

Rights of older people

Article 23 of the Revised European Social Charter

FACTSHEET



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Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

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

Underlying principles

■ The Charter contains a range of rights which, both individually and collectively, give tangible support to older people as active members of the society. These rights are anchored in several principles, which, according to the European Committee of Social Rights (ECSR), guide the interpretation and application of the Charter provisions:

- ▶ **Dignity** is pivotal in defining the minimum standards States Parties must uphold under the Charter and signals a shift from an assisting and caring paternalistic approach to one focused on equal citizenship;
- ▶ **Autonomy** ensures older persons can choose their protection and lifestyle, supported by safeguards against arbitrary deprivation. In that respect, States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences;
- ▶ **Equality**, reinforced by Article E emphasises respect for diversity and the need for positive action to ensure substantive equality;

- ▶ **Solidarity** reflects the social nature of human beings and encompasses the redistribution of resources through public assistance and social insurance systems;
- ▶ **Participation** involves taking part, in a meaningful and rewarding way, in the community and in processes related to social rights determination and implementation in law and policy.

Scope of Article 23

■ The Charter is unique in providing a provision dealing specifically with the rights of older persons. Article 23 is the first human rights treaty provision to specifically protect the rights of older persons. The core ideas that underpin it include an insistence on human autonomy and independence regardless of age. Also embedded in Article 23 is the concept of social inclusion and active citizenship.

■ Article 23 of the Charter requires States Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society. The expression “full members of society” used in Article 23 requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

■ The article is structured into three interconnected parts, encompassing various aspects of the wellbeing of older persons outside of the workplace. It mandates States Parties to develop comprehensive, cross-sectoral measures that address the diverse needs of ageing populations across various domains such as health, social security and assistance, housing and protection against poverty and exclusion. The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for older persons, obliging States Parties to devise and carry out coherent actions in the different areas covered.

Legal framework

■ The implementation of Article 23 is characterised by its dynamic nature, evolving in response to changing societal understandings and human rights standards of older persons’ rights and needs. Its interpretation has significantly evolved through the work of the ECSR. Accordingly, article 23 includes the following obligations:

Non-discrimination

■ Article 23 of the Charter requires States Parties to adopt comprehensive legislation to combat age discrimination beyond employment contexts, namely, in access to goods, facilities and services, healthcare, education, services such as insurance and banking products.

■ Discrimination against older persons in terms of social rights enjoyment, is also contrary to Article E, which specifically prohibits all forms of discrimination in the enjoyment of rights outlined in the Charter, including discrimination based on age. While Article E itself does not create independent grounds for complaints against States Parties, it ensures that discrimination is not tolerated in the implementation of Charter's rights.

■ The Committee distinguishes between direct and indirect discrimination. Direct discrimination involves treating individuals differently in comparable situations without a legitimate aim, objective grounds or proportionality. Indirect discrimination occurs when seemingly neutral legislation disproportionately affects a specific group due to failure to consider relevant differences or ensure equal access to rights. In recent cases, the Committee has examined indirect discrimination, assessing whether ostensibly neutral laws unjustly impact certain groups, such as older persons. Also, the Committee is concerned with issues of multiple discrimination and issues of intersectionality, e.g. concerning older women with disabilities.

Ageism

■ The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and involving, policies and other measures which reflect or reinforce such ageism. The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age.

■ States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. These measures include the following:

- ▶ reviewing (and as necessary amending) existing laws and policies to remove age-based discrimination;
- ▶ adopting action plans that ensure equal opportunities and rights for older persons;
- ▶ promoting positive attitudes towards ageing through society-wide awareness campaigns and the fostering of intergenerational solidarity.



Legal capacity

■ Article 23 further requires that there should be a national legal framework related to assisted decision-making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability. States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. Such measures may be formal or informal.

■ Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used. In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision-making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights.

Prevention of abuse

■ States Parties are required to take appropriate measures against the abuse of older persons (both in the institutional care context and beyond), through awareness campaigns, legislative frameworks and institutional safeguards. In particular, States Parties must take measures to evaluate the extent of the problem, raise awareness on the need to eradicate abuse or neglect of older persons and adopt legislative or other measures to prevent the possibility of abuse. Abuse can take the form of physical, psychological or emotional, sexual and financial abuse or simply reflect intentional or unintentional neglect within society at large and/or within welfare services and institutional care settings.

Ensuring adequate resources and access to information

■ The first part of Article 23 underlines the creation of conditions that allow older persons to lead active lives and fully participate in society. This involves ensuring adequate resources (such as pensions and benefits), including income levels that align with societal standards and enable access to essential needs such as housing, food, cultural activities and transportation. It also mandates the provision of accessible information on available support services and associated costs, tailored to the understanding and accessibility needs of older populations.

Adequate resources

■ The Committee focuses on States Parties' obligation to adopt positive measures ensuring older persons have sufficient income and access to social benefits to lead a dignified life and participate actively in public, social and cultural life. This includes examining States Parties' pension systems, both contributory and non-contributory, with pensions being required to be indexed to wages and consumer prices, supplementary cash benefits or vouchers and poverty levels among older populations.

■ This cumulative basket of resources is then compared with national indicator of income and poverty (for example, the average wage levels and the overall at risk of poverty thresholds) in order to assess its adequacy. Article 23 requires minimum income to be at a level where the benefit would reach at least 50% of the country's net equivalised median income.

Access to information, services and facilities

■ Although Article 23 only refers to the provision of information about services and facilities, it presupposes the existence of services and facilities. Therefore, the Committee not only examines the provision of information about these services and facilities, but also the services and facilities themselves. States Parties need to make available accessible information (through all possible means tailored to older persons' needs and in a language they understand) and to ascertain whether or not the information has been effectively received.

■ Beyond that requirement, the Committee evaluates the availability, extent and cost of services such as home help, community-based services, day care for dementia patients, rehabilitation, meals delivery, residential care, emergency shelters and cultural, leisure and educational facilities.

■ Many services (and information about services) are increasingly accessible online, and digitalisation provides opportunities also for older persons. However, older persons may have more limited access to the internet than other groups and may lack the necessary skills to use it. Therefore, the ECSR



considers that measures should be taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons and make sure that non-digital services are maintained.

Promoting autonomy, independence and choice of life-style

■ The second part of Article 23 guarantees the right of older persons, including those with limitations due to illness or disability, to make autonomous decisions about their lives. This includes choosing where and how to live, supported by appropriate housing options and necessary social and healthcare services. States Parties are encouraged to implement policies that facilitate this freedom of choice, ensuring that older persons can maintain their independence for as long as possible within their preferred living arrangements.

Housing

■ The Committee emphasises the right to suitable housing that accommodates the health needs of older persons in national or local housing policies. It calls for policies supporting the rights-based approach of “ageing in place” through the provision of sheltered/supported housing and assistance for the adaptation of homes to make independent living possible.

■ States Parties are expected to ensure that the supply of adequate housing for older persons is sufficient and to make measurable progress within a reasonable timeframe, consistent with the maximum use of available resources. This involves maintaining statistics on needs and resources, conducting regular

impact reviews, establishing timetables for achieving objectives and considering the policies' impact on vulnerable older people. There also need to be reasonable waiting periods to access housing options for older persons, while unreasonably long periods in temporary shelter are in violation of the Charter.

Healthcare

■ The Committee has stressed that healthcare expands beyond basic healthcare to include specialised services such as mental health programmes and palliative care. In addition, it has emphasised the need for States Parties to develop guidelines on healthcare of older persons and for measures aimed at improving the availability, accessibility and quality of geriatric and long-term care, as well as the coordination of social and healthcare services in respect of older persons. In that context, the Committee looks at the costs associated with care, particularly home care and pharmaceutical products, to ensure they do not impose excessive financial burdens on older persons. Health services need to be close by or brought to people's home, and older persons must be consulted on all decisions concerning their care and treatment.

■ As the Committee has emphasised, while the Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons, Article 23 of the Charter applies equally in the Covid-19 or similar contexts. In the healthcare context, there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life or the "worth" of lives of older persons when setting the boundaries for triage policies. According to the Committee, decisions around the allocation of medical resources should not be made solely on the basis of age and triage protocols should be developed and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

Deinstitutionalisation and protection of institutionalised older persons

Deinstitutionalisation

■ According to the Committee, institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons results in a pressing need to for steps to be taken to move away from the institutionalisation of older persons and re-invest in community-based supports as an alternative to institutions.

■ The Covid-19 pandemic put the spotlight on the shortcomings of institutionalised care. Enabling older persons to remain in their familiar surroundings as required by Article 23 of the Charter has become even more important in view of the heightened risk of contagion in the congregated settings of

nursing homes and other long-term institutional and residential facilities. To the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

Institutional care

Older persons requiring long-term care should be able to choose their living arrangements. In that respect, the Committee encourages States Parties to develop and implement deinstitutionalisation strategies, demonstrating concrete progress toward this goal. Where, in the transition period, institution-alisation is unavoidable, the third part of Article 23 focuses on ensuring that older persons living in institutions receive adequate support while preserving their fundamental rights to privacy, dignity and participation in decision-making processes affecting their lives. States Parties are obliged to ensure the availability of sufficient, affordable and well-regulated institutional care facilities that uphold these rights and prevent any form of abuse or neglect.

Article 23 requires that living conditions and care in institutions be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions.

Care in institutions should be affordable, and assistance must be available to cover the cost. All institutions should be licensed, and subject to an independent inspection body. According to the Committee, even private services must meet established standards. Issues such as the requirements relating to staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints and sedatives are also examined under this provision.

Other Charter provisions relating to older people

In many respects, the overall philosophy of Article 23 – equal and active social citizenship – is already reflected in other substantive provisions of the Charter. However, Article 23 provides an overarching philosophy to make the other rights come alive in the context of older people. These Charter rights including the right to social security (Article 12), the right to social and medical assistance (Article 13) and the right to benefit from welfare services (Article 14). Also, include the right of (older) persons with disabilities to independence, social integration and participation in the life of the community (Article 15), as well as the right of the family to social, legal and economic protection



(Article 16, in combination with Article 27), considering the importance of family support for older persons as their long-term care needs increase and the need for protection against domestic violence and abuse, especially affecting older women.

■ Lastly, relevant Charter provisions include the substantive rights to protection of health (Article 11), to protection against poverty and social exclusion (Article 30) and to housing (Article 31), which are a natural precondition for active social citizenship. including Article E, which prohibits discrimination on the grounds of age among other grounds.

➔ Relevant collective complaints

- 🔗 *International Federation of Associations of the Older (FIAPA) v. France*, Complaint No. 210/2022, decision on admissibility of 21 March 2023 – age limit of 71 years for candidates standing for election to the board of the Order of healthcare professionals (Articles 23, 5 and E of the Charter). *Pending decision on the merits*
- 🔗 *International Federation of Associations of the Older (FIAPA) v. France*, Complaint No. 205/2022, decision on the merits of 18 March 2025 – legal and judicial protection of older persons (Articles 23, 15 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 16, 30, 31, E and G of the Charter).
- 🔗 *Defence for Children International (DCI), and others v. Spain*, Complaint No. 206/2022, decision on the merits of 11 September 2024 – impact of power outages on the health and housing situation of older persons as well as their social protection (Articles 11, 15, 16, 17, 20, 23, 27, 30, 31 and E of the Charter)
- 🔗 *Validity Foundation – Mental Disability Advocacy Centre v. Czech Republic*, Complaint No. 188/2019, decision on the merits of 17 October 2023 – placement of older patients in netted cage-beds as a means of restraint in healthcare settings (Article 23/Article 4 of the 1988 Additional Protocol to the 1961 Charter and Article 11 of the Charter)
- 🔗 *Validity Foundation v. Finland*, Complaint No. 197/2020, decision on the merits of 22 March 2023 – response to the coronavirus pandemic in spring 2020 vis-à-vis persons with disabilities (Articles 11, 14, 15 and E of the Charter)
- 🔗 *Panhellenic Association of Pensioners of the OTE Group Telecommunications (PAP-OTE) v. Greece*, Complaint No. 165/2018, decision on the merits of 17 May 2022 – pension reforms and reductions implemented during the financial crisis (Articles 12§2, 12§3 and 23 of the Charter)
- 🔗 *International Federation of Associations of the Older (FIAPA) v. France*, Complaint No. 162/2018, decision on the merits of 10 December 2020 – age limit of 71 years for candidates standing for election to the board of the Order of healthcare professionals (Articles 5, 23, and E of the Charter)

- 🔗 *International Federation of Associations of the Older (FIAPA) v. France*, Complaint No. 145/2017, decision on the merits of 22 May 2019 – punishment of exploitation of weakness linked with old age (Articles 23 and E of the Charter)
- 🔗 *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on the merits of 2 July 2013 – compulsory retirement of seafarers at the upper age limit of 62 (Articles 1, 24 and E of the Charter)
- 🔗 *The Central Association of Carers in Finland v. Finland*, Complaint No. 71/2011, decision on the merits of 4 December 2012 – lack of statutory pricing for service housing or service housing with 24-hour assistance for older people (Articles 13, 14, 16 and 23 of the Charter)
- 🔗 *The Central Association of Carers in Finland v. Finland*, Complaint No. 70/2011, decision on the merits of 4 December 2012 – equality of the system of financial support for family and friend caregivers based on the place of residence (Article 23 of the Charter)
- 🔗 *International Federation of Human Rights (FIDH) v. Ireland*, Complaint No. 42/2007, decision on the merits of 3 June 2008 – receipt of contributory old age pensions by persons who do not reside in the country permanently (Article 23, in conjunction with Article E, and Article 12 of the Charter)

➔ Other relevant documents

- 🔗 ECSR, Social rights and the cost-of-living crisis, A review of States Parties' ad hoc reports - 2025
- 🔗 ECSR, Statement of interpretation on Article 23: Ageism - 2021
- 🔗 ECSR, Statement on COVID-19 and social rights - 2021
- 🔗 ECSR, Latest conclusions on Article 23 - 2021
- 🔗 ECSR, Statements of interpretation on Article 23 - 1991-2013

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

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

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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