standard established by the ESC, it must in practice be interpreted narrowly as not giving the employer the right to choose a ground for termination of the employment contract that is incompatible with the aforementioned principles. In other words, the justification of the use of a ground not directly established by law must be based on the circumstances that correspond with those provided in the ESC, obliging the employer, in the event of a dispute, to prove that the termination of the employment contract is related exclusively to the capacity or conduct of an employee or the operational requirements of an enterprise (economic reasons).

Art. 24 of the Appendix to the ESC contains the list of situations that do not constitute valid reasons for termination: trade union membership; seeking office as, acting or having acted in the capacity of a worker's representative; the filing of a complaint against an employer; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; maternity or parental leave; and temporary absence from work due to illness or injury. The list is not exhaustive and there could be different grounds for discriminatory or arbitrary dismissals. A series of ESC provisions require increased protection against the termination of employment on certain grounds: a) discrimination (Arts. 1.2, 4.3, and 20); b) trade union activities (Art. 5); c) participation in strikes (Art. 6.4); d) maternity (Art. 8.2); e) disability (Art. 15); f) family responsibilities (Art. 27); and g) worker representation (Art. 28).

According to the ECSR's case law, capacity- or conduct-related grounds include the conduct of an employee, insufficient work skills, and unsuitability for the job or inadaptability.[288] Regarding operational or economic grounds, a balance must be struck between employers' right to direct/run their businesses as they see fit and the need to protect the rights of employees. Assessment relies on the domestic courts' interpretation of the law. The courts must have the competence to review dismissal cases on the basis of economic facts underlying the reasons for dismissal and not just on points of law.[289] The term "operational requirements" can cover many different situations, in particular industrial or strategic measures considered necessary by the enterprise to maintain or improve competitiveness in a globalised market even when the enterprise is not in economic difficulty; employers may dismiss employees for economic or production-related grounds, but there must be a proper and weighty reason and the work must have diminished substantially and permanently; the factors which must be taken into account when assessing whether a dismissal fulfils the conditions: decline in demand, obsolete products, increased competition or restructuring of

283 Conclusions 2016 – Latvia – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/LVA/24/EN).
284 Conclusions 2016 – Italy – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/ITA/24/EN).
285 Conclusions 2016 – Ireland – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/IRL/24/EN).
286 Conclusions 2012 – Statement of interpretation – Art. 24, (https://hudoc.esc.coe.int/eng?i=2012_163_10/Ob/EN).
287 According to Art. 47.1 of the Labour Code of Georgia, there might be "other objective circumstances justifying the termination of an employment agreement"
288 Conclusions 2012 – Estonia – Art. 24 (https://hudoc.esc.coe.int/eng?i=2012/def/EST/24/EN).
289 Conclusions 2016 – France – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/FRA/24/EN).

the business; the practice of outsourcing of labour or using agency workers following dismissals for economic reasons could be contrary to Art. 24 of the ESC.[290]

Under Art. 24 of the ESC, the dismissal of the employee at the initiative of the employer on the ground that the former has reached the normal pensionable age (age when an individual becomes entitled to a pension) will be contrary to the ESC, unless the termination is properly justified with reference to one of the valid grounds expressly established by this provision of the ESC.[291] Dismissal on grounds of age does not on its own constitute a valid reason for termination of employment except when it occurs in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.[292] Dismissal is considered fair only if the age of an employee affects in a negative way his or her capacity to work, reduces productivity and causes inefficiency, lowers performance and increases aged-related accident risks due to reduced concentration. All these grounds should be set out together to justify the dismissal.[293]

A prison sentence delivered by a court can be a valid ground for termination if such a sentence is delivered for employment-related offences. This is not the case with prison sentences for offences unrelated to the person's employment, which cannot be considered a valid reason unless the length of the custodial sentence prevents the person from carrying out their work.[294]

c. *Adequate compensation and right to appeal*

Under Art. 24 of the ESC, the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief must be guaranteed. A worker who considers that his or her employment has been terminated without a valid reason must have the right to appeal to an impartial body.

According to the Appendix to the ESC, it is understood that compensation or other appropriate relief in the event of termination of employment without valid reasons must be determined by national laws or regulations, collective agreements or other means appropriate to national conditions. Compensation is considered appropriate if it includes the reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body, and must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers. Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are proscribed. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues (e.g. anti-discrimination legislation), and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must reach a decision within a reasonable time.[295]

Other appropriate relief in the event of unlawful dismissal should include reinstatement as one of the remedies available to national courts or tribunals. The possibility of awarding the remedy recognises the importance of restoring the employee to an employment situation no less favourable than he or she previously enjoyed. Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide.[296]

Any employee who believes that he or she has been dismissed without just cause should have the right to appeal to an impartial body. In proceedings relating to dismissal, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment between employee and employer.[297] In most situations where a dismissal has occurred, the burden of proof lies with the employer to prove that the dismissal was fair.[298]

290 Finnish Society of Social Rights v. Finland, Complaint No. 107/2014, ECSR decision on the merits of 6 September 2016 (par. 50-51) (https://hudoc.esc.coe.int/eng?i=cc-107-2014-dadmissandmerits-en).
291 Conclusions 2012 – Statement of interpretation – Art. 24 (https://hudoc.esc.coe.int/eng?i=2012_163_10/Ob/EN).
292 Conclusions 2007 – Statement of interpretation – Art. 24 (https://hudoc.esc.coe.int/eng?i=2007_Ob_4/Ob/EN).
293 Conclusions 2016 – Turkey – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/TUR/24/EN).
294 Conclusions 2005 – Estonia – Art. 24, https://hudoc.esc.coe.int/eng?i=2005/def/EST/24//EN.
295 Conclusions 2016 – Serbia – Art. 24 (https://hudoc.esc.coe.int/eng?i=2016/def/SRB/24/EN).
296 Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, ECSR decision on the merits of 8 September 2016 (par. 55.) (https://hudoc.esc.coe.int/eng?i=cc-106-2014-dadmissandmerits-en).
297 Conclusions 2012 – Slovak Republic – Art. 24 (https://hudoc.esc.coe.int/eng?i=2012/def/SVK/24/EN).
298 Conclusions 2012 – Ireland – Art. 24 (https://hudoc.esc.coe.int/eng?i=2012/def/IRL/24/EN).

V. Collective labour rights

Collective labour rights have a central place in the system of the Council of Europe (CoE). The ESC has a number of provisions covering the main aspects of collective labour rights, including the right to organise (Art. 5), the right to bargain collectively (Art. 6), the right to information and consultation (Art. 21), the right to take part in the determination and improvement of the working conditions and working environment (Art. 22), the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Art. 28), and the right to information and consultation in collective redundancy procedures (Art. 29).

1. Right to organise

Art. 5 of the ESC sets out the principle that employers and workers have the right to form national or international associations for the protection of their economic and social interest. Two obligations were embodied in this provision, having a negative and positive aspect respectively. The implementation of the first obligation requires the absence of any legislation or regulation or any administrative practice such as to impair the freedom of employers or workers to form or join their respective organisations. By virtue of the second obligation, adequate legislative or other measures have to be taken to guarantee the exercise of the right to organise and, in particular, to protect workers' organisations from any interference on the part of employers.[299] Full enjoyment of the freedom to organise is guaranteed, in principle, to every category of employer and worker, including public officials, with a few exceptions that apply to members of the armed forces and police.[300]

While a state may be permitted to limit the freedom of organisation of the members of the police, depriving them of all the guarantees cannot be justified.[301] Police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions, the right of access to the working place, as well as the right of assembly and speech. Compulsory membership of organisations also constitutes a breach of Art. 5. However, the situation is in conformity with Art. 5 even if members of the police service do not have the right to form "trade unions", provided they are given the right to establish "professional associations" having similar characteristics and competences as trade unions.[302]

The ECSR checks whether the bodies defined in national law as belonging to the armed forces do indeed perform military functions.[303] States Parties may impose restrictions upon members of the armed forces but may not go as far as to suppress entirely the right to organise,[304] such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations.[305] Examples of non-conformity include the following situations: soldiers in professional military service are prohibited from joining and forming organisations for the protection of their interests;[306] although the right of military personnel to create and join national professional associations of military personnel is granted by law, this association is not in practice able to sit on the representative body at the heart of military consultation;[307] military representative associations were prohibited from joining national employees' organisations.[308]

299 Conclusions I – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=I_Ob_-21/Ob/EN).
300 Conclusions III – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=III_Ob_-7/Ob/EN).
301 Conclusions I – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=I_Ob_-21/Ob/EN).
302 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, ECSR decision on the merits of 22 January 2019 (par. 75-76) (https://hudoc.esc.coe.int/eng?i=cc-140-2016-dmerits-en).
303 Conclusions XX-3 – Czech Republic – Art. 5 (https://hudoc.esc.coe.int/eng?i=XX-3/def/CZE/5/EN).
304 European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, ECSR decision on the merits of 12 September 2017 (par. 47) (https://hudoc.esc.coe.int/eng?i=cc-112-2014-dmerits-en).
305 European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, ECSR decision on the merits of 27 January 2016 (par. 80, 84) (https://hudoc.esc.coe.int/fre/?i=cc-101-2013-dmerits-en).
306 Conclusions 2022 – Lithuania – Art. 5 (https://hudoc.esc.coe.int/?i=2022/def/LTU/5/EN).
307 Conclusions 2022 – France – Art. 5 (https://hudoc.esc.coe.int/?i=2022/def/FRA/5/EN).
308 Conclusions 2022 – Ireland – Art. 5 (https://hudoc.esc.coe.int/?i=2022/def/IRL/5/EN).

Trade union freedom is an essential element of social dialogue between workers and employers, and hence an important tool in achieving social justice and harmony. Art. 11 of the ECHR presents trade union freedom as one form or as a special aspect of freedom of association.[309] The essential object of Art. 11 of the ECHR is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected. However, it may also imply positive obligations on the state to secure the effective enjoyment of such rights.[310] Through its case-law, the ECtHR has built up a non-exhaustive list of the constituent elements of the right to organise, including: the right to form or join a trade union, the prohibition of closed-shop agreements, the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members and, in principle, the right to bargain collectively with the employer.[311]

With regard to the public sector, Art. 11.2 of the ECHR requires the respect of freedom of assembly and association, subject to the possible imposition of "lawful restrictions" in the case of members of its armed forces, police or administration. Art. 11 is accordingly binding upon the "State as employer", whether the latter's relations with its employees are governed by public or private law.[312]

Unemployed and retired workers may join and remain in trade unions. However, States are not required to allow them to form trade unions, so long as they are entitled to form organisations which can take part in consultation processes that may impact on their rights and interests.[313]

The right to organise, as defined in Art. 5 of the ESC, implies that the main object of workers' and employers' right to form organisations is to engage in collective bargaining for the defence of their interests and that, in principle, this could not be qualified by any requirement to deposit money in order to obtain a negotiating license. Everyone wishing to organise for purposes that are not prejudicial to public order was automatically entitled to such a license, or if payment demanded covered only minimal administrative costs.[314] Trade unions and employer organisations must be free to organise without prior authorisation. Any initial formalities, such as declaration and registration, must be simple and easy to apply for.[315] Any fees charged for the registration or establishment of an organisation must be reasonable and designed only to cover strictly necessary administrative costs.[316] Legislation setting a minimum number of members required to form a trade union which may be considered to be manifestly excessive could constitute an obstacle to founding trade unions and, as such, infringe the freedom of association.[317] A minimum of at least one quarter of the workers of an undertaking required to form a trade union, and 50 founding members required to form a trade union outside an undertaking constitutes an excessive restriction on the right to organise.[318]

Trade unions and employers' organisations have the right to affiliate nationally and internationally. They must be free to form federations and join similar national and international organisations.[319]

Trade unions and employers' organisations must be autonomous in respect of their organisation or functioning. They have the right to make their own rules, to act freely and they are entitled to choose their own members and representatives.[320] Prohibiting the election of or appointment of foreign trade union representatives, substantially limiting the use that a trade union can make of its assets and substantially limiting the reasons for which a trade union is entitled to take disciplinary action against its members constitute infringements in breach of Art. 5 of the ESC.[321] Trade

309 National Union of Belgian Police v. Belgium, Application no. 4464/70, ECtHR judgment on the merits of 27 October 1975 (par. 38) (https://hudoc.echr.coe.int/eng?i=001-57435).
310 Demir and Baykara v. Turkey, Application no. 34503/97, ECtHR judgment on the merits of 12 November 2008 (par. 110) (https://hudoc.echr.coe.int/fre?i=001-89558).
311 Sindicatul "Păstorul cel Bun" v. Romania, Application no. 2330/09, ECtHR judgment on the merits of 9 July 2013 (par. 135) (https://hudoc.echr.coe.int/eng?i=001-122763).
312 Swedish Engine Drivers' Union v. Sweden, Application no. 5614/72, ECtHR judgment on the merits of 6 February 1976 (par. 37) (https://hudoc.echr.coe.int/eng?i=001-57527).
313 Conclusions 2010 – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=2010_163_03/Ob/EN).
314 Conclusions IV – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=IV_Ob_-5/Ob/EN).
315 Conclusions 2014 – Georgia – Art. 5 (https://hudoc.esc.coe.int/eng?i=2014/def/GEO/5/EN).
316 Conclusions 2014 – Hungary – Art. 5 (https://hudoc.esc.coe.int/eng?i=2014/def/HUN/5/EN).
317 Conclusions XIII-5 – Portugal – Art. 5 (https://hudoc.esc.coe.int/eng?i=XIII-5/def/PRT/5//EN).
318 Conclusions 2022 – Latvia – Art. 5 (https://hudoc.esc.coe.int/?i=2022/def/LVA/5/EN).
319 Conclusions I – Statement of interpretation – Art. 5 (https://hudoc.esc.coe.int/?i=I_Ob_-21/Ob/EN).
320 Conclusions XIV-1 – United Kingdom – Art. 5 (https://hudoc.esc.coe.int/eng?i=XIV-1/def/GBR/5//EN).
321 Conclusions 2010 – Georgia – Art. 5 (https://hudoc.esc.coe.int/eng?i=2010/def/GEO/5//EN).

unions and employers' organisations have the right to negotiate, to enter into collective agreements and they are entitled to perform their activities effectively. Trade union officials must have access to the workplace and union members must be able to hold meetings at work in so far as employers' interests and company requirements permit.[322]

The ECtHR comes to similar conclusions when interpreting Art. 11 of the ECHR. The right to form trade unions involves, *inter alia*, the right of trade unions to draw up their own rules and to administer their own affairs. *Prima facie*, trade unions enjoy the freedom to set up their own rules concerning conditions of membership, including rules on admission and expulsion, administrative formalities and payment of fees, as well as other more substantive criteria, such as the profession or trade exercised by the would-be member. This basic premise holds good where the association or trade union is a private and independent body, and is not, for example, through receipt of public funds or through the fulfilment of public duties imposed upon it, acting in a wider context, such as assisting the State in securing the enjoyment of rights and freedoms where other considerations may well come into play.[323]

Workers must be free not only to join but also not to join a trade union. The same rules apply to employers' freedom to organise. Trade union members and representatives must be protected from any harmful consequence that their trade union membership or activities may have on their employment. In particular, they must be protected against any form of reprisal or discrimination in the areas of recruitment, dismissal or promotion because they belong to a trade union or engage in trade union activities.[324] No worker may be forced to join or remain a member of a trade union. The exercise of a worker's right to join a trade union must be the result of a choice. Consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom.[325] Domestic law must clearly prohibit all pre-entry or post-entry closed-shop clauses and all union security clauses (including, for example, automatic deductions from wages for all workers, members or not, to finance a trade union). Clauses in collective agreements or legally authorised arrangements whereby jobs are reserved in practice for members of a specific trade union are in breach of the freedom guaranteed by Art. 5.[326] The existence of priority clauses in collective agreements which give priority to members of certain trade unions in respect of recruitment and termination of employment also infringes the right not to join trade unions.[327]

Art. 11 of the ECHR guarantees both a positive and a negative right to freedom of association. An employee or worker should be free or not to join a trade union without being sanctioned or subject to disincentives. Compulsion to join a particular trade union may not always be contrary to the ECHR. However, a form of compulsion which strikes at the very essence of the freedom of association guaranteed by Art. 11 will constitute a disproportionate interference with that freedom.[328]

2. Protection of workers' representatives

Art. 28 of the ESC guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. According to the Appendix to the ESC, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States parties may therefore establish different kinds of workers' representatives, either trade union representatives or other types of representatives or both (e.g. workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board).[329]

Protection should cover the prohibition of dismissal on the ground of being a workers' represen-

322 Conclusions 2010 – Ukraine – Art. 5 (https://hudoc.esc.coe.int/eng?i=2010/def/UKR/5//EN).
323 Associated Society of Locomotive Engineers & Firemen (ASLEF) v. the United Kingdom, Application no. 11002/05, ECtHR judgment on the merits of 27 February 2007 (par. 40) (https://hudoc.echr.coe.int/fre?i=001-79604).
324 Conclusions 2010 – Moldova – Art. 5 (https://hudoc.esc.coe.int/eng?i=2010/def/MDA/5//EN).
325 Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, ECSR decision on the merits of 22 May 2003 (par. 29) (https://hudoc.esc.coe.int/eng?i=cc-12-2002-dmerits-en).
326 Conclusions 2014 – Ireland – Art. 5 (https://hudoc.esc.coe.int/eng?i=2014/def/IRL/5/EN).
327 Conclusions XXI-3 – Iceland – Art. 5 (https://hudoc.esc.coe.int/eng?i=XXI-3/def/ISL/5/EN).
328 Sigurður A. Sigurjónsson v. Iceland, Application no. 16130/90, ECtHR judgment on the merits of 30 June 1993 (par. 41) (https://hudoc.echr.coe.int/eng?i=001-57844).
329 Conclusions 2014 – Montenegro – Art. 28 (https://hudoc.esc.coe.int/eng?i=2014/def/MNE/28/EN).

tative and the protection against detriment in employment other than dismissal.[330] The rights recognised in the ESC must take a practical and effective, rather than a purely theoretical, form. To this end, the protection afforded to workers' representatives should extend for a period beyond their mandate.[331] It shall be extended for a "reasonable period" after the effective end of period of their office. Protection which extends for six months after the end of the mandate of workers' representatives is, in principle, in conformity with Art. 28 of the ESC.[332] On the other hand, protection afforded for three months beyond the workers' representatives mandate cannot be regarded as "reasonable".[333] Moreover, remedies must be available to workers' representatives to allow them to contest their unlawful dismissal.[334]

Workers' representatives must be provided with facilities that enable them to carry out their functions promptly and efficiently. Account must be taken of the system for industrial relations in the country and the needs, size and capabilities of the undertaking concerned. For example, the facilities that must be granted to protected workers may include a financial contribution to the works council and the use of premises and materials for the operation of the works council, as well as other facilities (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 authorisation to post bills or notices in one or several places to be determined with the management board, the authorisation to distribute information sheets, factsheets and other documents on general trade union activities).[335]

The participation of workers' representatives in training courses on economic, social and union issues should not result in a loss of pay. Training costs should not be borne by the workers' representatives.[336] Prejudicial acts may entail, for instance, the denial of certain benefits, training opportunities, promotions or transfers, discrimination when issuing layoffs or assigning retirement options, being subjected to shifts, cut-down or any other taunts or abuse.[337]

3. Right to information and consultation

The rights to information and consultation are enshrined in Arts. 21 and 29 of the ESC. The right to information is a basic right that underpins good governance, democracy, poverty eradication and the practical realisation of other human rights. At the level of the enterprise, the right to information and consultation is a key component of a democratic enterprise where active personnel are involved in the improvement of the working environment.

Consultation at the enterprise level is dealt with under both Art. 6.1 and Art. 21 of the ESC.[338] Art. 21 of the ESC entitles employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly any that might have a significant impact on the employment situation in their undertaking.[339] These rights must be effectively guaranteed. In particular, legal remedies must be available to workers when these rights are not respected.[340]

Although Art. 21 has not been accepted by Georgia, having assessed the situation, the ECSR positively evaluated its domestic regulation.[341].

330 Conclusions 2016 – Armenia – Art. 28 (https://hudoc.esc.coe.int/eng?i=2016/def/ARM/28/EN).
331 Conclusions 2010 – Statement of interpretation – Art. 28 (https://hudoc.esc.coe.int/eng?i=2010_163_05/Ob/EN).
332 Conclusions 2010 – Bulgaria – Art. 28 (https://hudoc.esc.coe.int/eng?i=2010/def/BGR/28//EN).
333 Conclusions 2014 – Austria – Art. 28 (https://hudoc.esc.coe.int/eng?i=2014/def/AUT/28/EN).
334 Conclusions 2010 – Norway – Art. 28 (https://hudoc.esc.coe.int/eng?i=2010/def/NOR/28//EN); Conclusions 2016 – Finland – Art. 28 (https://hudoc.esc.coe.int/eng?i=2016/def/FIN/28/EN).
335 Conclusions 2010 – Statement of interpretation – Art. 28 (https://hudoc.esc.coe.int/eng?i=2010_163_05/Ob/EN).
336 Conclusions 2010 – Statement of interpretation – Art. 28 (https://hudoc.esc.coe.int/eng?i=2010_163_05/Ob/EN).
337 Conclusions 2018 – Azerbaijan – Art. 28 (https://hudoc.esc.coe.int/eng?i=2018/def/AZE/28/EN).
338 Conclusions 2010 – Ukraine – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2010/def/UKR/6/1/EN).
339 Conclusions XIX-3 – Croatia – Art. 2 of the 1988 Additional Protocol (https://hudoc.esc.coe.int/eng?i=XIX-3/def/HRV/21//EN).
340 Conclusions 2003 – Romania – Art. 21 (https://hudoc.esc.coe.int/eng?i=2003/def/ROU/21//EN).
341 Third report of ECSR on the non-accepted provisions of the European social charter (https://rm.coe.int/3rd-report-georgia-na-provisions-eng/1680a5d629).

Collective redundancies are redundancies affecting several workers within a period set by law and decided for reasons which have nothing to do with individual workers, but are linked to a reduction or a change in the firm's activity. The definition of collective redundancies in domestic law must not be too restrictive. A collective redundancies situation 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 ESC.[342]

Consultation procedures must take place in good time prior to collective redundancies. National law should thus ensure that employers are obliged to provide employees with information about planned collective redundancies sufficiently in advance of the process, to enable employees and their representatives to become familiar with the key aspects of the planned redundancies. 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. 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. 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. This information should 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.[343]

Under Art. 29 of the ESC, workers' representatives have the right to be informed and consulted in good time by employers planning to make collective redundancies. It requires that States Parties establish an information and consultation procedure which should precede the process of collective redundancies. Its provisions seek to ensure that workers are made aware of the reasons for and the scale of planned redundancies, and to ensure 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 those redundancies and the extent to which their consequences can be avoided, limited and/or mitigated.[344]

Art. 29 establishes that it is the employer's duty to consult with workers' representatives and the purposes 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.[345] The failure of the employer to carry out their information and consultation obligations amounts to a violation of Art. 29. The simple notification of redundancies to workers or their representatives is not sufficient. The consultation procedure must cover the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence, along with support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned, and the redundancy package.[346]

States Parties must introduce guarantees that the right of workers' representatives to be informed/consulted can be effectively exercised in practice. Therefore, when employers fail to comply with their obligations, there should be some possibility of recourse to administrative or judicial proceedings before the redundancies take place, to ensure that they are not put into effect before the consultation requirement is met. Provisions must be made for sanctions after the event and these must be effective, i.e. have a sufficiently strong deterrent effect on employers.[347]

342 Conclusions 2014 – Azerbaijan – Art. 29 (https://hudoc.esc.coe.int/eng?i=2014/def/AZE/29/EN).
343 Conclusions 2014 – Statement of interpretation – Art. 29 (https://hudoc.esc.coe.int/eng?i=2014_163_01/Ob/EN).
344 Conclusions 2014 – Statement of interpretation – Art. 29 (https://hudoc.esc.coe.int/eng?i=2014_163_01/Ob/EN).
345 Conclusions 2014 – Statement of interpretation – Art. 29 (https://hudoc.esc.coe.int/eng?i=2014_163_01/Ob/EN).
346 Conclusions 2014 – Georgia – Art. 29 (https://hudoc.esc.coe.int/eng?i=2014/def/GEO/29/EN).
347 Conclusions 2022 – Georgia – Art. 29 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/29/EN).

4. Collective bargaining

The right to bargain collectively is enshrined in Art. 6 of the ESC. This provision encompasses the right to negotiate and conclude collective agreements. The exercise of the right to bargain collectively (Art. 6.2) and the right to collective action (Art. 6.4) represents an essential basis for fulfilling other fundamental rights guaranteed by the ESC, including the right to just conditions of work (Art. 2), the right to safe and healthy working conditions (Art. 3), the right to fair remuneration (Art. 4), the right to information and consultation (Art. 21), the right to participation in the determination and improvement of the working conditions and working environment (Art. 22), the right to protection in cases of termination of employment (Art. 24), the right to protection of the workers' claims in the event of the insolvency of their employer (Art. 25), the right to dignity at work (Art. 26), the right to workers' representatives protection in the undertaking and facilities to be accorded to them (Art. 28), and the right to information and consultation in collective redundancy procedures (Art. 29).[348]

a. *Joint consultations*

Art. 6.1 of the ESC sets out the obligation to promote joint consultation between workers and employers. "Joint consultation" refers to the consultation between employees and employers or the organisations that represent them. Such consultation can take place within tripartite bodies, provided that the social partners are represented in these bodies on an equal footing.[349] States parties need to take positive steps to encourage consultation between trade unions and employers' organisations. If such consultation does not take place spontaneously, permanent bodies and arrangements should be established in which trade unions and employers' organisations are equally and jointly represented.[350]

Consultation must take place on several levels: national, regional/sectoral and enterprise.[351] Consultation should take place in the private and public sector (including the civil service). It must cover all matters of mutual interest and, in particular, productivity, efficiency, industrial health, safety and welfare, and other occupational issues (working conditions, vocational training, etc.), economic problems and social matters (social insurance, social welfare, etc.).[352] States Parties may require trade unions to meet an obligation of representativeness. However, such a requirement should be prescribed by law, be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal.[353]

The situation in Georgia, where joint consultation does not take place at several levels, does not cover all matters of mutual interest of workers and employers, and does not take place in the public sector including the civil service, is not in conformity with the standard in question.[354]

b. *Collective agreements*

According to Art. 6.2 of the ESC, domestic law must recognise that employers' and workers' organisations may regulate their relations by collective agreement. If the spontaneous development of collective bargaining is not sufficient, measures must be taken to facilitate and encourage the conclusion of collective agreements. However, whatever the procedures set in place, collective bargaining should remain free and voluntary.[355] It is up to the trade unions to decide themselves which subject matters they wish to regulate in collective agreements, and which lawful methods

348 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, ECSR decision on admissibility and the merits of 3 July 2013 (par. 109) (https://hudoc.esc.coe.int/eng?i=cc-85-2012-dadmissandmerits-en).

349 Conclusions V – Statement of interpretation – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=V_Ob_-8/Ob/EN).

350 Centrale générale des services publics (C.G.S.P.) v. Belgium, Complaint No. 25/2004, ECSR decision on the merits of 9 May 2005 (par. 41) (https://hudoc.esc.coe.int/eng?i=cc-25-2004-dmerits-en).

351 Conclusions 2010 – Ukraine – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2010/def/UKR/6/1/EN).

352 Conclusions I – Statement of interpretation – Art. 6-1(https://hudoc.esc.coe.int/eng?i=I_Ob_-23/Ob/EN); Conclusions 2018 – Azerbaijan – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2018/def/AZE/6/1/EN).

353 Conclusions 2014 – Bosnia and Herzegovina – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2014/def/BIH/6/1/EN); Conclusions 2006 – Albania – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2006/def/ALB/6/1/EN).

354 Conclusions 2022 – Georgia – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/6/1/EN).

355 Conclusions I – Statement of interpretation – Art. 6-2 (https://hudoc.esc.coe.int/eng?i=I_Ob_-24/Ob/EN).

should be used in their efforts to promote and defend the interest of the workers concerned. Trade unions must be allowed to strive for the improvement of existing living and working conditions of workers and in this area the rights of trade unions should not be limited by legislation to the attainment of minimum conditions.[356]

The right of association under Art. 11 of the ECHR also includes the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members and, in principle, the right to bargain collectively with the employer. It should be understood, however, that States parties remain free to organise their systems so as to grant special status to representative trade unions, if appropriate.[357]

A State's positive obligations under Art. 11 of the ECHR do not extend to providing for a mandatory statutory mechanism for collective bargaining. The essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps with a view to persuading the employer to enter into collective bargaining with it on the issues which the union believes are important for its members' interests.[358]

The extent to which collective bargaining applies to public officials (including members of the police and armed forces) may be determined by law. However, particularly in a situation where trade union rights have been restricted, the union must maintain its ability to argue on behalf of its members through at least one effective mechanism. This mechanism must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side.[359]

The rapidly changing world of work and the proliferation of contractual arrangements, often with the express aim of avoiding contracts of employment under labour law, have resulted in an increasing number of workers falling outside the definition of a dependent worker, including low-paid workers or service providers who are *de facto* "dependent" on one or more labour engagers. These developments must be considered when determining the scope of Art. 6.2 of the ESC in respect of self-employed workers. It is not sufficient to rely on distinctions between workers and the self-employed; the decisive criterion is rather whether there is an imbalance of power between the providers and engagers of labour. Where providers of labour have no substantial influence on the content of contractual conditions, they must be given the possibility of improving the power imbalance through collective bargaining. An outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of this provision.[360]

The requirement for trade unions to meet an obligation of representativeness, subject to certain general conditions, is not as such contrary to Art. 6.2 of the ESC if there are no excessive limitations of the possibility of trade unions to participate effectively in collective bargaining. Restricting collective bargaining to trade unions representing at least 33% of the employees concerned, has been held to be in violation of Art. 6.2.[361] A similar interpretation of Art. 11 of the ECHR is found in the case law of the ECtHR.[362]

The situation in Georgia, where the promotion of collective bargaining is not sufficient and an employer may unilaterally disregard a collective agreement, was found by the ECSR to not be in conformity with the standard in question.[363]

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356 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, ECSR decision on admissibility and the merits of 3 July 2013 (par. 111, 120) (https://hudoc.esc.coe.int/eng?i=cc-85-2012-dadmissandmerits-en).

357 Demir and Baykara v. Turkey, Application no. 34503/97, ECtHR judgment on the merits of 12 November 2008 (par. 144) (https://hudoc.echr.coe.int/fre?i=001-89558).

358 Wilson, and the National Union of Journalists, Palmer, Wyeth and the National Union of Rail Maritime and Transport Workers and Doolan and Others v. United Kingdom, Applications no. 30668/96, 30671/96, 30678/96, ECtHR judgment on the merits of 2 July 2002 (par. 46) (https://hudoc.echr.coe.int/eng?i=001-60554).

359 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, ECSR decision on the merits of 22 January 2019 (par. 125) (https://hudoc.esc.coe.int/eng?i=cc-140-2016-dmerits-en).

360 Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016, ECSR decision on the merits of 12 September 2018 (par. 37-40) (https://hudoc.esc.coe.int/eng?i=cc-123-2016-dmerits-en).

361 Conclusions 2014 – The former Yugoslav Republic of Macedonia – Art. 6-2 (https://hudoc.esc.coe.int/eng?i=2014/def/MKD/6/2/EN).

362 Tek Gıda İş Sendikası v. Turkey, Application no. 35009/05, ECtHR judgment on the merits of 4 April 2017 (par. 45-46) (https://hudoc.echr.coe.int/eng?i=001-172858).

363 Conclusions 2022 – Georgia – Art. 6-1 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/6/1/EN).

5. Collective labour disputes

Under Art. 6.3 of the ESC, conciliation, mediation and/or arbitration procedures must be introduced to facilitate the settlement of collective labour disputes. These procedures may be instituted by law, collective agreement or industrial practice.[364] Art. 6.3 applies to both the private and public sectors.[365] It concerns disputes which arise when collective agreements are negotiated or concluded.

This provision applies to conflicts of interest, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement, or to political disputes.[366]

Conciliation is a process aimed at the peaceful settlement of a labour conflict, whereas arbitration can resolve the conflict on the basis of a decision taken by one or more individuals selected by the parties. This distinction is important since the result of a conciliation proceeding is not binding for the parties, and recourse to arbitration should be voluntary (subject to the agreement of the parties). However, once the parties have chosen to solve the dispute through arbitration, the result of the arbitration proceedings is binding on them.[367]

All arbitration systems must be independent, and the outcome of arbitration may not be predetermined by pre-established criteria. Any form of compulsory recourse to arbitration is a violation of this provision, whether domestic law allows one of the parties to defer the dispute to arbitration without the consent of the other party or allows the government, or any other authority, to defer the dispute to arbitration without the consent of one party or both.[368]

6. Collective actions

Art. 6.4 of the ESC guarantees the right to collective action would it be a strike or a lock-out. The right to collective action is recognised only in cases of conflicts of interest. It cannot be invoked in cases of conflicts of right, i.e. in particular, in cases of disputes concerning the existence, validity or interpretation of a collective agreement or its violation, e.g. through action taken during its currency with a view to the revision of its contents.[369]

Protecting the right to collective action pursues the objective of solving collective conflicts. The right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining process. It is therefore of specific relevance to trade unions. The abolition of the right to strike affects one of the essential elements of the right to collective bargaining and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness. Consequently, restrictions on this right may be acceptable only under specific conditions.[370]

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Art. G of the ESC which provides that restrictions on the rights guaranteed by the ESC must be prescribed by law, serve a legitimate purpose and be necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. Art. G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable

364 Conclusions I – Statement of interpretation – Art. 6-3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-25/Ob/EN); Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, ECSR decision on the merits of 21 March 2018 (par. 105) (https://hudoc.esc.coe.int/eng?i=cc-116-2015-dmerits-en).
365 Conclusions I – Statement of interpretation – Art. 6-3 (https://hudoc.esc.coe.int/eng?i=I_Ob_-25/Ob/EN).
366 Conclusions 2010 – Georgia – Art. 6-3 (https://hudoc.esc.coe.int/eng?i=2010/def/GEO/6/3/EN).
367 Conclusions 2014 – Moldova – Art. 6-3 (https://hudoc.esc.coe.int/eng?i=2014/def/MDA/6/3/EN).
368 Conclusions 2010 – Georgia – Art. 6-3 (https://hudoc.esc.coe.int/eng?i=2010/def/GEO/6/3/EN).
369 Conclusions I – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=I_Ob_-26/Ob/EN).
370 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, ECSR decision on the merits of 22 January 2019 (par. 143-144) (https://hudoc.esc.coe.int/eng?i=cc-140-2016-dmerits-en).

to provide sufficient legal certainty for the parties concerned and respect of fair procedures.[371]

Excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law. The prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (e.g. goals which do not relate to the enjoyment of labour rights, or relate to discriminatory objectives) would not be necessarily contrary to Art. 6.4 of the ESC. However, national legislation which prevents *a priori* the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Art. 6.4 of the ESC, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. The right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.[372]

The ESC does not necessarily imply that legislation and case-law should establish full legal equality between the right to strike and the right to call a lock-out. In the first place, a State party cannot be found at fault for not having passed legislation regulating the exercise of lock-out and, in the second place, the competent tribunals were entitled to place certain restrictions on the exercise of lock-out in specific cases where it would in particular constitute an abuse of right or where it would be devoid of justification on the ground of *force majeure* or of the disorganisation of the enterprise caused by the workers' collective action.[373]

Art. 6.4 of the ESC does not require States to grant any group of workers authority to call a strike. It leaves them with the option of deciding which groups shall have this right and thus of restricting the right to call strikes to trade unions. However, such restrictions are only compatible with Art. 6.4 if there is complete freedom to form trade unions and the process is not subject to excessive formalities that would impede the rapid decisions that strike action sometimes requires.[374]

A rule of municipal law under which workers only have the right to strike if the union to which they belong has first acquired a "negotiating license" from the public authorities and the grant of that license is in the discretion of the authority and not subject to judicial review, the refusal to recognise the right to strike for paid employees in non-profit-making activities as well as any limitation of the right to strike connected with the conclusion of new collective agreements is incompatible with the provisions of Art. 6.4 of the ESC. [375]

Legislation denying the right to strike to persons employed in essential public services may be compatible with the ESC whether such restriction be total or partial. Whether or not, in a given case, it is so compatible depends on the extent to which the life of the community depends on the services involved.[376] The same applies to legislation for the compulsory settlement of conflicts of interest which are likely to expose the national economy to serious danger. As regards the right of public servants to strike, the right to strike of certain categories of public servants may be restricted, including members of the police and armed forces, judges and senior civil servants. On the other hand, a denial of the right of strike to public servants as a whole cannot be regarded as compatible with the ESC.[377]

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371 European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, ECSR decision on the merits of 13 September 2011 (par. 43-44) (https://hudoc.esc.coe.int/eng?i=cc-59-2009-dmerits-en).

372 Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, ECSR decision on admissibility and the merits of 3 July 2013 (par. 119-120) (https://hudoc.esc.coe.int/fre/?i=cc-85-2012-dadmissandmerits-en).

373 Conclusions VIII – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=VIII_Ob_-3/Ob/EN).

374 Conclusions XIX-3 – Slovak Republic – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=XIX-3/def/SVK/6/4/EN).

375 Conclusions I – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=I_Ob_-71/Ob/EN).

376 Conclusions I – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=I_Ob_-26/Ob/EN); Matica Hrvatskih Sindikata v. Croatia, Complaint No. 116/2015, ECSR decision on the merits of 21 March 2018, (par. 114) (https://rm.coe.int/cc-116-2015-dmerits-en-decision-on-the-merits/16808cecd9).

377 Conclusions I – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=I_Ob_-26/Ob/EN).

Concerning the armed forces, the need to be able to maintain the command operational in the most extreme situations of military exposure may not justify the absolute prohibition of the right to strike, because it is not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society. Minimum services may be imposed in the defense sector in the event of a strike. Other measures may be provided for by law, such as an effective and regular procedure of negotiation at the highest level between the members of the armed forces and the command authority regarding not only the material and salary conditions but also the work organisation, or conciliation or arbitration procedure. With such measures – minimum services and/or an effective procedure of negotiation or conciliation – the prohibition on the exercise of the right to strike would be proportionate.[378]

Concerning police officers, an absolute prohibition on the right to strike can be considered in conformity with Art. 6.4 only if there are compelling reasons justifying it. On the other hand, the imposition of restrictions as to the mode and form of such strike action can be in conformity with the ESC.[379]

Once a strike has been called, any worker concerned, irrespective of whether they are a member of the trade union that called the strike or not, has the right to participate in the strike.[380]

Regarding procedural requirements, the ECSR has found that the following procedural requirements are in conformity with Art. 6.4:

a) subjecting the exercise of the right to strike to prior approval by a certain percentage of workers, provided that the ballot method, the quorum and the majority required are not such that the exercise of the right to strike is excessively limited;[381]

b) the exhaustion of the conciliation/mediation procedures before a strike, as long as such machinery is not so slow that the deterrent effect of a strike is affected;[382]

c) periods of notice or cooling-off periods prescribed in connection with pre-strike conciliation procedures, if they are of a reasonable duration.[383]

A strike should not be considered a violation of the contractual obligations of the striking employees. It should be accompanied by a prohibition of dismissal. However, if in practice, strikers are fully reinstated when the strike has ended and their previously acquired entitlements (e.g. concerning pensions, holidays and seniority) are not affected, then formal termination of the employment contract does not violate Art. 6.4 of the ESC.[384] Any deduction from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their participation in the strike.[385] Workers participating in a strike who are not members of the trade union that called the strike are entitled to the same protection as trade union members.[386]

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378 Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, ECSR decision on the merits of 22 January 2019 (par. 152) (https://hudoc.esc.coe.int/eng?i=cc-140-2016-dmerits-en).

379 European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, ECSR decision on admissibility and the merits of 2 December 2013 (par. 211) (https://hudoc.esc.coe.int/eng/?i=cc-83-2012-dadmissandmerits-en); Conclusions 2022 – Georgia – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2022/def/GEO/6/4/EN).

380 Conclusions 2010 – Azerbaijan – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2010/def/AZE/6/4/EN).

381 Conclusions 2016 – Georgia – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2016/def/GEO/6/4/EN).

382 Conclusions 2014 – Romania – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2014/def/ROU/6/4/EN).

383 Conclusions 2002 – Sweden – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2002/def/SWE/6/4/EN).

384 Conclusions I – Statement of interpretation – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=I_Ob_-26/Ob/EN).

385 Confédération française de l'Encadrement CFE-CGC v. France, Complaint No. 16/2003, ECSR decision on the merits of 12 October 2004 (par. 63) (https://hudoc.esc.coe.int/eng?i=cc-16-2003-dmerits-en); Conclusions 2014 – Serbia – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2014/def/SRB/6/4/EN).

386 Conclusions XVIII-1 – Denmark – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=XVIII-1/def/DNK/6/4/EN); Conclusions 2010 – Armenia – Art. 6-4 (https://hudoc.esc.coe.int/eng?i=2010/def/ARM/6/4/EN).

European Social Charter, adopted in 1961 and revised in 1996, is the counterpart of the European Convention on Human Rights in the field of economic and social rights. It guarantees a broad range of human rights related to employment, housing, health, education, social protection and welfare.

No other legal instrument at pan-European level provides such an extensive and complete protection of social rights as that provided by the Charter.

The Charter is therefore seen as the Social Constitution of Europe and represents an essential component of the continent's human rights architecture.

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