



1 September 2008

# **DIGEST OF THE CASE LAW OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

## **INTRODUCTION**

**Part I: INTERPRETATION OF THE DIFFERENT PROVISIONS OF THE REVISED EUROPEAN SOCIAL CHARTER**

**Part II: RELEVANT ABSTRACTS OF CONCLUSIONS AND DECISIONS OF THE COMMITTEE**

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## Introduction

The European Committee of Social Rights (referred to below as “the Committee”) assesses whether countries respect the rights provided in the Charter.

The Digest presents the interpretation that the Committee has made of the different articles of the European Social Charter, in its revised version from 1996 (referred to below as “the Charter”). This Digest, prepared by the Secretariat, is not binding on the Committee.

### ***The European Committee of Social Rights***

#### **1. Composition of the Committee (by order of precedence according to Rule 5 of the Committee’s rules)**

##### ***End of term of office***

<i>Ms Polonca KONČAR (Slovenian) President</i>	<i>31/12/2010</i>
<i>Mr. Andrzej SWIATKOWSKI (Polish) First Vice-President</i>	<i>31/12/2012</i>
<i>Mr. Tekin AKILLIOGLU (Turkish) Second Vice-President</i>	<i>31/12/2008</i>
<i>Mr. Jean-Michel BELORGEY (French) General Rapporteur</i>	<i>31/12/2012</i>
<i>Mr. Alfredo BRUTO DA COSTA (Portuguese)</i>	<i>31/12/2008</i>
<i>Mr. Nikitas ALIPRANTIS (Greek)</i>	<i>31/12/2008</i>
<i>Mr. Stein EVJU (Norwegian)</i>	<i>31/12/2008</i>
<i>Ms Csilla KOLLONAY LEHOCZKY (Hungarian)</i>	<i>31/12/2012</i>
<i>Mr. Lucien FRANÇOIS (Belgian)</i>	<i>31/12/2008</i>
<i>Mr Lauri LEPPIK (Estonian)</i>	<i>31/12/2010</i>
<i>M. Colm O’CINNEIDE (Irish)</i>	<i>31/12/2010</i>
<i>Mme Monika SCHLACHTER (German)</i>	<i>31/12/2012</i>
<i>Mme Birgitta NYSTRÖM (Swedish)</i>	<i>31/12/2012</i>
<i>Ms Lyudmila HARUNTYUNYAN (Armenian)</i>	<i>31/12/2010</i>
<i>Ms Annalisa CIAMPI (Italian)</i>	<i>31/12/2010</i>

#### **2. Functions of the Committee**

The Committee decides whether the situation in the States Parties is in conformity with the European Social Charter. According to Article 2 of its Rules:

*“1. The Committee makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol and the Revised European Social Charter.*

*2. It adopts conclusions in the framework of the reporting procedure and decisions under the complaints procedure.”*

##### **i) Conclusions (Reporting procedure)**

Every year, the States Parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns a selection of the accepted provisions of the Charter.

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The Social Charter provisions are shared out into four groups :

<b>Thematic Groups</b>	<b>Provisions</b>	<b>Date of submission of reports:</b>	<b>Conclusions to be published on :</b>
- <b>Group 1</b> Employment, training and equal opportunities	Article 1 Article 9 Article 10 Article 15 Article 18 Article 20 Article 24 Article 25	31/10/2007	December 2008
- <b>Group 2</b> Health, social security and social protection	Article 3 Article 11 Article 12 Article 13 Article 14 Article 23 Article 30	31/10/2008	December 2009
- <b>Group 3</b> Labour rights	Article 2 Article 4 Article 5 Article 6 Article 21 Article 22 Article 26 Article 28 Article 29	31/10/2009	December 2010
- <b>Group 4</b> Children, families, migrants	Article 7 Article 8 Article 16 Article 17 Article 19 Article 27 Article 31	31/10/2010	December 2011
- <b>Group 1</b> Employment, training and equal opportunities	Article 1 Article 9 Article 10 Article 15 Article 18 Article 20 Article 24 Article 25	31/10/2011	December 2012



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According to Article 24 of the 1961 Charter, as modified by the 1991 Amending Protocol:

*“2. With regard to the reports referred to in Article 21, the Committee shall assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter for the Contracting Parties concerned.”*

The Committee's conclusions are published every year. They are available on the Council of Europe's internet site [www.coe.int](http://www.coe.int).

When the Committee concludes that a situation is not in conformity, the State Party has to bring the situation into conformity. If the State party takes no action, the Committee of Ministers may address a recommendation to that state, asking it to change the situation in law and/or in practice. The Committee of Ministers' work is prepared by a Governmental Committee comprising representatives of the governments of the States Parties to the Charter, assisted by observers representing European employers' organisations and trade unions (European Trade Union Confederation (ETUC), Business Europe (ex UNICE) and International Organisation of Employers (IOE)).

### ii) Decisions (Collective complaints)

Complaints alleging violations of the Charter may be lodged by trade unions, employers' organisations and NGOs.

#### a) Decisions on admissibility

The Committee examines the complaint and, if the formal requirements have been met, declares it admissible. The decisions are public and available on the Council of Europe's website [www.coe.int](http://www.coe.int).

#### b) Decisions on the merits

Once the complaint has been declared admissible, a written procedure is set in motion, with an exchange of memorials between the parties. The Committee may decide to hold a public hearing.

The Committee then takes a decision on the merits of the complaint, which it forwards to the parties concerned and the Committee of Ministers in a report, which is made public within four months of its being forwarded.

The decisions when they become public are available on the Council of Europe's website [www.coe.int](http://www.coe.int).

## 3. Statute of Committee members

The Committee's fifteen members are independent and impartial members.

They are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once.

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### *“Rule 3: Duties of Committee Members*

Members shall perform their duties with the requirements of independence, impartiality and availability inherent in their office and shall keep secret the Committee’s deliberations.

### *Rule 4: Incompatibility*

Members of the Committee shall not during their term of office perform any function which is incompatible with the requirements of independence, impartiality or availability inherent in their office.

### *Rule 5: Solemn declaration*

Before taking up duties, each member of the Committee shall, at the first meeting of the Committee at which the member is present after election, make the following declaration:

“I solemnly declare that I will exercise my functions as a member of this Committee in conformity with the requirements of independence, impartiality and availability inherent in my office and that I will keep secret the Committee’s deliberations.”

### *Rule 6: Conflict of Interest*

If it appears that a member of the Committee has accepted to undertake functions which are susceptible to be incompatible with the provisions of Rule 4, he/she is obliged to draw the consequences of Rule 4. Failing this, as well as in cases of a violation of the provisions of Rule 3, the Committee is, on the basis of a report by the President, required to take a decision on the situation.”

## 4. Working methods of the Committee

The Committee holds seven sessions per year at the Council of Europe premises in Strasbourg.

Each Committee member is Rapporteur for a certain number of provisions of the Charter and for complaints.

National reports are examined by two sub-committees, each of them being responsible for a certain number of provisions. The sub-Committee prepare the work of the plenary Committee.

Collective complains are examined by the plenary Committee.

The Committee is assisted by a secretariat composed of Council of Europe Staff.

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### 5. The Committee's case-law

What is called the Committee's "case-law" are all the sources in which it sets out its interpretation of the Charter's provisions.

These include:

- **Conclusions**, arising from the reporting procedure and published each year according to the following referencing system:
  - for the 1961 Charter, the volumes are numbered I, II, III, IV..., XVIII-1, XVIII-2
  - for the Revised Charter, they are numbered 2003, 2004, 2005, 2006, 2007, etc..
- **Statements of Interpretation**, included in the volumes of conclusions.

Until 1997, the conclusions were presented article by article and the statements appeared at the start of each chapter. Since 1998, conclusions have been published country by country, with statements of interpretation repeated in each country chapter. To avoid such repetition, as of 2006 these statements appear in the general introduction to the conclusions.

- Decisions on collective complaints: **decisions on admissibility** and **decisions on the merits**.

#### How the Committee makes its assessments

In deciding whether situations are in conformity with the Charter, the Committee first checks whether existing laws and regulations are consistent with Charter rights and do not impede their application.

If this first "test" is passed, it then goes on to ensure that the law is properly applied in practice.

A situation is "not in conformity" with the Charter if the relevant legislation is incompatible with its requirements or if compatible legislation is incorrectly or not fully applied.

#### Dissenting opinions of Committee members

The Committee adopts its conclusions and decisions by vote. In most cases, voting is unanimous. Occasionally, though, decisions are taken by majority vote. The Committee's Rules allow any member who has voted against a conclusion or a decision on the merits of a complaint to present a dissenting opinion, which is published at the same time as the conclusion or decision.

#### Publication of the Committee's decisions and conclusions

The Council of Europe publishes all these documents. They are also available on the HUDOC database, which is accessible on CD-ROM or the Council of Europe's internet site [www.coe.int](http://www.coe.int). There are scroll down menus for most of the fields and text strings should be in inverted commas.

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### References to Committee conclusions and decisions

Conclusions are cited as follows:

Conclusions 2003, France, Article 6 §2.

*Reference to the volume of conclusions, state, article and paragraph.*

Decisions are cited as follows:

Name of the complainant organisation v. name of the respondent State (Complaint No. complaint order / date registered), decision on admissibility of [date], § 111.

### 6. Rights guaranteed by the Charter

*The rights guaranteed by the Charter concern all individuals in their daily lives:*

#### **Housing:**

- access to adequate and affordable housing ;
- reduction of homelessness ; housing policy targeted at all disadvantaged categories ;
- procedures to limit forced eviction ;
- equal access for non-nationals to social housing and housing benefits ;
- housing construction and housing benefits related to family needs.

#### **Health:**

- accessible, effective health care facilities for the entire population;
- policy for preventing illness with, in particular, the guarantee of a healthy environment;
- elimination of occupational hazards so as to ensure that health and safety at work are provided for by law and guaranteed in practice;
- protection of maternity.

#### **Education:**

- free primary and secondary education;
- free and effective vocational guidance services;
- access to initial training (general and vocational secondary education), university and non-university higher education, vocational training, including continuing training ;
- special measures for foreign residents;
- integration of children with disabilities into mainstream schooling ;
- access to education and vocational training for persons with disabilities.

#### **Employment:**

- prohibition of forced labour;
- prohibition of the employment of children under the age of 15;
- special working conditions between 15 and 18 years of age;
- the right to earn one's living in an occupation freely entered upon;
- an economic and social policy designed to ensure full employment;
- fair working conditions as regards pay and working hours;

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- protection from sexual and psychological harassment;
- freedom to form trade unions and employers' organisations to defend economic and social interests; individual freedom to decide whether or not to join them;
- promotion of joint consultation, collective bargaining, conciliation and voluntary arbitration;
- protection in case of dismissal;
- the right to strike;
- access to work for persons with disabilities.

#### **Legal and social protection:**

- legal status of the child ;
- treatment of young offenders;
- protection from ill-treatment and abuse ;
- prohibition of any form of exploitation (sexual or other) ;
- legal protection of the family (equality of spouses within the couple and towards children, protection of children in case the family breaks up);
- the right to social security, social welfare and social services;
- the right to be protected against poverty and social exclusion;
- childcare
- special measures catering for the elderly.

#### **Movement of persons:**

- the right to family reunion;
- the right of nationals to leave the country;
- procedural safeguards in the event of expulsion;
- simplification of immigration formalities.

#### **Non-discrimination:**

- the right of women and men to equal treatment and equal opportunities in employment;
- a guarantee to all nationals and foreigners legally resident and/or working that all the rights set out in the Charter apply regardless of race, sex, age, colour, language, religion, opinions, national origin, social background, state of health or association with a national minority.
- prohibition of discrimination on the basis of family responsibilities ;
- right of persons with disabilities to social integration and participation in the life of the community.

### **7. Fundamental principles of interpretation**

#### **i. Nature and aim of the Charter**

The Committee has made the following presentation of the Charter:

"The Social Charter is a human rights treaty. Its purpose is to apply the Universal Declaration of Human Rights within Europe, as a supplement to the European Convention on Human Rights.

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In this perspective, while respecting the diversity of national traditions of the Council of Europe's member states, which constitute common European social values and which should not be undermined by the Charter nor by its application; it is important to:

- consolidate adherence to the shared values of solidarity, non-discrimination and participation;
- identify the principles that ensure that the rights embodied in the Charter are applied equally effectively in all the Council of Europe member states.

The primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, these implementation strategies, if not accompanied by appropriate safeguards, may put at risk the actual implementation of the undertakings under the Charter" (Conclusions 2006, pp. 9-10).

### ii. Links between the 1961 Charter and the Revised Charter

***Since the entry into force of the Revised Charter in 1999, the two treaties coexist and are interlinked. The Committee has explained the situation as follows:***

***" The Committee has proceeded for the first time to decide on the application of the Revised European Social Charter by the states that have ratified it. It has decided to apply the following principles to each state that has ratified the Revised Charter:***

- a) The interpretation given under the European Social Charter of 1961 remains valid for those provisions that were not amended by the Revised Social Charter of 1996. Any changes in case law relating to provisions that have not been amended naturally apply to both treaties.***
- b) The Committee will progressively determine its interpretation of the amended provisions and the new provisions.***
- c) Regarding the personal scope of the Revised Social Charter, the Parties are required to apply the provisions to their nationals and to the nationals of all other Parties as well as to the nationals of the Contracting Parties to the European Social Charter of 1961. This scope extends in principle to persons lawfully resident on the territory of the state concerned, but certain provisions expressly provide rights for persons residing abroad (Article 12§4: export of social security benefits; or Article 19§6 right to family reunion) or for persons lawfully present on the territory of a Party (Article 13§4).***
- d) According to Article E of the Revised Charter, rights contained in this treaty shall be enjoyed without discrimination. It is therefore for the Committee to examine whether, for each provision of the Revised Charter, this is the case in law and in practice." (Conclusions 2002, pp. 11-12).***

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### iii. Concrete and effective rights

On the occasion of the examination of several complaints, the Committee precised the nature of the States' obligations in order to implement the Charter:

"The Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. (International Commission of Jurists ICJ, complaint n°1/1998, decision on the merits of 9 September 1999, §32).

"The implementation of the Charter requires the State Parties to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter." (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

"In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein." (International Movement ATD Fourth world v. France, complaint No 33/2006, decision on the merits of 5 December 2007, § 61).

"When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected." (Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

"In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective (...) In connection with timetabling (...) it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely." (International Movement ATD Fourth world v. France, complaint No 33/2006, decision on the merits of 5 December 2007, § 65-66).

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### iv. "A la carte" acceptance

According to Article A states may chose provisions of the Charter they intend to accept at the time of ratification. The Committee explained :

"9. The Charter was conceived as a whole and all its provisions complement each other and overlap in part. It is impossible to draw watertight divisions between the material scope of each article or paragraph. It therefore falls to the Committee to ensure at the same time that obligations are not imposed on States stemming from provisions they did not intend to accept and that the essential core of accepted provisions is not amputated as a result of the fact it may contain obligations which may also result from unaccepted provisions." (Mental Disability Advocacy Center (MDAC) v. Bulgaria, complaint n°41/2007, decision on admissibility of 26 June 2007, §9).



**FIRST PART :**

**INTERPRETATION OF  
THE DIFFERENT PROVISIONS**



## Article 1

### **1. With a view to ensuring the effective exercise of the right to work, the Parties undertake to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible**

By accepting Article 1§1 of the Charter, States undertake to pursue a policy of full employment. This means that States :

- must adopt and follow an economic policy which is conducive to creating and preserving jobs;
- and must take adequate measures to assist those who become unemployed in finding and/or qualifying for a job.

Article 1§1 is an obligation as to means rather than as to result in the meaning that failure to achieve full employment does not as such lead to a conclusion of non-conformity<sup>1</sup>. However, the efforts made by states must be adequate in the light of the economic situation and the level of unemployment.

The Committee's assessment rests on a number of economic and social indicators which are linked to the results achieved by States in transforming economic growth into employment and providing assistance to unemployed people.

First of all, the Committee examines a wide range of indicators relating to the national economic situation (e.g. GDP growth, inflation, job growth), to patterns of employment (e.g. the employment rate, part-time and fixed-term employment) as well as to unemployment where it pays special attention to vulnerable groups such as youth, the long-term unemployed, persons belonging to ethnic minorities and persons with disabilities.<sup>2</sup>

In the light of this information, it then proceeds to examine the policy pursued relying both on evidence of legal or declaratory commitment to full employment as well as on actual figures of actual state effort such as the scope of the employment measures implemented (e.g. number of participants as a proportion of all unemployed, average duration of unemployment spent before being offered participation in a measure), the amount of resources devoted to the various measures (e.g. total expenditure as a share of GDP, balance between active and passive measures). The Committee also examines the output side of employment policy, notably the effects of different active measures (training, guidance, subsidised jobs, etc.) in terms of creating lasting employment.

The Committee takes account of constraints imposed on State policy by international economic trends and of the complexity of effectively combating unemployment.

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<sup>1</sup> Conclusions I, Statement of Interpretation on Article 1§1, p. 13

<sup>2</sup> Conclusions XVI-1, Statement of Interpretation on Article 1§1, p. 9

The Committee has found national situations to be in breach of the Charter:

- where there was an absence both of a declaratory commitment to full employment and of any concerted employment policy;<sup>3</sup>
- where unemployment and notably youth unemployment and long-term unemployment was extremely high and in the light of which the measures taken were insufficient (as indicated, *inter alia*, by a low number of participants in active measures);<sup>4</sup>
- where there were negative developments in the employment policy, both in terms of activation of unemployed persons and overall expenditure, at a time when unemployment, despite economic growth, was increasing sharply.<sup>5</sup>

## **2. With a view to ensuring the effective exercise of the right to work, the Parties undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon**

***Appendix: This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.***

Article 1§2 covers three different issues:

- 1) the prohibition of all forms of discrimination in employment,
- 2) the prohibition of forced or compulsory labour,
- 3) the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.<sup>6 7</sup>

### **1. Prohibition of all forms of discrimination in employment**

Under Article 1§2, legislation should prohibit any discrimination in employment *inter alia* on grounds of sex, race, ethnic origin, religion, disability, age, sexual orientation and political opinion.<sup>8 9</sup>

This provision is inherently linked to other provisions of the Charter, in particular Article 20 (The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex) and Article 15§2 (The right of persons with disabilities to employment). Where a state party has accepted these provisions, non-discrimination in employment in relation to women and persons with disabilities is examined under these more specific provisions.

Legislation should prohibit both direct and indirect discrimination.<sup>10</sup>

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<sup>3</sup> Conclusions XVI-1, Netherlands (Netherlands Antilles and Aruba), p. 464

<sup>4</sup> Conclusions 2004-1, Bulgaria, p. 21.

<sup>5</sup> Conclusions XVI-1, Poland, pp. 521-524.

<sup>6</sup> Conclusions II, Statement of Interpretation on Article 1§2, p. 4.

<sup>7</sup> Conclusions XVI-1, Statement of Interpretation on Article 1§2, p. 9.

<sup>8</sup> Conclusions XVIII-1, Iceland, pp. 423-424.

<sup>9</sup> Conclusions 2006, Albania, p. 28.

<sup>10</sup> Conclusions XVIII-I, Austria, p. 29.

## 21 Article 1

Discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued.<sup>11</sup> Whether a difference in treatment pursues a legitimate aim and is proportionate is assessed taking into account Article G of the Charter.<sup>12</sup>

Indirect discrimination arises when a measure or practice identical for everyone, without a legitimate aim disproportionately affects persons having a particular religion or belief, a particular disability, a particular age, a particular sexual orientation, particular political opinion, particular ethnic origin etc.

Discrimination may also result from the failing to take 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.<sup>13</sup>

The discriminatory acts and provisions prohibited by this provision are ones that may occur in connection with recruitment or with employment conditions in general (in particular, remuneration, training, promotion, transfer and dismissal or other detrimental action).<sup>14</sup>

In order to make the prohibition of discrimination effective, domestic law must at least provide for:

- the power to set aside, rescind, abrogate or amend any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms' own regulations;<sup>15</sup>
- protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;<sup>16</sup>
- appropriate and effective remedies in the event of an allegation of discrimination; remedies available to victims of discrimination must be adequate, proportionate and dissuasive. Therefore the imposition of pre defined upper limits to compensation that may be awarded are not in conformity with Article 1§2 as in certain cases these may preclude damages from being awarded which are commensurate with the actual loss suffered and not sufficiently dissuasive.<sup>17</sup>

Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.<sup>18 19</sup>

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<sup>11</sup> *Syndicat national des professions du tourisme v. France*, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §§24-25.

<sup>12</sup> Conclusions XVI-1, Greece, pp. 279.

<sup>13</sup> *Association Internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §52.

<sup>14</sup> Conclusions XVI-1, Austria, p. 25.

<sup>15</sup> Conclusions XVI-1, Iceland, p. 313.

<sup>16</sup> Conclusions XVI-1, Iceland, p. 313.

<sup>17</sup> Conclusions 2006, Albania, p. 29.

<sup>18</sup> Conclusions 2002, France, p. 24.

<sup>19</sup> *Syndicat Sud Travail et Affaires Sociales v. France*, Complaint No. 24/2004, Decision on the merits of 16 November 2005, §33.

## 22 Article 1

The following measures also contribute to combating discrimination in accordance with Article 1§2 of the Charter:

- recognising the right of trade unions to take action in cases of employment discrimination, including action on behalf of individuals;<sup>20</sup>
- granting groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated the right to take collective action;
- setting up a special, independent body to promote equal treatment, particularly by providing discrimination victims with the support they need to take proceedings.

States parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.<sup>21</sup>

Exclusion of individuals from functions, either in the form of refusal to recruit or dismissal, on grounds of previous political activities, is prohibited when it is not necessary within the meaning of Article G in that it does not apply solely to services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities.<sup>22</sup>

### 2. Prohibition of forced or compulsory labour

#### i) Forced labour for the production of goods or services

Forced or compulsory labour in all its forms must be prohibited. The definition of forced or compulsory labour is based on Article 4 of the European Convention on Human Rights and on ILO Convention 29 on forced labour: "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" (Article 2§1).

The non-application in practice of legislation which is contrary to the Charter is not sufficient to bring a situation into conformity with the Charter.<sup>23</sup>

The prohibition of forced or compulsory labour may be infringed when e.g.:

- a. Provisions authorise criminal sanctions in the event of disciplinary offences on the part of seamen or sanctions for seamen who abandon their post, even when the safety of a ship or the lives or health of the people on board are not at stake.<sup>24</sup>

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<sup>20</sup> Conclusions XVI-1, Iceland, p. 313.

<sup>21</sup> Conclusions 2006, Albania, p. 30.

<sup>22</sup> Conclusions 2006 Lithuania, p. 488.

<sup>23</sup> Conclusions XIII-3, Ireland, p. 66.

<sup>24</sup> International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §22.

## 23 Article 1

- b. Career army officers who have received several periods of training are required to complete a term of compulsory service that may last up to twenty five years<sup>25</sup> or they are refused the right to seek early termination of their commission unless they repay to the state at least part of the cost of their education and training.<sup>26</sup>
- c. Powers of requisition in exceptional circumstances are too broadly defined.<sup>27</sup> Any such powers must be defined with sufficient clarity and fall within the scope of Article G of the Charter.

### ii) Prison work

Prison work must be strictly regulated, in terms of pay, working hours and social security, particularly if prisoners are working for private firms. Prisoners may only be employed by private enterprises with their consent and in conditions as similar as possible to those normally associated with a private employment relationship.<sup>28</sup>

### iii) Conditions for the payment of unemployment benefits

The conditions to which the payment of unemployment benefits is subjected, including any obligations to take up offered employment is assessed under the right to social security provided by Article 12. However, where the constraint is particularly heavy it may give rise to an issue of conformity with Article 1§2<sup>29</sup>.

## 3. Other aspects of the right to earn one's living in an occupation freely entered upon

Several other practices may be in breach of Article 1§2:

### i) Length of service to replace military service

The length of service to replace military service (alternative service for conscientious objectors) during which persons are deprived of the right to earn their living in an occupation freely entered must be reasonable.<sup>30</sup> The Committee evaluates whether the length of such replacement service is reasonable in view of the period of military service.<sup>31</sup>

### ii) Part-time work

Adequate legal safeguards against discrimination must be provided in respect of part time work. In particular, there must be rules to prevent non-declared work through overtime, and equal pay, in all its aspects, between part-time and full-time employees.<sup>32</sup>

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<sup>25</sup> International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §21.

<sup>26</sup> Conclusions 2004, Ireland, p. 260.

<sup>27</sup> Conclusions XVI-1, Greece, p.283.

<sup>28</sup> Conclusions XVI-1, Germany, pp. 242-243.

<sup>29</sup> Conclusions 2004, Cyprus, p. 91.

<sup>30</sup> Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, Decision on the merits of 25 April 2001, §§23-25.

<sup>31</sup> Conclusions 2006, Estonia, p.178.

<sup>32</sup> Conclusions XVI-1, Austria, p. 28.

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### iii) Private life at work

Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation in particular through modern electronic communication and data collection techniques.<sup>33</sup>

## **3. With a view to ensuring the effective exercise of the right to work, the Parties undertake to establish or maintain free employment services for all workers**

Article 1§3 provides for the right to free employment services. All workers enjoy this right and therefore services must operate effectively throughout the national territory and in all sectors of the economy. The main function of such services is to place job-seekers in employment as well as employed workers looking for another job. Basic placement services such as registration of job-seekers and notification of vacancies must be provided free of charge for both employees and employers<sup>34</sup> and must be effective.

As regards fee-charging, the Committee has held that fees imposed on employers for the notification of vacancies is contrary to Article 1§3, even where the fees are small and aimed only at covering administrative costs.<sup>35</sup> The existence of fee-charging by private employment agencies is not contrary to Article 1§3 provide that fully-fledged free employment services exist in all occupational sectors and geographical areas.

Quantitative indicators used to assess the effectiveness in practice of free employment services<sup>36</sup> include the placement rate (i.e. placements made by the employment services as a share of notified vacancies) and the respective market shares of public and private services. Market share is measured as the number of placements effected as a proportion of total hirings in the labour market.

Finally, trade union and employers' organisations must participate in organising and running employment services.<sup>37</sup>

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<sup>33</sup> Conclusions 2006, Statement of Interpretation on Article 1§2, pp. 11-12.

<sup>34</sup> Conclusions XIV-1, Statement of Interpretation on Article 1§3, p.39.

<sup>35</sup> Conclusions XIV-1, Turkey, pp. 762.

<sup>36</sup> Conclusions XIV-1, Greece, pp. 350-351.

<sup>37</sup> Conclusions XV-1, Addendum, Poland, p. 143.



#### **4. With a view to ensuring the effective exercise of the right to work, the Parties undertake to provide or promote appropriate vocational guidance, training and rehabilitation**

Article 1§4 guarantees the right to vocational guidance, continuing vocational training for employed and unemployed persons and specialised guidance and training for persons with disabilities.<sup>38</sup> States must provide these services, grant access to them to all those interested and ensure equality of treatment for nationals of other States Parties to the Charter and for persons with disabilities.<sup>39</sup>

Article 1§4 is complemented by Articles 9 (right to vocational guidance), 10§3 (right to continuing vocational training of adult workers) and 15§1 (the right of persons with disabilities to guidance, education and vocational training), which contain more specific rights to vocational guidance and vocational training.

It is in the framework of these articles that the Committee assesses the conformity of national situations. It refers to this assessment in its conclusion under Article 1§4. Where a state has not accepted articles 9, 10§1, 10§3 or 15§1, the Committee assesses the conformity of the situation under Article 1§4.<sup>40</sup>

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<sup>38</sup> Conclusions 2003, Bulgaria, p. 21.

<sup>39</sup> Conclusions XII-1, Statement of Interpretation on Article 1§4, p. 67.

<sup>40</sup> Conclusions 2003, Bulgaria, p. 21.



## Article 2

### All workers have the right to just conditions of work

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

Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. This right must be guaranteed through legislation, regulations, collective agreements or any other binding means. In order to ensure that the limits are respected in practice, an appropriate authority must supervise whether the limits are being respected.<sup>41</sup>

The Charter does not expressly define what constitutes reasonable working hours. The Committee therefore assesses the situations on a case by case basis: extremely long working hours e.g. those of up to 16 hours on any one day<sup>42</sup> or, under certain conditions, more than 60 hours in one week<sup>43</sup> are unreasonable and therefore contrary to the Charter.

Working overtime must not simply be left to the discretion of the employer or the employee. The reasons for overtime work and its duration must be subject to regulation.<sup>44</sup>

Article 2§1 provides also for the progressive reduction of weekly working hours, to the extent permitted by productivity increases and other relevant factors. These “other factors” may be the nature of the work and the safety and health risks to which workers are exposed. This obligation is closely related to the reasonable nature or otherwise of working time. The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.<sup>45</sup>

The Committee considers that flexibility measures regarding working time are not as such in breach of the Charter. In order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:<sup>46</sup>

- (i) they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours referred to above must not be exceeded in any case.
- (ii) they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.

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<sup>41</sup> Conclusions I, Statement of Interpretation on Article 2§1, p. 169.

<sup>42</sup> Conclusions XIV-2, Norway, p. 578.

<sup>43</sup> Conclusions XIV-2, Netherlands, pp. 535-536.

<sup>44</sup> Conclusions XIV-2, Statement of Interpretation on Article 2§1, p. 32.

<sup>45</sup> Conclusions XIV-2, Statement of Interpretation on Article 2§1, p. 32.

<sup>46</sup> *Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38.

- (iii) they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

The Committee considers that periods of on-call duty (“*périodes d’astreinte*”) during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter, except in the framework 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.<sup>47</sup>

## **2. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to provide for public holidays with pay**

Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Public holidays may be specified in law or in collective agreements.

The Charter does not stipulate the number of public holidays. Currently, the number of public holidays varies from six to seventeen days per year. There has been no finding of non conformity with this provision because of states granting too few public holidays.

Work should be prohibited during public holidays. However, working on public holidays may be carried out in special cases; the conditions governing weekly rest periods apply (see Article 2§5 *infra*).

The compensatory rest period may be replaced by monetary compensation. The Committee considers that work performed on a public holiday requires a constraint on the part of the worker, who should be compensated with a remuneration at a higher than normal average wage. In this regard, work performed on a public holiday should be paid at least at double the usual rate.<sup>48</sup>

## **3. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake provide for a minimum of four weeks annual holiday with pay**

Note : The 1961 Charter provided for a minimum of two weeks

Article 2§3 guarantees the right to a minimum of four weeks (or 20 calendar days) annual holiday with pay.

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<sup>47</sup> *Confédération Française de l’Encadrement CFE-CGC v. France*, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §50-53.

<sup>48</sup> Conclusions XVIII-1, Croatia, p. 116.

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave.<sup>49</sup>

An employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.<sup>50</sup>

Workers may be required to have been employed for twelve months before they become eligible for annual paid leave.<sup>51</sup>

Workers who suffer from illness or injury during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday provided for under this paragraph, possibly under the condition of producing a medical certificate.<sup>52</sup>

**4. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations**

Note: Article 2§4 of the 1961 Charter read as follows: “With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake: to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed.”

The 1961 Charter was drafted at a time when working hours were longer and the main aim of occupational health and safety policies was not to prevent and eliminate risks but to compensate for them. Since then, daily and weekly working hours have generally decreased and, above all, prevention has become the priority, most often taking the form of reduction in exposure times to the minimum length considered not to present a threat to workers' health. The revised Charter takes account of this development by dividing Article 2§4 into two parts, the first requiring states to take the necessary measures to eliminate risks and the second requiring them to provide for compensation in the event of residual risks. This change ensures consistency with Articles 3 (right to safe and healthy working conditions) and 11 (right to protection of health)<sup>53</sup>.

When interpreting Article 2§4 of the 1961 Charter, the Committee takes into consideration the new wording of Article 2§4 in the Revised Charter.<sup>54</sup>

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<sup>49</sup> Conclusions I, Ireland, p. 171.

<sup>50</sup> Conclusions 2007, Statement of interpretation on article 2§3, p.11.

<sup>51</sup> Conclusions I, Norway, Sweden, p. 20.

<sup>52</sup> Conclusions XII-2, Statement of Interpretation on Article 2§3, p. 62.

<sup>53</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, § 232-236.

<sup>54</sup> Conclusions XVIII-2, Statement of interpretation on Article 2§4 of the 1961 Charter, p. 11.

### Elimination or reduction of risks

The first part of Article 2§4 requires states to eliminate risks in inherently dangerous or unhealthy occupations. This part is closely linked to Article 3 of the Charter (right to safe and healthy working conditions, see *infra*). Article 3 requires states to introduce policies and measures aimed at improving health and safety at work and preventing accidents and threats to health, particularly by reducing to a minimum risk factors in the working environment.

In assessing compliance with Article 2§4, the Committee therefore refers to its conclusions relating to the right to safe and healthy working conditions in general.<sup>55</sup>

### Measures in response to residual risks

The second part requires states to ensure that some form of compensation is received by workers exposed to risks where it has not yet been possible to eliminate or sufficiently reduce these risks despite the application of the aforementioned preventive measures or in the absence of their application<sup>56</sup>. This interpretation relates to the 1961 Charter and is valid *a fortiori* for the Revised Charter.

States have certain discretion to determine the activities and risks concerned, but the Committee monitors their decisions.<sup>57 58</sup> They must at least consider sectors and occupations that are manifestly dangerous or unhealthy, such as mining, quarrying, steel making and shipbuilding and occupations exposing employees to ionising radiation,<sup>59</sup> extreme temperatures and noise.<sup>60</sup>

The aim of the compensation must be to offer those concerned sufficient and regular time<sup>61</sup> to recover from the associated stress and fatigue, and thus maintain their vigilance.<sup>62</sup>

Article 2§4 mentions two forms of compensation: reduced working hours and additional paid holidays. In view of the emphasis in this provision on health and safety objectives, the Committee considers that other approaches to reducing exposure to risks may also be in conformity with the Charter.<sup>63</sup> It does not consider early retirement to be "a relevant and appropriate measure to achieve the aims of Article 2§4". Under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case<sup>64</sup>. For example, in a situation where a measure of this

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<sup>55</sup> Conclusions 2005, Statement of Interpretation on Article 2§4, p. 297.

<sup>56</sup> Conclusions XII-1, United-Kingdom, p. 61.

<sup>57</sup> Conclusions II, Statement of Interpretation on Article 2§4, p. 9.

<sup>58</sup> *STTK ry and Tehy ry v. Finland*, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §20.

<sup>59</sup> *STTK ry and Tehy ry v. Finland*, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §27.

<sup>60</sup> Conclusions XIV-2, Norway, p. 581.

<sup>61</sup> Conclusions V, Statement of Interpretation on Article 2§4, p. 16.

<sup>62</sup> Conclusions III, Ireland, p. 15.

<sup>63</sup> Conclusions 2005, Statement of Interpretation on Article 2§4, p. 297.

<sup>64</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006, §416.

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type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it deemed that a reduction in the number of years of exposure was not an appropriate measure in all cases.<sup>65</sup>

## **5. With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest**

Article 2§5 guarantees a weekly rest period, which insofar as possible shall coincide with the day traditionally or normally recognised as a day of rest in the country or region concerned, i.e. Sunday in all the states which have ratified the Charter.

Weekly rest periods may not be replaced by compensation and workers may not be permitted to give them up.

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.

Working on a Sunday is permitted in certain circumstances: the persons concerned must receive a compensatory rest period of at least equal duration.<sup>66</sup>

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

***Appendix: Parties may provide that this provision shall not apply:***

***a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;***

***b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.***

Note : This is a new provision which did not exist in the 1961 Charter.

Article 2§6 guarantees the right of workers to written information when starting employment. This information must at least cover essential aspects of the employment relationship or contract, i.e. the following:

- the identities of the parties;
- the place of work;
- the date of commencement of the contract or employment relationship;
- in the case of a temporary contract or employment relationship, the expected duration thereof;

<sup>65</sup> Conclusions 2003, Bulgaria, p. 25.

<sup>66</sup> Conclusions XIV-2, Statement of Interpretation on Article 2§5, pp. 34-35.

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- the amount of paid leave;
- the length of the periods of notice in case of termination of the contract or the employment relationship;
- the remuneration;
- the length of the employee's normal working day or week;
- where appropriate, a reference to the collective agreements governing the employee's conditions of work.<sup>67</sup>

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

Note: This is a new provision which did not exist in the 1961 Charter.

Article 2§7 guarantees compensatory measures for persons performing night work. National law or practice must define “night” within the context of this provision.

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

- regular medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- 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.<sup>68</sup>

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<sup>67</sup> Conclusions 2003, Bulgaria, pp. 28-29.

<sup>68</sup> Conclusions 2003, Romania, p. 368.



## Article 3

### All workers have the right to safe and healthy working conditions

The right of every worker to a safe and healthy working environment is a “widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights”.<sup>69</sup> The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life.<sup>70</sup> It applies to the whole economy, covering both the public and private sectors.<sup>71</sup>

The assessment of the conformity of national situations with Article 3 is taken into account under Article 2§4 of the Charter which requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently.<sup>72</sup>

**1. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health 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**

Note : This provision was not included in the 1961 Charter. The duty to consult employers' and workers' organisations on occupational health and safety was already included in the 1961 Charter, in Article 3§3.

Article 3§1 requires states to formulate, implement and periodically review a coherent policy on occupational health and safety in consultation with social partners i.e. employers' organisations and trade unions.<sup>73</sup>

#### General objective of national policy

The main policy objective must be to foster and preserve an culture of prevention in the areas of health and safety at national level. Occupational risk prevention must be a priority. It must be incorporated into the public authorities' activities at all levels and form part of other public policies (on employment, persons with disabilities, equal opportunities, etc.).<sup>74</sup>

The policy and strategies adopted must be regularly assessed and reviewed, particularly in the light of changing risks.

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<sup>69</sup> Conclusions I, Statement of Interpretation on Article 3, p. 22.

<sup>70</sup> Conclusions XIV-2, Statement of Interpretation on Article 3, p. 36.

<sup>71</sup> Conclusions II, Statement of Interpretation on Article 3, p. 12

<sup>72</sup> Conclusions 2005, Statement of Interpretation on Article 2§4; see in particular Conclusions 2005, Lithuania, pp. 297-298.

<sup>73</sup> Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria, p. 31.

<sup>74</sup> Conclusions 2005, Lithuania, p. 306.

### Organisation of occupational risk prevention

A culture of prevention implies that all the partners – authorities, employers and workers – will be actively involved in occupational risk prevention, working within a well-defined framework of rights and duties and predetermined structures.

The main aspects are:

- at company level: besides compliance with protective rules, the assessment of work-related risks and the adoption of preventive measures geared to the nature of risks as well as information and training for workers. Employers and/or users are required to provide appropriate information, training and medical supervision for temporary workers and employees on fixed-term contracts, i.e. taking account of accumulated periods of exposition to dangerous substances while working for different employers;
- at government level: the development of an appropriate system of public prevention and supervision, which is generally the task of the labour inspectorate. The only responsibility of inspectors covered by Article 3§1 is their duty to share the knowledge about risks and risk prevention they have acquired during their inspections and investigations conducted as part of their preventive activities (information, education, prevention). Their duty to ensure compliance with the rules comes under the rights guaranteed by Article 3§3 of the Charter (right to occupational health and safety – supervisory measures).<sup>75</sup>

### Improvement of occupational health and safety (research and training)

The methods used to increase general awareness, knowledge and understanding of the concepts of danger and risk and of ways of preventing and managing them must include<sup>76</sup>:

- training (qualified staff);
- information (statistical systems and dissemination of knowledge);
- quality assurance (professional qualifications, certification systems for facilities and equipment);
- research (scientific and technical expertise).

### Consultation with employers' and workers' organisations

When devising and implementing national policies and strategies, the relevant authorities must consult trade unions and employers' organisations at national, sectoral and company level.

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<sup>75</sup> Conclusions 2005, Lithuania, p. 306.

<sup>76</sup> Conclusions 2003, Statement of Interpretation on Article 3§1; see in particular Conclusions 2003, Bulgaria, p. 31.

Consultation between the relevant authorities and employers' and workers' organisations on measures to improve occupational health and safety was already required under Article 3§3 of the 1961 Charter. However, Article 3§1 of the Charter requires broader consultation in that it calls not only for tripartite co-operation between authorities, employers and workers to seek ways of improving their working conditions and working environment but also for the co-ordination of their activities and co-operation on key safety and prevention issues.

The Committee's case-law with regard to Article 3§3 of the 1961 Charter applies *mutatis mutandis* to Article 3§1 of the Charter.<sup>77</sup>

Consultation mechanisms and procedures must be set up. At national and sectoral level, this requirement is satisfied where there are specialised bodies made up of government, employers' and workers representatives, which are consulted by the public authorities. These bodies may be permanent or *ad hoc* consultation forums.

At company level, the employer's duty to consult trade unions forms part of the "right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking" guaranteed by Article 22 of the Charter. Consultation at company level in states which have accepted both Article 3§1 and Article 22 is examined only under Article 22.<sup>78</sup>

## **2. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations to issue safety and health regulations**

Note: This right is also set forth in Article 3§1 of the 1961 Charter.<sup>79</sup>

The determination and implementation of an occupational health and safety policy must be based on a precise legal framework.

### Risks that must be regulated<sup>80</sup>

States' first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Under §2, this obligation entails issuing health and safety regulations providing for preventive and protective measures against workplace risks recognised by the scientific community and laid down in Community and international regulations and standards<sup>81</sup>.

The Charter does not actually define the risks to be regulated. Supervision takes an indirect form, referring to international technical occupational health and safety standards such as the ILO Conventions and European Community Directives on health and safety at work.

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<sup>77</sup> Conclusions 2003, Sweden, pp. 576-577.

<sup>78</sup> Conclusions 2005, Lithuania, p. 306.

<sup>79</sup> Conclusions 2003, Statement of Interpretation on Article 3§2, see for example Conclusions 2003, Bulgaria, p.32.

<sup>80</sup> Conclusions XIV-2, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), pp. 36-43.

<sup>81</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Collective complaint No. 30/2005, decision on the merits of 6 December 2006, §224.

Domestic law must include framework legislation – often the Labour Code – setting out employers' responsibilities and the workers' rights and duties as well as specific regulations. In view of the particularly variable nature of the subject matter in the light of technological, ergonomic and medical advances, existing regulations must be geared to new circumstances where the rules prove to be out of keeping with the situation. Depending on such changes, the Committee states, where necessary, to which new risks it is referring.

The risks to which the Committee currently refers are as follows:

- i. Establishment, alteration and upkeep of workplaces — Work equipment
    - workplaces and equipment, particularly the protection of machines, manual handling of loads, work with display screen equipment;
    - hygiene (shops and offices);
    - maximum weight;
    - air pollution, noise and vibration; personal protective equipment; safety and/or health signs at work.
  - ii. Hazardous agents and substances
    - chemical, physical and biological agents, particularly carcinogens, including: white lead (in paint), benzene, asbestos, vinyl chloride monomer, metallic lead and its ionic compounds and ionizing radiation;
    - control of major accident hazards involving dangerous substances.
- III. Risks connected with certain sectors:
- indication of weight on packages to be transported by boat;
  - 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;
  - prevention of major industrial accidents.

Risks connected with agriculture and transport must also be controlled.

#### Levels of prevention and protection

Most of the risks listed above have to be covered by a specific regulation. Regulations have to be specific in that they must set out rules in sufficient detail for them to be applied properly and efficiently.<sup>82</sup> Accordingly, the Committee does not consider that states are required to introduce specific insurance for occupational diseases and accidents to comply with Article 3§2<sup>83</sup>

Limits must be aligned with those adopted in the above-mentioned international reference standards<sup>84</sup> e.g. in respect of benzene<sup>85</sup>.

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<sup>82</sup> Conclusions XIV-2, Norway, p. 584.

<sup>83</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Collective complaint No. 30/2005, decision on the merits of 6 December 2006, §226.

<sup>84</sup> Conclusions XIV-2, Italy, pp. 427-428.

<sup>85</sup> Conclusions XIV-2, Spain, p. 674.

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A state is considered to have satisfied this general requirement if it has transposed most of the *acquis communautaire* on occupational health and safety into its domestic legislation.<sup>86</sup>

The control carried out by the Committee is also affected by the relative size of the sectors of activity of the country's economy and hence the number of workers involved the degree of danger of the activities and trends in the situation with regard to employment injuries and occupational diseases.<sup>87</sup>

States are required to pay particular attention with regard to asbestos and ionizing radiation, producing evidence that workers are protected up to a level at least equivalent to that set by international reference standards. To ensure that this was indeed the case, the Committee put general questions on the subject to the states in Conclusions XIII-4 (pp. 105 and 341).

With regard to asbestos:

- the international standards are Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work, as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003, and ILO Convention No. 162 on asbestos of 1986;
- exposure limits must be equal to or lower than those laid down by these international instruments;
- these limits must be regularly reviewed and updated to keep pace with technological progress and developments in technical and scientific knowledge;
- use in the workplace of asbestos in what are recognised as its most harmful forms (amphiboles) must be prohibited<sup>88</sup>. Article 3§2 does not yet require a total ban on asbestos although it is considered that such a measure “will ensure that the right provided under Article 3§1 of the Charter is more effectively guaranteed” and a development of this sort is expected as soon as technical knowledge allows. See the reference to Recommendation 1369(1998) of the Parliamentary Assembly of the Council of Europe on the dangers of asbestos for workers and the environment, Conclusions XIV-2, p. 41. There is a potential development in the case-law on this subject under Article 11 (right to protection of health): “Compliance with this provision entails a policy that bans the use, production and sale of asbestos and products containing it” (Conclusions XVII-2, Portugal, pp. 685-689).
- the relevant authorities must draw up an inventory of all contaminated buildings and materials.<sup>89</sup>

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<sup>86</sup> Conclusions 2005, Cyprus, pp. 65-66.

<sup>87</sup> Conclusions XIV-2, Portugal, pp. 637-638.

<sup>88</sup> Conclusions XIV-2, Statement of Interpretation of Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), pp 36-43.

<sup>89</sup> Conclusions XIV-2, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), p. 36-43.

National standards with regard to ionizing radiation must take account of the recommendations made in 1990 by the International Commission on Radiological Protection (ICRP, publication No. 60), relating in particular to maximum doses of exposure in the workplace but also to persons who, although not directly assigned to work in a radioactive environment, may be exposed to radiation occasionally. The transposition into domestic law of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation is sufficient as this Directive takes up the ICRP's recommendations.<sup>90</sup>

#### Workers and sectors covered by the regulations

All workers, all workplaces and all sectors of activity must be covered by occupational health and safety regulations.<sup>91</sup>

The term "workers" used in Article 3 covers both employed and self-employed persons, especially as the latter are often employed in high-risk sectors.<sup>92</sup> The aim is to ensure that the working environment is safe and healthy for all operators, where necessary by adopting rules adapted to the operators' specific situation.<sup>93 94 95</sup>

All economic sectors must be covered by the regulations.<sup>96</sup> It is not necessary for a specific text to be adopted for each activity or sector, but the wording of texts should be sufficiently precise to allow their effective application in all sectors, taking particular account of the scale of or degree of danger in each sector. Sectors must be covered in their entirety and all companies must be covered regardless of the number of employees.<sup>97</sup>

No workplace, even if inhabited, can be "exempted" from the application of health and safety rules. Workers employed on residential premises, i.e. domestic staff and home workers, must therefore be covered but the rules may be adapted to the type of activity and the relatively risk-free nature of these workers' occupations and be worded in general terms.<sup>98</sup>

#### Consultation with employers' and workers' organisations

Regulations must be drawn up in consultation with employers' and workers' organisations (on the scope of this consultation, see above under Article 3§1).

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<sup>90</sup> Conclusions 2005, Cyprus, p. 66.

<sup>91</sup> Conclusions II, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), p. 12.

<sup>92</sup> Conclusions 2005, Estonia, p. 136.

<sup>93</sup> Conclusions III, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), p. 17.

<sup>94</sup> Conclusions IV, Statement of Interpretation on Article 3§1 of the 1961 Charter (i.e. on Article 3§2 of the Revised Charter), pp. 21-22.

<sup>95</sup> Conclusions XIII-4, Belgium, p. 335.

<sup>96</sup> Conclusions I, Statement of Interpretation on Article 3, p. 22.

<sup>97</sup> Conclusions XIII-1, Greece, p. 78.

<sup>98</sup> Conclusions XIV-2, Belgium, pp. 123-124.

Consultation between the relevant authorities and employers' and workers' organisations on measures to improve occupational health and safety was already required under Article 3§3 of the 1961 Charter. The requirement in Article 3§2 of the Charter is the same *mutatis mutandis* as that in Article 3§3 of the 1961 Charter.<sup>99</sup>

### **3. With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations, to provide for the enforcement of such regulations by measures of supervision**

Note: This right is guaranteed by Article 3§2 of the 1961 Charter.

The aim of Article 3§3 is to guarantee the effective implementation of the right to safety and health at work.

#### Employment injuries and occupational diseases<sup>100</sup>

Monitoring trends in the relationship between the number of accidents and the total number of workers makes it possible to determine the frequency of injuries (number per hundred workers). The situation is considered incompatible with the Charter where, for several years, this frequency is clearly too high for it to be maintained that the right to health and safety at work is being effectively secured. This assessment can be made on the basis of absolute figures<sup>101</sup> or in relation to the average in the states party to the Charter.<sup>102</sup> It relates to total injuries in all sectors or in one sector in particular. The same approach is applied to the relationship between the number of fatal accidents and total injuries.

The criteria for the assessment of trends in occupational diseases have not yet been established by the Committee. The problem stems primarily from the time lag between the emergence of the risk, its identification and the notification or even the recognition of the illness.

#### Monitoring of the application of regulations

The proper application of the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised"<sup>103</sup> Monitoring of compliance with occupational health and safety regulations including coercive measures (prevention is dealt with under Article 3§1, above) is a prerequisite for the right guaranteed by Article 3 to be effective.

States that have ratified the Charter have undertaken, under Article A§5, to maintain a system of labour inspection "appropriate to national conditions". The Charter does not impose any standard model for the organisation of the inspection system.

<sup>99</sup> Conclusions 2005, Norway, p. 520.

<sup>100</sup> Conclusions XIV-2, Statement of Interpretation on Article 3§2 of the 1961 Charter (i.e. Article 3§3 of the Revised Charter), pp. 43-46.

<sup>101</sup> Conclusions 2003, Slovenia, pp. 452-453.

<sup>102</sup> Conclusions XIV-2, Portugal, pp. 640-642.

<sup>103</sup> International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32.

The Committee considers that states have a measure of discretion regarding not only how they organise their inspection services but also what resources they allocate to them. However, since such services are the main safeguard of health and safety in the workplace, the Committee checks that enough resources are allocated to them 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 Article 3”<sup>104</sup> and that the risk of accidents is reduced to a minimum. This limits states’ discretion and means that the Charter is violated when the staffing of the inspection services and the number of visits carried out is manifestly inadequate for the number of employees concerned<sup>105</sup>. Inspectors must be entitled to inspect all workplaces, including residential premises, in all economic sectors. They must have sufficient and appropriate means of investigation and enforcement, particularly where they see that there is an immediate danger to the health or safety of workers.<sup>106</sup>

The system of penalties in the event of breaches of the regulations must be efficient and dissuasive. The situation can be assessed in the light of the relationship between the number of offences recorded and the number of penalties imposed, the link between the frequency of offences and the severity of penalties, the types of penalty imposed and, finally, the ultimate amount of fines and the way in which they are fixed, particularly whether they are proportionate to the number of workers concerned.<sup>107</sup>

#### Consultation with employers' and workers' organisations

There is not yet any case-law on this subject. The Committee has asked the states to provide information on the legal and practical arrangements for informing and consulting employers' and workers' organisations with regard to labour inspectorate activities other than participation in company inspections, forming part of the “right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking” guaranteed by Article 22 of the Charter.<sup>108</sup>

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<sup>104</sup> Conclusions XIV-2, Belgium, p. 128.

<sup>105</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, §229.

<sup>106</sup> Conclusions XIV-2, Statement of Interpretation on Article 3§2 of the 1961 Charter (i.e. Article 3§3 of the Revised Charter), pp. 43-46.

<sup>107</sup> Conclusions 2005, Norway, p. 521.

<sup>108</sup> Conclusions 2005, Norway, p. 522.



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

***Appendix: It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.***

Note: This Article does not appear in the 1961 Charter.

Under Article 3§4, all workers in all branches of economic activity and all companies must have access to occupational health services. These services may be run jointly by several companies.<sup>109</sup>

States party are required to promote the progressive development of such services. It means that “a State Party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources”.<sup>110</sup> Therefore, if occupational health services are not established for all enterprises, the authorities must develop a strategy, in consultation with employers' and employees' organisations, for that purpose.<sup>111</sup>

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<sup>109</sup> Conclusions 2003, Statement of Interpretation on Article 3§4, see e. g. Conclusions 2003, Bulgaria p. 37.

<sup>110</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §53.

<sup>111</sup> Conclusions 2003, Statement of Interpretation on Article 3§4.



## Article 4

### **All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families**

#### **1. With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to remuneration such as will give them and their families a decent standard of living**

Article 4§1 guarantees the right to a remuneration such as to ensure a decent standard of living.

To be considered fair within the meaning of Article 4§1, a wages must in any event be above the poverty line in a given country i.e. 50% of the national average wage.

In addition, a wage must not fall too far short of the national average wage. The threshold adopted by the Committee is 60%.<sup>112</sup>

The concept of remuneration, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities.

The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

The net national average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry. When a national minimum wage exists, its net value is used as a basis for comparison with the net average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid.<sup>113</sup>

A net wage which falls below the 60% threshold is not automatically considered unfair within the meaning of the Charter. If the wage lies between 50% and 60%, a state is asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.<sup>114</sup> However, a net wage which is less than half the net national average wage will be deemed to be unfair and therefore the situation of the Party concerned will not be in conformity with Article 4§1.

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<sup>112</sup> Conclusions XIV-2, Statement of Interpretation on Article 4§1, pp. 50-52.

<sup>113</sup> Conclusions XVI-2, Denmark, p. 203.

<sup>114</sup> Conclusions 2003, France, p. 120.

## **2. With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases**

Article 4§2 is inextricably linked to Article 2§1, which guarantees the right to reasonable daily and weekly working hours. Employees working overtime must be paid at a higher rate than the normal wage rate.<sup>115</sup>

Granting leave to compensate for overtime is in conformity with Article 4§2, on condition that this leave is longer than the overtime worked. It is not sufficient, therefore, to offer employees leave of equal length to the number of overtime hours worked.<sup>116</sup>

This provision may be applied through collective agreements, statutory regulations or other means appropriate to national conditions so long as it applies to all employees.

Exceptions may be authorised in certain specific cases. These "special cases" have been defined by the Committee as "state employees, management executives, etc."<sup>117</sup>:

- State employees: Confining exceptions to "senior officials" is compatible with Article 4§2.<sup>118</sup> Exceptions to a higher rate of overtime pay cannot apply to all state employees or public officials, irrespective of their level of responsibility.<sup>119</sup>
- Managers: Exceptions may be applied to all senior managers. However, the Committee has ruled that certain limits must apply, particularly on the number of hours of overtime not paid at a higher rate.<sup>120</sup>

In a number of countries, working hours are calculated on the basis of average weekly hours worked over a period of several months. Over such periods, weekly working hours may vary between specified maximum and minimum figures without any of them counting as overtime, and thus qualifying for a higher rate of pay. Arrangements of this kind do not, as such, constitute a violation of Article 4§2, provided that the conditions laid down in Article 2§1 are respected.<sup>121</sup>

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<sup>115</sup> Conclusions I, Statement of Interpretation on Article 4§2, p. 28

<sup>116</sup> Conclusions XIV-2, Belgium, pp. 134.

<sup>117</sup> Conclusions IX-2, Ireland, p. 38.

<sup>118</sup> Conclusions X-2, Ireland, p. 62.

<sup>119</sup> Conclusions XV-2, Poland, p. 420.

<sup>120</sup> *Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §45.

<sup>121</sup> Conclusions XIV-2, Statement of Interpretation on Article 4§2, p. 35.

### **3. With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of men and women workers to equal pay for work of equal value**

Article 4§3 guarantees the right to equal pay without discrimination on grounds of sex.<sup>122</sup> This is one aspect of the right to equal opportunities in matters of employment guaranteed by Article 20. As a result, the case-law under Article 20 (see *infra*) applies *mutatis mutandis* to Article 4§3. Only aspects specifically linked to equal pay are dealt with hereinafter.

The situation as regards equal pay in countries which have accepted both Article 20 and Article 4§3 is examined exclusively under Article 20 and these countries are no longer required to submit a report on the application of Article 4§3.<sup>123</sup>

#### The principle of equal pay

Women and men are entitled to “equal pay for work of equal value”. This means that the equal pay principle applies to the same work and to “mixed jobs”, that is ones performed by both women and men, but also to work of the same value.

The principle of equality should cover all the elements of pay, that is basic or minimum wages or salary plus all other benefits paid directly or indirectly in cash or kind by the employer to the worker by reason of the latter’s employment.<sup>124</sup>

It must also apply between full-time and part-time employees, covering the calculation of hourly wages, pay increases and the components of pay.<sup>125</sup>

#### Guarantees of enforcement

##### *Legislative means*

The right of women and men to “equal pay for work of equal value” must be expressly provided for in legislation.<sup>126</sup>

As far as setting wage levels is concerned, states are free to choose their own methods and can treat this as a matter to be decided by collective bargaining. Domestic law must however ensure that violations of the principle of equal pay will be sanctioned and lay down the general rules applying to labour and management when they are negotiating wages (for example, differential pay scales and discriminatory clauses must be ruled out). If full equal pay cannot be achieved through collective bargaining, the state must intervene using legal wage-fixing methods or any other appropriate means.

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<sup>122</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of Additional Protocol, pp. 257-259.

<sup>123</sup> Conclusions 2002, Statement of Interpretation on Article 4§3, pp. 11-12.

<sup>124</sup> Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29.

<sup>125</sup> Conclusions XVI-2, Portugal, p. 683.

<sup>126</sup> Conclusions XV-2, Addendum, Slovak Republic, p. 151.

### *Judicial safeguards*

Domestic law must provide for appropriate and effective remedies in the event of alleged wage discrimination. Employees who claim that they have suffered discrimination must be able to take their case to court.<sup>127</sup>

Domestic law should provide for an alleviation of the burden of proof in favour of the plaintiff in discrimination cases.

Anyone who suffers wage discrimination on grounds of sex must be entitled to adequate compensation, i.e. compensation that is sufficient to make good the damage suffered by the victim and act as a deterrent to the offender.<sup>128</sup> In cases of unequal pay, any compensation must, as a minimum, cover the difference in pay.<sup>129</sup>

### *Methods of classification and comparison and other measures*

Appropriate classification methods must be devised enabling to compare the respective values of different jobs and carry out objective job appraisals in the various sectors of the economy, including those with a predominantly female labour force.<sup>130</sup>

Domestic law must make provision for comparisons of pay and jobs to extend outside the company directly concerned where this is necessary for an appropriate comparison. The Committee views this as a crucial means of ensuring that job appraisal systems are effective under certain circumstances, particularly in companies where the workforce is largely, or even exclusively, female.<sup>131</sup>

States must promote positive measures to narrow the pay gap, including:

- measures to improve the quality and coverage of wage statistics;
- steps to ensure that more attention is paid to equal pay for women and men in national action plans for employment.<sup>132</sup>

## **4. With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to recognise the right of all workers to a reasonable period of notice for termination of employment**

***Appendix: This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.***

This paragraph forms part of the Article on remuneration, as the main purpose of giving a reasonable notice is to allow the person concerned a certain time to look for other work before his or her current employment ends, i.e. while he or she is still receiving wages. In this respect, receipt of wages in lieu of notice is

<sup>127</sup> Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29.

<sup>128</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, pp. 257-259.

<sup>129</sup> Conclusions XVI-2, Malta, p. 489.

<sup>130</sup> Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29.

<sup>131</sup> Conclusions XVI-2, Portugal, pp. 680-681.

<sup>132</sup> Conclusions XVII-2, Czech Republic, pp. 113-114.

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admitted, provided that the sum paid is equivalent to that which the worker would have earned during the corresponding period of notice.

Article 4§4 does not apply solely to dismissals, but to all cases of termination of employment, such as termination due to bankruptcy, invalidity or death of the employer.<sup>133</sup>

The right to reasonable notice of termination of employment applies to all categories of employees,<sup>134</sup> independently of their status/grade, including those employed on a non-standard basis. It also applies during the probationary period. National law must be broad enough to ensure that no workers are left unprotected.

The Committee has not defined *in abstractio* the concept of “reasonable” notice nor ruled on the function of the notice period or on compensation. It assesses the situations on a case by case basis.<sup>135</sup> The major criterion for the assessment of reasonableness is length of service. It has concluded, for example, that the following are not in conformity to the Charter:

- one week’s notice for less than six months of service;<sup>136</sup>
- two weeks after six months of service ;<sup>137</sup>
- less than one month’s notice after one year of service;<sup>138</sup>
- thirty days’ notice after at least five years’ service;<sup>139</sup>
- six weeks’ notice after ten to fifteen years’ service;<sup>140</sup>
- eight weeks’ notice after more than fifteen years’ service.<sup>141</sup>

When a decision to terminate employment on grounds other than disciplinary is subject to certain procedures being followed, the period of notice starts only after the decision has been taken.

In addition to the above, workers must be given time off to look for a new job during the period of notice.<sup>142</sup>

### **5. With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards**

***Appendix: It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer from deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.***

Article 4§5 guarantees workers the right to their wage being subject to deductions only in circumstances which are well-defined in a legal instrument,

<sup>133</sup> Conclusions XIV-2, Spain, p. 684.

<sup>134</sup> Conclusions XIII-4, Belgium, p. 352.

<sup>135</sup> Conclusions XIII-3, Portugal, p. 267.

<sup>136</sup> Conclusions XIII-3, Portugal, p. 267.

<sup>137</sup> Conclusions XVI-2, Poland, p. 616.

<sup>138</sup> Conclusions XIV-2, Spain, p. 684.

<sup>139</sup> Conclusions 2003, Bulgaria, p. 41.

<sup>140</sup> Conclusions XIV-2, Ireland, p. 398

<sup>141</sup> Conclusions XIV-2, Ireland, p. 398.

<sup>142</sup> Conclusions XIII-1, Greece, p.124; Conclusions XIII-3, Greece, p. 220.

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(law, regulation, collective agreement or arbitration award) and subject to reasonable limits.

The remaining wage after deductions should not deprive workers and their dependents of their very means of subsistence.<sup>143</sup>

A worker should not be entitled to waive his rights to limitation of wage deductions.<sup>144</sup>

All forms of deduction are covered by this provision, including trade union dues, fines, maintenance payments, repayment or wage advances etc.

The exercise of these rights shall be achieved for the great majority of workers and by legislation, by freely concluded collective agreements, or by other means appropriate to national conditions.<sup>145</sup>

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<sup>143</sup> Conclusions XI-1, Greece, p. 76

<sup>144</sup> Conclusions 2005, Norway, pp. 524-525.

<sup>145</sup> Conclusions V, Statement of interpretation on Article 4§5, p. 36.



## Article 5

### **Employers and workers have the right to form national or international associations for the protection of their economic and social interests**

**With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations**

Article 5 guarantees workers' and employers' freedom to organise. This covers not only workers in activity but also persons who exercise rights resulting from work (pensioners, unemployed persons).<sup>146</sup>

#### Forming trade unions and employer associations

Trade unions and employer organisations must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply.

If fees are charged for the registration or establishment of an organisation, they must be reasonable and designed only to cover strictly necessary administrative costs.<sup>147 148</sup>

Requirements as to minimum numbers of members comply with Article 5 if the number is reasonable and presents no obstacle to the founding of organisations.<sup>149</sup>

Trade unions and employers' organisations must be independent in respect of their organisation or functioning. The following examples constitute infringements in breach of Article 5: 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.

Trade unions must be free to form federations and join similar national and international organisations<sup>150</sup> and so states party may not limit the degree to which they are authorised to organise.

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<sup>146</sup> Conclusions XVII-1, Poland, p. 375.

<sup>147</sup> Conclusions XV-1, United Kingdom, p. 628.

<sup>148</sup> Conclusions XVI-1, United Kingdom, p. 683.

<sup>149</sup> Conclusions XIII-5, Portugal, p. 172.

<sup>150</sup> Conclusions I, Statement of Interpretation on Article 5, p. 31.

There must also be provision in domestic law for a right of appeal to the courts to ensure that all these rights are upheld.

#### Freedom to join or not to join a trade union

Workers must be free not only to join but also not to join a trade union.<sup>151</sup> Indeed, the freedom guaranteed by Article 5 implies that the exercise of a worker's right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom<sup>152</sup>.

Domestic law must guarantee the right of workers to join a trade union and include effective punishments and remedies where this right is not respected. Trade union members must be protected from any harmful consequence that their trade union membership or activities may have on their employment, particularly 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. Where such discrimination occurs, domestic law must make provision for compensation that is adequate and proportionate to the harm suffered by the victim.<sup>153</sup>

Furthermore, no worker may be forced to join or remain a member of a trade union. Any form of legally compulsory trade unionism is incompatible with Article 5.<sup>154</sup> The freedom guaranteed by Article 5 is the result of a choice and such decisions must not be taken under the influence of constraints that rule out the exercise of this freedom.<sup>155</sup> To secure this freedom, domestic law must clearly prohibit all pre-entry or post-entry closed shop clauses and all union security clauses (automatic deductions from the wages of all workers, whether union members or not, to finance the trade union acting within the company).<sup>156</sup> Consequently, 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 Article 5.<sup>157</sup>

The same rules apply to employers' freedom to organise.

#### Trade union activities

Trade unions and employers' organisations must be largely independent where anything to do with their infrastructure or functioning is concerned. They are entitled to perform their activities effectively and devise a work programme.<sup>158</sup> Consequently, any excessive state interference constitutes a violation of Article 5.

This independence takes various forms.

a) Trade unions are entitled to choose their own members and representatives.

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<sup>151</sup> Conclusions I, Statement of Interpretation on Article 5, p. 31.

<sup>152</sup> Confederation of Swedish Enterprise v. Sweden, complaint N° 12/2002, decision on the merits of 15 May 2003, § 29.

<sup>153</sup> Conclusions 2004, Bulgaria, p. 32.

<sup>154</sup> Conclusions III, Statement of Interpretation on Article 5, p. 30.

<sup>155</sup> Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, Decision on the merits of 15 May 2003, §29

<sup>156</sup> Conclusions VIII, Statement of Interpretation on Article 5, p. 77.

<sup>157</sup> Conclusions XV-1, Denmark, p. 142.

<sup>158</sup> Conclusions XII-2, Germany, p. 98.

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b) Excessive limits on the reasons for which a trade union may take disciplinary action against a member constitute an unwarranted interference in the autonomy of trade unions inherent in Article 5.<sup>159</sup>

c) 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.<sup>160</sup>

### Representativeness

Domestic law may restrict participation in various consultation and collective bargaining procedures to representative trade unions alone.

For the situation to comply with Article 5, the following conditions must be met:

a) decisions on representativeness must not present a direct or indirect obstacle to the founding of trade unions;

b) areas of activity restricted to representative unions should not include key trade union prerogatives;<sup>161</sup>

c) criteria used to determine representativeness must be reasonable, clear, predetermined, objective, prescribed by law and open to judicial review.<sup>162</sup>

### Personal scope

a) Article 5 applies both to the public and to the private sector.<sup>163</sup>

b) Under Article 19§4b of the Charter, states party must secure for nationals of other parties treatment not less favourable than that of their own nationals in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

c) A possible exception with regard to the armed forces

With regard to the armed forces, Article 5 states as follows: "*The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations*". The states party are entitled to restrict or withdraw the right of the armed forces to organise.<sup>164</sup>

The Committee checks, however, that bodies defined in national law as belonging to the armed forces do indeed perform military functions.<sup>165</sup> With regard to *gendarmes* in France, the Committee has found that they can be equated with military personnel in the light of their duties and therefore they are excluded from the right to organise.<sup>166</sup>

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<sup>159</sup> Conclusions XVII, United Kingdom, p. 510.

<sup>160</sup> Conclusions XV-1, France, p. 240.

<sup>161</sup> Conclusions XV-1, Belgium, p. 74.

<sup>162</sup> Conclusions XV-1, France, p. 240.

<sup>163</sup> Conclusions I, Statement of Interpretation on Article 5, p. 31.

<sup>164</sup> European Federation of Employees in Public Services (EUROFEDOP) v. France, Italy and Portugal, Complaint No. 2/1999, No. 4/1999, No. 5/1999, Decision on the merits of 4 December 2000, §27.

<sup>165</sup> Conclusions XVIII-1, Poland, p. 633.

<sup>166</sup> Conclusions XVIII-1, France, p. 302.

d) Restriction with regard to the police

With regard to the police, the Committee has held that *“it is clear, in fact, from the second sentence of Article 5 and from the ‘travaux préparatoires’ on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article”*.<sup>167</sup> In other words, police officers must enjoy the main trade union rights, which are the right to negotiate their salaries and working conditions, and freedom of association.<sup>168</sup> Compulsory membership of organisations also constitutes a breach of Article 5.<sup>169</sup>

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<sup>167</sup> Conclusions I, Statement of Interpretation on Article 5, p. 31

<sup>168</sup> European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decision on the merits of 22 May 2002, §§25-26.

<sup>169</sup> Conclusions I, Statement of Interpretation on Article 5, p. 31.

## Article 6

### All workers and employers have the right to bargain collectively

#### 1. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote joint consultation between workers and employers

Within the meaning of Article 6§1, joint consultation is consultation between employees and employers or the organisations that represent them.<sup>170</sup> Such consultation can take place within tripartite bodies provided that the social partners are represented in these bodies on an equal footing.<sup>171</sup>

If adequate consultation already exists, there is no need for the state to intervene. If no adequate joint consultation is in place, the state must take positive steps to encourage it.<sup>172</sup>

Consultation must take place on several levels: national, regional/sectoral. It should take place in the private and public sector (including the civil service).<sup>173 174</sup> Consultation at the enterprise level is dealt with under Article 6§1 and Article 22. For the States which have ratified both Article 6§1 and Article 22, consultation at enterprise level is examined under Article 22.<sup>175</sup>

Consultation must cover all matters of mutual interest, and particularly: 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.).<sup>176 177</sup>

It is open to States parties to require trade unions to meet representativeness criteria subject to certain general conditions. With respect to Article 6§1, such a requirement must not excessively limit the possibility of trade unions to participate effectively in consultation. In order to be in conformity with Article 6§1, representativity criteria should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals.<sup>178</sup>

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<sup>170</sup> Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35.

<sup>171</sup> Conclusions V, Statement of Interpretation on Article 6§1, p. 41.

<sup>172</sup> *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41.

<sup>173</sup> Conclusions III, Denmark, Germany, Norway, Sweden, p.33.

<sup>174</sup> *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41.

<sup>175</sup> Conclusions 2004, Ireland, p. 264.

<sup>176</sup> Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35.

<sup>177</sup> Conclusions V, Ireland, pp. 42-43.

<sup>178</sup> Conclusions 2006, Albania, p. 39.

**2. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements**

According to Article 6§2, domestic law must recognise that employers' and workers' organisations may regulate their relations by collective agreement. If necessary and useful, i.e. in particular if the spontaneous development of collective bargaining is not sufficient, positive measures should be taken to facilitate and encourage the conclusion of collective agreements. Whatever the procedures put in place are, collective bargaining should remain free and voluntary.<sup>179</sup>

To the extent to which, if at all, ordinary collective bargaining applies to public officials, it may be subject to regulations determined by law. Nevertheless, such officials always retain the right to participate in any processes that are directly relevant to the determination of the procedures applicable to them.<sup>180 181</sup>

It is open to States parties to require trade unions to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§2 such a requirement must not excessively limit the possibility of trade unions to participate effectively in collective bargaining. In order to be in conformity with Article 6§2, the criteria of representativeness should be prescribed by law, should be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusals.<sup>182</sup>

**3. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes**

According to Article 6§3, conciliation, mediation and/or arbitration procedures should be instituted to facilitate the resolution of collective conflicts. They may be instituted by law, collective agreement or industrial practice.<sup>183</sup> Such procedures should also exist for resolving conflicts which may arise between the public administration and its employees.<sup>184</sup>

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<sup>179</sup> Conclusions I, Statement of Interpretation on Article 6§2, p. 35.

<sup>180</sup> Conclusions III, Germany, p. 34.

<sup>181</sup> European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decision on the merits of 21 May 2002, §58.

<sup>182</sup> Conclusions 2006, Albania, p. 41-42.

<sup>183</sup> Conclusions I, Statement of Interpretation on Article 6§3, p. 37.

<sup>184</sup> Conclusions III, Denmark, Germany, Norway, Sweden, p. 33.

Article 6§3 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.<sup>185 186</sup>

All arbitration systems must be independent, and the outcome of arbitration may not be predetermined by pre-established criteria.<sup>187</sup>

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. Such a restriction is only allowed within the limits prescribed by Article G.<sup>188</sup>

**4. With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into**

***Appendix: It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.***

Article 6§4 guarantees the right to strike whether in law or case-law.<sup>189</sup>

In the former case, case law of domestic courts is closely examined in order to verify whether the courts rule in a reasonable manner and in particular whether their intervention does not reduce the substance of the right to strike so as to render it ineffective.<sup>190 191</sup> In this regard for example, the fact that a national judge may determine whether recourse to strikes are “premature” is not in conformity with Article 6§4 as this allows the judge to exercise one of the trade unions’ key prerogatives.<sup>192</sup>

A general prohibition of lock-out is not in conformity with Article 6§4.<sup>193 194</sup>

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<sup>185</sup> Conclusions V, Statement of Interpretation on Article 6§3, p. 45.

<sup>186</sup> Conclusions V, Italy, p. 46.

<sup>187</sup> Conclusions XIV-1, Iceland, p. 388.

<sup>188</sup> Conclusions 2006, Portugal, p. 681.

<sup>189</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 34.

<sup>190</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 38.

<sup>191</sup> Conclusion XVII-1, Netherlands, p. 317.

<sup>192</sup> Conclusions XVII-1, Netherlands, p. 319.

<sup>193</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 38.

<sup>194</sup> Conclusions VIII, Statement of Interpretation on Article 6§4, p. 95.

1. Group entitled to call a collective action

The decision to call a strike can be taken only by a trade union provided that forming a trade union is not subject to excessive formalities.<sup>195</sup> On the contrary, limiting the right to call a strike to the representative or the most representative trade unions constitutes a restriction which is not in conformity with Article 6§4.<sup>196</sup>

Once a strike has been called, any employee concerned, irrespective of whether he is a member of the trade union having called the strike or not, has the right to participate in the strike.

Article 6§4 does not require recognition of the right to lock-out by an individual employer beyond exceptional circumstances.<sup>197</sup>

2. Permitted objectives of collective action

Article 6§4 applies to conflicts of interests. It does not concern conflicts of rights, i.e. related to the existence, validity or interpretation of a collective agreement and to the violation of a collective agreement.<sup>198</sup>

Within those limits, the right to strike should be guaranteed in the context of any negotiation between employers and employees in order to settle an industrial dispute. Consequently prohibiting strikes not aimed at concluding a collective agreement is not in conformity with Article 6§4.<sup>199</sup>

3. Specific restrictions to the right to strike

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G which provides that restrictions on the rights guaranteed by the Charter that are prescribed by law, serve a legitimate purpose and are 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.<sup>200</sup>

i. Restrictions related to essential services/sectors

Prohibiting strikes in sectors which are essential to the community is deemed to serve a legitimate purpose since strikes in these sectors could pose a threat to public interest, national security and/or public health. However, simply banning strikes even in essential sectors – particularly when they are extensively defined, i.e. “energy” or “health” – is not deemed proportionate to the specific requirements of each sector. At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4.<sup>201 202</sup>

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<sup>195</sup> Conclusions 2004, Sweden, pp. 565-566.

<sup>196</sup> Conclusions XV-1, France, pp. 254-257.

<sup>197</sup> Conclusions IX-2, Italy, p. 48.

<sup>198</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 38.

<sup>199</sup> Conclusions IV, Germany, p. 50.

<sup>200</sup> Conclusions X-1, Norway, p. 76 (regarding Article 31 of the Charter).

<sup>201</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 38.

<sup>202</sup> Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint n°32/2005, Decision on the merits of 16 October 2006, §24.



ii. Restrictions related to public officials

Public officials enjoy the right to strike under Article 6§4. Therefore prohibiting all public officials from exercising the right to strike is not in conformity with Article 6§4. They must be entitled to withdraw their labour.<sup>203</sup> Allowing public officials only to declare symbolic strikes is not sufficient.<sup>204</sup>

The right to strike of certain categories of public officials may be restricted. Under Article G, these restrictions should be limited to public officials whose duties and functions, given their nature or level of responsibility, are directly related to national security, general interest, etc.<sup>205 206</sup>

iii. Interference by Parliament or Government to end a strike

The conformity of such an interference is only assessed when it is imposed to end a strike in sectors which are not *prima facie* covered by Article G.<sup>207</sup>

4. Procedural requirements

a) Peace obligation

The systems of industrial relations in which collective agreements are seen as a social peace treaty during which strikes are prohibited are in conformity with Article 6§4. However, a peace obligation must reflect with certainty the will of social partners. Whether this is the case, is subject to assessment *inter alia* with reference to the industrial relations background in the given state.<sup>208</sup>

b) Other procedural requirements

Subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6§4, 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.<sup>209 210</sup>

The exhaustion of conciliation/mediation procedures requirement before strike is in conformity with Article 6§4 – given Article 6§3 – as long as such machinery is not so slow that the deterrent effect of a strike is affected.<sup>211</sup>

Periods of notice or cooling-off periods prescribed in connection with pre-strike conciliation procedures are in conformity with Article 6§4 as long as they are of a reasonable duration.<sup>212</sup>

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<sup>203</sup> Conclusions I, Statement of Interpretation on Article 6§4, pp. 38-39.

<sup>204</sup> Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint n° 32/2005, Decision on the merits of 16 October 2006, §44-46.

<sup>205</sup> Conclusions I, Statement of Interpretation on Article 6§4, pp. 38-39.

<sup>206</sup> Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint n° 32/2005, Decision on the merits of 16 October 2006, §46.

<sup>207</sup> Conclusions 2004, Norway, p. 404.

<sup>208</sup> Conclusions 2004, Norway, p. 404.

<sup>209</sup> Conclusions II, Cyprus, p. 187.

<sup>210</sup> Conclusions XIV-1, United Kingdom, p. 805.

<sup>211</sup> Conclusions XVII-1, Czech Republic, p. 100.

<sup>212</sup> Conclusions XIV-1, Cyprus, pp. 156-159.

5. Consequences of a strike

A strike should not be considered a violation of the contractual obligations of the striking employees entailing a breach of their employment contract. It should be accompanied by a prohibition of dismissal. If however, 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 Article 6§4.<sup>213</sup>

Any deduction from strikers' wages should not exceed the proportion of their wage that would be attributable to the duration of their strike participation.<sup>214 215</sup>

Workers participating in a strike, who are not members of the trade union having called the strike, are entitled to the same protection as trade union members.<sup>216</sup>

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<sup>213</sup> Conclusions I, Statement of Interpretation on Article 6§4, p. 39.

<sup>214</sup> Conclusions XIII-1, France, p. 154.

<sup>215</sup> *Confédération française de l'Encadrement –“CFE-CGC”* v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §63.

<sup>216</sup> Conclusions XVIII-1, Denmark, p. 273

## Article 7

### **Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed**

**1. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education**

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

The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households.<sup>217</sup> It also extends to all forms of economic activity, irrespective of the status of the worker (employee, self-employed, unpaid family helper or other).<sup>218</sup>

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labor Inspectorate has a decisive role to play in this respect.<sup>219</sup>

Article 7§1 allows for an exception concerning light work, i.e. work which does not entail any risk to the health, moral welfare, development or education of children. States are required to define the types of work which may be considered light, or at least to draw up a list of those who are not. Work considered to be light ceases to be so if it is performed for an excessive duration.<sup>220</sup>

Regarding work done at home, States are required to monitor the conditions under which it is performed in practice.<sup>221</sup>

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<sup>217</sup> Conclusions I, Statement of interpretation on Article 7§1, p. 42.

<sup>218</sup> International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§27-28.

<sup>219</sup> International Commission of Jurists (CIJ) v. Portugal, Decision on the merits of 9 September 1999, §32.

<sup>220</sup> International Commission of Jurists (CIJ) v. Portugal, Decision on the merits of 9 September 1999, §§29-

31.

<sup>221</sup> Conclusions 2006, General question on Article 7§1, p. 16.

**2. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy**

*Appendix: This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.*

Note: Under the 1961 Charter it was “a higher minimum age” (higher than 15).

In application of Article 7§2, domestic law must set 18 as the minimum age of admission to prescribed occupations regarded as dangerous or unhealthy. There must be 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 in the course of work.<sup>222</sup>

However, if such work proves absolutely necessary for their vocational training, they may be permitted to perform it before the age of 18, but only under strict, expert supervision and only for the time necessary. The Labour Inspectorate must monitor these arrangements.<sup>223</sup>

The Appendix to Article 7§2 also permits exceptions in cases where young persons under the age of 18 have completed their training for performing dangerous tasks and, thus, received the necessary information.<sup>224</sup>

**3. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education**

Article 7§3 guarantees the right of every child to education by safeguarding its capacity to learn.

Only light work is permissible for schoolchildren under this provision. The notion of “light work” is the same as under article 7§1.

In the case of states that have set the same age, which is over 15 years, for admission to employment and the end of compulsory education, questions related to light work are examined under Article 7§1. However, since Article 7§3 is concerned with the effective exercise of the right to compulsory education, matters relating thereto are assessed under that article. Adequate safeguards

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<sup>222</sup> Conclusions 2006, France, pp. 310-313.

<sup>223</sup> Conclusions 2006, Norway, p. 631.

<sup>224</sup> Conclusions 2006, Sweden, p. 868.

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must be in place to allow the authorities (labour inspectorate, social and education services) to protect children from work which could deprive them of the full benefit of their education.<sup>225</sup>

During school term, the time during which children may work must be limited so as not to interfere with their attendance, receptiveness and homework. Allowing children to work before school begins in the morning is, in principle, contrary to Article 7§3. Allowing children aged 15 years still subject to compulsory education to deliver newspapers from 6 a.m. for up 2 hours per day, 5 days per week before school is not in conformity with the Charter.<sup>226</sup>

In order that children still subject to compulsory education benefit fully from school after the holiday, work must be prohibited for a period of at least 4 weeks during the summer holidays and for at least half of each holiday period granted in the course of the school year.<sup>227</sup>

#### **4. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training**

Under Article 7§4, domestic law must limit the working hours of persons under 18 years of age who are no longer subject to compulsory schooling. The limitation may be the result of legislation, regulations, contracts or practice.<sup>228</sup>

For persons under 16 years of age, a limit of eight hours a day or forty hours a week is contrary to the article.<sup>229</sup> However, for persons over 16 years of age, the same limits are in conformity with the article.<sup>230</sup>

#### **5. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances**

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements or other means.

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 (aged eighteen or above).<sup>231</sup>

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<sup>225</sup> Conclusions 2006, Portugal, pp. 690-692.

<sup>226</sup> Conclusions XVII-2, Netherlands, p. 582.

<sup>227</sup> Conclusions XVII-2, Netherlands, p. 581.

<sup>228</sup> Conclusions 2006, Albania, p. 55.

<sup>229</sup> Conclusions XI-1, Netherlands, p. 95.

<sup>230</sup> Conclusions 2002, Italy, pp. 85-86.

<sup>231</sup> Conclusions XI-1, United-Kingdom, p. 96.

In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

#### Young workers

The young worker's wage may be less than the adult starting wage, but any difference must be reasonable and the gap must close quickly. For fifteen/sixteen year-olds, a wage of 30% lower than the adult starting wage is acceptable. For sixteen/eighteen year-olds, the difference may not exceed 20%.<sup>232</sup>

The adult reference wage must in all cases be sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, even a young worker's wage which respects these percentage differentials is not considered fair.<sup>233</sup>

#### Apprentices

Apprentices may be paid lower wages, since the value of the on-the-job training they receive must be taken into account. However, the apprenticeship system must not be deflected from its purpose and be used to underpay young workers. Accordingly, the terms of apprenticeships should not last too long and, as skills are acquired, the allowance should be gradually increased throughout the contract period: starting from at least one-third of the adult starting wage or minimum wage at the commencement of the apprenticeship, and arriving at least at two-thirds at the end.<sup>234</sup>

### **6. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day**

In application of Article 7§6, time spent on vocational training by young people during normal working hours must be treated as part of the working day<sup>235</sup>. Such training must, in principle, be done with the employer's consent and be related to the young person's work.

Training time must thus be remunerated as normal working time, 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.<sup>236</sup>

This right also applies to training followed by young people with the consent of the employer and which is related to the work carried out, but which is not necessarily financed by the latter.<sup>237</sup>

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<sup>232</sup> Conclusions 2006, Albania, p. 56.

<sup>233</sup> Conclusions XII-2, Malta, p. 126.

<sup>234</sup> Conclusions 2006, Portugal, p. 693.

<sup>235</sup> Conclusions XV-2, Netherlands, p. 342.

<sup>236</sup> Conclusions V, Statement of interpretation on Article 7§6, p. 67.

<sup>237</sup> Conclusions V, Statement of interpretation on Article 7§6, p. 67.

**7. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay**

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

The arrangements which apply are the same as those applicable to annual paid leave for adults (Article 2§3). For example, employed persons of under 18 years of age should not have the option of giving-up their annual holiday with pay; the annual holiday with pay should not be suspended in the event of illness or accident during the holidays.<sup>238</sup>

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

*Appendix: It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law the great majority of persons under eighteen years of age shall not be employed in night work.*

In application of Article 7§8, domestic law must provide that under-eighteen year olds are not employed in night work. Laws or regulations must not cover only industrial work. Exceptions can be made as regards certain occupations specified in national laws or regulations.

It is up to national laws or regulations to define the period of time considered as being "night".<sup>239</sup>

**9. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control**

In application of Article 7§9, domestic law must provide for compulsory regular medical check-ups for under-eighteen year olds employed in occupations specified by national laws or regulations.

These check-ups must be adapted to the specific situation of young workers and the particular risks to which they are exposed.<sup>240</sup> They may, however, be

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<sup>238</sup> Conclusions 2006, France p. 316.

<sup>239</sup> Conclusions I, Statement of interpretation on Article 7§8, p. 46.

<sup>240</sup> Conclusions 2006, Albania, p. 58.

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carried out by the occupational health services, if these services have the specific training to do so.<sup>241</sup>

The obligation entails a full medical examination on recruitment and regular check-ups thereafter.<sup>242</sup> The intervals between check-ups must not be too long. In this regard, an interval of three years has been considered to be too long by the Committee.<sup>243</sup>

The medical check-ups foreseen by Article 7§9 should take into account the skills and risks of the work envisaged.<sup>244</sup>

### **10. With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work**

Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment.<sup>245</sup> This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies. This Article covers also the trafficking of human beings since this is a form of exploitation.<sup>246 247</sup>

#### Sexual exploitation

In particular in order to guarantee the right provided by Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular children's involvement in the sex industry.

This prohibition must be accompanied by an adequate supervisory mechanism and sanctions.<sup>248</sup>

The following are minimum obligations:

- as legislation is a prerequisite for an effective policy against the sexual exploitation of children, Article 7§10 requires that all acts of sexual exploitation be criminalised.<sup>249</sup> In this respect, it is not necessary for a Party to adopt a specific mode of criminalisation of the activities involved, but it must rather ensure that criminal proceedings can be instituted in respect of these acts. Furthermore, States must criminalise the defined activities with all children under 18 years of age irrespective of lower national ages of sexual consent.<sup>250</sup> Child victims of sexual exploitation should not be prosecuted for any act connected with this exploitation.<sup>251</sup>

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<sup>241</sup> Conclusions VIII, Statement of interpretation on Article 7§9, p. 119.

<sup>242</sup> Conclusions XIII-1, Sweden, p. 170.

<sup>243</sup> Conclusions XIII-2, Belgium, p. 299.

<sup>244</sup> Conclusions XIII-2, Italy, p. 99.

<sup>245</sup> Conclusions XV-2, Statement of Interpretation on Article 7§10, pp. 26-27.

<sup>246</sup> Conclusions 2004, Bulgaria, p. 55.

<sup>247</sup> Conclusions 2004, Norway, p. 412.

<sup>248</sup> Conclusions 2004, Bulgaria, p. 56.

<sup>249</sup> Conclusions XVII-2, Poland, p. 638.

<sup>250</sup> Conclusions XVII-2, Czech Republic, p. 122.

<sup>251</sup> Conclusions XVII-2, United Kingdom, p. 817.



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- a national action plan combating the sexual exploitation of children should be adopted.<sup>252 253</sup>

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children.

- Child prostitution includes the offer, procurement, use or provision of a child for sexual activities for remuneration or any other kind of consideration.
- Child pornography is given an extensive definition and takes account of the fact that new technology has changed the nature of child pornography. It includes the procurement, production, distribution, making available and possession of material that visually depicts a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct.<sup>254</sup>
- Trafficking of children is the recruiting, transporting, transferring, harbouring, delivering, selling or receiving children for the purposes of sexual exploitation.

In light of the fact that new information technologies have made the sexual exploitation of children easier, States parties must adopt measures in law and in practice to protect children from their misuse. As for example the Internet is becoming one of the most frequently used tools for the spread of child pornography, States parties must take measures to combat this, such as by providing that Internet service providers be responsible for controlling the material they host, encouraging the development and use of the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).<sup>255</sup>

### Other forms of exploitation

Parties must prohibit the use of children in other forms of exploitation such as, domestic/labour exploitation, including trafficking for the purposes of labour exploitation, begging, or the removal of organs.<sup>256</sup>

States parties must also take measures to prevent and assist street children.<sup>257 258</sup>

States parties must ensure not only that they have the necessary legislation to prevent exploitation and protect children and young persons, but also that this legislation is effective in practice.<sup>259 260</sup>

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<sup>252</sup> Conclusions XVI-2, Poland, p. 623.

<sup>253</sup> Conclusions 2006, Albania, p. 60-61.

<sup>254</sup> Conclusions XVII-2, Portugal, p. 677.

<sup>255</sup> Conclusions 2004, Romania, p. 473.

<sup>256</sup> Conclusions 2004, Bulgaria, p. 57.

<sup>257</sup> Conclusions XV-2, Statement of Interpretation on Article 7§10, pp. 26-27.

<sup>258</sup> Conclusions 2004, Romania, p. 472.

<sup>259</sup> Conclusions 2006, Albania, p. 61.

<sup>260</sup> Conclusions 2006, Bulgaria, p. 113.



## Article 8

### Employed women, in case of maternity, have the right to a special protection in their work

**1. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks**

Article 8§1 recognises the right of employed women to:

a. maternity leave

The right to maternity leave of at least 14 weeks must be guaranteed by law.<sup>261</sup> This right must be guaranteed for all categories of employees<sup>262</sup> and the leave must be maternity leave and not sick leave.

National law may permit women to opt for a shorter period of maternity leave. However, in all cases there must be a compulsory period of leave of no less than six weeks which may not be waived by the woman concerned.<sup>263</sup>

b. maternity benefits

Maternity leave must be accompanied by the continued payment of the individual's wage or salary or by the payment of social security benefits or benefits from public funds.

A benefit must be adequate and must be equal to the salary or close to its value.<sup>264</sup> For example, a benefit equal to 70% of the salary is adequate.<sup>265</sup> For high salaries, a significant reduction in pay during maternity leave is not, in itself, contrary to Article 8§1. Various elements are taken into account in order to assess the reasonable character of the reduction, such as the upper limit for calculating benefit, how this compares to overall wage patterns and the number of women in receipt of a salary above this limit.<sup>266</sup>

The right to benefit may be subject to conditions such as a minimum period of contribution and/or employment. However, these conditions must be reasonable. Periods of unemployment shall be included in the calculation of work time needed to qualify for maternity leave.<sup>267</sup>

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<sup>261</sup> Conclusions III, Statement of Interpretation on Article 8§1, p. 48.

<sup>262</sup> Conclusions XV-2, Addendum, Malta, p. 109.

<sup>263</sup> Conclusions VIII, Statement of Interpretation on Article 8§1, p. 123.

<sup>264</sup> Conclusions XV-2, United Kingdom, p. 594.

<sup>265</sup> Conclusions XVII-2, Latvia, p. 488.

<sup>266</sup> Conclusions XV-2, Belgium, p. 86.

<sup>267</sup> Conclusions XV-2, France, p. 197.

**2. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period**

*Appendix: This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases :*

- a. if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;*
- b. if the undertaking concerned ceases to operate;*
- c. if the period prescribed in the employment contract has expired.*

Note: Article 8§2 of the 1961 Social Charter read as follows: “With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake: to consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such a time that the notice would expire during such absence:”

Article 8§2 makes it unlawful to dismiss female employees from the time they notify the employer of their pregnancy to the end of their maternity leave.

Article 8§2 applies equally to women on fixed-term and open-ended contracts.<sup>268</sup>

This provision does however not lay down an absolute prohibition; according to the Committee’s case law<sup>269</sup> inserted in the Appendix to the Revised Charter, it permits exceptions in certain cases such as misconduct which justifies breaking off the employment relationship, if the undertaking ceases to operate or if the period prescribed in the employment contract expires.<sup>270</sup> Exceptions are strictly interpreted by the Committee.

The notification of the dismissal, by the employer, during the period of protection does not as such amount to a violation of article 8§2 provided that the period of notice and any procedures are suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures must apply in the event of notice of dismissal prior to the period of protection.<sup>271</sup>

In cases of dismissal contravening this provision of the Charter, national legislation must provide for adequate and effective remedies, employees who consider that their rights in this respect have been violated must be able to take their case before the courts.

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<sup>268</sup> Conclusions XIII-4, Austria, p. 93.

<sup>269</sup> Conclusions X-2, Spain, p. 96.

<sup>270</sup> Conclusions 2005, Estonia, p. 144.

<sup>271</sup> Conclusions XIII-4, Statement of Interpretation on Article 8§2, pp. 92-93.

Reinstatement of the women should be the rule.<sup>272</sup> Exceptionally, if this is impossible (e.g. where the enterprise closes down) or the woman concerned does not wish it, adequate compensation must be available. Domestic law must not prevent courts (or any other competent authority) from awarding a level of compensation that is sufficient both to deter the employer and fully compensate the victim of dismissal, hence any ceiling on the level of compensation that may be awarded is not in conformity with the Charter.<sup>273</sup>

### **3. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose**

According to Article 8§3, all employed mothers (including domestic employees<sup>274</sup> and women working at home) who breastfeed their babies shall be granted time off for this purpose.

Time off for nursing should in principle be granted during working hours should be treated as normal working time and remunerated as such.<sup>275</sup> However provision for part time work may be considered to be sufficient where loss of income is compensated by a parental benefit or other allowance.<sup>276</sup>

Time off for nursing must be granted at least until the child reaches the age of nine months.<sup>277</sup>

Each situation is assessed on a case-by-case basis; legislation providing for two daily breaks for a period of one year for breastfeeding, two half-hour breaks where the employer provides a nursery or room for breastfeeding,<sup>278</sup> one-hour daily breaks<sup>279</sup> and entitlement to begin or leave work earlier have all been found to be in conformity with the Charter.<sup>280</sup>

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<sup>272</sup> Conclusions 2005, Cyprus, p. 73.

<sup>273</sup> Conclusions 2005, Estonia, p. 144.

<sup>274</sup> Conclusions XVII-2, Spain, p. 726.

<sup>275</sup> Conclusions XIII-4, Netherlands, p. 102.

<sup>276</sup> Conclusions 2005, Sweden, p. 689.

<sup>277</sup> Conclusions 2005, Cyprus, p. 74.

<sup>278</sup> Conclusions I, Italy, p. 51.

<sup>279</sup> Conclusion I, Germany, p. 191.

<sup>280</sup> Conclusions 2005, France, p. 228.

**4. With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants**

Article 8§4 does not require states to prohibit night work for pregnant women, women who have recently given birth and women nursing their infants, but to regulate it in order to limit the adverse effects on the health of the woman. The regulations must:

- only authorise night work where necessary, having due regard to working conditions and the organisation of work in the firm concerned;<sup>281</sup>
- lay down conditions for night work of pregnant women, women who have recently given birth and women nursing their infants, e.g. prior authorisation by the Labour Inspectorate (when applicable), prescribed working hours, breaks, rest days following periods of night work, the right to be transferred to daytime work in case of health problems linked to night work, etc.<sup>282</sup>

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

Article 8§5 applies to all pregnant women, women who have recently given birth or who are nursing their infants, in paid employment, including civil servants. Only self-employed women are excluded.

1- This provision prohibits the employment of pregnant women, women who have recently given birth and women nursing their infants in underground work in mines. This applies to extraction work proper, but not to women who:

- occupy managerial posts and do not perform manual work;
- work in health and welfare services;
- spend brief training periods in underground sections of mines.<sup>283</sup>

This prohibition must be provided for in law.

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<sup>281</sup> Conclusions 2003, France, p. 125.

<sup>282</sup> Conclusions X-2, Statement of Interpretation on Article 8§4, p. 97.

<sup>283</sup> Conclusions X-2, Statement of Interpretation on Article 8§5, p. 97.

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2- Certain other dangerous activities, such as those involving exposure to lead, benzene, ionizing radiation, high temperatures, vibration or viral agents, must be prohibited or strictly regulated for the group of women concerned depending on the risks posed by the work. National law must ensure a high level of protection against all known hazards to the health and safety of women who come within the scope of this provision.<sup>284</sup>

National 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 such women should be entitled to paid leave. Such women should retain the right to return to their previous employment.<sup>285</sup>

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<sup>284</sup> Conclusions 2003, Bulgaria, p. 46.

<sup>285</sup> Conclusions 2005, Lithuania, p. 321.





## Article 9

### **Everyone has the right to appropriate facilities for vocational guidance with a view to helping him choose an occupation suited to his personal aptitude and interests**

**With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults**

Article 9 imposes on states to set up and operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance.<sup>286</sup>

The right to vocational guidance must be guaranteed<sup>287</sup> :

1. within the school system (information on training and access to training);
2. within the labour market (information on vocational training and retraining, career planning, etc).

The indicators taken into consideration to assess vocational guidance are : objectives, organisation, operation, overall expenditure, number of staff and number of beneficiaries. Vocational guidance shall address in particular school-leavers, job-seekers and unemployed persons.

Vocational guidance must be provided:

- free of charge;
- by qualified (counsellors, psychologist and teachers) and sufficient staff;
- to a significant number of persons.

It shall also be adequately financed by the State: the information collected and the means used to disseminate them should allow as many people as possible to be reached.

Equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of

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<sup>286</sup> Conclusions I, Statement of Interpretation on Article 9, p. 53.

<sup>287</sup> Conclusions XIV-2, Statement of Interpretation on Article 9, p. 53-61.

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residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.<sup>288</sup>

Vocational guidance of persons with disabilities is dealt with under Article 15 of the Charter for States having accepted both provisions.<sup>289</sup>

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<sup>288</sup> Conclusions XVI-2, Poland, pp. 632-633.

<sup>289</sup> Conclusions 2003, France, p. 127.

## Article 10

### Everyone has the right to appropriate facilities for vocational training

**1. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude**

In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the notion of vocational training of Article 10§1 covers: initial training - i.e. general and vocational secondary education - university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under paragraph 3 of the Charter (see *infra*). University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.<sup>290</sup>

The right to vocational training must be guaranteed to everyone.<sup>291</sup> States must provide vocational training by:<sup>292</sup>

- ensuring general and vocational secondary education, university and non-university higher education; and other forms of vocational training;
- building bridges between secondary vocational education and university and non-university higher education;
- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introducing mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

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<sup>290</sup> Conclusions 2003, France, p. 131.

<sup>291</sup> Conclusions I, p. 55.

<sup>292</sup> Conclusions 2003, France, p. 131.

Facilities other than financial assistance to students (which is dealt with under paragraph 4, see *infra*) shall be granted to ease access to technical or university higher education based solely on individual aptitude.<sup>293</sup> This obligation<sup>294</sup> can be achieved namely by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators<sup>295</sup> of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

Equal treatment with respect to access to vocational training must be guaranteed to non-nationals.<sup>296</sup> According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, length of residence requirements or employment requirements and/or the application of the reciprocity clause are contrary to the provisions of the Charter.<sup>297</sup>

Vocational training of persons with disabilities is dealt with under Article 15 of the Charter for States having accepted Article 15.<sup>298</sup>

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<sup>293</sup> Conclusions I, p. 55.

<sup>294</sup> Conclusions 2003, France, p. 132.

<sup>295</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 60 and Conclusions 2003.

<sup>296</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 62.

<sup>297</sup> Conclusions 2003, Slovenia, p. 473.

<sup>298</sup> Conclusions XIV-2, Statement of Interpretation on Article 10,§1 p. 62.

**2. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments**

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. Apprenticeship means training based on a contract between the young person and the employer, whereas other training arrangements can be based on such a contract, but also be school-based vocational training.<sup>299</sup> They both must combine theoretical and practical training and close ties must be maintained between training establishments and the working world.<sup>300</sup>

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.<sup>301</sup>

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people enrolled, the total spending, both public and private, on these types of training and the availability of places for all those seeking them.<sup>302</sup>

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.<sup>303</sup>

**3. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary:**

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

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

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

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<sup>299</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61 and Conclusions 2003, Sweden, p. 589.

<sup>300</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61.

<sup>301</sup> Conclusions XVI-2, Malta, p. 498.

<sup>302</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 61.

<sup>303</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 62 and Conclusions 2003, Slovenia, p. 473.

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dealt with under Article 10§4.<sup>304</sup> The notion of continuing vocational training includes adult education.<sup>305</sup>

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the overall participation rate of persons in training and the gender balance, the percentage of employees participating in continuing vocational training, and the total expenditure.<sup>306</sup>

As regards employed persons, the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic development is also taken into consideration.<sup>307</sup>

As regards unemployed people, the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures - is used to assess the impact of the States' policies.

In addition, the following aspects are taken into account:<sup>308</sup>

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;
- the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals<sup>309</sup> on the basis of the conditions mentioned under paragraph 1.<sup>310</sup>

#### **4. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed**

In accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. A person who has been without work for 12 months or more is long-term unemployed.<sup>311</sup>

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<sup>304</sup> Conclusions 2003, Italy, p. 272.

<sup>305</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61.

<sup>306</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61.

<sup>307</sup> Conclusions 2003, Italy, p. 273.

<sup>308</sup> Conclusions 2003, Slovenia, pp. 477-478.

<sup>309</sup> Conclusions IV, Statement of Interpretation on Article 10§3, p. xv.

<sup>310</sup> Conclusions XVI-2, Addendum, Ireland, p. 39.

<sup>311</sup> Conclusions 2003, Italy, p. 274.

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.

**5. With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake to encourage the full utilisation of the facilities provided by appropriate measures such as:**

While paragraphs 1 to 4 of Article 10 mainly deal with the right of access to vocational training and continuing vocational training, paragraph 5 focuses on complementary measures which are nonetheless fundamental to make access effective in practice. The list is non-exhaustive.

**a reducing or abolishing any fees or charges;**

States must ensure that vocational training, as defined in paragraph 1, is provided free of charge or that fees are reduced. Fees and contributions, however, shall not apply differently to non-nationals and States are under the obligation to guarantee equal treatment on the basis of the conditions mentioned under paragraph 1.<sup>312</sup>

**b granting financial assistance in appropriate cases;**

Access to vocational training also covers the granting of financial assistance, whose importance is so great that the very existence of the right to vocational training may depend on it.<sup>313</sup> All issues concerning financial assistance for vocational training up to higher education, including allowances for training programmes in the context of the labour market policy,<sup>314</sup> are dealt with under paragraph 4.<sup>315</sup> States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need<sup>316</sup> and shall be adequate.<sup>317</sup> It may consist of scholarships or loans at preferential interest rates. The number of beneficiaries and the amount of financial assistance are also taken into consideration for assessing compliance with this provision.<sup>318</sup>

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<sup>312</sup> Conclusions XVI-2, United Kingdom, p. 941.

<sup>313</sup> Conclusions VIII, Statement of Interpretation on Article 10§5, p. 136.

<sup>314</sup> Conclusions XVI-2, Slovak Republic, p. 773.

<sup>315</sup> Conclusions XIV-2, Statement of Interpretation on Article 10§5, p. 62.

<sup>316</sup> Conclusions XIII-1, Turkey, p. 242.

<sup>317</sup> Conclusion XVI-2, Slovak Republic, p. 772.

<sup>318</sup> Conclusions XIV-2, Ireland, p. 406.

Equal treatment with respect to financial assistance must be guaranteed to non-nationals on the basis of the conditions mentioned under paragraph 1.<sup>319</sup>

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

The time spent on supplementary training at the request of the employer must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous training. The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.

**d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.**

States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers' and workers' organisations is required in the supervision process.<sup>320</sup>

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<sup>319</sup> Conclusions 2003, Slovenia, p. 483.

<sup>320</sup> Conclusions XIV-2, United Kingdom, p. 784.



## Article 11

### **Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable**

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise.<sup>321</sup> The Committee has emphasised that rights relating to health embodied in the two treaties are inextricably linked, since "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights - and health care is a prerequisite for the preservation of human dignity".<sup>322</sup>

Taking account of the complementarity with the Convention and the growing link that states party to the Charter and other international bodies now make between the protection of health and a healthy environment, and has interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment.<sup>323</sup>

#### **1. With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia to remove as far as possible the causes of ill health**

##### Right to the highest possible standard of health

Under Article 11, health means physical and mental well-being, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all to Parties to the Charter.<sup>324</sup>

States must ensure the best possible state of health for the population according to existing knowledge. Health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action.<sup>325</sup> The main indicators are life expectancy and the principal causes of death. These indicators must show an improvement and not be too far behind the European average.<sup>326</sup>

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<sup>321</sup> Conclusions 2005, Statement of Interpretation on Article 11§5.

<sup>322</sup> International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31.

<sup>323</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, §§ 194-195.

<sup>324</sup> Conclusions 2005, Statement of Interpretation on Article 11§5.

<sup>325</sup> Conclusions XV-2, Denmark, pp. 126-129.

<sup>326</sup> Conclusions 2005, Lithuania, pp. 336-338.

Avoidable risks include those which result from environmental threats.<sup>327</sup>

The Committee also considers infant and maternal mortality to be good indicators of how well a particular country's overall health system is operating.<sup>328</sup> These are avoidable risks and every step should be taken, particularly in highly developed health care systems, to reduce these rates to as close to zero as possible.<sup>329</sup>

#### Right of access to health care

The health care system must be accessible to everyone.

Restrictions on the application of Article 11 may not be interpreted in such a way as to impede disadvantaged groups' exercise of their right to health. This interpretation is the logical consequence of the non-discrimination provision in Article E of the Charter, in conjunction with the substantive rights of the Charter. The Committee pointed that this approach calls for a strict interpretation of the way the personal scope of the Charter is applied in conjunction with Article 11 on the right to protection of health, particularly with its first paragraph on access to health care.<sup>330</sup> In this respect, it referred to its interpretation of the Charter's personal scope in which it noted that "that the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations."<sup>331</sup>

The Committee considers the conditions governing access to care taking into consideration Parliamentary Assembly Recommendation 1626 (2003) on "the reform of health care systems in Europe: reconciling equity, quality and efficiency", which invites member states to take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right.<sup>332</sup>

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<sup>327</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, § 202

<sup>328</sup> Conclusions 2003, Roumanie, p. 390.

<sup>329</sup> Conclusions 2003, France, p. 146.

<sup>330</sup> Conclusions 2005, Statement of Interpretation on Article 11§5, p. 10.

<sup>331</sup> Conclusions 2004, Statement of Interpretation on Article 11, p. 10.

<sup>332</sup> Conclusions 2005, Statement of Interpretation on Article 11§5, p. 10.

The right of access to care requires that:

- the cost of health care should be borne, at least in part, by the community as a whole;<sup>333 334</sup>
- the cost of health care must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients from the most disadvantaged sections of the community,<sup>335</sup>
- arrangements for access to care must not lead to unnecessary delays in its provision. The management of waiting lists and waiting times in health care are considered in the light of Committee of Ministers Recommendation (99)21 on criteria for such management. Access to treatment must be based on transparent criteria, agreed at national level, taking into account the risk of deterioration in either clinical condition or quality of life,<sup>336</sup>
- the number of health care professionals and equipment must be adequate. In the case of hospitals, the Committee refers to the objective laid down by WHO for developing countries of 3 beds per thousand population.<sup>337</sup> It also considers that a very low density of hospital beds, combined with waiting lists, could be an obstacle to access to health care for the largest possible number of people.<sup>338</sup> Conditions of stay in hospital, including psychiatric hospitals, must be satisfactory and compatible with human dignity.<sup>339 340</sup>

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<sup>333</sup> Conclusions I, Statement of Interpretation on Article 11, p. 59-60.

<sup>334</sup> Conclusions XV-2, Addendum, Cyprus, pp. 26-28.

<sup>335</sup> Conclusions XVII-2, Portugal, p. 681.

<sup>336</sup> Conclusions XV-2, United Kingdom, p. 599.

<sup>337</sup> Conclusions XV-2, Addendum, Turkey, p. 257.

<sup>338</sup> Conclusions XV-2, Denmark, p. 128.

<sup>339</sup> Conclusions 2005, Statement of Interpretation on Article 11§5.

<sup>340</sup> Conclusions 2005, Romania, pp. 600-601.

2. **With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health.**

There are two obligations under this provision:

*Education and awareness raising*

Public health policy must pursue the promotion of public health in conformity with the objectives fixed by the World health organisation (WHO). National rules must provide for informing the public, education and participation. States must demonstrate through concrete measures that they implement a public health education policy in favour of the general population and population groups affected by specific problems.<sup>341</sup>

These measures should be introduced to prevent activities that are damaging to health, such as smoking, alcohol and drugs, and to develop a sense of individual responsibility, including such aspects as a healthy diet, sexuality and the environment.

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<sup>341</sup> Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, § 216 and 219.

Health education must continue throughout school life and form part of school curricula. The Committee considers that, after the family, school is the most appropriate setting for health education because the general purpose of education is to impart the knowledge and skills necessary for life. It refers in particular to Committee of Ministers Recommendation No R(88)7 on school health education and the role and training of teachers.

Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned.<sup>342</sup>

#### *Counselling and screening*

There must be free and regular consultation and screening for pregnant women and children throughout the country.<sup>343</sup>

Free medical checks must be carried out throughout the period of schooling. In assessing compliance, the Committee takes account of the frequency of school medical examinations, their objectives, the proportion of pupils concerned and the level of staffing.<sup>344</sup>

There should be screening, preferably systematic, for all the diseases that constitute the principal causes of death.<sup>345</sup> The Committee has ruled that "where it has proved to be an effective means of prevention, screening must be used to the full".<sup>346</sup>

### **3. With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia to prevent as far as possible epidemic, endemic and other diseases, as well as accidents**

#### Healthy environment

Under the Charter overcoming pollution is an objective that can only be achieved gradually. Nevertheless, states party must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.<sup>347</sup> The measures taken by states are assessed with reference to their national legislation and regulations and undertakings entered into with regard to the European Union and the United Nations<sup>348</sup> and in terms of how the relevant law is applied in practice.

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<sup>342</sup> Conclusions XV-2, Belgium, p. 99.

<sup>343</sup> Conclusions 2005, Moldova, p. 452.

<sup>344</sup> Conclusions XV-2, France, p. 210.

<sup>345</sup> Conclusions 2005, Moldova, p. 452.

<sup>346</sup> Conclusions XV-2, Belgium, p. 99.

<sup>347</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint n°30/2005, decision on the merits of 6 December 2006, §§ 203 and 205.

<sup>348</sup> Conclusions XV-2, Italy, Article 11§3, p. 332.

*Air pollution*

In this respect the guarantee of a healthy environment requires that States:

- develop and regularly update sufficiently comprehensive environmental legislation and regulations;<sup>349</sup>
- take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level<sup>350</sup> and to help to reduce it on a global scale . In the case of global pollution, emission control is assessed with reference to the objectives set for implementation of the United Nations Framework Convention on Climate Change (UNFCCC) of 9 May 1992 Change, and of the Kyoto Protocol to the UNFCCC of 11 December 1997;<sup>351</sup>
- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery, effective and efficient, that is comprising measures which have been established to be sufficiently dissuasive and have a direct effect on polluting emission levels;<sup>352</sup>
- assess health risks through epidemiological monitoring of the groups concerned.<sup>353</sup>

*Nuclear hazards for communities living in the vicinity of nuclear power plants*

The dose limits should be in accordance with the 1990 recommendations of the International Commission for Radiation Protection. The assessment will vary depending on the extent to which energy production is based on nuclear power.<sup>354</sup> All countries are required to protect their population against the consequences of nuclear accidents taking place abroad and having an effect on the country concerned.<sup>355</sup>

*Risks relating to asbestos*

Article 11 entails a policy that bans the use, production and sale of asbestos and products containing it.<sup>356</sup> There must also be legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and placing obligations on enterprises concerning waste disposal.<sup>357</sup>

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<sup>349</sup> Conclusions XV-2, Addendum, Slovakia, p. 213.

<sup>350</sup> Conclusions 2005, Moldova, article 11§3, p. 487.

<sup>351</sup> Conclusions XV-2, Italy, p. 332.

<sup>352</sup> Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint n° 30/2005, decision on the merits of 6 December 2006, §§ 203, 209, 210 and 215.

<sup>353</sup> Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint n° 30/2005, decision on the merits of 6 December 2006, §§ 203 and 220.

<sup>354</sup> Conclusions XV-2, France, pp. 213-214.

<sup>355</sup> Conclusions XV-2, Denmark, pp. 131-132.

<sup>356</sup> Conclusions XVII-2, Portugal, p. 686.

<sup>357</sup> Conclusions XVII-2, Latvia, p. 502.

*Food safety*

The Committee refers to the resolution adopted by the 53<sup>rd</sup> World Health Assembly in May 2000 on food safety and recognises the relevance of international strategies. However, to comply with the Charter in this area, states must also establish national food hygiene standards with legal force that take account of relevant scientific data, establish and maintain machinery for monitoring compliance with these standards throughout the food chain, develop, implement and regularly update systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases.<sup>358</sup>

The Committee also considers preventive and protective measures concerned with water and noise pollution and - in the case of states that have not accepted Article 31 (right to housing) – the enforcement of public health standards in housing. In each case, the Committee considers both the relevant legislation and the measures to implement it.<sup>359</sup>

Tobacco, alcohol and drugs

Anti-smoking measures are particularly relevant for the compliance with Article 11 since smoking is a major cause of avoidable death in developed countries (in Europe 30% of deaths from cancer are attributable to smoking) and is associated with a wide range of diseases (cardiac and circulatory diseases, cancers, pulmonary diseases, etc.). Smoking kills one adult in ten throughout the world. The World Health Organisation (WHO) forecasts an increase to up to one in every six deaths by 2030, which is more than the figure for any other cause of death. It also notes that WHO is drawing up a convention on measures to combat smoking and points out that, as part of the Health for All campaign, the Organisation has set a target for European countries of raising the proportion of non-smokers in the population to at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke.<sup>360</sup>

To be effective, any prevention policy must restrict the supply of tobacco through controls on production, distribution, advertising and pricing.<sup>361</sup> In particular, the sale of tobacco to young persons must be banned.<sup>362</sup> as must smoking in public places, including transport, and advertising on posters and in the press.<sup>363</sup> The Committee assesses the effectiveness of such policies on the basis of statistics on tobacco consumption.<sup>364</sup>

This approach also applies *mutatis mutandis* to anti-alcoholism and drug addiction measures.<sup>365</sup>

<sup>358</sup> Conclusions XV-2, Addendum, Cyprus, pp. 32.

<sup>359</sup> Conclusions XVII-2, Portugal, p. 687.

<sup>360</sup> Conclusions XV-2, Greece, p. 252-253.

<sup>361</sup> Conclusions XVII-2, Malta, p. 560-561.

<sup>362</sup> Conclusions XVII-2, Portugal, p. 499.

<sup>363</sup> Conclusions XV-2, Greece, p. 271-272.

<sup>364</sup> Conclusions XVII-2, Malta, p. 560-561.

<sup>365</sup> Conclusions XVII-2, Malta, p. 560-561.

### Immunisation and epidemiological monitoring

States must operate widely accessible immunisation programmes. They must maintain high coverage rates not only to reduce the incidence of these diseases, but also to neutralise the reservoir of the virus and thus achieve the goals set by WHO to eradicate several infectious diseases.<sup>366</sup>

Countries must demonstrate their ability to cope with infectious diseases, such as arrangements for reporting and notifying diseases, special treatment for AIDS patients and emergency measures in case of epidemics.<sup>367</sup>

### Accidents

States must take steps to prevent accidents. The main sorts of accident covered are road accidents, domestic accidents, accidents at school, accidents during leisure time, including those caused by animals,<sup>368</sup> and accidents at work. Trends in accidents at work are considered from the standpoint of health and safety at work (Article 3).

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<sup>366</sup> Conclusions XV-2, Belgium, p. 103.

<sup>367</sup> Conclusions XVII-2, Latvia, p. 504.

<sup>368</sup> Conclusions 2005, Moldova, p. 457.



## Article 12

### All workers and their dependants have the right to social security

#### 1. With a view to ensuring the effective exercise of the right to social security, the Parties undertake to establish or maintain a system of social security

##### Definitions

Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed.<sup>369</sup> States must ensure this right through the existence of a social security system established by law and functioning in practice. Each country is free to define its own social security system. The European Social Charter neither imposes a common model, nor seeks to harmonise social security legislation but rather to lay down minimum common standards.

Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined allowances related to certain risks. These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.<sup>370</sup>

##### Material and personal scope

A social security system exists within the meaning of Article 12§1 when it complies with the following criteria:<sup>371</sup>

- Firstly, the social security system should cover the traditional risks and therefore provide the following benefits: medical care, sickness benefit, unemployment benefit, old age benefit, employment injury benefit, family benefit, and maternity benefit.<sup>372</sup>
- Secondly, it must be collectively financed, which means funded by contributions of employers and employees and/or by the state's budget.
- Thirdly, it must cover a significant percentage of the population in respect of health insurance and family benefits, and the system must cover a significant percentage of the active population as regards sickness and maternity benefits, unemployment benefits, pensions, and work accidents or occupational diseases benefits.<sup>373</sup> The system must cover a significant percentage of the active population. When the system is financed by taxation, its coverage in terms of persons protected should rest on the principle of non-discrimination, without prejudice to the conditions for entitlement (means-test, etc.).<sup>374</sup>

Equal treatment on the ground of gender with respect to social security is dealt with under Article 20. No discrimination on the basis of sex should occur as regards the material scope of the social security system, access to the system, the calculation and the length of benefits.

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<sup>369</sup> Conclusions XIV-1, Ireland, p. 424.

<sup>370</sup> Conclusions XIII-4, statement of interpretation on Article 12, p. 36.

<sup>371</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10.

<sup>372</sup> Conclusions 2006, Bulgaria, p. 116.

<sup>373</sup> Conclusions 2006, Bulgaria, p. 116.

<sup>374</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10.

### Social security benefits and their adequacy

A social security system must also guarantee an effective right to social security with respect to the benefits provided under each branch.<sup>375</sup> Under Article 12§1, when they are income-replacement benefits, the level of benefits should be such as to represent a reasonable proportion of the previous income and should never fall below the poverty threshold defined as 50% of median equivalised income, as calculated on the basis of the Eurostat at-risk-of-poverty threshold value; otherwise the level is inadequate<sup>376</sup>.

However, in the event that the level of the benefit in question falls between 40% and 50% of median equivalised income, its combination with other benefits, including those of a social assistance nature is taken into account and is considered to be in conformity with Article 12§1 where the level of the combined benefits reaches 50%.<sup>377</sup> When the level of the benefit originally falls below 40% of the median equivalised income, it is manifestly inadequate, and therefore its completion with other benefits cannot bring the situation into conformity with Article 12§1.<sup>378</sup> The inadequacy of a benefit in a single branch is sufficient to bring the situation into non-conformity.<sup>379</sup>

Unemployment benefits must also meet specific conditions to be in conformity with Article 12§1: their payment must be for a reasonable duration<sup>380</sup> and there must be a reasonable initial period during which an unemployed person may refuse a job or a training offer not matching his previous skills without losing his unemployment benefits.<sup>381</sup> The threat of suspension or withdrawal of their unemployment benefits during this initial period may in certain circumstances infringe their right to earn a living in an occupation freely entered upon (Article 1§2).

Under Article 12§1, the existence of maternity and family branches is taken into consideration, but the scope and level of the benefits are assessed under, respectively, Articles 8 and 16.<sup>382</sup>

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<sup>375</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 36.

<sup>376</sup> Conclusions 2006, Bulgaria, p. 118.

<sup>377</sup> Conclusions 2006, Estonia, p. 107.

<sup>378</sup> Conclusions XVIII-1, Austria, p. 20.

<sup>379</sup> Conclusions 2006, Portugal, p. 703.

<sup>380</sup> Conclusions XVIII-1, Malta, p. 215.

<sup>381</sup> Conclusions XVIII-1, Germany, p. 131.

<sup>382</sup> Conclusions 2006, Bulgaria, p. 119.

## **2. With a view to ensuring the effective exercise of the right to social security, the Parties undertake to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security**

Note: Under the 1961 Charter it was “a satisfactory level at least equal to that required for ratification of International Labour Convention(No 102) Concerning Minimum Standards of Social Security.

Article 12§2 obliges states to establish and maintain a social security system which is least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of a higher number of parts than ILO Convention No 102; six of the nine parts must be accepted although certain branches count for more than one part medical care counts as two parts, and old age counts as three. Each contingency sets minimum levels of personal coverage and minimum levels of benefits.

Where a state has ratified the European Code of Social Security the Committee bases its conclusions under this paragraph on the Committee of Minister’s Resolutions under the Code (which are in turn based on the assessment of the ILO Committee of Experts and the Committee of Experts on Social Security (CS-SS)). Failure to comply with the European Code of Social Security will lead to a conclusion of non-conformity with Article 12§2, where the state is not in compliance with at least the minimum parts for ratification.<sup>383</sup>

When the State concerned has not ratified the European Code of Social Security, the Committee makes its own assessment of the social security system in order to decide on the conformity with Article 12§2.<sup>384</sup>

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

Article 12§3 requires states to improve their social security system, the expansion of schemes, protection against new risks or increase of benefits, are examples improvement.<sup>385</sup>

A restrictive evolution in the social security system is not automatically in violation of Article 12§3. The Committee’s assessment of the situation is based on the following criteria:<sup>386</sup>

- the nature of the changes (field of application, conditions for granting allowances, amounts of allowance, etc.);
- the reasons given for the changes and the framework of social and economic policy in which they arise;

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<sup>383</sup> Conclusions 2006, Italy, p.448.

<sup>384</sup> Conclusions XIV-1, Finland, p. 223.

<sup>385</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11.

<sup>386</sup> Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11.

- the extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);
- the necessity of the reform;
- the existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
- the results obtained by such changes.

Measures taken in order to consolidate public finances may be considered as a necessary means to ensure the maintenance and sustainability of the social security system. However, any modifications should not undermine the effective social protection of all members of society against social and economic risks and should not transform the social security system into a basic social assistance system.<sup>387</sup>

Therefore any changes to a social security system must nonetheless ensure the maintenance of a basic compulsory social security system which is sufficiently extensive.<sup>388</sup>

**4. With a view to ensuring the effective exercise of the right to social security, the Parties undertake to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:**

**a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;**

***Appendix : The words “and subject to the conditions laid down in such agreements” in the introduction to this paragraph are taken to imply inter alia that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.***

*Personal scope of Article 12§4*

In defining the personal scope of Article 12§4, reference must be made to paragraph 1 of the Appendix to the Charter, which reads “Without prejudice to Article 12§4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned”. It follows from the Appendix to the Charter that Article 12§4 applies to nationals of other States Parties who no longer reside on the territory concerned but who did

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<sup>387</sup> Conclusions XIV-1, Statement of Interpretation on Article 12, p. 47.

<sup>388</sup> Conclusions XIV-1, Statement of Interpretation on Article 12, p. 48.

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reside or worked regularly there in the past and acquired social security rights.

The scope of Article 12§4 extends to refugees and stateless persons. Self employed workers<sup>389</sup> are also covered.<sup>390</sup>

Finally, the principle of reciprocity does not apply to Article 12§4.<sup>391</sup>

#### *Material scope of Article 12§4a*

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

#### Right to equal treatment

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

Both direct and indirect discrimination are covered. National legislation cannot reserve a social security benefit to nationals only, or impose extra or more restrictive conditions on foreigners, neither may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree.<sup>392</sup> However, legislation may require a completion of a period of residence for non-contributory benefits. In this respect, Article 12§4 requires that any period of residence is reasonable.<sup>393 394</sup>

As regards child benefit, a condition that the child concerned resides on the territory of the paying state is compatible with Article 12§4.<sup>395</sup> This means that any child resident in a defined country is entitled to the payment of family benefits on an equal footing with nationals of the country concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state Parties are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. However, since not all countries apply such a system, states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle.<sup>396</sup>

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<sup>389</sup> Conclusions XIV-1, Turkey, p. 769.

<sup>390</sup> Conclusions XIV-1, Turkey, p. 768.

<sup>391</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43.

<sup>392</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43.

<sup>393</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44.

<sup>394</sup> Conclusions 2004, Lithuania, p. 370.

<sup>395</sup> Conclusions 2006, Statement of Interpretation on Article 12 §4, p. 13.

<sup>396</sup> Conclusions 2006, Statement of Interpretation on Article 12§4, see for example Cyprus p. 160.

Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient. The level of benefit may in this case be reduced where the cost of living in the child's country of residence is significantly lower, but the reduction must be proportional to the differences of the cost of living in the countries concerned.<sup>397 398</sup>

Right to retention of accrued rights

Invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained irrespective of whether the beneficiary moves between the territories.<sup>399</sup> Due to the particular nature of unemployment benefit, which is a short-term benefit closely linked to trends in the labour market, Article 12§4 does not require it to be exported.<sup>400</sup>

With respect to the retention of benefits (exportability), the obligations entered into by States Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable.<sup>401</sup> In order to ensure the exportability of benefits, States may choose between bilateral agreements or any other means<sup>402 403</sup> such as unilateral, legislative or administrative measures.

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

*Material scope of Article 12§4b*

Right to maintenance of accruing rights

There should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. This requires, where necessary, the aggregation of employment or insurance periods completed in another territory and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit.<sup>404</sup>

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<sup>397</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44.

<sup>398</sup> Conclusions XIV-1, Germany, p. 314.

<sup>399</sup> Conclusions XIV-1, Finland, p. 230.

<sup>400</sup> Conclusions XIV-1, Norway, p. 630.

<sup>401</sup> Conclusions XVI-1, Belgium, p. 74.

<sup>402</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 54.

<sup>403</sup> Conclusions XIII-2, Norway, p.122.

<sup>404</sup> Conclusions XIII-4, Statement of Interpretation on Article 12, p. 45.

States may choose between the following means in order to ensure maintenance of accruing rights: multilateral convention, bilateral agreement or, unilateral, legislative or administrative measures.<sup>405</sup> States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.<sup>406</sup>

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<sup>405</sup> Conclusions XIV-1, Portugal, p. 669.

<sup>406</sup> Conclusions 2006, Italy.





## Article 13

### **Anyone without adequate resources has the right to social and medical assistance**

**1. With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition**

The Charter is the only treaty which guarantees the right to social and medical assistance. It breaks with the traditional concept of assistance, which is confused with the moral duty of charity: “the Contracting Parties are not merely empowered to grant assistance as they think fit; they are under an obligation which they may be called on in court to honour”.<sup>407</sup>

The right to protection from poverty and exclusion is the subject of another provision of the Charter – Article 30. The right to social assistance provided for in Article 13§1 is regarded as one aspect of that provision.<sup>408</sup>

The dichotomy between social security and social assistance is highly controversial, it appears in the Charter, which approaches the two areas in two separate Articles (Article 12 and Article 13) carrying different undertakings. The Committee must therefore take this division into account. The wording of the Charter itself contains no specific indications as to the scope of each of these two concepts. Whilst taking into consideration the views of the state concerned as to whether a particular benefit should be seen as social assistance or as social security, the Committee pays most attention to the purpose of and the conditions attached to the benefit in question.

It thus considers as social assistance, benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, as Article 13§1 demonstrates, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health.<sup>409</sup>

#### Conditions for granting assistance

The system of assistance must be universal in the sense that benefits must be payable to “any person” on the sole ground that he/she is in need. This does not mean that specific benefits cannot be provided for the most vulnerable population categories, as long as persons who do not fall into these categories are entitled to appropriate assistance.<sup>410 411</sup> Similarly, a minimum age limit may be set on the grant of benefits on condition that the rule ensures that young

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<sup>407</sup> Conclusions I, Statement of Interpretation on Article 13§1, pp. 65-67.

<sup>408</sup> Conclusions 2006, France, pp. 329-330.

<sup>409</sup> Conclusions XIII-4, Statement of Interpretation on Articles 12 and 13, pp.34-36.

<sup>410</sup> Conclusions X-2, Spain, p. 121.

<sup>411</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

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people below that age limit receive appropriate assistance.<sup>412</sup> By contrast, a condition in respect of length of residence in the country or part of its territory (as distinct from a condition in respect of stay or presence) is not in keeping with Article 13§1.<sup>413</sup>

The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner”.<sup>414</sup> <sup>415</sup> Conversely, appropriate assistance is that which enables any person to meet his/her basic needs (see *infra*). The level of resources below which a person is entitled to assistance is assessed by reference to the poverty threshold in the sense defined *infra*.

The right to assistance presupposes that the person is unable to obtain resources “either by his own efforts or from other sources, in particular by benefits under a social security scheme”.

The establishment of a link between social assistance and a willingness to seek employment or to receive vocational training is in keeping with the Charter, in so far as such conditions are reasonable and consistent with the aim pursued, that is to say to find a lasting solution to the individual’s difficulties. Reducing or suspending social assistance benefits can only be in conformity with the Charter if it does not deprive the person concerned of his/her means of subsistence.<sup>416</sup> <sup>417</sup> Furthermore, it must be possible to appeal against a decision to suspend or reduce assistance (see *infra*).

The reference to social security does not prejudge the link between social security and social assistance which exists within each state, whether the assistance machinery has evolved on the fringe of social security or is an intrinsic part of the system of social protection.

Family solidarity is not regarded as an “other source” where it appears as “a moral value not legally defined”.<sup>418</sup>

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<sup>412</sup> Conclusions XV-1, France, pp. 270-271.

<sup>413</sup> Conclusions XVIII-1, Czech Republic, p. 238.

<sup>414</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

<sup>415</sup> Conclusions XIV-1, Portugal, pp. 701-702.

<sup>416</sup> Conclusions XIV-1, Statement of Interpretation on Article 13§1, pp. 52-55.

<sup>417</sup> Conclusions 2006, Estonia, p. 208.

<sup>418</sup> Conclusions XIII-2, Greece, p. 129.

## Form of assistance

### *Social assistance*

Article 13§1 does not say what form social assistance should take. It may therefore take the form of benefits in cash or in kind. The Committee has observed that “an income guarantee has been established in most Contracting Parties”,<sup>419</sup> but has not in theory made the introduction of an income guarantee system a condition of conformity with Article 13§1. However, the situation of all states which have not introduced a general income guarantee system has been judged not to conform on the ground that their system of assistance does not cover the whole population.<sup>420</sup>

The income guarantee for elderly people is examined from the standpoint of Article 23 of the Charter (the right of elderly people to social protection).

### *Medical assistance*

Everyone who lacks adequate resources must be able to obtain free of charge “in the event of sickness the care necessitated by his condition”. In this context, medical assistance includes free or subsidised health care or payments to enable persons to pay for the care required by their condition.

The Committee has not determined what care must cover, nor whether it is limited to treating illness. It has stated that “it is not within its competence to define the nature of the care required, or the place where it is given”.<sup>421</sup> The seriousness of the illness cannot however be a factor in refusing to grant medical assistance.<sup>422</sup>

## Level and duration of assistance

Assistance must be “appropriate”, i.e. make it possible to live a decent life and to cover the individual’s basic needs. In order to assess the level of assistance, the Committee takes into account basic benefits, additional benefits and the poverty threshold in the country, which is set at 50% of the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of “equivalent adults” using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.) and calculated on the basis of the poverty risk threshold by Eurostat.

The Committee considers that assistance is appropriate where the monthly amount of assistance benefits – basic and/or additional – paid to a person living alone is not manifestly below the poverty threshold in the above sense.<sup>423</sup> In conducting this assessment, the Committee also takes the level of medical assistance into account.

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<sup>419</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

<sup>420</sup> Conclusions 2006, Moldova, pp. 122-123.

<sup>421</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>422</sup> Conclusions XIII-2, Greece p. 181 and Conclusions XIII-4, pp. 180-181.

<sup>423</sup> Conclusions 2004, Lithuania, p. 373.

Social assistance must be provided for as long as the situation of need persists. Subject to participating in training or accepting employment (see *supra*), the right to social assistance must be conditional only on the criterion of necessity, and the availability of adequate resources must be the sole criterion according to which assistance may be denied, suspended or reduced.<sup>424</sup>

#### Individual right supported by a right of appeal

The right to assistance may not depend solely on the discretion of the administrative authorities: it must constitute an individual right laid down in law and be supported by an effective right of appeal.<sup>425</sup>

#### *Statutory right*

The law must lay down objective criteria and phrase them in sufficiently precise terms. So as not to leave the assessment of the state of need and the necessity of assistance entirely in the hands of the competent authority,<sup>426</sup> the law must define the elements taken into account in order to assess the state of need and make the criteria for assessment of that need clear, as well as the procedure for determining whether a person lacks adequate resources, including the methods used to investigate resources and needs. Such information has been required since the very first conclusions (for example, Conclusions I, p. 66).<sup>427</sup>

#### *Effective appeal*

The right secured by Article 13§1 places an obligation on states “which they may be called on in court to honour”.<sup>428</sup> This does not have to be a court within the country’s judicial system, or a judicial body in the institutional sense. The Committee focuses on the judicial role of the review body, which is to rule on cases within its jurisdiction and hand down binding decisions based on the law. The body may therefore be an ordinary court or an administrative body, provided that it offers the guarantees mentioned below.

- It must be a body independent of the executive and of the parties. In deciding whether a body may be considered independent, the Committee looks at the manner of appointment of its members, the duration of their term of office and existing safeguards against outside pressures (rules governing removal from office, dismissal, instructions, qualifications required, etc.);<sup>429</sup>
- All unfavourable decisions concerning the granting and maintenance of assistance must be subject to appeal, including decisions to suspend or reduce assistance benefits, for example in the event of refusal by the person concerned to accept an offer of employment or training.<sup>430</sup>

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<sup>424</sup> Conclusions XVIII-1, Spain, p. 745.

<sup>425</sup> Conclusions I, Statement of Interpretation on Article 13§1, p. 64.

<sup>426</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>427</sup> See also the Conclusions XIII-4, Statement of Interpretation on Article 13, p. 54-57.

<sup>428</sup> Conclusions I, Statement of Interpretation on Article 13, p. 64.

<sup>429</sup> Conclusions XVIII-1, Iceland, p. 444.

<sup>430</sup> Conclusions XVIII-I, Hungary, p. 406.

- The review body must have the power to judge the case on its merits, not merely on points of law.<sup>431 432</sup> If this requirement concerning the scope of the appeal is not satisfied in the first instance, it must be satisfied at the subsequent level of review.<sup>433</sup>

In order to guarantee applicants the effective exercise of their right of appeal, legal aid must be provided.<sup>434</sup>

#### Personal scope

In accordance with the Appendix to the Charter, foreigners who are nationals of Contracting Parties and are lawfully resident or working regularly in the territory of another Party and lack adequate resources must enjoy an individual right to appropriate assistance on an equal footing with nationals,<sup>435</sup> without the need for reciprocity.<sup>436</sup> The appendix to the 1961 Charter requires states to grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28th July 1951, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Contracting Party under the said Convention and under any other existing international instruments applicable to those refugees. The Charter extends that requirement to stateless persons within the meaning of the New York Convention of 1954 on the status of stateless persons.

Equality of treatment must be guaranteed once the foreigner has been given permission to reside lawfully or to work regularly in the territory of a Contracting Party. The Charter does not regulate procedures for admitting foreigners to the territory of Parties, and the rules governing “resident” status are left to national legislation. This stems in particular from the appendix to the Charter in respect of Article 18§1: “It is understood that these provisions [Article 18§1 and paragraph 18 of Part I] are not concerned with the question of entry into the territories of [states which have ratified the Charter] and do not prejudice the provisions of the European Convention on Establishment, signed at Paris on 13th December 1955.”

As a result, that status may be made subject to a condition of length of residence or presence in the territory in order to enjoy equality of treatment, always provided that it is not manifestly excessive.<sup>437</sup>

The guarantee of equal treatment must preferably be enshrined in legislation. The Committee has however accepted that the extension may derive from an administrative circular.<sup>438</sup>

Equality of treatment means that entitlement to assistance benefits, including income guarantees, is not confined in law to nationals or to certain categories of foreigners<sup>439</sup> and that the criteria applied in practice for the granting of benefits do not differ by reason of nationality.<sup>440</sup>

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<sup>431</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>432</sup> Conclusions XVIII-1, Hungary, p. 406.

<sup>433</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>434</sup> Conclusions XVI-1, Ireland, p. 366.

<sup>435</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>436</sup> Conclusions VII, Statement of Interpretation on Article 13§4, p. 77.

<sup>437</sup> Conclusions XVIII-1, Czech Republic, p.240.

<sup>438</sup> Conclusions XIV-1, Greece, p. 378.

<sup>439</sup> Conclusions XVIII-1, Belgium, p. 88.

<sup>440</sup> Conclusions XVIII-1, Germany, p. 319.

Equality of treatment also implies that additional conditions such as length of residence,<sup>441</sup> or conditions which are harder for foreigners to meet, may not be imposed on them.

### Repatriation

Foreigners lawfully resident in the territory of a Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their lawful residence or regular work continues, they enjoy equal treatment as well as (where such persons are migrant workers) the protection afforded by Article 19§8, which does not permit expulsion on the ground of needing assistance.<sup>442 443</sup>

Once the validity of the residence and/or work permit has expired, the Parties have no further obligation towards foreigners covered by the Charter, even if they are in a state of need. However, this does not mean that a country's authorities are authorised to withdraw a residence permit solely on the grounds that the person concerned is without resources and unable to provide for the needs of his family<sup>444</sup>.

## **2. With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights**

Under Article 13§2, persons receiving assistance must not suffer as a result any diminution of their political or social rights.

Any discrimination against persons receiving assistance that might result from an express provision must be eradicated.<sup>445 446</sup>

The social rights concerned must at least include those embodied in the Charter, starting with the right to assistance itself. For example, confining eligibility for social services in general and assistance in particular to holders of identity documents or certificates of residence in a particular municipality could be incompatible with Article 13§2 as persons without the resources necessary to establish a fixed place of residence might be deprived of assistance.<sup>447</sup>

The political rights concerned go beyond those embodied in the European Convention on Human Rights.<sup>448</sup> They include, for example, access to civil service posts and the right to vote.

Since political rights such as the right to vote are in principle restricted to nationals, on the grounds that they imply a role in the exercise of public authority, the Committee has ruled that "[any] assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that

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<sup>441</sup> Conclusions XVIII-1, Denmark, pp.144-145.

<sup>442</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57.

<sup>443</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 54-55.

<sup>444</sup> Conclusions XIV-1, Norway, p. 661.

<sup>445</sup> Conclusions I, Statement of Interpretation on Article 13§2, p. 64.

<sup>446</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 58-59.

<sup>447</sup> Conclusions 2006, Bulgaria, p. 126.

<sup>448</sup> Conclusions XVIII-1, Malta, pp. 528-529.

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foreigners with a certain length of residence may enjoy more extensive rights".<sup>449</sup>

### **3. With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want**

Article 13§3 is concerned specifically with services offering advice and personal assistance to persons without adequate resources or at risk of becoming so.

Article 14§1 is concerned with social services in general whereas Article 13§3 is a more specific provision.<sup>450</sup> Measures to co-ordinate services concerned with poverty and social exclusion are considered under Article 30 of the Charter and those concerned with social housing and measures to deal with homelessness are covered by Article 31.<sup>451</sup>

#### Benefits and services

Article 13§3 does not require specific services separate from the social welfare services of Article 14, so long as persons without adequate resources receive benefits and services adapted to their needs.<sup>452</sup> What distinguish Article 13§3 from Article 14 therefore are the types of benefits and services under consideration.

Article 13§3 must be seen as complementing Article 13§1. The Committee has stated that "the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required".<sup>453</sup> The social services covered by Article 13§3 must therefore play a preventive, supportive and treatment role. This means offering advice and assistance to make those concerned fully aware of their entitlement to social and medical assistance and how they can exercise those rights.

#### Criteria for equal and effective access

The criteria selected by the Committee to determine whether those concerned have equal and effective access to services and to assess the quality of those services and other issues relating to users' rights and participation are the same as those used to assess general social services (see Article 14). In countries where the general social services are responsible for the application of Article 13§3, the Committee refers to its assessment of the situation under Article 14§1.<sup>454</sup> The one distinguishing feature of Article 13§3 is that the services concerned must be provided free of charge.<sup>455</sup>

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<sup>449</sup> Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 54-57.

<sup>450</sup> Conclusions 2005, Statement of Interpretation on Article 14§1.

<sup>451</sup> Conclusions 2005, Statement of Interpretation on Article 14§1.

<sup>452</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>453</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 52.

<sup>454</sup> Conclusions XVIII-1, Iceland, p. 447.

<sup>455</sup> Conclusions XVII-2 and 2005, Statement of Interpretation on Article 14§1.

**4. With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Contracting Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11th December 1953.**

***Appendix: Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.***

Article 13§4 grants foreign nationals entitlement to emergency social and medical assistance.

#### Beneficiaries of Article 13§4

The personal scope of Article 13§4 differs from that of other Charter provisions. The beneficiaries of this right to social and medical assistance are foreign nationals who are lawfully present in a particular country but do not have resident status and ones who are unlawfully present. This is stated in the Charter itself. Paragraph 1§1 of the Appendix, concerning its personal scope, states that Articles 1 to 17 and 20 to 31 apply to foreigners "only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned", but adds that this rule is "without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4". Article 13 para. 4 refers to "nationals of other Contracting Parties lawfully within their territories". The Committee has extended the scope of the right to emergency medical assistance.<sup>456</sup>

By definition, no condition of length of presence can be set on the right to emergency assistance.<sup>457</sup>

#### Right to emergency assistance

States are required to provide for those concerned to cope with an immediate state of need (accommodation, food, emergency care and clothing).<sup>458</sup> They are not required to apply the guaranteed income arrangements under their social protection systems. While individuals' need must be sufficiently urgent and serious to entitle them to assistance under Article 13§4, this should not be interpreted too narrowly.<sup>459</sup> The provision of emergency medical care must be governed by the individual's particular state of health.<sup>460</sup>

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<sup>456</sup> International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32.

<sup>457</sup> Conclusions XIV-1, United Kingdom, p. 845.

<sup>458</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.

<sup>459</sup> Conclusions XIV-1, Netherlands, p. 598.

<sup>460</sup> Conclusions XIV-1, Iceland, p. 417.



Conditions governing repatriation – links with the 1953 Convention

*Foreign nationals' right to assistance must be "in accordance with [states'] obligations under the European Convention on Social Medical Assistance, signed at Paris on 11<sup>th</sup> December 1953".*

Since the personal and material scope of Article 13§4 is defined in the Charter, the only link between Article 13§4<sup>461</sup> 462 and the 1953 Convention concerns states' right to repatriate foreigners because they are in need of assistance, in accordance with the Convention's provisions on repatriation. The conditions governing repatriation (Articles 7-10 of the Convention) are: Article 7 authorises parties to repatriate persons on the sole ground that they are in need of assistance. This option may only be applied in the greatest moderation and then only where there is no objection on humanitarian grounds, and subject to the following specific conditions:

- those concerned have not been continuously resident in the party's territory for at least five years. This condition does not apply to nationals of states party to the Charter since foreign nationals legally present in another party may not in any case be repatriated on the ground that they need assistance (see above);
- they are in a fit state of health to be transported;
- they have no close ties in the territory in which they are resident.

In addition, repatriating states must bear the cost of repatriation as far as the frontier of the territory to which the national is being repatriated (Article 8) and provide relevant information to the diplomatic or consular authorities of the country of origin and the authorities of any country or countries of transit (Article 10). Finally, if the country of which an assisted person claims to be a national does not recognise him or her as such, the grounds of the disclaimer must be forwarded to the country of residence (Article 9).

However, the requirement to accept and apply the Article 13§4 provision on repatriation is not conditional on ratification of the 1953 Convention, which means that States that are bound by Article 13§4 must also comply with the Convention provisions on the conditions and arrangements for repatriation of nationals of Charter parties that have not ratified the Convention. According to the Appendix to Article 13§3, states that have ratified the Charter but are not parties to the Convention may accept Article 13§4, "provided that they grant to nationals of other [states that have ratified the Charter] a treatment which is in conformity with the provisions of the said convention".

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<sup>461</sup> Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52.

<sup>462</sup> Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57.



## Article 14

### Everyone has the right to benefit from social welfare services

**1. With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment**

The right to benefit from social welfare services provided for by Article 14§1<sup>463</sup> requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Measures to fight poverty and social exclusion are dealt with under Article 30 of the Charter, while social housing services and measures to combat homelessness are dealt with under Article 31.

The provision of social welfare services concerns everybody lacking capabilities to cope, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

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<sup>463</sup> Conclusions 2005, Statement of Interpretation on Article 14§1. See, for example, Conclusions 2005, Bulgaria, pp. 32-33.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- An individual right of access to counselling and advice from social services shall be guaranteed to everyone. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restrictive and at any event ensure care in case of urgent need;
- Access to social services should be guaranteed to those who lack personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment of the individual and groups to the social environment;
- The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity;
- Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- The geographical distribution of these services shall be sufficiently wide;
- Recourse to these services must not interfere with people's right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;
- there must be mechanisms for supervising the adequacy of services, public as well as private.

## **2. With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services**

Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services<sup>464</sup>. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include, the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

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<sup>464</sup> Conclusions 2005, Statement of Interpretation on Article 14§2, all countries. See, in particular, Conclusions 2005, Bulgaria, pp. 37-38.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the users as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services, for example by taking action to strengthen the dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user-groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.



## Article 15

### **Disabled persons have the right to independence, social integration and participation in the life of the community**

Article 15 reflects and advances the change in disability policy that has occurred over the last decade or more away from welfare and segregation and towards inclusion and choice. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15.<sup>465</sup>

Article 15 is to be seen both as reflecting and advancing a profound shift of values in all European countries over the past decade away from treating them as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”.<sup>466</sup>

Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.<sup>467</sup>

The first two paragraphs deal with the decisive, “classic” integration issues: education and employment. The third deals with equal treatment in other areas of community life.

#### **1. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private**

According to Article 15§1, all persons with disabilities have a right to education and training: primary education, general and vocational secondary education as well as other forms of vocational training.

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<sup>465</sup> Conclusions 2003, Statement of Interpretation on article 15, p. 10 §5.

<sup>466</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48.

<sup>467</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48.

Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age. It thus also covers both children and adults who face particular disadvantages in education, such as persons with intellectual disabilities. Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two<sup>468</sup>.

Persons with disabilities (children, adolescents, adults) must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special schools.

Lessons provided in mainstream schools and, if need be, in special schools must be adequate.<sup>469</sup> This means that in order to guarantee an equal and non-discriminatory treatment of persons with disabilities, mainstream and special schools must ensure adapted teaching.

States must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made in setting up education systems which exclude nobody.<sup>470</sup>

**2. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services**

Article 15§2 requires states to promote access to employment on the open labour market for persons with disabilities. It applies to both physically and intellectually disabled persons.<sup>471</sup>

<sup>468</sup> Conclusions 2007, Statement of Interpretation on Article 15 § 1, p.12.

<sup>469</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48.

<sup>470</sup> Conclusions 2005, Cyprus, p. 96.

<sup>471</sup> Conclusions I, Statement of Interpretation on article 15§2, p. 208.



To this aim, legislation must prohibit discrimination on the basis of disability in employment<sup>472</sup>, as well as the dismissal on the basis of disability. In addition, there must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease<sup>473</sup>.

States enjoy a margin of appreciation concerning the other measures they take in order to promote access to employment of persons with disability. Article 15§2 does not require the introduction of quotas but, when such a system is applied, the Committee examines its effectiveness when assessing conformity with Article 15§2.<sup>474</sup>

Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to enter the open labour market.

Persons working in sheltered employment facilities where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights.<sup>475</sup>

**3. With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure**

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail, sea and air), housing (public, social and private), cultural activities and leisure (social and sporting activities).<sup>476</sup> To this purpose Article 15§3 requires:<sup>477</sup>

- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;

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<sup>472</sup> Conclusions 2003, Slovenia, p. 503.

<sup>473</sup> Conclusions 2007, Statement of Interpretation on Article 15§2, §10, p. 12.

<sup>474</sup> Conclusions XIV-2, Belgium, p. 152.

<sup>475</sup> Conclusions XVII-2, Czech Republic, pp. 145-146.

<sup>476</sup> Conclusions 2005, Norway, p. 558.

<sup>477</sup> Conclusions 2007, Slovenia, p.1033.

- the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated;

People with disabilities should have a voice in the design, implementation and review of such a policy;<sup>478</sup>

Technical aids must be available either for free or subject to a contribution towards their cost;<sup>479</sup>

Telecommunications and new information technology must be accessible<sup>480</sup> and sign language must have an official status.<sup>481</sup>

Public transports (land, rail, sea and air), all newly constructed or renovated public buildings, facilities and buildings open to the public, and cultural and leisure activities should be physically accessible.<sup>482</sup>

The needs of persons with disabilities must be taken into account in housing policies, including the construction of an adequate supply of suitable, public, social or private, housing. Further, financial assistance should be provided for the adaptation of existing housing.<sup>483</sup>

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<sup>478</sup> Conclusions 2003, Italy, p. 297.

<sup>479</sup> Conclusions 2007, Finland, p.455.

<sup>480</sup> Conclusions 2005, Estonia, p. 188.

<sup>481</sup> Conclusions 2003, Slovenia, p. 509.

<sup>482</sup> Conclusions 2003, Italy, p. 299.

<sup>483</sup> Conclusions 2003, Italy, p. 299.

## Article 16

**The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development**

**With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means**

*Appendix: It is understood that the protection afforded in this provision covers single-parent families.*

Since "family" can mean different things in different places and at different times, the Charter refers to the definitions used in national law. No distinction is made between the various models of family and, in keeping with the case law of the European Court of Human Rights in relation to Article 8 of the Convention; the scope of Article 16 is not restricted to family based on marriage. Consequently, every constellation defined as "family" by national law falls under the protection of Article 16.

States enjoy a margin of appreciation to choose the means in their endeavour to ensure the social, legal and economic protection of the various types of families that can be found in the population.<sup>484</sup>

### 1. Social protection

#### *Housing for families*

Article 16 guarantees a right to decent housing only from the family prospective. In this context. This provision focuses on the right of families to an adequate supply of housing, on the obligation to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and includes essential services.<sup>485</sup>

The destruction of housing or forced evacuation of villages is contrary to Article 16. In that situation, States must provide effective remedies to the victims,<sup>486</sup> and must take measures in order to rehouse families in decent accommodation or to provide financial assistance.<sup>487</sup>

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<sup>484</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 13.

<sup>485</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31§2005, Decision on admissibility of 10 October 2005, §9.

<sup>486</sup> Conclusions XIII-1, Turkey, pp. 258-259.

<sup>487</sup> Conclusions XIII-3, Turkey, pp. 381-385.

Roma families should effectively enjoy such right. Therefore, the following points are examined: the availability of suitable temporary and permanent accommodation.

*Childcare facilities*

States are required to ensure that childcare facilities are available, affordable and of good quality (coverage with respect to the number of children aged 0-6, ratio of staff to children, staff training, suitable premises and cost of childcare to parents, etc.).<sup>488</sup>

*Family counselling services*

Families should have access to appropriate social services, in particular in times of difficulty. States should provide *inter alia* family counselling and psychological guidance advice on child raising.

*Participation of associations representing families*

In order to ensure that the views of families are taken into account in the formulation of family policy, all civil organisations representing families should be consulted by the relevant authorities.<sup>489</sup>

## 2. Legal Protection

*Rights and obligations of spouses*

Spouses must be equal, particularly in respect of rights and duties within the couple (marital authority, ownership, administration and use of property,<sup>490</sup> etc.) and children (parental authority, management of children's property).

In cases of family break down, Article 16 requires the provision of legal arrangements to settle marital conflicts and, in particular, conflicts relating to children: care and maintenance, custody and access to children.

*Mediation services*

States are required to provide family mediation services. The following issues are examined: access to the said services as well as whether they are free of charge and cover the whole country, and how effective they are.<sup>491</sup>

*Domestic violence against women*

Article 16 applies to all forms of domestic violence. Since violence against children is more specifically addressed by Article 17, the issue is examined under this provision.

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<sup>488</sup> Conclusions XVII-1, Turkey, p. 490.

<sup>489</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 15.

<sup>490</sup> Conclusions XVI-1, United Kingdom, p. 699.

<sup>491</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

With a view to interpreting States obligations in this field, it is appropriate to refer to the European Court of Human Rights (“the Court”) judgment *X and Y v. the Netherlands* of 26 March 1985. The Court pointed out that Article 8 of the European Convention on Human Rights which guarantees the right to respect for private and family life, does not only prevent the State from interfering but it implies also positive obligations in order to ensure effective respect for the rights guaranteed by Article 8. “These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves” (§23).

The same applies to Article 16. States are required to ensure an adequate protection with respect to women, both in law (appropriate measures –including restraining orders- and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). These issues are assessed in the light of the principles laid down in Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member States on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.<sup>492</sup>

### 3. Economic protection

#### *Overview of family benefits*

States are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test.<sup>493</sup>

#### *Family benefits of a sufficient amount*

These benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of "equivalent adults" using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.), as calculated by Eurostat.<sup>494 495</sup>

<sup>492</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>493</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>494</sup> Conclusions 2006, Statement of Interpretation on Article 16, p. 14.

<sup>495</sup> Conclusions 2006, Estonia, p.215.

The level of benefit should be adjusted as necessary to keep pace with inflation. Other forms of economic protection, such as birth grants, additional payments to large families or tax relief in respect of children , are also relevant to the implementation of this provision

*Vulnerable families*

States are required to ensure the protection of vulnerable families, single-parent families, Roma families, in accordance with the principle of equality of treatment.

## Article 17

### Children and young persons have the right to appropriate social, legal and economic protection

1. With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

b to protect children and young persons against negligence, violence or exploitation;

c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

*Appendix : It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.*

*This does not imply an obligation to provide compulsory education up to the above-mentioned age.*

This is a new provision. In the 1961 Charter, Article 17 provided for rights of the mother and child.

Article 17§1 integrates into the Charter rights which are guaranteed by the UN Convention on the Rights of the Child, and Article 17 is interpreted in light of the UN Convention on the Rights of the Child.<sup>496</sup> <sup>497</sup> The Committee has concentrated its examinations of national situations on the following issues:

- The legal status of the child;
- The right to education;
- Children in public care;
- Protection of children from violence, ill-treatment and abuse;
- Young offenders.

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<sup>496</sup> Conclusions XV-2, Statement of Interpretation on Article 17, p. 26.

<sup>497</sup> World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §61-63

Moreover, the Committee stated that Article 17 protects the right of children and young persons, including unaccompanied children to care and assistance which includes medical assistance.<sup>498</sup>

#### The legal status of the child

Article 17 of the Charter permits no discrimination between children born outside of marriage, and children born within marriage, e.g. in respect of maintenance obligations and inheritance rights.<sup>499</sup>

Article 17 guarantees the right of a child to know in principle, his or her origins. The Committee examines the procedures available for the establishment of maternity and paternity and, in particular, the situations where the establishment of maternity or paternity is not possible and where the right of a child to know his or her origins is restricted.<sup>500</sup>

As regards minimum age for marriage, questions have been raised where there is a difference in the minimum age for marriage for males and females, on the grounds that this may be discriminatory and where the age is low for females this may not adequately protect them.<sup>501</sup>

#### The right to education

Every child has the right to education. Both §1 and §2 of Article 17 require states to establish and maintain an education system that is both accessible and effective. In order for there to be an accessible and effective system of education there must be *inter alia* a functioning system of primary and secondary education; which includes an adequate number of schools fairly distributed over the geographical area (in particular between rural and urban areas). The number of children enrolled in school should reach 100% of those of the relevant age. Class sizes and the teacher pupil ratio must be reasonable. A mechanism to monitor the quality of education delivered and to ensure a high quality of teaching is also required. Education must be compulsory until the minimum age for admission to employment.<sup>502</sup>

Equal access to education must be ensured for all children, in this respect particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty, etc. Children belonging to these groups must be integrated into mainstream educational facilities and ordinary educational schemes. Where necessary special measures should be taken to ensure equal access to education for these children. However, special measures for Roma children should not involve the establishment of separate schools or classes reserved for this group.<sup>503</sup>

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<sup>498</sup> International federation of Human rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 5 September 2003, §36.

<sup>499</sup> Conclusions XVII-2, Malta, p. 567.

<sup>500</sup> Conclusions 2003, France, p. 173.

<sup>501</sup> Conclusions 2003, France, p. 173.

<sup>502</sup> Conclusions 2003, Statement of interpretation on Article 17, for example France, p. 174.

<sup>503</sup> Conclusions 2003, Slovenia, p. 511.



The right of children with disabilities to education is part of Article 17. However, in respect of States having accepted Article 17 and Article 15 is examined under Article 15§1.<sup>504</sup>

#### Children in public care

Any restriction or limitation of parents' custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.<sup>505</sup>

The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions.<sup>506</sup>

Children placed in institutions are entitled to the highest degree of satisfaction of their emotional needs and physical well being as well as to special protection and assistance. Such institutions must provide conditions promoting all aspects of children's growth. A unit in a child welfare institution should be of such a size as to resemble the home environment and should not therefore accommodate, not more than 10 children.<sup>507</sup>

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.<sup>508</sup>

National law must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family.<sup>509</sup>

Furthermore, a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system and in particular of the institutions involved.<sup>510</sup>

#### Protection of children from violence, ill-treatment and abuse

To comply with Article 17, states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children.

The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.

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<sup>504</sup> Conclusions 2003, Bulgaria, p. 66.

<sup>505</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 29.

<sup>506</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 30.

<sup>507</sup> Conclusions 2005, Moldova, p. 474.

<sup>508</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31.

<sup>509</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31.

<sup>510</sup> Conclusions 2005, Lithuania, p. 370.

Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.<sup>511</sup>

The prohibition of violence and all other forms of degrading punishment or treatment of children must be accompanied by adequate sanctions in penal or civil law.

There must be agencies and services designed to protect and prevent the ill-treatment of children.

#### Young offenders

The age of criminal responsibility must not be too low.<sup>512</sup> The criminal procedure relating to children and young persons must be adapted to their age and proceedings involving minors must be conducted rapidly. Minors should only exceptionally be detained pending trial for serious offences, for short periods of time and should in such cases be separated from adults.

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length of sentence must be laid down by a court. Young offenders should not serve their sentence together with adult prisoners.<sup>513 514</sup>

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

*Appendix: It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.*

*This does not imply an obligation to provide compulsory education up to the above-mentioned age.*

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

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<sup>511</sup> World Organisation against Torture (OMCT) v. Portugal, Complaint 34/2006, Decision on the merits of 5 December 2006, §19-21.

<sup>512</sup> Conclusions XVII-2, Malta, p. 795.

<sup>513</sup> Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 32.

<sup>514</sup> Conclusions XVII-2, Statement of Interpretation on Article 17§1, Turkey, p. 795.

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Measures must be taken to encourage school attendance and to actively reduce the number of children dropping out or not completing compulsory education and the rate of absenteeism.<sup>515</sup>

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<sup>515</sup> Conclusions 2005, Bulgaria, pp. 42-43.



## Article 18

**The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons**

**1. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to apply existing regulations in a spirit of liberality**

Article 18 applies to employees and the self-employed who are nationals of States party to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.<sup>516</sup>

Article 18 relates not only to workers already on the territory of the State concerned, but also to workers outside the country applying for a permit to work on the territory.<sup>517</sup>

This article also covers foreign workers who have obtained employment in a foreign country but subsequently lose it.<sup>518</sup>

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.<sup>519</sup>

**2. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers**

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers also covered by paragraph 3 but are dealt with specifically under this provision.<sup>520</sup>

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin<sup>521</sup> and obtaining the residence and work permits at the same time and through a single application.<sup>522</sup> It also

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<sup>516</sup> Conclusions X-2, Austria, p. 137.

<sup>517</sup> Conclusions XIII-1, Sweden, p. 204.

<sup>518</sup> Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61.

<sup>519</sup> Conclusions XVII-2, Spain, p. 747.

<sup>520</sup> Conclusions IX-1, United Kingdom, p. 102.

<sup>521</sup> Conclusions XVII-2, Finland, p. 243.

<sup>522</sup> Conclusions XVII-2, Germany, pp. 285-286.

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implies that the documents required (residence/work permits) will be delivered within a reasonable time.<sup>523</sup>

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.<sup>524</sup>

**3. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake to liberalise, individually or collectively, regulations governing the employment of foreign workers**

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:

- Access to the national labour market

The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.<sup>525</sup>

States parties may make foreign nationals' access to employment on their territory subject to possession of a work permit but they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G of the Charter. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.

- Right to engage in an occupation:

A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.<sup>526</sup>

- Rights in the event of loss of employment

Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.<sup>527</sup>

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<sup>523</sup> Conclusions XVII-2, Portugal, pp. 702-703.

<sup>524</sup> Conclusions XVII-2, Portugal, p. 703.

<sup>525</sup> Conclusions V, Germany, p. 119.

<sup>526</sup> Conclusions II, Statement of Interpretation on Article 18§3, p. 60.

<sup>527</sup> Conclusions XVII-2, Finland, p. 247.

**4. With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties recognise the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties**

***According to Article 18§4, States undertake not to restrict the right of their nationals to leave the country to engage in gainful employment in other Parties to the Charter.***

The only permitted restrictions are those provided for in Article G of the Charter, i.e. those which are “prescribed by law and are 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.”<sup>528</sup> <sup>529</sup>

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<sup>528</sup> Conclusions XI-1, Netherlands, p. 155.

<sup>529</sup> Conclusions 2005, Cyprus, p. 105.





## Article 19

### **Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party**

**1. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration**

This paragraph guarantees the right to free information and assistance to nationals wishing to emigrate and to nationals of other Parties who wish to immigrate<sup>530</sup>. Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health).<sup>531</sup>

Another obligation under this paragraph is that States must take measures to prevent misleading propaganda relating to immigration and emigration. Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.<sup>532</sup>

To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease.<sup>533</sup>

States must also take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants.

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<sup>530</sup> Conclusions I, Statement of Interpretation on Article 19§1, p. 82.

<sup>531</sup> Conclusions III, Cyprus, p. 87.

<sup>532</sup> Conclusions XIV-1, Greece, p. 366.

<sup>533</sup> Conclusion XV-1, Austria, p. 59.

**2. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey**

This paragraph obliges States to adopt special measures for the benefit of migrant workers, beyond those which are provided for nationals to facilitate their departure, journey and reception.<sup>534</sup>

Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.<sup>535</sup>

**3. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries**

The scope of this paragraph extends to migrant workers immigrating as well as migrant workers emigrating to the territory of any other State. Contacts and information exchanges should be established between public and/or private social services in emigration and immigration countries, with a view to facilitating the life of emigrants and their families, their adjustment to the new environment and their relations with members of their families who remain in their country of origin.<sup>536</sup> Formal arrangements are not necessary, especially if there is little migratory movement in a given country. In such cases, the provision of practical co-operation on a needs basis may be sufficient.

Common situations in which such co-operation would be useful would be for example where the migrant worker, who has left his or her family in the home country, fails to send money back or needs to be contacted for family reasons, or where the worker has returned to his or her country but needs to claim unpaid wages or benefits or must deal with various issues in the country in which he was employed.<sup>537</sup>

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<sup>534</sup> Conclusions III, Cyprus, p. 88.

<sup>535</sup> Conclusions IV, Germany, p. 116.

<sup>536</sup> Conclusions XIV-1, Belgium, p. 137.

<sup>537</sup> Conclusions XIV-1, Finland, pp. 165-166.

**4. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:**

This paragraph guarantees the right of migrant workers to a treatment not less favourable than that of the nationals in the areas of: (i) remuneration and other employment and working conditions, (ii) trade union membership and the enjoyment of benefits of collective bargaining, and (iii) accommodation.

States are required to guarantee certain minimum standards in these areas with a view to assisting and improving the legal, social and material position of migrant workers and their families.

States are required to prove the absence of discrimination, direct or indirect, in terms of law and practice,<sup>538</sup> and should inform of any practical measures taken to remedy cases of discrimination. Moreover, States should pursue a positive and continuous course of action providing for more favourable treatment of migrant workers.<sup>539</sup>

**a remuneration and other employment and working conditions;**

Under this sub-heading, States are obliged to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions, including in-service training and promotion. The provision applies notably to vocational training.<sup>540</sup>

**b membership of trade unions and enjoyment of the benefits of collective bargaining;**

This sub-heading requires States to eliminate all legal and de facto discrimination concerning trade union membership<sup>541</sup> and as regards the enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions.

**c accommodation;**

The undertaking of States under this sub-heading is to eliminate all legal and de facto discrimination concerning access to public and private housing. There must be no legal or de facto restrictions on home-buying,<sup>542</sup> access to subsidised housing or housing aids, such as loans or other allowances.<sup>543</sup>

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<sup>538</sup> Conclusions III, Italy, p. 92.

<sup>539</sup> Conclusions I, Italy, Norway, Sweden, United-Kingdom, p. 81.

<sup>540</sup> Conclusions VII, United-Kingdom, p. 103.

<sup>541</sup> Conclusions XIII-3, Turkey, p. 418.

<sup>542</sup> Conclusions IV, Norway, p. 121.

<sup>543</sup> Conclusions III, Italy, p. 92.

**5. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons**

This paragraph recognises the right of migrant workers to equal treatment in law and in practice in respect of the payment of employment taxes, dues or contributions.<sup>544</sup>

**6. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory**

*Appendix : For the purpose of applying this provision, the term “family of a foreign worker” is understood to mean at least the worker’s spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.*

Note : Appendix to Article 19§6 of the 1961 Charter reads as follows : “For the purpose of this provision, the term ‘family of a foreign worker’ is understood to mean at least his wife and dependent children under the age of twenty-one years”.

This paragraph obliges States to allow the families of migrants legally established in their territory to join them. The worker’s children entitled to family reunion are those who are dependent and unmarried, and who fall under the legal age-limit in the receiving state (under the Charter the age limit for admission under family reunion is set at the age of majority, which in most countries is 18 years).

"Dependent" children are understood as being those who have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies.<sup>545</sup>

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<sup>544</sup> Conclusions II, Norway, p. 68.

<sup>545</sup> Conclusions VIII, p. 212.

Conditions and restrictions of family reunion:

a) Refusal on health grounds

A state may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. A refusal on this ground may only be admitted for specific illnesses which are so serious as to endanger public health.<sup>546</sup> These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security.<sup>547</sup>

b) Length of residence

States may require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter. On the contrary, a period of three years is not in conformity with this provision of the Charter.<sup>548</sup>

c) Housing condition

The requirement of having sufficient or suitable accommodation to house the family or certain family members should not be so restrictive as to prevent any family reunion.<sup>549</sup>

d) Means requirement

The level of means required by States to bring in the family or certain family members should not be so restrictive as to prevent any family reunion.<sup>550</sup>

Once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right to stay in that territory.

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<sup>546</sup> Conclusions XVI-1, Greece, p. 316.

<sup>547</sup> Conclusions XVI-1, Finland, pp. 227-228.

<sup>548</sup> Conclusions I, Germany, p. 216-217.

<sup>549</sup> Conclusions IV, Norway, p. 126.

<sup>550</sup> Conclusions XIII-1, The Netherlands, p. 209.

**7. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article**

Under this paragraph, States must ensure that migrants have access to courts, to lawyers and legal aid on the same conditions as their own nationals.<sup>551</sup> This obligation applies to all legal proceedings concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes).<sup>552</sup>

**8. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;**

This paragraph obliges States to prohibit by law the expulsion of migrants lawfully residing in their territory, except where they are a threat to national security, or offend against public interest or morality.<sup>553</sup>

Expulsion for offences against public order or morality can only be in conformity with the Charter if they constitutes a penalty for a criminal act, imposed by a court or a judicial authority, and are not solely based on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the territory of the State.

Risks to public health are not in themselves risks to public order and cannot constitute a ground for expulsion, unless the person refuses to undergo suitable treatment.<sup>554</sup>

The fact that a migrant worker is dependent on social assistance can not be regarded as a threat against public order and cannot constitute a ground for expulsion.<sup>555</sup>

States must ensure that foreign nationals served with expulsion orders have a right of appeal<sup>556</sup> to a court or other independent body, even in cases where national security, public order or morality are at stake.

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<sup>551</sup> Conclusions I, Italy, Norway, Turkey, p. 86.

<sup>552</sup> Conclusions I, Germany, p. 217.

<sup>553</sup> Conclusions VI, Cyprus, p. 126.

<sup>554</sup> Conclusions V, Germany, p. 138.

<sup>555</sup> Conclusions V, Italy, pp. 138-139.

<sup>556</sup> Conclusions IV, United-Kingdom, pp. 129-130.

Migrant worker's family members, who have joined him or her through family reunion, may not be expelled as a consequence of his or her own expulsion, since these family members have an independent right to stay in the territory.<sup>557</sup>

The guarantees against expulsion contained in this paragraph only apply to migrant workers and his or her family members if these persons reside legally in the territory of the State.<sup>558</sup>

**9. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire**

This provision obliges States not to place excessive restrictions on the right of migrants to transfer earnings and savings, either during their stay or when they leave their host country.<sup>559</sup>

Migrants must be allowed to transfer money to their own country or any other country.

**10. With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply**

Under this paragraph, States must ensure that the rights provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families.<sup>560</sup>

States must ensure that there is no unjustified treatment which amounts to discrimination, in law or in practice between wage-earners and self-employed migrants; In addition equal treatment between self employed migrants and self employed nationals must be guaranteed in the areas covered by this provision.

A finding of non-conformity under paragraphs 1 to 9, 11 and/or 12 of Article 19 may lead to a non-conformity of paragraph 10.

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<sup>557</sup> Conclusions XVI-1, Netherlands, pp. 460-461.

<sup>558</sup> Conclusions II, Cyprus, p. 198.

<sup>559</sup> Conclusions XIII-1, Greece, p. 212.

<sup>560</sup> Conclusions I, Norway, p. 87.

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

Under this paragraph, States should promote and facilitate the teaching of the national language to children of school age, as well as to the migrants themselves and to members of their families who are no longer of school age.<sup>561</sup> The teaching of the national language of the receiving state is the main means by which migrants and their families can integrate into the world of work and society at large.

The language of the receiving country is automatically taught to children throughout their formal education, but this measure is not sufficient to fulfil the obligations arising out of Article 19§11. States must endeavour to introduce additional educational support alongside formal schooling for migrant workers' children who have not attended the first few primary school years and who may therefore lag behind their classmates who are nationals of the receiving state.

States must furthermore encourage the teaching of the national language in the workplace, in the voluntary sector or in public institutions, such as universities. Such language classes must be provided free of charge in order not to worsen the already difficult position of migrants on the labour market.

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

The undertaking of States under this paragraph is to promote and facilitate the teaching, in schools or other structures, such as voluntary associations, of those languages that are most represented among migrants within their territory.<sup>562</sup> In practical terms, States should therefore promote and facilitate the teaching of the mother tongue where there are a significant number of children of migrants who would follow such teachings.

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<sup>561</sup> Conclusions 2002, France, pp. 55-57.

<sup>562</sup> Conclusions 2002, Italy, pp. 102-103.



## Article 20

**All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

**With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:**

- a. access to employment, protection against dismissal and occupational reintegration;**
- b. vocational guidance, training, retraining and rehabilitation;**
- c terms of employment and working conditions, including remuneration;**
- d career development, including promotion.**

*Appendix 1. It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.*

*2. Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.*

*3. This article shall not prevent the adoption of specific measures aimed at removing de facto inequalities.*

*4. Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.*

Note : This provision is identical to Article 1 of the 1988 Additional Protocol.

### Equality at work and in social security matters

#### *Definitions and scope*

Article 20 guarantees the right to equality at all stages of working life – access to employment, remuneration and other working conditions, including dismissal and other forms of detriment, vocational training and guidance and promotion. These words give Article 20 the status of *lex specialis* in relation to Article 1§2 of the Charter, which prohibits all discrimination at work on whatever ground.

The right to equal pay without discrimination on the grounds of sex is guaranteed by Article 4§3 and the relevant specific case-law is presented under this article (see above): The situation as to equal pay in States party which have accepted Articles 4§3 and 20 is examined under Article 20 only. Consequently, these States are no longer required to submit a report on the application of Article 4§3.<sup>563</sup>

Article 20 guarantees equal treatment with regard to social security. The Appendix authorises states, when they ratify the Charter or accept Article 20, to make a declaration excluding some or all of the aspects relating to social security.<sup>564</sup> Equal treatment with regard to social security implies the absence of any discrimination on grounds of sex, particularly as far as the scope of schemes, conditions of access to schemes, the calculation of benefits and the length of entitlement to benefits are concerned.

The principle of equal treatment of women and men is understood to mean the absence of any discrimination on grounds of sex. Equal treatment precludes any discrimination, whether direct or indirect.<sup>565</sup>

Discrimination in breach of the Charter is constituted by a difference in treatment between people in comparable situations which does not pursue a legitimate aim and is not based on objective and reasonable grounds.<sup>566</sup> In determining whether a legitimate aim is being pursued and the measures taken are reasonably proportionate, the Committee applies Article G.<sup>567</sup>

Indirect discrimination occurs where a rule, identical for everyone, disproportionately affects men or women without a legitimate aim. Equal treatment of full-time and part-time employees is considered from this angle in particular in respect of social security issues.

Indirect discrimination can also occur when people in different situations are not treated differently. Referring to the case-law of the European Court of Human Rights (*Thlimmenos v. Greece*, Complaint No. 34369/97, ECHR 2000-IV, §44.), the Committee has stated that the Charter prohibits all forms of indirect discrimination which can 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"<sup>568</sup> and requires that particular measures are taken to meet the specific needs of persons whose situation distinguishes them from the majority.<sup>569</sup>

The principle of equality applies to all employees, in both the private and public sectors.

<sup>563</sup> Conclusions 2002, Statement of Interpretation on Article 20, pp. 12-13.

<sup>564</sup> Conclusions 2002, Italy, pp. 84-85.

<sup>565</sup> Conclusions XIII-5, Sweden, Article 1 of the Protocol, pp. 272-276.

<sup>566</sup> *Syndicat national des Professions du Tourisme v. France*, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §25.

<sup>567</sup> Conclusions XVI-1, Greece, Article 1§2, pp. 208-209.

<sup>568</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §52.

<sup>569</sup> *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, Decision on the merits of 7 December 2005, §20.

*Means of enforcement*

## Legal framework

The right of women and men to equality must be guaranteed by a law. The Charter requires “states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact a sufficiently detailed legislation explicitly imposing equal treatment in all aspects.”<sup>570 571 572</sup> It is not sufficient merely to state the principle in the Constitution.

Any legislation, regulation or other administrative measure that fails to comply with the equality principle must be repealed or revoked. The non-application of discriminatory legislation is not sufficient for a situation to be considered in conformity with the Charter.<sup>573</sup>

It must be possible to set aside, withdraw, repeal or amend any provision in collective agreements, employment contracts or firms' internal regulations that is incompatible with the principle of equal treatment.<sup>574</sup>

## Right of appeal

National legislation must provide for appropriate and effective remedies in the event of alleged discrimination. Employees who consider that they have suffered discrimination must be able to take their case to an independent body.<sup>575</sup>

The burden of proof must be shifted.<sup>576</sup> The shift in the burden of proof consists in ensuring that where a person believes he or she has suffered as the result of non-compliance with the principle of equal treatment and establishes facts which make it reasonable to suppose that discrimination has occurred, the onus is on the defendant to prove that there has been no infringement of the principle of equal treatment.<sup>577</sup> The purpose of this rule is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice and hence that the shift in the burden of proof is a key factor in the effective application of rules on protection against discrimination.<sup>578</sup>

By analogy with the case-law in relation to Article 1§2, a number of other legal steps should be taken to make the right of appeal fully effective, such as authorising trade unions and other bodies to take action in employment discrimination cases, including action on behalf of individuals<sup>579</sup> or setting up an independent body to promote equal treatment and provide legal assistance to victims.

<sup>570</sup> Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423.

<sup>571</sup> Conclusions XV-2, Addendum, Slovak Republic, Article 1 of the Protocol, p. 235.

<sup>572</sup> Conclusions XVII-2, Netherlands (Aruba), Article 1 of the Protocol, pp. 618-625.

<sup>573</sup> Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423.

<sup>574</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276.

<sup>575</sup> Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423

<sup>576</sup> Conclusions 2004, Romania, p. 495.

<sup>577</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276.

<sup>578</sup> *Syndicat SUD Travail et Affaires Sociales v. France*, Complaint No. 24/2004, Decision on the merits of 8 November 2005, §34.

<sup>579</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276.

### Adequate compensation

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

Adequate compensation means:

- reinstatement or retention of employment and compensation for any pecuniary damage suffered in the event of unlawful or unfair dismissal;
- compensation proportionate to the damage suffered, i.e. to cover pecuniary and non-pecuniary damage, where the dismissed employee does not wish to be reinstated or continuation of the employment relationship is impossible;<sup>580</sup>
- in all other cases, bringing the discrimination to an end and awarding compensation proportionate to the pecuniary and non-pecuniary damage suffered.<sup>581</sup>

In accordance with these principles, the Committee considers that compensation should not be subject to an upper limit as this prevents it from being proportionate to the damage suffered and hence adequate.<sup>582</sup>

When assessing the level of compensation, the Committee takes account of whether it is high enough to prevent employers from re-offending. For this purpose, it also considers any other administrative, civil or criminal penalties imposed on employers.<sup>583</sup>

### Protection against reprisals

Employees who try to enforce their right to equality must be legally protected against any form of reprisals from their employers,<sup>584</sup> including not only dismissal, but also downgrading, changes to working conditions and so on. National legislation must provide for the same consequences where an employee is a victim of reprisal measures as those described above in the sections on appeal procedures and compensation.

### Exceptions in respect of certain occupations

Occupational activities – and the training required for them – which, by their nature or the context in which they are carried out, can only be entrusted to persons of one sex may be excluded from the scope of Article 20. States are not required to adopt laws or regulations containing lists of such activities (Appendix to Article 20, §4).

In determining whether, because of the conditions in which police activities are conducted, sex constitutes a decisive factor in the police force, the army, etc., states may take account of public order or national security-related requirements provided that they are prescribed by law, pursue a legitimate aim and are necessary in a democratic society (Article G). Like any measure that

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<sup>580</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276.

<sup>581</sup> Conclusions XVII-2, Finland, Article 1 of the Protocol, pp. 249-250.

<sup>582</sup> Conclusions XVI-2, Germany, Article 4§3, p. 299.

<sup>583</sup> Conclusions XVII-2, Finland, Article 1 of the Protocol, pp. 249-250.

<sup>584</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, p.272-276.

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derogates from the rights guaranteed by the Charter, the exception must be interpreted restrictively and not exceed the legitimately pursued aim.<sup>585</sup>

#### Particular rights of women

##### *Protecting women*

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

On the other hand, prohibiting women from performing night work while authorising men to do so is contrary to the principle of equal treatment for, while night work is harmful, it is just as detrimental to men as to women.<sup>586</sup>

##### *Equal opportunities and positive measures*

Since "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" and conformity with the Charter cannot be ensured solely by the operation of legislation,<sup>587</sup> states must take practical steps to promote equal opportunities.<sup>588</sup>

Appropriate measures include:

- adopting and implementing national equal opportunities action plans;
- requiring individual undertakings to draw up enterprise or company plans to secure greater equality between women and men;
- encouraging employers and workers to deal with equality issues in collective agreements;
- setting more store by equality between women and men in national action plans for employment.<sup>589</sup>

Action taken must be based on a comprehensive strategy for incorporating the gender perspective into all labour market policies. For this purpose, account will be taken of Recommendation No. R(98)14 on gender mainstreaming, addressed by the Committee of Ministers to the Member States of the Council of Europe on 7 October 1998.<sup>590</sup>

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<sup>585</sup> Conclusions XVI-2, Greece Article 1 of the Protocol, p. 338-341.

<sup>586</sup> Conclusions XVII-2, Netherlands (Aruba), Article 1 of the Protocol, pp. 623-625.

<sup>587</sup> International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32.

<sup>588</sup> Conclusions XVII-2, Netherlands (Antilles and Aruba), Article 1 of the Protocol, pp. 618-625.

<sup>589</sup> Conclusions XVII-2, Greece, Article 1 of the Protocol, pp. 338-341.

<sup>590</sup> Conclusions XVII-2, Greece, Article 1 of the Protocol, pp. 338-341.

The Appendix to Article 20 (§3) makes it clear that specific measures designed to remove *de facto* inequalities are permitted. As this provision simply upholds the very purpose of Article 20 in that it guarantees the right to equal opportunities, the Committee has interpreted it as placing a positive obligation on the states. Besides the fact that legislation may not prevent the adoption of positive measures or positive action,<sup>591</sup> the states are required to take specific steps aimed at removing *de facto* inequalities affecting women's training or employment opportunities.<sup>592</sup>

There is no case-law on discrimination by results, such as the systematic granting of priority to women in sectors of activity in which they are under-represented.

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<sup>591</sup> Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, p. 272-276.

<sup>592</sup> Conclusions 2002, Romania, Article 20, pp. 127.

## Article 21

### Workers have the right to be informed and to be consulted within the undertaking

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

*Appendix (Articles 21 and 22): 1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.*

*2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.*

*3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy.*

*4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.*

*5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.*

*6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.*

Note: This provision is identical to Article 2 of the 1988 Additional Protocol.

Workers and/or their representatives (trade unions, worker's delegates, health and safety representatives, works councils) must be informed on all matters relevant to their working environment except where the conduct of the business requires that some confidential information not be disclosed.

Furthermore, they must be consulted in good time with respect to proposed decisions that could substantially affect the workers' interests, in particular those which may have an impact on their employment status.

This provision applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. However it is not applicable to public servants.<sup>593</sup>

These rights must be effectively guaranteed. In particular, workers must have legal remedies when these rights are not respected.<sup>594</sup> There must also be sanctions for employers which fail to fulfil their obligations under this Article.<sup>595</sup>

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<sup>593</sup> Conclusions XIII-3, Finland, p. 441.

<sup>594</sup> Conclusions 2003, Romania, p. 420.

<sup>595</sup> Conclusions 2005, Lithuania, p. 378.



## **Article 22**

### **Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking**

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

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

*Appendix (Articles 21 and 22): 1. For the purpose of the application of these articles, the term “workers’ representatives” means persons who are recognised as such under national legislation or practice.*

*2. The terms “national legislation and practice” embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers’ representatives, customs as well as relevant case law.*

*3. For the purpose of the application of these articles, the term “undertaking” is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or services for financial gain and with power to determine its own market policy.*

*4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are “undertakings” within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.*

*5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.*

*6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.*

**Appendix [Article 22]. 1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application.**

**2. The terms « social and socio-cultural services and facilities » are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children’s holiday camps, etc.**

Note: This provision is identical to Article 3 of the 1988 Additional Protocol.

Workers and/or their representatives (trade unions, worker’s delegates, health and safety representatives, works councils) must be granted an effective right to participate in the decision-making process and the supervision of the observance of regulations in all matters referred to in this provision.

The right to take part in the organisation of social and socio-cultural services and facilities only applies in undertakings where such services and facilities are planned or have already been established.

This provision applies to all undertakings, whether private or public. States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.<sup>596</sup> The Committee considers as in conformity with this provision a situation where, in undertakings employing less than 10 people, “employees are in direct contact with the employer.”

Workers must have legal remedies when these rights are not respected.<sup>597</sup> There must also be sanctions for employers which fail to fulfil their obligations under this Article.<sup>598</sup>

The right of workers’ representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 (right to safe and healthy working conditions, see *supra*). For the States who have accepted Articles 3 and 22, this issue is examined only under Article 22.

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<sup>596</sup> Conclusions 2005, Estonia, pp. 202-203.

<sup>597</sup> Conclusions 2003, Bulgaria, p. 75

<sup>598</sup> Conclusions 2003, Slovenia, p. 526

## Article 23

### Every elderly person has the right to social protection.

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

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

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

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

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

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

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

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

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<sup>599</sup> Conclusions XIII-5, Statement of Interpretation on Article 23, p. 455.

<sup>600</sup> Conclusions XIII-5, Finland, p. 305

<sup>601</sup> Conclusions 2003, France, p. 186; Conclusions 2005, Sweden, p. 711.

<sup>602</sup> Conclusions 2003, France, p. 186.

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

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

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

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

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

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

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

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<sup>603</sup> Conclusions 2003, France, p. 186.

<sup>604</sup> Conclusions 2003, France, p. 186.

<sup>605</sup> Conclusions 2005, Slovenia, p. 659.

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

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

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

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

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

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

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

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions should be licensed, subject to a declaration regime, to inspection or to any other mechanism which ensures, in particular, that the quality of care delivered is adequate.<sup>610</sup>

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<sup>606</sup> Conclusions 2003, Slovenia, p. 530.

<sup>607</sup> Conclusions 2003, France, p. 189.

<sup>608</sup> Conclusions 2003, Slovenia, p. 530.

<sup>609</sup> Conclusions 2005, Slovenia, p. 659.

<sup>610</sup> Conclusions 2005, Slovenia, p. 659.

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

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<sup>611</sup> Conclusions 2003, Slovenia, p. 530.

## **Article 24**

### **All workers have the right to protection in cases of termination of employment**

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.

#### ***Appendix***

***1. It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.***

***2. It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:***

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

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

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

***3. For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:***

***a trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;***

***b seeking office as, acting or having acted in the capacity of a workers' representative;***

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

***d race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;***

***e maternity or parental leave;***

***f temporary absence from work due to illness or injury.***

**4. It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.**

Scope of protection

Article 24 relates to termination of employment at the initiative of the employer (paragraph 1 of the appendix to Article 24).

Definition of an “employee”

All workers who have signed an employment contract<sup>612</sup> are entitled to protection in the event of termination of employment. However, according to the appendix, the States party may exclude one or more of the following categories from this:

- i workers engaged under a contract of employment for a specified period of time or a specified task;
- ii workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration. Exclusion of employees from protection against dismissal for six months or 26 weeks is not considered reasonable if it is applied indiscriminately, regardless of the employee's qualifications,<sup>613 614</sup>
- iii workers engaged on a casual basis for a short period.

This list is exhaustive. Exclusion of any other category of employee is not in conformity with the Charter.<sup>615</sup>

Definition of valid reasons

Under Article 24, the following are regarded as valid reasons for termination of an employment contract:

- i. reasons connected with the capacity or conduct of the employee

A prison sentence delivered in court for employment-related offences can be considered a valid reason for dismissal. This is not the case with prison sentences for offences unrelated with the person's employment, which cannot be considered valid reasons unless the length of the custodial sentence prevents the person from carrying out their work.<sup>616</sup>

Dismissal on grounds of age will not constitute a valid reason for termination of employment except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.

States should take adequate measures to ensure protection for all workers against dismissal on ground of age.<sup>617</sup>

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<sup>612</sup> Conclusions 2003, Statement of Interpretation on Article 24.

<sup>613</sup> Conclusions 2003, Italy, pp. 318-321.

<sup>614</sup> Conclusions 2005, Cyprus, pp. 107-111.

<sup>615</sup> Conclusions 2003, Italy, pp. 318-321.

<sup>616</sup> Conclusions 2005, Estonia, pp. 205-210.

<sup>617</sup> Conclusions 2007, Statement of Interpretation on Article 24, General introduction.



As regards dismissal without notice in the event of permanent invalidity. The Committee has stated that, when reaching its conclusions, it will take account of the following factors:

- is dismissal without notice for reasons of permanent invalidity permitted regardless of the origin of the invalidity? In particular, may this occur in cases of employment injuries or occupational diseases?
- are employers required to pay compensation for termination in such cases?
- if, despite the permanent invalidity, the worker can still carry out light work, is the employer required to offer a different placement? If the employer is unable to meet this requirement, what alternatives are available?<sup>618</sup>

ii. certain economic reasons

These must be reasons “based on the operational requirements of the undertaking, establishment or service”. The Committee has not specified yet whether economic reasons within the meaning of Article 24 must be limited to situations where firms are in difficulty or whether they can include other business strategies.<sup>619</sup>

To assess the extent to which reasons regarded in practice as justifying dismissal constitute valid reasons under Article 24, the Committee examines the national courts’ interpretation of the law and their leading decisions and judgments.<sup>620</sup>

Employers must notify employees of their dismissal in writing.

Prohibition of termination of employment for certain reasons

The appendix to Article 24 lists reasons for which it is prohibited to terminate employment.

Prohibition to terminate employment for most of these reasons is also a requirement for conformity with other Articles of the Charter:

- discrimination (Articles 1§2, 4§3, 15 and 20);
- trade union activities (Article 5);
- participation in strikes (Article 6§4);
- maternity (Article 8§2);
- family responsibilities (Article 27);
- worker representation (Article 28).

Two reasons are examined only under Article 24,<sup>621</sup> namely:

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

National legislation or case-law must contain express safeguards against retaliatory dismissal.<sup>622</sup>

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<sup>618</sup> Conclusions 2003, Bulgaria, p. 76.

<sup>619</sup> Conclusions 2003, France, p. 191.

<sup>620</sup> For example, Conclusions 2005, Norway, pp. 572-575.

<sup>621</sup> Conclusions 2003, Statement of Interpretation on Article 24.

<sup>622</sup> Conclusions 2005, Estonia, pp. 205-210.

ii. temporary absence from work due to illness or injury. A time limit can be placed on protection against dismissal in such cases.<sup>623</sup> Absence can constitute a valid reason for dismissal if it severely disrupts the smooth running of the undertaking and a genuine, permanent replacement must be provided for the absent employee. Additional protection must be offered, where necessary, for victims of employment injuries or occupational diseases.<sup>624</sup>

The list of prohibited reasons set out in the appendix to Article 24 is not exhaustive.

#### Adequate compensation

##### Right of appeal

Any employee who considers him- or herself to have been dismissed without valid reason must have the right to appeal to an impartial body. In all the states the Committee has examined to date, it has been possible to appeal to a court or a tribunal.

If employment is terminated for economic reasons, the appeal body must be empowered to investigate the economic facts underlying the measures.<sup>625</sup>

##### Damages

Employees dismissed without valid reason must be granted adequate compensation or other appropriate relief. Compensation systems are considered appropriate<sup>626</sup> if they include the following provisions:

reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;<sup>627</sup>

the possibility of reinstatement;

and/or compensation of a high enough level to dissuade the employer and make good the damage suffered by the employee.

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<sup>623</sup> Conclusions 2005, Norway, pp. 572-575.

<sup>624</sup> Conclusions 2003, France, p. 191.

<sup>625</sup> Conclusions 2003, Bulgaria, p. 78.

<sup>626</sup> Conclusions 2005, Norway, pp. 572-575.

<sup>627</sup> Conclusions 2003, Bulgaria, p. 78.

## Article 25

### All workers have the right to protection of their claims in the event of the insolvency of their employer

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

*Appendix: 1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided by reason of the special nature of their employment relationship.*

*2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.*

*3. The workers' claims covered by this provision shall include at least :*

*a the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;*

*b the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;*

*c the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.*

*4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.*

Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers' claims and so Article 25 does not require the existence of a specific guarantee institution.

The protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should also apply in situations where the employer's assets are recognised as insufficient to justify the opening of formal insolvency proceedings.<sup>628</sup>

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<sup>628</sup> Conclusions 2003, see, for example, p. 199.

The Committee has found that a privilege system where workers' claims were ranked below mortgage obligations, foreclosure on property and bankruptcy costs did not amount to an effective protection under the Charter.<sup>629</sup>

In order to demonstrate the adequacy in practice of the protection, States must provide information, *inter alia*, on the average duration of the period from a claim is lodged until the worker is paid and on the overall proportion of workers' claims which are satisfied by the guarantee institution and/or the privilege system.<sup>630</sup>

States may limit the protection of workers' claims to a prescribed amount. The Committee has found three times the average monthly wage of the employee to be an acceptable level.<sup>631</sup>

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<sup>629</sup> Conclusions 2003, Bulgaria, p. 83.

<sup>630</sup> Conclusions 2003, Sweden, p. 632.

<sup>631</sup> Conclusions 2005, Estonia, pp. 211-212.

## Article 26

**1. With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.**

***Appendix: It is understood that this article does not require that legislation be enacted by the Parties.***

Sexual harassment amounts to a breach of equal treatment characterised by the adoption towards one or more persons of preferential or retaliatory conduct or other forms of insistent behaviour which may undermine their dignity or harm their career.<sup>632</sup>

The Appendix to Article 26§1 specifies that states have no obligation to enact laws relating specifically to harassment where workers are afforded effective protection against harassment by existing norms,<sup>633</sup> irrespective of whether this is a general anti-discrimination act or a specific law against harassment.

It must be possible for employers to be held liable towards persons employed or not employed by them who have suffered sexual harassment from employees under their responsibility or, on premises under their responsibility, from persons not employed by them, such as independent contractors, self-employed workers, visitors, clients, etc.<sup>634</sup>

Victims of sexual harassment must have effective judicial remedies to seek reparation for pecuniary and non-pecuniary damage.<sup>635</sup> These remedies must, in particular, allow for appropriate compensation of a sufficient amount to make good the victim's pecuniary and non-pecuniary damage and act as a deterrent to the employer.<sup>636</sup> Procedures should allow an effective protection of victims, making it possible for a court to find in favour of the victim on the basis of sufficient *prima facie* evidence and the personal conviction of the judge or judges.<sup>637</sup>

Furthermore, states must conduct information, awareness-raising and prevention campaigns in the workplace or in relation to work.

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<sup>632</sup> Conclusions 2005, Statement of Interpretation on Article 26§1.

<sup>633</sup> Conclusions 2005, Statement of Interpretation on Article 26§1.

<sup>634</sup> Conclusions 2003, Italy, p. 324.

<sup>635</sup> Conclusions 2005, Moldova, pp. 493-495.

<sup>636</sup> Conclusions 2005, Lithuania, p. 390.

<sup>637</sup> Conclusions 2003, Slovenia, p. 537.

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

***Appendix: It is understood that this article does not require that legislation be enacted by the Parties. It is understood that paragraph 2 does not cover sexual harassment.***

Article 26§2 of the Charter establishes a right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. The states party are required to take all necessary preventive and compensatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them at the workplace or in relation to their work, since these acts constitute humiliating behaviour.<sup>638</sup> This protection must include the right to appeal to an independent body in the event of harassment, the right to obtain adequate compensation and the right not to be discriminated against for upholding these rights.<sup>639</sup>

As far as awareness raising is concerned, the requirements are the same as under Article 26§1.

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<sup>638</sup> Conclusions 2005, Statement of Interpretation on Article 26§2.

<sup>639</sup> Conclusions 2003, Slovenia, p. 539.

## Article 27

**All persons with family responsibilities and 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**

*Appendix : It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating on or advancing in economic activity. The terms “dependent children » and « other members of their immediate family who clearly need their care and support” mean persons defined as such by the national legislation of the Party concerned.*

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

**a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;**

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

Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training.<sup>640</sup>

Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. However, when the quality of standard employment services is adequate, there is no need to provide extra services for people with family responsibilities.<sup>641</sup>

States should pay particular attention to the problem of unemployment of part-time workers.

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<sup>640</sup> Conclusions 2005, Statement of Interpretation on Article 27§1a; see for example Estonia p. 213.

<sup>641</sup> Conclusions 2003, Sweden, p. 637.

**b to take account of their needs in terms of conditions of employment and social security;**

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security.

Measures need to be taken concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.<sup>642</sup> These measures should apply equally to men and women.<sup>643</sup>

The type of measures cannot be defined unilaterally by the employer but should be provided by a binding text (legislation or collective agreement).

Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes or in the determination of pension rights.

The kind of measures to be adopted shall not be decided unilaterally by the employer, but shall be defined with employees in collective agreements or other measures.

**c to develop or promote services, public or private, in particular child day care services and other childcare arrangements.**

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.<sup>644</sup>

Where a State has accepted Article 16, childcare arrangements are dealt with under that provision.

In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.<sup>645</sup>

**2. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice**

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<sup>642</sup> Conclusions 2005, Statement of Interpretation on Article 27§1b; see for example Estonia p. 213.

<sup>643</sup> Conclusions 2005, Lithuania, p. 397.

<sup>644</sup> Conclusions 2005, Statement of Interpretation on Article 27§1c ; see for example Estonia, p. 215.

<sup>645</sup> Conclusions 2005, Norway, p. 578.



**3. With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment**

Family responsibilities must not constitute a valid ground for termination of employment.<sup>646</sup>

Workers dismissed on such illegal grounds must be afforded the same level of protection afforded in other cases of discriminatory dismissal under Article 1§2 of the Charter. In particular, courts or other competent bodies should be able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are therefore not in conformity with the Charter.<sup>647</sup>

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<sup>646</sup> Conclusions 2003, Statement of Interpretation on Article 27§3 ; see for example Bulgaria, p. 89.

<sup>647</sup> Conclusions 2005, Estonia, p. 217.



## Article 28

### **Workers' representatives in the undertaking have the right to protection against acts prejudicial to them and should be afforded appropriate facilities to carry out their functions**

**With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that, in the undertaking**

**a they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;**

**b they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relation system of the country and the needs, size and capabilities of the undertaking concerned.**

*Appendix: For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"*

This provision guarantees the right of workers' representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises a similar right in respect of trade union representatives.<sup>648</sup>

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States may therefore establish different kinds of workers' trade union representatives or other types of representatives or both. Representation may be exercised, for example, through workers' commissioners, workers' council or workers' representatives on the enterprise's supervisory board.<sup>649</sup>

Protection should cover the prohibition of dismissal on the ground of being a workers' representative and the protection against detriment in employment other than dismissal.<sup>650</sup>

The facilities may include for example paid time off to represent the workers, financial contribution to the workers' council, the use of premises and materials for the operation of the workers' council.<sup>651</sup>

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<sup>648</sup> Conclusions 2003, Bulgaria, p. 91.

<sup>649</sup> Conclusions 2003, Bulgaria, p. 91.

<sup>650</sup> Conclusions 2003, France, pp.208-209.

<sup>651</sup> Conclusions 2003, Slovenia, p. 545.



## Article 29

### All workers have the right to be informed and consulted in collective redundancy procedures.

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

*Appendix: For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.*

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

#### Redundancies concerned

Article 29 gives no definition of the term "collective redundancy". The Committee has explained that the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity.<sup>652</sup>

#### Notion of workers' representatives

The appendix to the Charter defines workers' representatives as persons who are recognised as such under national legislation or practice, in accordance with ILO Convention No. 135 on workers' representatives. In other words, trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. This wording means that states are free to decide how the workers' representatives who have to be informed and consulted are to be appointed (general or ad hoc system).<sup>653</sup>

#### Consultation procedure

##### *Prior consultation in good time*

Under Article 29, consultation procedures must take place in good time, before the redundancies, in other words as soon as the employer contemplates making collective redundancies.

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<sup>652</sup> Conclusions 2003, Statement of Interpretation on Article 29.

<sup>653</sup> Conclusions 2003, see Sweden, p. 641.

### *Purpose of the consultation*

Article 29 defines the purpose of the consultation procedure, which must cover at least:

- the redundancies themselves, the “ways and means of avoiding collective redundancies or limiting their occurrence”; and
- support measures and ways and means of mitigating their consequences, for example by recourse to accompanying social measures designed, in particular, to facilitate the redeployment or retraining of the workers concerned, in other words a redundancy package.

Article 29 provides for the employer’s duty to consult with workers’ representatives and the purpose of such consultation. The Committee has stated that “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”.<sup>654</sup>

### *Content of prior information*

With a view to fostering dialogue, the Committee has stipulated that all relevant documents must be supplied before consultation starts, including the reasons for the redundancies, planned social measures, the criteria for being made redundant and information on the order of the redundancies.<sup>655</sup>

### Intervention of the public authorities

Article 29 lays down no specific obligations in this respect. The form for submitting reports refers to “possibilities of intervention by the public authorities” “in case of default by the employer” implying that the authorities are expected to play a secondary, a posteriori role at some point in the redundancy procedure in the event of default by the employer. However, there is not as yet any case-law on this subject.

### Sanctions

Consultation rights must be accompanied by guarantees that they can be exercised in practice. Where employers fail to fulfil their obligations, there must be at least some possibility of recourse to administrative or judicial proceedings before the redundancies are made to ensure that they are not put into effect before the consultation requirement is met. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their dismissal is examined under Article 24 of the Charter.<sup>656</sup>

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<sup>654</sup> Conclusions 2003, Statement of Interpretation on Article 29.

<sup>655</sup> Conclusions 2005, Lithuania, p. 404; Conclusions 2003, Romania, p. 429.

<sup>656</sup> Conclusions 2003, Statement of Interpretation on Article 29.

## Article 30

### Everyone has the right to protection against poverty and social exclusion

**With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:**

**a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;**

**b to review these measures with a view to their adaptation if necessary.**

Living in a situation of poverty and social exclusion violates the dignity of human beings.<sup>657</sup> Poverty means deprivation due to a lack of resources.<sup>658</sup>

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30 requires States Parties to adopt an overall and coordinated approach, which should consist of an analytical framework, a set of priorities and measures to prevent and remove obstacles to access fundamental social rights. There should also exist monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion.<sup>659</sup> This approach must link and integrate policies in a consistent way, moving beyond a purely sectoral or target group approach.

The measures taken for such a purpose must promote and remove obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance.<sup>660</sup> It should be noted that this is not an exhaustive list of the areas in which measures must be taken to address the multidimensional phenomena of poverty and social exclusion.

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<sup>657</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>658</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2005, France, p. 261.

<sup>659</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>660</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

The measures should strengthen access to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions.<sup>661</sup> Access to fundamental social rights is assessed by taking into consideration the effectiveness of policies, measures and actions undertaken.<sup>662</sup>

As long as poverty and social exclusion persist, alongside the measures there should also be an increase in the resources deployed to make social rights possible. Adequate resources are one of the main elements of the overall strategy to fight social exclusion and poverty, and should consequently be allocated to attain the objectives of the strategy.<sup>663</sup> Moreover, adequate resources are an essential element to enable people to become self-sufficient.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned.<sup>664</sup> In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed. The at-risk-of-poverty rate before and after social transfers (Eurostat), is used as a comparative value to assess national situations.

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<sup>661</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.

<sup>662</sup> Conclusions 2005, Norway, p. 580.

<sup>663</sup> Conclusions 2005, Slovenia, p. 674.

<sup>664</sup> Statement of Interpretation on Article 30, see in particular Conclusions 2003, France, p. 214.



## Article 31

### Everyone has the right to housing.

The Committee has given the following interpretation of Article 31:

State must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. They enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources.<sup>665</sup>

The actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of “results”. However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form. This implies that, for the situation to be in conformity with the treaty, states party must<sup>666</sup>:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b) maintain meaningful statistics on needs, resources and results;
- c) undertake regular reviews of the impact of the strategies adopted;
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.

As concerns the means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein.

When one of the rights in question is exceptionally complex and particularly expensive to implement, states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources.

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<sup>665</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on the merits of 18 October 2006, § 35.

<sup>666</sup> International Movement ATD Fourth World v. France, complaint n°33/2006, decision on the merits of 5 December 2007, §§ 58-71.

The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.

The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty.

The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied: the European Convention on Human Rights and the United Nations Covenant on Economic, Social and Cultural Rights.

## **1. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard.**

### *Definition and Material scope*

States must guarantee to everyone the right to adequate housing.<sup>667</sup> They should promote access to housing in particular to the different groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons, persons with disabilities including those with mental health problems.<sup>668</sup>

The notion of adequate housing must be defined in law. "Adequate housing" means:

1. a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and where specific dangers such as the presence of lead or asbestos are under control;
2. a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence,
3. a dwelling with secure tenure supported by the law. This issue is covered by Article 31§2.<sup>669</sup>

The definition of adequate housing must be applied not only to new constructions, but also gradually to the existing housing stock. It must also be applied to housing available for rent as well as to housing owner occupied housing.<sup>670</sup>

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<sup>667</sup> Conclusions 2003, France, p. 221.

<sup>668</sup> Conclusions 2003, Italy, p. 342.

<sup>669</sup> Conclusions 2003, France, p. 221.

<sup>670</sup> Conclusions 2003, France, p. 221.

### *Effectiveness*

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also limit against the interruption of essential services such as water, electricity and telephone.<sup>671</sup>

Even if under domestic law, local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, States parties to the Charter are responsible, under their international obligations to ensure that such responsibilities are properly exercised. Thus, ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.<sup>672 673</sup>

### *Legal protection*

The effectiveness of the right to adequate housing requires its legal protection through adequate procedural safeguards. Occupiers must have access to affordable and impartial legal and non-legal remedies.<sup>674</sup> Any appeal procedure must be effective.<sup>675</sup>

## **2. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.**

### *Definition*

Homeless persons are those persons who legally do not have at their disposal a dwelling or other form of adequate housing in the terms of Article 31§1.<sup>676</sup>

### *Prevention*

States must take action to prevent categories of vulnerable people from becoming homeless. In addition to a housing policy for all disadvantaged groups of people to ensure access to social housing (cf. Article 31§3),<sup>677</sup> States must set up procedures to limit the risk of eviction.

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<sup>671</sup> Conclusions 2003, France, p. 224.

<sup>672</sup> European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, Decision on the merits of 7 December 2005, § 26.

<sup>673</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 79.

<sup>674</sup> Conclusions 2003, France, p. 224.

<sup>675</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 80-81.

<sup>676</sup> Conclusions 2003, Italy, p. 345.

<sup>677</sup> Conclusions 2005, Lithuania, p. 409.

Though State authorities enjoy a wide margin of appreciation in measures to be taken concerning town planning, they must strike a balance between the general interest and the fundamental rights of the individuals, in particular the right to housing and its corollary of ensuring individuals do not become homeless.<sup>678</sup>

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation.<sup>679</sup>

Illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However, the criteria of illegal occupation must not be unduly wide.

The eviction should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.<sup>680</sup>

Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties affected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. The law must prohibit evictions carried out at night or during the winter period. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.<sup>681</sup>

Domestic law must provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Compensation for illegal evictions must also be provided.

### *Reduction*

States must take measures in order to reduce homelessness with a view to eliminating it.

Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter. There must be enough places<sup>682</sup> and the conditions in the shelters should be such as to enable living in keeping with human dignity<sup>683</sup>.

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<sup>678</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, Decision on the merits of 18/10/2006, §54.

<sup>679</sup> Conclusions 2003, Sweden, p. 655.

<sup>680</sup> European Roma Rights Center (ERRC) v. Greece, Complaint N° 15/2003, Decision on the merits of 8/12/2004, §51.

<sup>681</sup> European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, Decision on the merits of 18/10/2006, §52.

<sup>682</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, § 107.

<sup>683</sup> European Federation of National Organisations Working with the Homeless (FEANTSA) c. France, Complaint No 39/2006, decision on the merits of 5 December 2007, §§ 108-109.

The temporary supply of shelter, however adequate, cannot be considered satisfactory; Individuals who are homeless should be provided with adequate housing within a reasonable period. In addition, measures should be taken to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness.<sup>684</sup>

**3. With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to make the price of housing accessible to those without adequate resources.**

An adequate supply of affordable housing must be ensured for persons with limited resources.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other housing-related costs (e.g. utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.<sup>685</sup>

States must:

- adopt appropriate measures for the provision of housing, in particular social housing;<sup>686</sup> social housing should target, in particular, the most disadvantaged;<sup>687</sup>
- adopt measures to ensure that waiting periods for the allocation of housing are not excessive; legal and non-legal remedies must be available when waiting periods are excessive;<sup>688</sup>
- introduce housing benefits at least for low-income and disadvantaged sections of the population.<sup>689</sup> Housing benefit is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.<sup>690</sup>

All the rights thus provided must be guaranteed without discrimination, in particular as in respect of Roma or travellers.<sup>691</sup>

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<sup>684</sup> Conclusions 2003, Italy, p. 345.

<sup>685</sup> Conclusions 2003, Sweden, p. 655.

<sup>686</sup> Conclusions 2003, Sweden, p. 656.

<sup>687</sup> International Movement ATD Fourth World v. France, complaint n°33/2006, decision on the merits of 5 December 2007, §§ 98-100.

<sup>688</sup> International Movement ATD Fourth World v. France, complaint n°33/2006, decision on the merits of 5 December 2007, § 131.

<sup>689</sup> Conclusions 2003, Sweden, p. 656.

<sup>690</sup> Conclusions 2005, Sweden, p. 734.

<sup>691</sup> International Movement ATD Fourth World v. France, complaint n°33/2006, decision on the merits of 5 December 2007, §§ 149-155.



## Article E – Non discrimination

**The enjoyment of the rights set forth in this Charter shall 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**

**With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to promote access to housing of an adequate standard**

### Background to Article E

Article E draws its inspiration from Article 14 of the European Convention on Human Rights.<sup>692</sup> It takes up the principle of non-discrimination which was set forth in the Preamble of the Social Charter of 1961 and incorporates it into the main body of the revised Charter.

### Purpose of Article E

Article E prohibits all forms of discrimination. It confirms the right to non-discrimination which is established implicitly or explicitly by a large number of Charter provisions. The insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the fundamental rights contained therein. Its function is to help secure the equal effective enjoyment of all the rights concerned regardless of the specific characteristics of certain persons or groups of persons.<sup>693</sup>

It does not constitute an autonomous right which could in itself provide independent grounds for a complaint.<sup>694</sup>

### Prohibited grounds for discrimination

The prohibited grounds for discrimination are a combination of those listed in Article 14 of the European Convention on Human Rights and those in the Preamble to the 1961 Charter.

The expression “or other status” means that this is not an exhaustive list. Moreover, the Committee has expressly stated that disability is a prohibited ground for discrimination although it is not listed as such in the article.<sup>695</sup>

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<sup>692</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52.

<sup>693</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.

<sup>694</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.

<sup>695</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51.

### Scope of Article E

The principle of equality underlying article E implies not only that all people in the same situation must be treated equally but also that people in different situations must be treated differently. The Parties fail to respect the Charter where, without an objective and reasonable justification, they fail to treat differently persons whose situations are different. In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality. In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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.<sup>696 697</sup>

## **Article F – Derogations in time of war or public emergency**

**1 In time of war or other public emergency threatening the life of the nation any Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law**

**2 Any Party which has availed itself of this right of derogation shall, within a reasonable lapse of time, keep the Secretary General of the Council of Europe fully informed of the measures taken and of the reasons therefore. It shall likewise inform the Secretary General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed**

So far, no Party has implemented Article F.

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<sup>696</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52.

<sup>697</sup> *European Roma Rights Center (ERRC) v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36.



## **Article G – Restrictions**

**1** The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are 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

**2** The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed

Article G is applicable to all provisions of Articles 1 to 31 of the Charter.

Any restriction to a right is only in conformity with the Charter if it satisfies the conditions laid down in Article G. Thus, any restriction has to be

*(i) prescribed by law,*

Prescribed by law means by statutory law or any other text or case-law provided that the text is sufficiently clear i. e. that satisfy the requirements of precision and foreseeability implied by the concept of “prescribed by law”

*(ii) pursue a legitimate purpose,* i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals and

*(iii) necessary in a democratic society for the pursuance of these purposes,* i.e. the restriction has to be proportionate to the legitimate aim pursued : There must be a reasonable relationship of proportionality between the restriction on the right and the legitimate aim(s) pursued.

## **Article H – Relations between the Charter and domestic law or international agreements**

**The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected**

## Article I – Implementation of the undertakings given

**1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:**

- a laws or regulations;**
- b agreements between employers or employers' organisations and workers' organisations;**
- c a combination of those two methods;**
- d other appropriate means.**

The means of fulfilling Charter obligations is left to the discretion of the Parties, who are free to use all the methods referred to above.

However, the Committee has stated that:

- it is not enough for a law to exist and comply with principles of the Charter for the situation to be in conformity; the law also has to be applied in practice,<sup>698</sup>
- in the event of fulfilment through collective agreements or by the national authorities, it is for the state to ensure that the rights enshrined in the Charter are respected: States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.<sup>699</sup>

Lastly, in cases of complex circumstances entailing a substantial financial cost, the enforcement of Charter rights may require a certain length of time. In such cases, a State party must take measures that allow it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.<sup>700</sup>

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<sup>698</sup> International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32.

<sup>699</sup> Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 15 May 2003, §§27-28.

<sup>700</sup> *Association internationale Autisme-Europe (AIAE) v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53.

**2 Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned**

The Committee has defined the expression “great majority” as signifying 80%.<sup>701</sup>

For the provisions listed above, the situation is considered to be in conformity when the right enshrined is enjoyed by at least 80% of workers. However:

1. any law failing to satisfy the above criteria and which is potentially applicable to all workers, is in breach of paragraph 2, even if it affects less than 20% of workers in practice.<sup>702</sup>
2. The application of Article I cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.<sup>703</sup>

The appendix to Article 7§8 contains a similar provision:

“It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great majority of persons under eighteen years of age shall not be employed in night work.”

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<sup>701</sup> Conclusions I.

<sup>702</sup> Conclusions XIV-2, Norway p. 578 .

<sup>703</sup> *Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§39-41.



## Annex: The personal scope of the Charter

The primary reference is the Appendix to the Charter on its scope in terms of persons protected. Paragraph 1, sub-paragraph 1 states that Articles 1 to 17 and 20 to 31 apply to foreigners "*only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*". This rule is "*without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4*", and must be interpreted "*in the light of the provisions of Articles 18 and 19*". Sub-paragraph 2 states that "*this interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties*".

### *Rights for nationals of other parties lawfully present*

#### i. General

When they ratify the Charter, states undertake to apply the provisions they have accepted to their nationals and "*nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*" (Appendix). Foreign nationals must therefore satisfy three conditions for entitlement to the rights in the Charter on the same basis as nationals:

1. be a national of one of the 38 parties to the Charter or the Revised Charter;
2. be lawfully resident, in other words be authorised to enter and reside in the state's territory;
3. and/or be working regularly, in other words be authorised to enter and work in the state's territory.

It is clear from these conditions that the Charter does not grant foreign nationals any right of entry to, let alone freedom of circulation in, the territory of other parties. However it does require states to operate a flexible immigration policy towards nationals of other parties by liberalising the regulations governing the employment of foreign workers (article 18§§1-3) and facilitating family reunion (article 19§6).

#### ii. Specific cases

Certain Charter rights are not included in the appended list of those that states must apply without discrimination based on nationality, not only for the simple reason that foreigners are the sole beneficiaries of these rights but also because in certain respects the relevant provisions extend the circle of beneficiaries beyond nationals and foreigners as defined in the Appendix:

- Article 12§4 concerns the social security of "nationals of other Parties". This requires states to ensure not only that foreign nationals covered by the Appendix are entitled to equal treatment and the export of social security benefits but also that foreigners who are no longer resident in the country but were previously lawfully resident or working there regularly retain their social security rights acquired under that country's legislation;

- Article 13§4 offers specific entitlement to assistance to foreigners with the nationality of a party to the Charter or Charter who are lawfully present in the territory of another state, but not resident or working there. This may apply to students or tourists, and grants such persons a right to temporary social assistance and emergency medical care;
- Article 18 grants a right to engage in a gainful occupation in the territory of other parties. It follows from the very purpose of this provision – see above – that those concerned are applicants for residence and/or work permits and are not yet in the country in question;
- Article 19 contains several rights that apply specifically to migrant workers and their families, such as the rights to family reunion and procedural safeguards in the event of expulsion and the right to teaching of the language of the host country and the mother tongue.

*Exclusion of foreign nationals of other countries and/or those unlawfully present*

One consequence of the positive definition of protected persons in the Appendix is that certain persons are, in theory, excluded from the scope of the Charter:

i. Foreigners without the nationality of a party to the Charter

A significant exception to the first group of excluded persons is specifically provided for in paragraph 2 of the Appendix, namely refugees and stateless persons. Under the Appendix to the 1961 Charter, states must grant refugees as defined in the 1951 Geneva Convention on the Status of Refugees and lawfully staying in their territory, treatment as favourable as possible, and in any case not less favourable than required under the Convention. The Appendix to the Charter extends this requirement to stateless persons as defined in the 1954 New York Convention on the Status of Stateless Persons. This exception does not simply confirm parties' obligations under these conventions regarding equal treatment for refugees and stateless persons but also invites states to go further by offering them treatment as favourable as possible.

ii. Foreigners unlawfully present

This category also includes persons who have had their applications for refugee or stateless person status rejected.

*Towards recognition of certain rights of nationals of other countries*

In 2004, the Committee recalled the possibility of extending Charter protection to foreign nationals of non-party states<sup>704</sup>. The Committee based its argument on the Appendix itself, which stipulates that parties can extend the Charter's application to persons other than those covered by the Appendix. Specifically, the Committee stated that "*the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations.*"

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<sup>704</sup> Conclusions 2004, Statement of Interpretation, p. 10.

However, after stating the principle, the Committee added that these obligations did "*not in principle fall within the ambit of its supervisory functions*". The Committee made it clear that it did not exclude "*that the implementation of certain provisions of the Charter could in certain specific situations require complete equality of treatment between nationals and foreigners, whether or not they are nationals of member States, Party to the Charter*".

## ii. Foreigners in an irregular situation

Among the persons belonging to this category are also those who have been denied status as refugees or stateless persons.

In a collective complaint, the Committee has clarified its position: The International Federation of Human Rights Leagues (FIDH) alleged that the introduction, under the state medical assistance (AME) scheme, of a flat-rate charge (*ticket modérateur*) and a daily charge (*forfait journalier*) for in-patient hospital treatment of foreigners unlawfully present in France, and the exclusion of children of illegal immigrants and unaccompanied minors from the universal medical coverage (CMU) scheme were in breach of Article 13§1 and §4 (right to medical assistance) and Article 17§1 (right of children to social and legal protection), in conjunction with Article E. (non-discrimination clause), of the Revised Social Charter.

The Committee stated for the first time that "*legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter*".

The decision.<sup>705</sup> In reaching this conclusion, the Committee reasoned as follows:

- Firstly, the Committee makes it clear that, when it has to interpret the Charter, it does so on the basis of the 1969 Vienna Convention on the Law of Treaties: interpretation in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose;
- Secondly, the Committee opts for a broad concept of human rights based on the notion of human dignity. When determining the object and purpose of the Charter it takes account of the fact that the latter is a living human rights instrument dedicated to the values of dignity, autonomy, equality and solidarity, and closely complements the European Convention on Human Rights. The Committee concludes from this that the Charter must be interpreted so as to give life and meaning to fundamental social rights, and that restrictions on rights must therefore be read restrictively;
- Thirdly and finally, it considers the importance of the right in question for individuals. In this case the restrictions impinge on a right of fundamental importance to individuals since they concern the right to life itself and thus to human dignity, a fundamental value at the core of positive European human rights law. When interpreting the Appendix, therefore, the Committee considers that denying foreigners the right to medical assistance, even if they are there illegally, is contrary to the Charter.

<sup>705</sup> International Federation of Human Rights Leagues (FIDH) v. France, complaint n° 14/2003, decision on the merits of 8 September 2004, §§ 26-32.

In this case, the Committee concluded that French legislation did not deprive illegal immigrants of all entitlement to medical assistance and that there had not therefore been a violation of the right to emergency care - Article 13§4 of the Charter. However, it did find a violation of the right of children and young persons to protection - Article 17 of the Charter, directly inspired by the United Nations Convention on the Rights of the Child – because children of illegal immigrants and unaccompanied minors are only entitled to medical assistance in life-threatening situations and the former are in any case only admitted to the medical assistance scheme after a certain period of residence.



# **SECOND PART:**

## **RELEVANT ABSTRACTS OF CONCLUSIONS AND DECISIONS**



# Article 1

## Article 1§1

1. **Conclusions I, Statement of interpretation on Article 1§1, p. 13:** “The Committee interpreted this provision as imposing an obligation as to means rather than an obligation as to results. It recognised that in order to decide whether a country is really fulfilling this obligation, it is necessary to adopt a dynamic standpoint, to assess the situation existing at a given moment having regard to the continuous action pursued.”
2. **Conclusions XVI-1, Statement of interpretation on Article 1§1, p. 9:** “Basing itself on its deliberations in recent supervision cycles, the Committee has decided to assess the conformity of national situations with the obligation laid down by Article 1§1 of the Charter. The assessment rests on a certain number of legal, economic and social indicators which are particularly linked to the results achieved by states in providing active assistance to unemployed persons and the translation of economic growth into employment.”
3. **Conclusions XVI-1, Netherlands (Netherlands Antilles and Aruba), p. 464:** “The report states that the Government aims to achieve full employment by way of industrial development policies favouring in particular the tourism industry. However, while the report states that employment policy is the responsibility of the island governments, it also states that these same governments pursue no specific employment policy and that no budget is allotted for this purpose. The Committee considers that, in light of the employment situation described above, the absence of a specific employment policy is irreconcilable with the purpose of Article 1§1.”
4. **Conclusions 2004, Bulgaria, p. 21:** “During the years 1993-1996 the (total) unemployment rate in Bulgaria decreased from 21.4% to 14%. It remained unchanged until 1998 when it began to rise again. After a particularly strong increase in 2000 (of nearly 3 percentage points) the rate reached 19.6% the following year. It was slightly higher for males.

The Committee observes that the 2002 data provided in the report indicates a rapid decline of (registered) unemployment – from 18.6% in January 2002 to 16.3% in December 2002. This recent trend, according to the report, started already in 2001 as a result of active employment measures taken by the government. The Committee notes from another source that long-term unemployment has been on the rise since 2000. It amounted to 52.8% that year, 57.9% the following year and reached 65.4% in 2002. During the reference period these rates were slightly higher for males. As indicated in the Joint Assessment of Employment Priorities in Bulgaria 2002, almost 50% of the long-term unemployed and 70% of the young long-term unemployed had low educational attainment (primary education or below 7).

[...]

The Committee notes from the Joint Assessment of Employment Priorities in Bulgaria that expenditure on active labour market programmes during the reference period represented 0.35% of GDP. The Committee observes that this rate is low by the European standards. Furthermore, the Committee observes that after a considerable increase from 7% in 1991 to 31.2% in 1998, the share of expenditures for active policy fell to 23.6% in 2001. This despite the objective, set out in the national Action Plan, to increase the relative share of the expenditures for active measures to 40% of the total employment policy expenditure. Moreover, the provision of active measures is heavily concentrated on temporary employment measures, which do not contribute to the long-term employability

[...]

According to the report, 106,780 individuals participated in active measure programmes organised in 2001. Given the total number of unemployed, which was about 684,000 that year, the level of participation is modest.

[...]

The Committee concludes that the situation in Bulgaria is not in conformity with Article 1§1 of the Charter, on the grounds of

- a high general unemployment rate,
- a very high long-term unemployment rate, and
- inadequate financing of active measures.”

5. **Conclusions XVI-1, Poland, pp. 521-524:** “The Committee observes that relative spending on active labour market measures has decreased in favour of passive measures due to the high growth in the number of unemployment benefit claimants. More importantly, however, it notes from OECD information that total expenditure on labour market measures has fallen steadily since 1996 when it stood at 2.2% of GDP, compared to 0.96% in 2000. According to the report, there was a very modest increase in total expenditure from 1999 to 2000 (from 0.93% of GDP to 1.01%) exclusively due to increased benefit payments. Spending on active measures has plummeted according to both the report and the OECD, accounting for only 0.15% of GDP in 2000 (the share was thus more than halved in one year, as it stood at 0.35% of GDP in 1999) which is 7-8 times less than the OECD Europe average. Spending in absolute terms per unemployed person was as low as € 940 in 1998 and has declined further. The report explains that the situation of the labour market policy financing institution, the Labour Fund, was difficult in 2000. Due to the increased outlays on pre-retirement benefits and allowances the Fund was unable to fully finance other programmes, in particular active measures.

Notwithstanding the challenges facing the Polish economy, especially the still comparatively low economic output and the on-going privatisation process, the Committee considers that these negative developments in the labour market policy effort, both in terms of activation of unemployed persons and expenditure, occurring as they do at a time when the economy is in fact growing and unemployment is soaring, are irreconcilable with the purpose of Article 1§1. “

## Article 1§2

6. **Conclusions II, Statement of Interpretation on Article 1§2, p. 4:** “As the Committee decided during the consideration of the first biennial reports, this provision deals essentially with two particularly important problems: the prohibition of forced labour and the elimination of all forms of discrimination in employment.”
7. **Conclusions XVI-1, Statement of Interpretation on Article 1§2, p. 9:** “As far as Article 1§2 (right to earn one’s living in an occupation freely entered upon) is concerned, a provision which has not been amended in the Charter, the Committee developed its case law as follows:
- first, it holds that most of the requirements for compliance with Article 1§2 as regards the prohibition of discrimination on the ground of sex apply to any ground of discrimination;
  - secondly, it will henceforth systematically examine the length of civilian service, the loss of unemployment benefits for refusal to take up employment and the consequences of part-time work. These questions are gathered under a new heading “Other aspects of the right to earn one’s living in an occupation freely entered upon”.
8. **Conclusions XVIII-1, Iceland, pp.423-424 :** “As regards discrimination on grounds other than sex, the report confirms that there is no specific legislation in Iceland prohibiting discrimination on the above-mentioned grounds in employment. According to the report Icelandic law contains general provisions on non-discrimination (the Constitution, Administrative Procedure Act etc.).

However the Committee considers that the above-mentioned provisions are general in scope, and is unclear how they could provide adequate protection to individual victims of discrimination in employment.

It recalls that on the previous occasion it examined this provision it concluded that the arrangements for prohibiting discrimination other than on grounds of sex, fell short of what is required by this provision of the Charter, but deferred pending further information on any developments. The report fails to provide any new information. Therefore the Committee concludes that the situation is not in conformity in this respect with Article 1§2 of the Charter.”

9. **Conclusions 2006, Albania, p. 28** : “The Committee considers that under Article 1§2 legislation should prohibit discrimination in employment at least on grounds of race, ethnic origin, religion, disability, age, sexual orientation and political opinion.”
10. **Conclusions XVIII-1, Austria, p. 29** : “Legislation should cover both direct and indirect discrimination, in the context of indirect discrimination the Committee recalls that it has stated that in the context of Article E of the Charter: “ Such indirect discrimination may 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” (*Autism Europe v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §52).”
11. **Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §§24-25**: “The Committee points out that Article 1 para. 2 of the Charter requires those states which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation requires *inter alia* the elimination of all forms of discrimination in employment whatever is the legal nature of the professional relationship.

A difference in treatment between people in comparable situations constitutes discrimination in breach of the Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.”

12. **Conclusions XVI-1, Greece, p. 279**: “As the Committee stated in its previous conclusion, limiting the number of women eligible for police training could be justified under Article 31 of the Charter. The Committee then has to establish whether the restriction on the right to equal treatment is necessary in a democratic society to protect public interest or national security. Such a restriction might also be justified where sex is a decisive criterion due to the nature of the activities concerned or the conditions under which they are exercised.”
13. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §52**: “The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the *Thlimmenos* case [*Thlimmenos c. Greece* [GC], No. 34369/97, CEDH 2000-IV, §44)], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case:

*‘The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.’*

In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.

In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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.”

14. **Conclusions XVI-1, Austria, p. 25:** “The Committee interprets Article 1§2 of the Charter as requiring states to legally prohibit any discrimination, direct or indirect, in employment. Stronger protection may be provided in respect of certain grounds, such as gender or membership of a race or ethnic group. The discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action).The Committee considers that in order to comply with Article 1§2 states should take legal measures to safeguard the effectiveness of the prohibition of discrimination.”
15. **Conclusions XVI-1, Iceland, p. 313:** “The Committee considers that in order to comply with Article 1§2 states should take legal measures to safeguard the effectiveness of the prohibition of discrimination. These measures must at least provide :
  - that any provision contrary to the principle of equal treatment which appears in collective labour agreements, in employment contracts or in firms’ own regulations may be declared null or be rescinded, abrogated or amended;
  - appropriate and effective remedies in the event of an allegation of discrimination;
  - protection against dismissal or other retaliatory action by the employer against an employee who has lodged a complaint or taken legal action;
  - in the event of a violation of the prohibition of discrimination, sanctions that are a sufficient deterrent to employers as well as adequate compensation proportionate to the damage suffered by the victim.”
16. **Conclusions XVI-1, Iceland, p. 313, *op. cit.***
17. **Conclusions 2006, Albania, p. 29:** “Further the Committee recalls that under Article 1§2 of the Charter remedies available to victims of discrimination must be adequate, proportionate and dissuasive. It therefore considers that the imposition of predefined upper limits to compensation that may be awarded not to be in conformity with the Charter as in certain cases that may preclude damages from being awarded which are commensurate with the loss and damage actually sustained and may not be sufficiently dissuasive for the employer.”
18. **Conclusions 2002, France, p. 24:** “The Committee observes that when they accept Article 1§2 of the Charter, states undertake to prohibit any discrimination, whether this takes the form of an explicit rule or occurs in practice, and to organise appropriate and effective remedies in the event of allegations of discrimination. It takes the view that the effectiveness of a remedy in a matter of discrimination requires an amendment of the burden of proof, so as to enable the court to deal with the discrimination in the light of the effects produced by the rule, act or practice.”
19. ***Syndicat Sud Travail et Affaires sociales v. France, Complaint No. 24/2004, Decision on the merits of 16 November 2005, §33:*** “The Committee notes that from the point of view of effective application of rules on protection against discrimination the purpose of rules on alleviation of the burden of proof is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice. The Committee observes that it is the administrative courts that are the competent courts in discrimination cases involving civil servants, as well as public servants without tenure and employees of ANPE. It also observes that the administrative courts apply an “inquisitorial procedure” in which issues of burden of proof may present themselves differently from in adversarial litigation. However, the Committee is forced to note that it is unable to see that for the categories of employees concerned in the present context French law contains statutory provisions geared to guarantee the alleviation of the burden of proof consistent with the requirements of Article 1§2 of the Charter. The Government has adduced no evidence or submitted no reference to any statutory text or case law to show that the situation in law is in accordance with the obligations incumbent on it pursuant to Article 1§2.”

20. **Conclusions XVI-1, Iceland, p. 313:** “The Committee considers that the following measures foster the full effectiveness of the efforts to combat discrimination according to Article 1§2 of the Charter:
- recognising the right of trade unions to take action in cases of discrimination in employment, including on behalf of individuals ;
  - the possibility of collective action by groups with an interest in obtaining a ruling that the prohibition of discrimination has been violated ;
  - the setting up of a specialised body to promote, independently, equal treatment, especially by providing discrimination victims with the support they need to take proceedings. “
21. **Conclusions 2006, Albania, p. 30:** “As regards discrimination in employment on grounds of nationality the Committee recalls that under Article 1§2 of the Charter while it is possible for states to make foreign nationals' access to employment on their territory subject to possession of a work permit, they cannot ban nationals of States Parties, in general, from occupying jobs for reasons other than those set out in Article G; restrictions on the rights guaranteed by the Charter are admitted only if they are prescribed by law, serve a legitimate purpose and are 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. The only jobs from which foreigners may be banned therefore are those that are inherently connected with the protection of the public interest or national security and involve the exercise of public authority.”
22. **Conclusions 2006, Lithuania, p. 488:** “As regards discrimination in employment on grounds of past employment in the security services of the former Soviet Union, the Committee notes that the Law on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organisation (16 July 1998) significantly restricts the employment rights of former employees of the USSR institutions competent in security matters.
- [...]
- The Committee notes that the restrictions are prescribed by law within the meaning of Article G of the Charter and serve one of the purposes therein, the protection of national security, however it considers that they are not necessary and proportionate in that they apply to a large field of employments and not solely to those services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities. “
23. **Conclusions XIII-3, Ireland, p. 66:** “With regard to the prohibition of forced labour, the Committee noted in the Irish report that the provisions of the Merchant Shipping Act 1894, whereby restrictions and in some cases detention could be imposed on seamen who failed to rejoin their ship or who did not carry out orders, had still not been repealed. It recalled once again its established case law on the subject, according to which the non-application of national legislation did not suffice to demonstrate a state's compliance with this provision.”
24. **International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §22:** “With regard to *the prohibition of forced labour*, the Committee noted in the Irish report that the provisions of the Merchant Shipping Act 1894, whereby restrictions and in some cases detention could be imposed on seamen who failed to rejoin their ship or who did not carry out orders, had still not been repealed. It recalled once again its established case law on the subject, according to which the non-application of national legislation did not suffice to demonstrate a state's compliance with this provision.”

25. **International Federation of Human Rights Leagues (FIDH) v. Greece, Complaint No. 7/2000, Decision on the merits of 5 December 2000, §21:** "As for Article 64 of Legislative Decree No. 1400/73 concerning career officers in the Greek army, who have received several periods of training, the Committee has similarly concluded since the eleventh supervision cycle that this provision violates Article 1 para. 2 of the Charter. A compulsory period of service of up to 25 years is excessive and contrary to the freedom to choose and to leave an occupation (Conclusion XI-1, p. 43; most recently Conclusion XV-1, p. 294)."
26. **Conclusions 2004, Ireland, p. 260:** "In its last conclusion under the 1961 Charter, the Committee found that the situation was not in conformity because army officers could not seek early termination of their commission unless they repaid to the state at least part of the cost of their education and training, and the decision to grant early retirement was left to the discretion of the Minister of Defence. This could lead to a period of service which would be too long to be regarded as compatible with the freedom to choose and leave an occupation. This reason for non-conformity has remained unchanged since 1998 (Conclusions XIV-1, pp. 409-410) and the report does not refer to any change. The Committee therefore concludes that the situation in this respect is not in conformity with the Charter."
27. **Conclusions XVI-1, Greece, p. 283:** "Powers of requisition in exceptional circumstances  
In the decision of 5 December 2000 on the merits of complaint no. 7/2000, the Committee considered Greece to be in contravention of Article 1§2 of the Charter on the grounds that Legislative Decree No. 17/74, which provides for the mobilisation of the civilian population in a state of emergency, that is "in any unforeseen situation causing disruption of the country's economy and society", is of such a general nature that it cannot be considered to be in conformity with Article 1§2 of the Charter, even if the provisions of Article 31 are taken into account. The report states that Legislative Decree No. 17/74 has been amended by Act No. 2936/2001 and that it is now possible to mobilise the civilian population in situations defined as follows: "a state of emergency is any unforeseen situation caused by natural phenomena or by other technological incidents or war which cause or threaten to cause extensive loss, damage and destruction to persons or property or to obstruct and disturb the economic and social life of the country". The Committee considers that the notion of state of emergency is now defined with sufficient clarity and that the violation of Article 1§2 of the Charter has now been remedied."
28. **Conclusions XVI-1, Germany, pp. 242-243:** "The Committee takes the view that the practice of employing prisoners for private enterprises, without the prisoners' consent and in conditions so far removed from those normally associated with a private employment relationship, is not consistent with the Charter prohibition on forced labour (Article 1§2)."
29. **Conclusions 2004, Cyprus, p. 91:** "The Committee .. recalls that the right to an occupation freely entered upon implies that, for a reasonable initial period, job seekers may refuse offers that do not match their qualifications and experience without running the risk of losing their entitlement to unemployment benefit."
30. **Quaker Council for European Affairs (QCEA) v. Greece, Collective Complaint No. 8/2000, Decision on the merits of 25 April 2001, §23-25:** "The Committee considers, however, that alternative civilian service may amount to a restriction on the freedom to earn one's living in an occupation freely entered upon. Such a situation comes therefore within the scope of Article 1 para. 2 of the Charter. It is accordingly for the Committee to determine whether, in the present case, the conditions and modalities for the performance of alternative civilian service, compared to military service, constitute a disproportionate restriction on the freedom guaranteed by Article 1 para. 2 of the Charter."



As regards the duration of alternative civilian service, the Committee accepts the Government's view that the less onerous nature of civilian service justifies a longer duration than that of military service. The Contracting Parties to the Charter indeed enjoy a certain margin of appreciation in this area.

In the present case, the Committee observes however that the duration of civilian service is 18 months longer than that of the corresponding military service, be it of 18, 19 or 21 months, or reduced to 12, 6 or 3 months. A conscientious objector may therefore perform alternative civilian service for a period of up to 39 months. The Committee considers that these 18 additional months, during which the persons concerned are denied the right to earn their living in an occupation freely entered upon, do not come within reasonable limits, compared to the duration of military service. It therefore considers that this additional duration, because of its excessive character, amounts to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon", and is contrary to Article 1 para. 2 of the Charter."

31. **Conclusions 2006, Estonia, p. 178:** "The Committee previously noted that legislation provided for alternative service to compulsory military service, but sought further clarification on the length of such alternative service. In December 2004 the length of alternative service was reduced to between 12 months (minimum) and 18 months (maximum) and is (according to other sources) currently set at 16 months duration. Military service lasts between eight months (minimum) and 11 months (maximum).

The Committee recalls that under Article 1§2 the duration of alternative service may not exceed one and half times the length of military service. The Committee notes that according to the information available to it alternative service may amount to double the length of military service. The situation is therefore not in conformity with the Charter on this point."

32. **Conclusions XVI-1, Austria, p. 28:** "The Committee recalls that states that have accepted Article 1§2 of the Charter undertake "to protect effectively the right of the worker to earn his living in an occupation freely entered upon". It is concerned about the impact of the development of part-time work on these two aspects of Article 1§2. It therefore asks for the next report to include information on the legal safeguards attached to part-time work, in particular whether there is a minimum working week and whether there are rules to avoid undeclared work in the context of overtime and ones requiring equal pay, in all its aspects, between part-time and full-time workers."

33. **Conclusions 2006, Statement of Interpretation on Article 1§2, pp. 11-12:** "13. Individuals must be protected from interference in their private or personal lives associated with or arising from their employment situation. Modern electronic communication and data collection techniques have increased the chances of such interference.

14. Since the term "private life" may be defined with varying degrees of strictness it may be preferable to speak of "infringements of private or personal life".

15. In the first place, 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. The Charter's insistence that anyone is entitled to earn his living in an occupation freely entered upon (Revised Social Charter, Part I, 26 and Article 1§2) means that employees must remain free persons, in the sense that their employment obligations, and hence the powers of management, are limited in scope.

16. The principle is indisputable, even though it is sometimes difficult to determine the precise boundary between the occupational and non-occupational spheres, bearing in mind the nature of the work and the purpose of the business.

## 194 Article 1

17. Admittedly, Article 1§2 only refers explicitly to the time when workers enter into employment. Logically, though, the fundamental principle of freedom which the Charter refers to with respect to this particular occasion must continue to apply thereafter in the non-work sphere. According to the Committee's case-law, "the discriminatory acts and provisions prohibited by this provision are all those which may occur in connection with recruitment and employment conditions in general (mainly remuneration, training, promotion, transfer, dismissal and other detrimental action)" (Conclusions XVI-1, Vol. 1, p. 313).

18. Secondly, employees must be protected against infringements of their dignity, as embodied in the Charter (Part I, Article 26, in which "dignity" appears in the title). What is at issue here is people's private lives in the strictest sense. For example, certain employers, taking advantage of their dominant position over employees, intercept oral or written conversations of their employees or of job seekers between themselves or with third parties or question them about their sexual relationships or their religious or political beliefs.

19. Infringements of the two principles described above take many diverse forms. They may arise from questions to employees or job seekers about their family situation or background, their associates, their opinions, their sexual orientation or behaviour and their health or that of members of their family and about how they spend their time away from work. They may also arise from the storage, temporarily or permanently, and processing of such data by the employer, from their being shared with third parties and from their use for purposes of taking measures regarding the employees.

20. In Articles 1§2 and 26, as cited above, the principles protecting employees from unnecessary interference in their personal or private lives are worded in the most general terms. However, it should not be overlooked that under various specific circumstances, violations of these principles can also constitute violations of other articles of the Revised Social Charter. This applies in particular to Article 3 (one of whose aims is to counter threats to workers' health, including their mental health), Article 5 (in relation to the right to join organisations and not to disclose that one is a member), Article 6 (in relation to collective bargaining), Article 11 (in relation to mental health), Article 20 (in relation to discrimination on the ground of sex), Article 24 (in relation, in particular, to paragraph a., on reasons for dismissal) and Article 26 (in relation to protection against various forms of harassment).

21. Quite apart from the fact that the various types of conduct described above are sometimes aggravated by an intention to discriminate, they may in themselves upset the balance between the needs of the workplace and the individual's right to protection."

## Article 1§3

34. **Conclusions XIV-1, Statement of Interpretation on Article 1§3, p. 39:** "Under Article 1§3, the Committee has confirmed, inter alia, the States' obligation to maintain employment services free of charge for all workers and in all sectors of the economy. It follows from the wording of this provision of the Charter that free services should be provided not only for the unemployed but also for employed workers looking for another job. Moreover according to the established case law of the Committee, the basic services such as registration or supply and demand for labour should be free for both workers and employers."
35. **Conclusions XIV-1, Turkey, p. 762:** "The Committee noted in its previous conclusion with respect to Turkey that employers had to pay a fee for the notification of vacancies and asked the Turkish Government to indicate the basis for this fee, its amount and whether all employers were obliged to pay it. The report states only that the fees are reimbursements of expenses incurred by the State Employment Agency and that the amounts were 1.5 million Turkish pounds (TRL) for public employers and TRL 400,000 for private employers. Taking into account that Article 1 para. 3 requires that employment services are free of charge for both workers and employers, the Committee considers that the charging of a fee for such a fundamental operation of the employment services as is the notification of vacancies cannot be in conformity with the Charter. The Committee has stated that "the principle of free services would be devoid of its meaning if it applied only to the demand of employment by workers and did not include the supply of jobs by employers." And further "that services paid for concern specifically selection or assessment separate from the registration of supply and demand of manpower, which must remain free" (Conclusions VIII, pp. 36-37). »

36. **Conclusions XIV-1, Greece, pp. 350-351:** "From the Greek report, the Committee notes the information on the number of vacancies registered and the number of placements made by the Manpower Employment Organisation (OAED) in 1994, which enjoys a monopoly on employment services in Greece. Due to technical difficulties related to the implementation of an electronic data registration system, the information covers only the year 1994. The Committee notes that a total of 11,136 vacancies were notified to OAED and that 3,994 persons were placed in work, corresponding to a placement rate of 36%. While the placement rate is rather low, the Committee is seriously concerned at the number of vacancies and placements in absolute terms. Considering that the employed labour force in Greece comprises about 3.9 million persons and that there are more than 450,000 unemployed, it appears to the Committee that the placement services of OAED are of marginal importance in the Greek labour market.

From another source, the Committee notes that jobseekers registered with the public employment service only accounted for 10.5% of all jobseekers in 1994, while the average of the other European countries for which this information was available was about 68%. Moreover, the percentage of jobseekers reporting that the public employment service was their main means of seeking employment was exceptionally low at about 5% compared to a European Union average of about 57%.

[...]

In view of the evidently insufficient results of the public employment service, the Committee can only reach a negative conclusion. "

37. **Conclusions XV-1, Addendum, Poland, p. 143:** "Finally, the Committee observes that employers' organisations, trade unions and regional bodies are actively involved in the formulation of employment policy in general and in the objective setting for employment offices. The dialogue between the parties takes place within the framework of Employment Councils, organised at central, regional and districts levels. Their role is to jointly define measures aimed at full employment.

In the light of the information provided, the Committee concludes that the situation in Poland complies with Article 1 para. 3 of the Charter."

## Article 1§4

38. **Conclusions 2003, Bulgaria, p. 21:** "Under Article 1§4 of the Charter, the Committee considers vocational guidance, continuing vocational training for workers and rehabilitation for people with disabilities (subjects dealt with by Articles 9, 10§3 and 15§1 respectively)."
39. **Conclusions XII-1, Statement of Interpretation on Article 1§4, p. 67:** "The purpose of Article 1 of the Charter being to ensure the effective exercise of the right to work, the Committee specified that in order to satisfy the requirements of Article 1, para. 4, a state must not only have institutions providing vocational guidance, training and rehabilitation, but must also ensure access to the institutions for all those interested, including foreigners, nationals of the states parties to the Charter, and the disabled."
40. **Conclusions 2003, Bulgaria, p. 21:** " Due to the fact that [Bulgaria] has accepted none of the following provisions, that is Articles 9 (right to vocational guidance), 10§3 (right to vocational training and retraining of adult workers), and 15§1 (the right of persons with disabilities to guidance, education and vocational training) of the Charter, the Committee examines [under Article 1§4] all these issues."



## Article 2

### Article 2§1

41. **Conclusions I, Statement of Interpretation on Article 2§1, p. 169:** " A Contracting Party [cannot] be considered as complying with the obligation [under Article 2§1] unless reasonable daily and weekly working hours were established in that country either by law or regulations or by collective agreement, or by some other process imposing an obligation whose performance is subject to the supervision of an appropriate authority."
42. **Conclusions XIV-2, Norway, p. 578:** "[The Committee] is therefore of the opinion that daily working hours of sixteen hours are too long to be considered as reasonable under this provision of the Charter. The Committee does not find that the limits set to weekly working hours, etc. can compensate the fact that the daily hours are unreasonably long.  
  
Reaching this conclusion the Committee has considered the fact that overtime work may only be performed in the cases mentioned in Section 49 and that there are certain other guarantees in the legislation for daily working hours of sixteen hours to be permissible, i.e. that local agreements providing for such long working hours may only be concluded in enterprises bound by collective agreement, that they are only valid for three months and that the individual worker must agree."
43. **Conclusions XIV-2, Netherlands, pp. 535-536:** "The Committee notes that the regulations allowing for working time flexibility described above have a precise normative framework and that the new legislation does aim to protect the safety and health of workers. It observes that the way the flexibility system is organised does not afford sufficient protection to workers: on the one hand, unless the relevant collective agreement contains provisions on the length of working time "flexibility regulations" may be introduced by an agreement at enterprise level, and, on the other hand, the "basic regulations" which also allow for adjustments of working time apply directly in the absence of a workers' representative body or of staff delegates within the enterprise or if the employer does not obtain an agreement. The Committee finds that in these circumstances a total working week (usual hours plus overtime) which within the framework of "flexibility regulations" may attain up to sixty hours per week is unreasonable."
44. **Conclusions XIV-2, Statement of Interpretation on Article 2§1, p. 32:** "(...) 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 at the discretion of the employer or the worker; the utilisation and/or the length of overtime should be limited in order to avoid exposing the worker to the risks of accidents at the end of a working day".
45. **Conclusions XIV-2, Statement of Interpretation on Article 2§1, p. 32:** "When examining national reports, the Committee cannot give an opinion in the abstract on which daily and weekly working hours are reasonable over a given period in time. It recalls that it has held that what is reasonable under the Charter varied from place to place and from time to time. Moreover, the progressive reduction of working hours depends on "the increase of productivity and other relevant factors". Such other factors are the nature of the work, including the risks to which the workers' safety and health are exposed. As the Committee has pointed out on many occasions, risks are higher for workers occupied for long hours over a considerable period of time."

46. **Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38:** "29. The Committee recalls that it has considered that flexibility measures regarding working time are not as such in breach of the Charter (see in particular General Introduction, Conclusions XIV-2, p. 33). In order to be found in conformity with the revised Social Charter, national laws or regulations must fulfil three criteria:

- (i) they must prevent unreasonable daily and weekly working time
  - (ii) they must operate within a legal framework providing adequate guarantees
  - (iii) they must provide for reasonable reference periods for the calculation of average working time.
- (i) Length of daily and weekly working time

30. The Committee observes that the system of annual working days does not set any limit to the daily working time of managerial staff. Consequently, the right to a daily rest period of 11 hours provided for by Article L 220-1 of the Labour Code applies. No derogation is permitted. Therefore, managerial staff cannot work for more than 13 hours on any day within the maximum of 217 working days in the year, no matter what the circumstances. This daily limit is in conformity with Article 2 para. 1 of the Revised Social Charter.

31. There is no specific limit to weekly working time either in the annual working days system. Here again it is the minimum rest period provided for in Article L221-4 of the Labour Code which sets a limit to weekly working time. The weekly rest period must be for 35 consecutive hours, meaning that, no matter what the circumstances, the managerial staff concerned cannot work for more than 78 hours per week. The Committee is of the view that this length of working time is manifestly excessive and therefore cannot be considered reasonable within the meaning of Article 2 para. 1 of the revised Social Charter.

- (ii) a legal framework providing adequate guarantees

32. In order to be deemed in conformity with the revised Social Charter, a flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.

33. In the present case, the annual working days system can only be adopted on the basis of collective agreements. Furthermore, such agreements are required by law to lay down the procedures to monitor the working time of the managerial staff concerned, especially their daily working time and their workload.

34. The Committee observes that the law does not require that collective agreements provide for a maximum daily or weekly limit, although the social partners are clearly free to do so. It accordingly considers that the guarantees afforded by collective bargaining are not sufficient to comply with Article 2 para. 1.

35. The Committee further observes that collective agreements may be reached at enterprise level. The possibility to do so is not in conformity with Article 2 para. 1 unless specific guarantees are provided for. It observes in this respect that the procedure for contesting collective agreements under Article L. 132-26 of the Labour Code does not constitute such a guarantee since its implementation is of a random nature. Consequently, the Committee concludes that the situation is not in conformity with Article 2 para. 1 of the revised Social Charter.

- (iii) a reasonable period for the calculation of average working time.

36. When determining the conformity of flexible working time systems with the revised Social Charter, the Committee takes account of the length of the reference period which is used to calculate average working time (see in particular General Introduction, Conclusions XIV-2, p. 34).

37. In light of the findings above on the first two criteria, the Committee considers that it is not necessary in the present case to pronounce on the third criterion.

- (iv) Conclusion

38. In conclusion, the Committee holds that the situation of managerial staff in the annual working days system constitutes a violation of Article 2 para. 1 of the revised Social Charter given the excessive length of weekly working time permitted and the absence of adequate guarantees."

47. **Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §§50-53:** “50. The Committee considers that the “*périodes d’astreinte*” during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures.

51. The “*périodes d’astreinte*” are in effect periods during which the employee is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the employee from the pursuit of activities of his or her own choosing, planned within the limits of the time available before the beginning of work at a fixed time and not subjected to any lack of certainty resulting from the exercise of an occupation or from the situation of dependency inherent in that exercise.

52. The absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot therefore constitute an adequate criterion for regarding such a period as a rest period.

53. The Committee therefore holds that the assimilation of “*périodes d’astreinte*” to rest periods constitutes a violation of the right to reasonable working time provided in Article 2§1.”

## Article 2§2

48. **Conclusions XVIII-1, Croatia, p. 116 :** “The Committee recalls that Article 2§2 of the Charter guarantees the right to public holidays with pay. It further considers that the principle of this provision is that if work is nevertheless performed on a public holiday, this entails an increased effort on the part of the worker, who therefore should be compensated with a remuneration at a higher than normal average wage. In this regard, work performed on a public holiday should be paid at least the double the usual rate (100% above the normal salary), complemented by an additional bonus.”

## Article 2§3

49. **Conclusions I, Ireland, p. 171** “ The Committee stated that the legislation allowing agricultural employees to forego [the] annual holiday and accept a lump sum in compensation was incompatible with the interpretation of [Article 2§3]”
50. **Conclusions 2007, Statement of interpretation on article 2§3, p.11:** “An employee must take at least two weeks uninterrupted annual holidays during the year the holidays were due. Annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.”
51. **Conclusions I, Norway, Sweden, p. 20** “ Having examined the arrangement under Swedish and Norwegian law whereby annual holiday may not be taken until the twelve working months for which it is due have fully elapsed, the Committee considered that this was not incompatible with the Charter.”
52. **Conclusions XII-2, Statement of Interpretation on Article 2§3, p. 62:** “The Committee recalled the fundamental importance of the right to an annual holiday guaranteed by Article 2 para. 3, which, in accordance with its consistent case-law, cannot be waived. As a result, Article 2 para. 3 requires that a worker who is incapacitated for work by reason of illness or injury during all or part of his/her 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 Charter.

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.”

*Note by the Secretariat : The same rule applies in respect of Article 2§3 of the Revised Charter which provides for 4 weeks’ annual paid leave.*

## Article 2§4

53. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint N° 30/2005, decision on the merits of 6 December 2006, §232-236 :**

“232. The Committee points out that Article 2§4 of the Charter requires states to grant workers exposed to occupational health risks compensatory measures.

233. The Committee notes that for a number of years Greece, like the other states party to the Charter, has been pursuing a policy of occupational risk prevention and elimination rather than one of compensation. It considers that this development needs to be taken into account in interpreting Article 2§4 of the Charter, to ensure consistency with Articles 3 (right to safe and healthy working conditions) and 11 (right to protection of health). A literal reading of Article 2§4, without taking other factors into consideration, would point to the conclusion that there had been a violation of the Charter.

234. It follows from the newer interpretation that states' obligation under Article 2§4 of the Charter consists in measures to compensate for residual risks. By this, the Committee means situations in which workers are exposed to risks that it is not possible or has not yet been possible to eliminate or sufficiently reduce despite the application of the preventive and protective measures referred to in Articles 3 and 11 or in the absence of their application.

...

236. Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. In its examination of reports under the revised Charter, the Committee has stated that other means of reducing the length of exposure to risks may be considered acceptable (Conclusions 2003, Bulgaria, Article 2§4 of the revised Charter, pp. 24-27). It states that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case. For example, in a situation where a measure of this type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it ruled that a reduction in the number of years of exposure was not an appropriate measure in all cases (ibid).”

54. **Conclusions XVIII-2, Statement of Interpretation on Article 2§4 of the 1961 Charter, p. 11: “**

The Committee refers to the case of Marangopoulos Foundation for Human Rights (MFRH) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006 where the Committee set out its current interpretation of Article 2§4 of the 1961 Charter:

...

The Committee points out that this interpretation of Article 2§4 of the 1961 Charter applies thereon to all states bound by the 1961 Charter as reflected in the current volume of Conclusions XVIII-2.”

55. **Conclusions 2005, Statement of Interpretation on Article 2§4, p. 297:** “In order to assess national situations under Article 2§4 of the Charter the Committee will examine information on the measures taken to eliminate risks in inherently dangerous or unhealthy occupations. Where appropriate it will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter.”
56. **Conclusions XII-1, United Kingdom, p. 61:** “The Committee [...] felt bound to recall that while the elimination of risks is without doubt the objective to be sought, as long as that objective was not reached in a specific occupation, the reduction in working hours or the provision of additional holidays is required by Article 2 para. 4 for the purpose of reducing the stress or fatigue caused by working in dangerous or unhealthy occupations.”



## 201 Article 2

57. **Conclusions II, Statement of Interpretation on Article 2§4, p. 9:** “The Committee observed that the term “as prescribed” did; admittedly leave the national legislature a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is still subject to review by the Committee, and were it not to include occupations which were manifestly dangerous or unhealthy, the latter might conclude that the Charter had been violated.”
58. **STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §20:** “ [The Committee] recalls that this provision of the Charter leaves the Contracting Party concerned a certain latitude in the choice of occupations to be classed as dangerous or unhealthy. This choice is however still subject to review by the Committee (Conclusions II, p. 9).“
59. **STTK ry and Tehy ry v. Finland, Complaint No. 10/2000, Decision on the merits of 17 October 2001, §27:** “However in light of the evidence, in particular the current recommendations of the ICRP, the Committee considers that at present it cannot be stated that exposure to radiation even at low levels is completely safe. It finds no reasons to alter its case law, namely that work involving exposure to ionising radiation is covered by Article 2 para. 4. Therefore radiation related work in the health sector in Finland must be considered as being dangerous and unhealthy within the meaning of Article 2 para. 4 of the Charter. This being the case, workers in this sector should be entitled to additional paid holidays or reduced working hours.”
60. **Conclusions XIV-2, Norway, p. 581:** “The Committee notes that the report contains no information on occupations which it has always considered dangerous and unhealthy, such as work in steelworks and shipyards or jobs which expose individuals to ionising radiation, extremes of temperatures, noise, etc.”
61. **Conclusions V, Statement of Interpretation on Article 2§4, p. 16:** “It felt, in fact, that if on the one hand a constant improvement of the technical conditions in which are carried out certain dangerous or unhealthy occupations represents a major factor for the reduction of the risk of accidents or disease, on the other hand, a decrease in working hours and the granting of additional holidays are equally necessary in the light of the above provision of the Charter, as they allow for a reduced accumulation of physical and mental fatigue and a reeducation in the exposure to risk, whilst at the same time granting workers longer periods of rest.”
62. **Conclusions III, Ireland, p. 15:** “The Committee stressed the importance of reducing working hours and providing additional holidays where such elimination is not possible, both because of the need for workers in hazardous situations to be alert, and in order to limit the period of exposure to safety and health risks.”
63. **Conclusions 2005, Statement of Interpretation on Article 2§4, p. 297 :** “It further wishes to point out in this respect that while Article 2§4 requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently, it considers, in view of the overriding health and safety aims of this provision, that other means of reducing the length of exposure to risks may also satisfy the Charter in such cases.”
64. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint N° 30/2005, decision on the merits of 6 December 2006, §236 :** “Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. In its examination of reports under the revised Charter, the Committee has stated that other means of reducing the length of exposure to risks may be considered acceptable (Conclusions 2003, Bulgaria, Article 2§4 of the revised Charter, pp. 24-27). It states that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case. For example, in a situation where a measure of this type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it ruled that a reduction in the number of years of exposure was not an appropriate measure in all cases (ibid). “

65. **Conclusions 2003, Bulgaria, p. 25:** “Referring to its statement above concerning the reduction of length of exposure, the Committee nevertheless wishes to point out that it does not consider early retirement to be a relevant and appropriate measure to achieve the aims of Article 2§4 of the Charter.”

### Article 2§5

66. **Conclusions XIV-2, Statement of Interpretation on Article 2§5, pp. 34-35:** “During the examination of the different national situations, the Committee has been prompted to recall the aim of Article 2 para. 5, which 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 (Sunday in all the Contracting Parties to the Charter). The Committee has also stated that this provision allows for the rest to be taken on a day other than Sunday, where the type of activity so requires or for reasons of an economic nature. The Committee insists on the fact that at all events, another day of rest during the week must be provided for.

Moreover, the Committee has noted that in some Contracting Parties, legislation or collective agreements may in certain cases provide for the postponement of weekly rest periods. In Sweden, for instance, collective agreements signed or approved by a trade union confederation may provide derogations from the rule stipulating that weekly rest periods must be taken in the course of each seven-day period of work. The Committee has made clear that the possibility for those concerned to waive their right to weekly rest periods is not in compliance with the Charter. However, it considered in the latter case, where weekly rest is postponed, that the situation is not in breach of the Charter, as two days' rest are provided for following twelve consecutive days' work. The Committee has nevertheless observed that twelve consecutive working days before a rest period is a maximum.”

### Article 2§6

67. **Conclusions 2003, Bulgaria, pp. 28-29:** “The Committee considers that the written information which workers are guaranteed under Article 2§6 of the Charter must at least cover the essential aspects of the employment relationship or contract, including the following:

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

### Article 2§7

68. **Conclusions 2003, Romania, p. 368:** “Having regard to the general recognition that night work places special constraints, including mental and physical strain, on workers, the Committee considers that the measures provided for under Article 2§7 of the Charter should include, as a minimum, the following:

- periodic medical examinations, including a check prior to employment on night work;
- the provision of possibilities for transfer to daytime work;
- 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.”

## Article 3

69. **Conclusions I, Statement of Interpretation on Article 3, p. 22:** “The Committee regarded this Article as establishing a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights.

Considerable attention has been given in the Charter to the application of this principle: indeed, two more articles (Articles 7 and 8) have been devoted to the protection of young persons and women.

The second of the three paragraphs comprising Article 3 has, in the opinion of the Committee, a particular importance, since it establishes the need to provide for a system of labour inspection to safeguard the implementation of the rights to safe and healthy working conditions in practice.

The Committee considered that a country which has accepted this article can only be regarded as fulfilling the undertaking deriving from it if it can prove that safety and health regulations have been issued for all economic sectors, that such regulations are adequately enforced through inspection and civil and criminal sanctions, and finally that any necessary consultations on safety and health matters between Governments and both sides of industry are arranged and actually take place.”

70. **Conclusions XIV-2, Statement of Interpretation on Article 3, p. 36:** Article 3, which requires of the Contracting Parties that they guarantee the right to safe and healthy working conditions, protects individuals' right to physical and mental integrity at work. Its purpose is related to that of Article 2 of European Convention on Human Rights and Fundamental Freedoms which recognises the right to life. Article 3 provides that this right be ensured by requiring Contracting Parties to agree to three undertakings:

- a. to issue health and safety regulations;
- b. to provide for measures of supervision of the enforcement of these regulations;
- c. to consult employers' and workers' organisations on measures to improve industrial safety and health

71. **Conclusions II, Statement of Interpretation on Article 3, p. 12:** “This article is 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 increasing mechanisation manifest in every branch of activity.”

72. **Conclusions 2005, Lithuania, pp. 297-298:** “In order to assess national situations under Article 2§4 of the Charter the Committee will examine information on the measures taken to eliminate risks in inherently dangerous or unhealthy occupations. Where appropriate it will take into account the information provided and the conclusions reached in respect of Article 3 of the Charter. It further wishes to point out in this respect that while Article 2§4 requires provision for reduced working hours or additional paid holidays in dangerous and unhealthy occupations where it has not yet been possible to eliminate or reduce risks sufficiently, it considers, in view of the overriding health and safety aims of this provision, that other means of reducing the length of exposure to risks may also satisfy the Charter in such cases.”

## Article 3§1

73. **Conclusions 2003, Bulgaria, p. 31:** “To ensure that all persons working benefit from the right to health and safety at work, the new paragraph 1 of Article 3 of the Charter requests states, in consultation with employers' and workers' organisations, to formulate, implement and periodically review a coherent national policy on occupational health and safety.

## 204 Article 3

Under Article 3§1 such a policy must include strategies for making occupational risk prevention an integral aspect of the public authorities' activity at all levels. To comply with this provision states must ensure the following:

- the assessment of work-related risks and introduction of a range of preventive measures taking account of the particular risks concerned, monitoring of the effectiveness of those measures and provision of information and training for employees, since, within individual firms, occupational risk prevention means more than simply applying regulations and remedying situations that have led to occupational injuries;
- the development of an appropriate public monitoring system - more often than not a responsibility for the labour inspectorate - to maintain standards and ensure they apply in the workplace;
- the establishment and further development of programmes in areas such as:
  - training (qualified staff);
  - information (statistical systems and dissemination of knowledge);
  - quality assurance (professional qualifications, certification systems for facilities and equipment);
  - where appropriate, research (scientific and technical expertise)."

74. **Conclusions 2005, Lithuania, p. 306:** "The Committee asks whether provision is made for a periodical assessment and reviewing of the national policy strategies and which steps are taken for making occupational health and safety an integral aspect of other public authorities' policies (such as employment policy, policy on disabled people, gender policy).
75. **Conclusions 2005, Lithuania, p. 306:** "Labour inspection monitoring activities are dealt with under Article 3§3 of the Charter."
76. **Conclusions 2003, Bulgaria, p. 31 *op. cit.***
77. **Conclusions 2003, Sweden, pp. 576-577:** "In its Conclusions XIV-2 (pp. 710-711) the Committee examined the arrangements for consulting employers' and workers' organisations about the preparation and implementation of the national health and safety policy. The report does not indicate any changes. The Committee considers that the situation in Sweden is in conformity with Article 3§1 of the Charter."
78. **Conclusions 2005, Lithuania, p. 306:** "At the enterprise level, the employer must inform workers and consult them on all health and safety issues (planning, improvement, organisation, implementation and supervision) (Section 13 of the Act on safety and health at work). The Committee refers to its conclusion under Article 22 of the Charter."

### Article 3§2 (ex-Article 3§1 of the 1961 Charter)

79. **Conclusions 2003, Statement of Interpretation on Article 3§2:** "Article 3§2 of the Revised European Social Charter re-states the provisions which appeared under Article 3§1 of the 1961 Social Charter; it adds to these provisions the obligation to consult employers' and workers' organisations. Therefore, the Committee repeats the interpretation it had given under the old Article 3§1."
80. **Conclusions XIV-2, Statement of Interpretation on Article 3§1 (of the 1961 Charter, ie article 3§2 of the Revised Charter), pp. 36-43:** "Article 3 para. 1 requires the Contracting Parties to issue regulations on health and safety at work. In order to be in conformity with the Charter, the regulations in force should meet requirements as to their content and personal scope.

*The regulations should provide for preventive and protective measures against most of the risks provided in the international technical reference standards*

## 205 Article 3

The Committee observes that generally speaking, the legislative and regulatory measures relating to industrial health and safety in the Contracting Parties are organised as follows:

Framework legislation on health and safety at work which imposes general obligations on employers and on workers. All Contracting Parties, members of the European Union or parties to the Agreement on the European Economic Area have adopted this type of legislation, in some cases following the incorporation during the reference period of Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work;

*Regulations providing for specific measures* in accordance with the risks and hazards connected with:

- the establishment of, alteration to and upkeep of workplaces;
- work equipment;
- hazardous agents and substances;
- certain sectors and activities;
- certain vulnerable categories of workers,
- the organisation of work.

The first stage in supervision of the conformity of the content of regulations consists in defining the risks that should be regulated. During the first supervision cycles, the Committee referred in various separate cases to the numerous ILO Conventions and recently to several Community Directives on health and safety at work.

The Committee observes that since the last cycle during which it examined Article 3 for all the Contracting Parties (Conclusions XIII-1, reference period 1990-1992), Community legislation on safety and health has been developed substantially and now covers most areas of workers' health and safety (following the introduction of Article 118A and the adoption of the Charter of Fundamental Social Rights of Workers). It considers that reference to Community law is now necessary in this field, in particular in the light of Directive 89/391/EEC which establishes the framework and principles of the protection of workers' health and safety and serves as a basis for a large number of more specific directives.

Consequently, the Committee has at its disposal a very complete set of international technical reference standards which can be of use for defining and listing the main risks and occupations concerning which regulations should provide for protection and prevention measures in order to comply with Article 3 para. 1 of the Charter. Aware of the particularly changing nature in this field with the progress made in technology, ergonomics and medicine, the Committee will explain the new areas to which it will turn its attention each time it examines Article 3.

Currently, the areas in which supervision is conducted are the following:

### *Establishment, alterations and upkeep of workplaces — Work equipment*

- Workplaces and equipment, in particular the protection of machines, manual handling of loads, work with display screen equipment
- Hygiene (Commerce and Offices)
- Maximum Weight
- Air Pollution, Noise and Vibration
- Personal protective equipment
- Safety and/or health signs at work.

### *Hazardous agents and substances*

- Chemical, physical and biological agents in particular carcinogens, including: white lead (painting), benzene, asbestos, vinyl chloride monomer, metallic lead and its ionic compounds, ionizing radiation;
- Control of major accident hazards involving dangerous substances

### *Risks connected with certain sectors or activities*

- Marking of weight (packages transported by vessels)
- Protection of dockers against accidents
- Dock Work
- Building Safety Provisions, temporary or mobile construction sites
- Mines, mineral through drilling and underground mineral extracting industries
- Ships and fishing vessels
- Prevention of Major Industrial Accidents

## 206 Article 3

### *Risks connected with certain vulnerable categories of workers*

The protection of health and safety for certain categories of workers calls for special provisions:

— The Committee notes that there have been substantial changes in the characteristics of the active population over the past years, and in particular an increased use of insecure types of employment (temporary and fixed-term employment and self-employment). It observes that these workers are more subject to a combination of risks in terms of health and safety, related both to the nature of the work they are asked to perform (often in the building and industrial sectors) and to their statute.

This explains why the Committee decided to pay attention to the situation of workers in insecure employment or working under fixed-term contracts. It therefore asks those Contracting Parties bound by Article 3 whether appropriate rules have been laid down to take account of the specific nature of these types of employment relationship, in order to ensure that the workers concerned enjoy the same level of health protection at work as other workers in the undertaking. For example, the Committee will take into account the existence of a list of occupations in which these workers may not be employed, and of provisions providing for special information, training and medical surveillance.

It notes that these forms of work are the subject of prescriptions at Community law level, in Directive 91/383 which supplements the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship.

— Article 7 of the Charter contains provisions for specific measures to be taken in relation to children and young persons (higher minimum age of admission to employment with the exception of certain prescribed light work, higher minimum age for certain dangerous and unhealthy occupations, limited working hours, ban on night work, medical examinations). The Committee considers that control of the compliance with these prescriptions falls within the remit of Article 7;

— Article 8 para. 4 of the Charter provides for regulation of the employment of women workers on night work in industrial employment (Article 8 para. 4a) and for the prohibition of all employment of women workers in underground mining work and as appropriate of all other work unsuitable for them by reason of its dangerous, unhealthy or arduous nature (Article 8 para. 4b). For several cycles the Committee has focused on situations connected with maternity. It found the expression "as appropriate" used in Article 8 para. 4b permitted states to limit the prohibition of employment of women in the above-mentioned occupations to the sole cases where this was necessary to protect motherhood, notably pregnancy, confinement and the post-natal period, as well as future children (Conclusions X-2, pp. 97 and 98). The Committee thus examines the special protection which must be afforded to women and especially pregnant women, those having recently given birth or who are breastfeeding in the context of Article 8 para. 4.

### *Risks connected with the organisation of work.*

These include prescriptions on working hours, weekly rest periods, paid leave, etc, covered as such by Article 2, of which the aim is to protect the health and safety of workers, similarly to Article 3. Article 2 para. 4 contains a specific requirement in relation to the organisation of working time in dangerous or unhealthy occupations. Supervision of the effects of the adjustment of working time, and in particular its development (flexibility measures) on health and safety at work, are therefore part of the assessment of conformity with Article 2. This supervision will be extended to cover night work in the framework of the Charter (Article 2 para. 7).

*Regulations should provide for preventive and protective measures without any major gap*

### 207 Article 3

The Committee considers that the extent, technical nature and development of prescriptions prevent it from monitoring the situation in a detailed and thorough fashion. It thus proceeds to its assessment in the following manner:

— it firstly makes a global appraisal of the level of protection offered in order to assess whether there are any major loopholes. Appraisal is not only based on information included in the report but also on the observations of the ILO Committee of Experts on the application of the many ILO conventions in the field and on the information about the incorporation of Community directives into the domestic law of the Contracting Parties which are members of the European Union and parties to the Agreement on the European Economic Area. The Committee considers that significant criteria for assessment are: the scope of employers' general requirements and in particular those related to risk management; the order of importance of the main means of protection and prevention, and the trends in the area of industrial accidents and occupational disease examined under Article 3 para. 2;

— it also makes an assessment by subject, determining more precisely the actual means of prevention and protection needed against certain risks, again with reference to international technical standards. Assessment of these risks plays a significant part in the global examination of levels of protection.

It asked general questions in Conclusions XIII-4 on protection against hazards related to asbestos and ionizing radiation:

#### *Protection against asbestos*

International technical reference standards are ILO Convention No. 162 of 1986 on asbestos (ratified by seven Contracting Parties to the Charter) and Community Directive 83/477 on the protection of workers from the risks related to exposure to asbestos at work, amended by Directive 91/382. The Committee also notes that the Parliamentary Assembly of the Council of Europe adopted a recommendation on the dangers of asbestos for workers and the environment (Recommendation No. 1369 (1998).

The Committee concentrated its examination on the following measures:

*Threshold levels for exposure.* The ILO Convention and the Directive oblige exposure to asbestos to be reduced to the lowest levels and provide for the prescription of limits to exposure. The Directive sets them at 0.6 fibres per cm<sup>2</sup> for chrysotile (ribbon fibres considered only slightly dangerous) and at 0.3 fibres per cm<sup>2</sup> for the other types of asbestos. It also notes that the ILO Convention requires limits to be revised and periodically updated to match technological progress and developments in technical and scientific knowledge.

The Committee considers that in order to comply with Article 3 para. 1, limits to exposure should be at least equal to or lower than the limits set out in the Directive. In this respect it observes that during the reference period, this was in fact the case in all the member states of the European Union except Greece.

*Measures of prohibition.* The ILO Convention and the Directive prohibit asbestos spraying in any form whatsoever. The ILO Convention also requires that where necessary and technically possible, legislation should provide for the replacement by other less toxic materials or the partial prohibition of the use of asbestos. At all events, the use at workplaces of asbestos in one of its most harmful forms (crocidolite) should be prohibited. The Parliamentary Assembly's Recommendation states that asbestos must be eliminated where technical knowledge allows.

The Committee holds that the total prohibition of asbestos is a measure which will ensure that the right provided under Article 3 para. 1 of the Charter is more effectively guaranteed. It notes from the information at its disposal that France, the Netherlands, Italy, Denmark, the United Kingdom, Germany, Finland and Sweden have taken measures of general prohibition of asbestos. These measures are very different, varying according to the scope of the ban (use, handling, import, export, sale and manufacture), the exceptions allowed and the type of fibres prohibited.

In addition, bearing in mind the importance of this issue in the light of the right to health of the population (Article 11 of the Charter), the Committee requests whether measures have been taken to draw up an inventory of all contaminated buildings and materials.

*Protection against ionising radiation*

The Committee considers that effective protection against the risks related to ionising radiation requires that the maximum levels prescribed in 1990 by the International Commission on protection against radiation be respected and invites Parties which are members of the European Union and parties to the Agreement on the European Economic Area that have not yet adjusted their legislation according to these levels to do so in the framework of Directive 96/29/Euratom.

The Committees points out that Article 3 of the Charter contains a requirement of coherent risk prevention policy, such as reducing to the minimum the causes of risks inherent in the working environment and providing for the institution of health services at work for all workers. This will enable the Committee to focus on such prevention factors as the training and informing of workers, the medical supervision of workers and the organisation of that supervision, etc.

*All workers, regardless of their category and the sector of activity in which they are occupied, must be protected*

As Article 33 does not apply, this aspect of Article 3 has always been systematically monitored by the Committee and has led to negative conclusions in certain cases, generally connected with a lack of adequate protection for the self-employed. The Committee recalls that it has recognised that, "given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements. However, the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done" (*inter alia*, Conclusions XIII-4, p. 342).

In the light of these remarks, the Committee examined the new Belgian legislation (Welfare of Workers Act of 4 August 1996) and observed that, although the category of self-employed workers was still not fully protected, the rules on prevention and safety provided for in the 1996 Act must be respected in the majority of situations in which the health and safety of such workers may be jeopardised. Therefore the only self-employed workers to whom the law does not apply at all are those who work for themselves, at home, without anyone under their authority. In these circumstances the Committee concluded that Belgium does guarantee self-employed workers the protection required under Article 3 para. 1.

The Committee notes that the incorporation into domestic law of Community directives in matters of health and safety at work has led several Contracting Parties to extend the personal scope of their regulations, in particular to cover the self-employed. It cannot, however, take this positive development into consideration if the states in which the problem has arisen (Greece, Italy and the Netherlands) do not supply sufficient information to allow it, as in the case of Belgium, to make an assessment of which regulations apply to self-employed workers and in which situations they are effectively covered and therefore subject to supervision by the labour inspection."

81. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint N° 30/2005, decision on the merits of 6 December 2006, §224 :** "States' first obligation under Article 3 is to ensure the right to safe and healthy working standards of the highest possible level. Paragraph 1 of this article requires them to issue health and safety regulations providing for preventive and protective measures against most of the risks recognised by the scientific community and laid down in Community and international regulations and standards (Conclusions XIV-2, statement of interpretation of Article 3, pp. 36-37)."
82. **Conclusions XIV-2, Norway, p. 584:** "It has learned from the ILO that Act No. 3 of 24 May 1929 on white lead has been repealed because of the authorities' wish to abandon detailed legislation on certain substances and to apply the general rules of the 1977 Act instead. The Committee notes that this approach stems from a general policy on the part of the Norwegian authorities (see *infra*, *Personal scope*) and is concerned about this development. It points out that the Charter requires Contracting Parties having accepted Article 3 para. 1 to have a legislative and regulatory framework sufficiently precise."



83. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint N° 30/2005, decision on the merits of 6 December 2006, §226:** “Regarding the complaint concerning arrangements for compensating for occupational diseases and accidents, the Committee notes that in Greece occupational risks are covered by sickness and invalidity insurance in the same way as non-occupational accidents or diseases. Although the majority of states party to the Charter have introduced specific insurance for occupational risks, which generally offer more generous benefits than those paid by sickness and invalidity insurance schemes, the Committee does not consider that states are required to introduce such specific insurance to comply with Article 3§1.”

84. **Conclusions XIV-2, Italy, pp. 427-428:** “1. The main regulations on protecting workers against asbestos (a general question in Conclusions XIII-4, p. 341) are to be found in Act No. 257/1992. The Committee notes with interest that Italy has taken measures to introduce an overall ban. The above Act is in fact intended to prohibit the extraction, import, export, sale and production of asbestos and products containing asbestos. It also establishes the maximum concentration levels of asbestos fibre in the air, making them equal to or less than those fixed by Directive 83/477, as amended by Directive 91/382. The Committee also observes that steps have been taken to identify and eliminate the risks associated with the use of materials containing asbestos in school and hospital buildings. The Committee considers that in this respect the situation complies with Article 3 para. 1.

2. The Committee has learnt that the Legislative Decree of 30 July 1990 and Legislative Decree No. 230/1995 on ionising radiation (a general question, *ibid.*) transpose several Euratom directives into Italian law and are chiefly intended to minimise workers' exposure to ionising radiation. However, this information does not enable it to ascertain whether Italy has adapted its regulations in such a way as to respect all the maximum doses recommended in 1990 by the International Commission on Radiological Protection. If this is not the case, given the importance which the Committee attaches to these recommendations, it invites the Italian Government to act on the recommendations when transposing into national law Directive 96/29/Euratom on protecting the health of workers and the general public against the dangers arising from ionising radiation.

3. The Committee learnt from the ILO that there are serious shortcomings in the establishment of maximum values for exposure to benzene. The report does not reply to the question on this matter in the previous conclusion (Conclusions XIII-3, p. 206). It emerges from another source that Legislative Decree No. 626/1994 (see above) is cited by the Italian Government as a measure for transposing directive 90/394 into national law. However, this act contains only general rules and does not establish any limits to exposure. The Committee emphasises that the establishment of limits that comply with current international technical norms for exposure to this carcinogen is a crucial protective and preventative measure in terms of conformity with Article 3 para. 1. It therefore hopes that the next report will contain information on the introduction of regulations to improve the situation.

4. Air pollution, noise and vibration. The Committee learnt from information provided by the ILO that there is no national organisation responsible for up-dating the limits for exposure in these areas. Pointing out that this situation could result in considerable discrepancies, particularly with regard to the norms established by ILO Convention No. 148 on Working Environment (Air Pollution, Noise and Vibration), the Committee asks that the next report describe the procedures by which the criteria and exposure limits are revised in the light of new information.

- Workplaces and work equipment.

The Committee has learnt that there is no legal limit on the weight of loads that can be transported manually by adult male workers (this observation was made in 1994 by the ILO Committee of Experts on the application of Convention No. 127 on Maximum Weights). It asks that the next report indicate the measures taken or foreseen to remedy this lacuna.

- Protection against the risks inherent in certain sectors and occupations

The Committee notes that Italy excludes on-board aircraft workers from the scope of Convention No. 148. As flying personnel are particularly exposed to these risks, the Committee insists that the next report indicates which regulations apply the norms established by Convention No. 148 to the air transport sector.

85. **Conclusions XIV-2, Spain, p. 674:** “The Committee notes that in 1997 Spain transposed Directive 90/394 on carcinogenic agents, including benzene, into its domestic law (Royal Decree 665/1997). The report reveals, however, that the limit values for exposure to benzene have not been lowered and remain particularly high, and that there will be no revision until Directive 97/42 is transposed. Stressing that international technical standards recognise benzene as a carcinogenic agent present in a large number of work situations, the Committee considers that the Parties to the Charter who have accepted Article 3 must reduce this risk, which means reducing exposure to the lowest level taking current knowledge into account.”
86. **Conclusions 2005, Cyprus, pp. 65-66:** “In its last report before Cypriot accession to the European Union (“Comprehensive Monitoring Report on Cyprus's Preparations for Membership” 2003), the European Commission found that most of the Community *acquis* in the area of health and safety at work had been transposed. However, it also said that alignment with regard to indicative occupational exposure limit values (chemical agents at work) must continue.

The Committee notes that to be in conformity with Article 3§2 of the Charter the occupational health and safety regulations must specifically cover the great majority of risks listed in the General Introduction to Conclusions XIV-2 (p. 39). The transposition of most of the Community *acquis* shows that this general obligation has been met.

87. **Conclusions XIV-2, Portugal, pp. 637-638:** “The Committee notes that Portugal has excluded the fishing industry from the scope of ILO Convention No. 148 and that, according to the previous report, Community Directive 93/103 concerning the minimum safety and health requirements for work on board fishing vessels is currently being transposed into domestic law. However, the report presently being examined does not make mention of any change in this field. In view of the fishing industry's importance in Portugal and the significant risks which the activity involves, any deficiency in the health and safety regulations can have serious consequences. The Committee therefore stresses that the next report must show that suitable, comprehensive and sufficiently stringent health and safety measures have been taken to protect fishing industry workers.”
88. **Conclusions XIV-2, Statement of Interpretation on Article 3§1 (of the 1961 Charter, ie on article 3§2 of the Revised Charter), pp. 36-43 *op. cit.***
89. **Conclusions XIV-2, Statement of Interpretation on Article 3§1 (of the 1961 Charter, ie on article 3§2 of the Revised Charter), pp. 36-43 *op. cit.***
90. **Conclusions 2005, Cyprus, p. 66:** “For the situation to be in conformity with Article 3§2, states must offer effective protection against the risks related to ionising radiation, which involves adjusting their regulations to take account of the recommendations of the International Commission on Radiological Protection (ICRP). It considers that these recommendations are sufficiently reflected in the dose limits in Directive 96/29/Euratom and that the situation in Cyprus is therefore in conformity with Article 3§2 in this regard.”
91. **Conclusions II, Statement of Interpretation on Article 3, p. 12, *op. cit.***
92. **Conclusions 2005, Estonia, p. 136:** “The Committee points out that for the purposes of Article 3§2 all workers, including non-permanent workers, must be covered by health and safety at work regulations (Conclusions I, p. 8 and Conclusions II, p. 182). It has always maintained this interpretation, on the grounds that permanent and temporary workers are normally exposed to the same risks and that self-employed workers are often employed in high-risk sectors. Noting that self-employed persons in Estonia are not covered by the occupational health and safety laws, the Committee considers that the situation is not in conformity with Article 3§2 of the Charter.”

## 211 Article 3

93. **Conclusions III, Statement of Interpretation on Article 3§1 (of the 1961 Charter, ie on article 3§2 of the Revised Charter), p. 17:** “This interpretation is all the more inescapable because discrimination between employed and self-employed workers as regards safety and health at work would hardly be compatible with current concern to ensure a satisfactory working environment for all workers, especially where employed and self-employed workers were employed on the same work. However, the Committee emphasised that the fact that this article applies to all workers, employed or otherwise, does not mean that the same regulations, supervision machinery, etc should be applied in all cases.”
94. **Conclusions IV, Statement of Interpretation on Article 3§1 (of the 1961 Charter, ie on article 3§2 of the Revised Charter), pp. 21-22:** “However, this may be, the activities of the self-employed also affect both the personal health and safety, and the duties in this regard, of other people; these therefore have an interest in effective regulation and inspection.  
[...]  
Of course, derogations for practical reasons, such as to the low risk of certain economic sectors, the difficulty of inspection, lack of co-operation with inspection and so on. It is also clear that as regards more specifically agriculture there is no presumption that there is a case warranting such derogations: rather the opposite.”
95. **Conclusions XIII-4, Belgium, p. 335:** “The Committee considered that even though the protection offered to the self-employed could be extended through the bill mentioned above, this category was not entirely covered. It was particularly concerned about the situation of farmers, considering the many hazards involved in their work. The Committee recalled its case law according to which the requirement under this provision concerned both employed and self-employed workers in all sectors of the economy, although “given the difference in the conditions in which an employee and a self-employed worker carry out their activities, there may, to a certain extent, have to be different rules for applying safety and health requirements.” However, “the objective of providing a safe and healthy working environment must be the same for both employed and self-employed workers, and the regulations and their enforcement must be adequate and suitable in view of the work being done” (Conclusions XIII-1, p. 89).”
96. **Conclusions I, Statement of Interpretation on article 3, p. 22, *op. cit.***
97. **Conclusions XIII-1, Greece, p. 78:** “The Committee noted that according to the Greek report the 1985 Act on health and safety at work was not the only relevant legislation in this field and there were other specific provisions applying to firms with fewer than 150 employees.  
However, it also noted that minimum staff levels were always required for the application of these provisions. [...]  
Given the minimum staff levels for the application of health and safety legislation, [...] the Committee could only renew its negative conclusion.”

98. **Conclusions XIV-2, Belgium, pp. 123-124:** "The Committee had also explained that it reached a negative conclusion because of the absence of health and safety regulations applying to domestic employees and their employers. It notes, however, in this connection, that Section 20 of the Employment Contracts Act of 3 July 1978 obliges employers "to see to it, carefully and diligently, that the work is carried out in appropriate conditions of worker safety and that first aid is provided in case of accident (...) and to give workers suitable accommodation as well as an adequate amount of nourishing food (...)". Employers are also obliged to insure their employees against industrial accidents, irrespective of whether they are employed on a regular or casual basis and of whether or not they are covered by the National Social Security Office (Industrial Accidents Act of 10 April 1971). The Committee considers that, in the light of this information, domestic employees are protected by safety and health regulations as required by Article 3 para. 1."
99. **Conclusions 2005, Norway, p. 520:** "In previous conclusions (Conclusions XIV-2, pp. 588-589), the Committee found that Norway has consultation mechanisms which complied with the requirements of Article 3§3 of the 1961 Charter (consultation with employers' and workers' organisations on questions of safety and health). It considers that the duty under Article 3§2 of the Charter to consult employer's and workers' organisations before adopting health and safety measures was already covered by Article 3§3 of the 1961 Charter, and that the situation is therefore in conformity with the Charter in this respect."

### Article 3§3 (ex-Article 3§2 of the 1961 Charter)

100. **Conclusions XIV-2, Statement of Interpretation on Article 3 (of the 1961 Charter, ie on article 3§2 of the Revised Charter), pp. 43-46:** "Under paragraph 2 of Article 3, Contracting Parties must provide for the enforcement of health and safety regulations by measures of supervision. The purpose of this provision is to ensure individuals an effective implementation of the right to protection of their physical and mental integrity at work. The Committee monitors compliance with this undertaking by taking into account developments in the area of occupational accidents and diseases as well as the setting up and maintenance of an effective inspection system. It considers that there is no systematic link to be maintained between the conclusions it adopts under paragraph 1 and under paragraph 2 of Article 3 and that each of these provisions contains its own requirements which may be the subject of an independent assessment.

#### *Occupational accidents and diseases*

In order to assess the development of the situation the Committee takes into account the number of accidents in absolute terms and of trends in the numbers of workers over the same period, which allows it to ascertain the frequency of accidents (the number per one hundred workers). In the absence of other indications in the report on the number of workers taken into consideration for the compilation of statistics, the Committee refers to total employment as defined and given in the ILO's Yearbook of Labour Statistics. It also uses the figures given on the number of occupational accidents in this source where those in national reports are imprecise or partial.

In addition, it decided during the reference period to adopt a more "comparative" approach. For this it uses to supplement the information included in the Contracting Parties' reports the work of Eurostat on "Accidents at work in the European Union in 1994" in Statistics in focus, Population and Social Conditions, No. 1998/2. These figures cover eight branches of activity (agriculture/hunting/forestry; manufacturing; building; wholesaling and retailing; restaurants; transport and communication; finance; renting and business services), covering 50% to 65% of the entire workforce according to the countries. They define a standardised number of occupational and fatal accidents per 100,000 people in employment, i.e. the number of accidents reported, adjusted or standardised to give each branch of activity the same weight at national level as in the European Union as a whole, so as to correct the impact of a given country's activities structure on its total accident frequency.

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The Committee is aware of the problems related to the accuracy of statistical comparisons and is therefore cautious in its approach. For this reason, it has only found breaches of the Charter where situations present obvious problems. For the current reference period, it thus observed that Portugal's average figures for the number of industrial accidents and fatalities recorded are far higher than those of other European Union member states — and even the highest of all and that there did not seem to be any prospects of improvement in the period in question. It considers that the frequency of industrial accidents and fatalities is clearly too high for it to conclude that effective exercise of the right to protection from physical and mental injury in the workplace is ensured in Portugal.

The proportion of fatal accidents in relation to the total number of accidents and its fluctuations are taken as a significant factor for assessment of the conformity of situations. The Committee has observed that very few Contracting Parties were able to report a reduction in this proportion, although the standard and frequency of prevention and protection measures is rising, which should in principle result in less serious accidents. It hopes that the recent adoption in several Contracting Parties of measures aimed to prevent major industrial incidents and control the dangers related to major accidents involving hazardous substances will have a positive impact on the probability of death by an occupational accident in the long term.

The Committee notes that in the great majority of Contracting Parties the construction sector of activity is the most dangerous — the average number of accidents and fatal accidents is twice as high as in the other branches. The Committee is aware that temporary workers and sub-contractors are often present in this sector where the labour turnover is rapid. It feels that these characteristics explain in part the high number of accidents and stresses the importance of information and training for all workers in general, and above all the necessity of devising information and training methods adapted for workers in insecure employment (see above).

The Committee observes that in several Contracting Parties, there is a great difference between the number of accidents registered and the actual occurrence of accidents, resulting in a loss of precision and thus usefulness, of statistics. This prevents the Committee from assessing the effective enforcement of prescriptions accurately enough to reach a decision, and has prompted it to postpone its conclusion on several occasions. It hopes that the Contracting Parties concerned will take measures to improve the situation, by making the requirement for employers to register accidents more mandatory.

#### *Activities of the Labour Inspectorate*

Despite the general question posed on this subject in Conclusions XIII-1, there is a general lack of information in national reports. Therefore, the Committee takes this opportunity to recapitulate the information it needs in order to adopt a conclusion.

It must be supplied with figures on the number of firms under the Inspectorate's supervision and the number of workers employed in them, on inspections made and on the number of workers covered by visits. For a number of years the Committee has observed a declining trend in inspections, sometimes offset by an increase in inspectors' prevention activities. It draws the Contracting Parties' attention to the fact that an efficient inspection system can only be maintained where a minimum number of inspections are performed on a regular basis, the aim being to ensure that the right enshrined in Article 3 is effectively enjoyed by the largest possible number of workers. In the case of Portugal it found that the number of inspections taken as the relation between workers inspected and total employment was so low that this objective could not be considered to be achieved.

The Committee also asks to be given regular information on the structure of the Labour Inspectorate, including staff levels and the powers of inspectors. In this respect, it noted with interest that in most of the Contracting Parties inspectors can use coercive means of enforcement such as stoppage of activities, placing of seals, etc. in the event of an immediate danger to the health or safety of workers.

Finally, reports should include information on breaches of safety and health regulations, the fields in which they occurred and what action, including legal measures, was taken. In order to ascertain whether the system of sanctions is sufficiently dissuasive for employers, information on sanctions should state their range and for fines should explain how amounts are decided (*inter alia*, if they are proportional to the number of workers concerned), with a breakdown by administrative and criminal sanctions if this applies.

The Committee invites the Contracting Parties which have ratified ILO Convention No. 81 concerning labour inspection and ILO Convention No. 129 on labour inspection in agriculture, to send it copies of the reports they submit periodically to the ILO in compliance with these conventions.”

101. **Conclusions 2003, Slovenia, pp. 452-453:** “The Committee notes that in the extractive sector the accident frequency is more than double the average (6%), followed by the construction industry (5%). In the former, the situation deteriorated in 2000 to reach a frequency of 7.8 accidents per 100 workers. In the light of the foregoing information, the Committee draws the Slovenian Government's attention to the fact that in accepting Article 3 it has undertaken to guarantee individuals' right to physical and psychological integrity at work. The Committee recalls that the satisfactory application of the Charter "cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised" (Complaint No. 1/1998, International Commission of Jurists against Portugal, decision on the merits, 9 September 1999, §32). The Committee considers that in assessing respect for the right enshrined in Article 3§3, the number and frequency of fatal accidents and their trends are a decisive factor. In Slovenia's case, it considers that the number of fatal accidents, particularly in the extractive sector, is patently too high for this right to be considered secured.”
102. **Conclusions XIV-2, Portugal, pp. 640-642:** “The Committee points out that in certain branches of activity Portugal's average figures for the number of industrial accidents and fatalities recorded are far higher than those of other European Union member states — and even the highest of all. In 1994, in eight branches of activity Portugal's standardised number of industrial accidents necessitating more than three days' absence per 100,000 people in employment was 7,361, or 170,114 accidents reported (about 75% of the total number of accidents in 1994 according to the ILO); the European Union average was 4,539. In the same year and the same branches of activity the standardised number of fatalities per 100,000 people in work was 9.7 (or 194 accidents reported excluding road deaths and those from natural causes); the European Union average was 3.9.
- The Committee considers that the industrial accidents situation gives cause for concern. It would point out to the Portuguese Government that, in accepting Article 3, it committed itself to guarantee individuals the right to protection from physical and mental injury in the workplace. It is under paragraph 2 of Article 3 that the Committee monitors whether this right can effectively be exercised, and, in this connection, it regards the frequency of industrial accidents and the trend thereof as decisive factors. In Portugal's case, it considers that the frequency of industrial accidents and fatalities is clearly too high for it to conclude that effective exercise of the right is ensured.”
103. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits, 9 September 1999, §32:** “The satisfactory application of the Charter ‘cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised’.”
104. **Conclusions XIV-2, Belgium, p. 128:** “It draws the attention of the Belgian Government to the fact that, in order to maintain an efficient system of inspection, there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3 as soon as possible. In view of the statistics available to the Committee, it doubts that this objective is met in Belgium. However, it defers its assessment on this point, given that it has no information on the inspection work of the Technical Inspectorate. It therefore emphasises that the next report should contain as much information as possible on these activities.”

105. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, decision on the merits of 6 December 2006, §229:**” States that have ratified the Charter have undertaken, under Article 20§5, to “maintain a system of labour inspection appropriate to national conditions”. The Committee considers that states have a measure of discretion regarding not only how they organise their inspection services but also what resources they allocate to them. However, since such services are the main safeguard of health and safety in the workplace, “there must be a minimum number of regular inspections to ensure that the largest possible number of workers benefit from the right enshrined in Article 3” (Conclusions XIV-2, Belgium, p. 127) and that the risk of accidents is reduced to a minimum. The Committee stresses that this limits states’ discretion and that the Charter is violated when the staffing of the inspection services and the number of visits carried out is manifestly inadequate for the number of employees concerned.“
106. **Conclusions XIV-2, Statement of Interpretation on Article 3§2 of the 1961 Charter (i.e. Article 3§3 of the Revised Charter), pp. 43-46, *op. cit.***
107. **Conclusions 2005, Norway, p. 521:** “The Committee [...] cannot use [...] data to assess to situation unless it is provided with up-to-date information on the number of businesses under the labour inspectorate’s supervision, the number that have been inspected and the number of workers covered.“
108. **Conclusions 2005, Norway, p. 522:** “The Committee asks for information in the next report on the practical means of informing and consulting employers’ and workers’ organisations about labour inspectorate activities apart from company inspections. This last issue is examined under Article 22 of the Charter, as accepted by Norway.”

#### Article 3§4

109. **Conclusions 2003, Bulgaria p. 37:** “The Committee recalls that when accepting Article 3§4 states undertook to give all workers in all branches of the economy and every undertaking access to occupational health services. These services may be run jointly by several undertakings. If occupational health services are not established by every undertaking the authorities must develop a strategy, in consultation with employers’ and employees’ organisations, for that purpose. The Committee will then assess whether sufficient progress has been made.”
110. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits, 4 November 2003, §53:** “A State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources.”
111. **Conclusions 2003, Statement of Interpretation on Article 3§4, *op. cit.***





## Article 4

### Article 4§1

#### 112. Conclusions XIV-2, Statement of Interpretation on Article 4§1, pp. 50-52:

"Historical background

Assessment of the implementation of Article 4 para. 1, requiring states "to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living" has proved difficult throughout the history of the supervision of the Charter. Several factors have contributed to the difficulties, notably the widely differing wage formation mechanisms in the countries concerned due to differences in labour market, socio-economic and institutional conditions and the paucity of data which could be used to determine the relevant wage levels.

As early as in its first conclusions, the Committee observed that this provision "which obliges Contracting States to take appropriate measures to ensure a decent standard of living for workers and their families, requires those states to make a continuous effort to achieve the objectives set by this provision of the Charter. This being so, account must be taken of the fact that the socio-economic status of the worker and his family changes and that his basic needs, which at first are centred on the provision of purely material basic necessities such as food and housing, subsequently move towards concerns of a more advanced and complex nature, such as educational facilities and cultural and social benefits." (Conclusions I, p. 26).

In Conclusions V the Committee adopted an assessment method based on statistical studies carried out by the OECD and the Council of Europe from which a so-called decency threshold for the lowest wage was established. The basic premise of this method was that wages which fall markedly behind those of the community in general could not be considered decent or fair. Thus for a wage to be decent it had to be at least equal to 68 % of the national average wage in a given country. If the lowest wage fell below this level, the Committee did however take certain compensatory factors into account such as taxes, substantial social benefits, including family and housing benefits (see Conclusions V, pp. 25-26).

In supervision cycles XIII-1 and XIII-2 the Committee deferred its conclusions with regard to all Contracting Parties, except for two states where a negative conclusion was reached. From cycle XIII-3 it refrained entirely from reaching conclusions under this provision, both because of increasing doubts as to whether the method applied was appropriate considering the social and economic developments that had taken place since the Charter entered into force and because the data furnished by governments in many cases simply did not enable it to assess the situation with any degree of validity.

A modified assessment method

During the present supervision cycle the Committee therefore reviewed the matter in the light of all the information submitted by the Contracting Parties and decided to make certain adjustments to the method of assessment with a view to assessing the situation for the Contracting Parties concerned. In doing so, the Committee deliberated on and clarified a number of points with respect to some basic definitions in the light of the wording of Article 4 para. 1. It also considered the question of data availability.

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The Committee still proceeds from the fundamental assumption that in order for the situation to be in conformity with the Charter, i.e. for a wage to be fair, the lowest wage should not fall too far behind the national average wage in a given country. However, the Committee found it appropriate to fix the percentage threshold (lowest net wage as a percentage of net average wage), below which the lowest wage should not fall, at 60% instead of 68%. It emphasises the following reasons for this adjustment:

- the developments in the earnings patterns of families since the 68% threshold was introduced make it untenable to maintain a general requirement that a single wage income must give a decent living standard to a whole family. The notion in the wording of Article 4 para. 1 that a single wage earner, implicitly male, alone should provide for the family reflects an outdated conception of family structures which is not, in effect, conducive to promoting equal opportunities of women in the labour market. The Committee has noted with interest that the Community Charter of Fundamental Social Rights of Workers from 1989 also states the principle of fair remuneration, but describes it as "a wage sufficient to enable them (i.e. the workers) to have a decent standard of living".
- the 68 % threshold reflected statistical studies made at an early stage of the supervision of the Charter when there were a limited number of Contracting Parties representing a significant economic homogeneity. At present there are twenty-two Contracting Parties with the number being expected to grow rapidly over the next few years. The new percentage threshold must be able to accommodate a situation with less homogeneity, notably in so far as the new democracies of Central and Eastern Europe are concerned, where the wage structure is different and dispersion greater.

The Committee proceeds from the expectation that a wage amounting to at least 60% of the average wage (calculated net — see *infra*) will provide the wage earner concerned — and not the family — with a decent living standard. It nevertheless underlines that a wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker, i.e. it must be clearly above the poverty line for a given country.

The Committee notes that in many countries provision is made for a minimum guaranteed income for persons whose income falls below a given poverty line. The minimum guaranteed income is paid under particular conditions which vary from country to country and without prejudice to the employment situation of the person concerned. It also notes from a Eurostat study that in general the minimum guaranteed income is significantly lower than the lowest wages paid to full-time workers, both in countries with a statutory minimum wage and in countries with negotiated wage minima.<sup>3</sup> The Committee emphasises that in so far as the minimum guaranteed income is not linked to the wage of a full-time worker so as to increase the level of the minimum wage, it is not directly relevant to the assessment of conformity under Article 4 para. 1.

The Committee defines remuneration for the purposes of the assessment under Article 4 para. 1 as the net value, i.e. after deduction of social security contributions and taxes, of the total wages, in principle both monetary and in kind, paid regularly by an employer to a worker for work carried out. Account shall where applicable be taken of bonuses and gratuities not paid regularly with each pay packet. Social security contributions shall be calculated on the basis of employee contribution rates laid down by law or collective agreement. Taxes are all taxes on earned income. Indirect taxes are thus not taken into account.

Social transfers or welfare benefits which are not directly linked to the wage will not be taken into consideration as Article 4 para. 1 concerns remuneration for work as such. Governments are urged to provide evidence of any social transfers/benefits applicable to all full-time workers on minimum wages (and not to average earners) irrespective of their family situation, as such transfers/benefits may be of relevance to the assessment. The Committee underlines that by looking at net wages it takes into account any redistributive effects of contributions and taxes.

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The reference wage considered by the Committee 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.<sup>4</sup> As the lowest wage the Committee will consider the net statutory minimum wage for those countries where such a wage has been established. For countries with no statutory minimum wage it will consider information on the net value of minima agreed upon in collective agreements and/or actually paid in the labour market. Obviously, the Committee will seek to determine the practical relevance of the minima in terms of the number of workers receiving them.

If the lowest wage in a given Contracting Party does not satisfy the 60% threshold, but does not fall very far below, the Committee 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 even if it is below 60% of the national net average wage. In particular, consideration will be given to the costs of having health care, education, transport, etc. In extreme cases, however, for instance where the lowest wage is less than half the average wage the Committee would, however, consider the situation to be in breach of the Charter and proceed to conclude negatively.”

113. **Conclusions XVI-2, Denmark, p. 203:** “The report further states that the lowest wage fixed by collective agreement is that of a cashier in a supermarket: about 79 Danish crowns (DKK; 10.60 €) per hour which corresponds to about 152,000 DKK (20,458 €) on an annual basis (before deduction of tax and contributions). The authorities have no information on the lowest wages paid to workers not covered by collective agreement, but it is pointed out that there is a considerable “spill-over” effect from the agreement regulated areas.

From Eurostat information the Committee notes that the average gross monthly wage of a single male manual worker in manufacturing industry was 2,660 € in 1999 and the corresponding net wage was 1,332 €. In comparison the gross monthly wage of the supermarket cashier mentioned above would amount to 1,704 € (about 64 % of the average of the manufacturing industry worker).

In view of the scant information contained in the report, the Committee once again has to point out that in order for it to assess the situation properly each report must contain information on the lowest wages actually paid in the labour market, whether determined by collective agreement or by other means, as well as on the national average wage. Both the lowest wages and the average wage should be given net of any tax and social security contributions. If the information is not readily available, the Committee invites the Government to carry out any surveys necessary to make the appropriate estimates.”

114. **Conclusions 2003, France, p. 120:**” The Committee observes that the net value of the SMIC falls below the threshold of 60 % of the national net average wage but is above 50%. Therefore it is up to the French authorities to show that this level suffices to give the worker a decent standard of living.

[...]

The Committee asks that the next report contain detailed information on any social transfers or benefits made available specifically to workers earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living.”

## Article 4§2

115. **Conclusions I, Statement of Interpretation of Article 4§2, p. 28:** “Not only must the worker receive payment for overtime, therefore, but also the rate of such payment must be higher than the normal wage rate.”

116. **Conclusions XIV-2, Belgium, p. 134** : “The Committee points out that the aim of Article 4 para. 2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, as in the present case, Article 4 para. 2 requires that this time be longer than the additional hours worked. That requirement is not met in the Belgian public service, and the Committee therefore takes the view that the situation does not comply with this provision.”
117. **Conclusions IX-2, Ireland, p. 38, *op.cit.***
118. **Conclusions X-2, Ireland, p. 62**: “[The Committee] noted that, by virtue of the legislation and regulations in force, collective agreements and established practice, increased rates of remuneration were actually paid for overtime work in the public and private sectors, except to senior officials, management and workers for whom there are no arrangements for overtime.  
[...]  
The Committee was thus able to conclude that Ireland complies with this provision of the Charter.”
119. **Conclusions XV-2, Poland, p. 420** : “The Committee concludes that the situation in Poland is not in conformity with Article 4 para. 2 of the Charter since:
- for workers covered by the Labour Code, it is permissible for overtime work to be compensated by a rest period which merely equals the period of overtime and therefore does not correspond to a higher rate of pay;
  - the rules which applied during the reference period governing overtime work by civil servants were not in conformity with this provision of the Charter, since they did not provide for a higher rate of pay or a corresponding period of rest.”
120. **Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §45** : “The Committee considers that the number hours of work performed by managers who come under the annual working days system and which, under the flexible working time system, are not paid at a higher rate is abnormally high. In such circumstances, a reference period of one year is excessive. The situation is therefore contrary to Article 4 para.2 of the Charter.”
121. **Conclusions XIV-2, Statement of Interpretation on Article 4§2, p. 35** : “The Committee recalls that the principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage. The Committee allows additional time off to replace increased remuneration.  
As has been pointed out in the conclusions for Article 2 para. 1, overtime must be regulated.  
The Committee has noted that most Contracting Parties having 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. 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. The Committee has considered that such arrangements are not in breach of Article 4 para. 2.  
In some cases, increased remuneration for overtime work has been maintained where work is carried out over and above the maximum daily or weekly hours provided in the flexibility scheme.

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The Committee reserves the possibility to assess on a case-by-case basis whether flexible working time arrangements ensure effective compliance with Article 4 para. 2.”

### Article 4§3

122. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, pp. 257-259:** “Recalling its general observation on Article 1 of the Additional Protocol to the Charter (Conclusions XIII-3, p. 429), the Committee notes that the rights and obligations ensuing from this provision are also, in part, within the ambit of provisions of the Charter itself, i.e. in particular, Article 1 para. 2 and Article 4 para. 3.

All three provisions entail the following obligations for Contracting Parties:

- to promulgate the rights concerned in legislation;
- to take legal measures to ensure the effectiveness of the rights concerned;
- to define active policies and to take measures to implement them, and thus the rights concerned, in practice.

The scope in substance of the provisions noted are, however, not wholly coinciding. Whereas Article 1 para. 2 of the Charter covers discrimination in employment on other grounds than gender, Article 1 of the Additional Protocol relates only to gender discrimination. Whereas Article 4 para. 3 of the Charter relates specifically to equal pay for work of equal value, Article 1 of the Additional Protocol — while similarly encompassing remuneration — on the whole has a wider scope.

Moreover, within its ambit Article 1 of the Additional Protocol entails further obligations for states than those ensuing from Article 1 para. 2 and Article 4 para. 3 of the Charter, within their respective scopes. The Committee wishes to underline that the entry into force of Article 1 of the Additional Protocol will not affect the case law developed under the latter provisions.

With a view to expounding the contents of the three provisions in question (Article 1, para. 2, Article 4 para. 3 and Article 1 of the Additional Protocol), it notes:

[...]

In respect of Article 4 para. 3 of the Charter, that it has established a clear set of legal criteria which a state must fulfil. A basic requirement is that the legislation of a state which has accepted it must prescribe that men and women workers must receive equal pay not only for equal work but also for work of equal value. Equal pay must be guaranteed not only as far as basic wages are concerned, but also for all other benefits paid by the employer to the worker as a consequence of the employment relationship.

Furthermore, legislation must provide effective protection against any retaliatory measures taken by the employer against a worker asking to benefit from the right to equal pay. The latter requirement includes in particular an obligation to prohibit dismissal in such cases and in cases of unlawful dismissal to provide for the reinstatement of the worker. In exceptional cases, where reinstatement is not possible or is not desired by the worker, financial compensation instead may be acceptable, but only if it is sufficient to deter the employer and to compensate the worker.

In its endeavour to ensure that the principle of equal pay is implemented effectively, the Committee has also insisted on being informed of measures such as placing the burden of proof on the employer in certain cases, on state intervention in the fixing of wages, on objective evaluation of jobs and on the raising of wages in sectors characterised by relatively low remuneration and traditionally employing large numbers of women.”

123. **Conclusions 2002, Statement of Interpretation on Article 4§3, pp. 11-12** : “Moreover, [the Committee] has modified its approach in order to take into account the new Article 20 of the Charter (right of women and men to equal treatment and equal opportunities) which covers areas already dealt with under other provisions:
- since the right to equality under Article 20 covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3. States which have accepted Article 4§3 only will continue to submit a report on the application of this Article.”

124. **Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29** : “...This provision obliges the Contracting States who have accepted it to recognise the principle of equal pay for work of equal value, not only in law but also in fact.

...

The Committee pointed out that equal pay for men and women workers is required for work of equal value, this presupposes the establishment by the governments of the states concerned of objective criteria for evaluating work, on the basis of appropriate methods (commissions, surveys, etc.). In this connection, the Committee considered that the Charter leaves governments free to choose the methods whereby equality of pay between men and women workers is achieved and that this equality may be ensured either by means of legislation and regulations or by collective agreements, provided only that equality is achieved in practice.”

125. **Conclusions XVI-2, Portugal, p. 683** : “The Committee considers that the principle that there should be no discrimination between the sexes implies that the rule of equal pay for full-time and part-time workers should be observed, since most of the latter are women and this can give rise to indirect discrimination. Accordingly, the Committee wishes to receive answers to the following questions:
- Is the hourly wage of part-time workers employed in the same type of job or in a similar job identical, as a rule, to the hourly wage of full-time workers ?
  - Are there any exceptions to this principle and, if so, on what grounds?
  - If pay increases with length of service, how is the latter calculated in the case of part-time workers?
  - Are certain components of pay, such as premiums, bonuses, entitlements and benefits associated with complementary insurance schemes, paid as a result of employment, reserved for full-time workers?

126. **Conclusions XV-2, Addendum, Slovak Republic, p. 151**: “The Slovak Constitution provides general protection for employees against discrimination. However, there is no express statutory guarantee of the right of men and women to equal pay for work of equal value. The Committee recalls that under the Charter the right of male and female workers to equal pay for work of equal value must be expressly provided for in domestic law.

Article 4 para. 3 of the Charter also requires that all clauses in employment contracts or collective agreements which violate the principle of equal pay must be held to be null and void. Further, a court must have the power to waive the application of the offending clauses. Employees who claim their right to equal pay must be legally protected from all forms of retaliatory action. Where an employee is the victim of retaliatory action, there must be an adequate remedy, which will both compensate the employee and serve as a deterrent to the employer.

National law should not unduly restrict the scope for job comparisons, e.g. by confining them to the same enterprise.

In the absence of specific legislation on the above-mentioned points, the Committee finds that the legal situation is not in conformity with the requirements of the Charter and urges the Slovak authorities to explicitly incorporate the notion of equal pay for work of equal value in domestic law.”

127. **Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29, *op. cit.***
128. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, pp. 257-259, *op. cit.***
129. **Conclusions XVI-2, Malta, p. 489:** “The Committee asks for information on the consequences of breaches of the equal pay principle. It asks whether victims are entitled to the difference in pay...”
130. **Conclusions I, Statement of Interpretation on Article 4§3, pp. 28-29, *op. cit.***
131. **Conclusions XVI-2, Portugal, pp. 680-681:** “The Committee has consistently held that comparisons of pay and jobs must extend to other enterprises, where this is necessary for an appropriate comparison (Conclusions XIII-1, p.121). It considers that the ‘possibility of looking outside the enterprise for an appropriate comparison is of fundamental importance for a system of objective job evaluation to be efficient in certain circumstances, in particular in enterprises where the workforce is largely, or even exclusively, female’ (Conclusions XIII-5, pp. 259, 265 and 269).”
132. **Conclusions XVII-2, Czech Republic, pp. 113-114:** “The Committee emphasises that in order to comply with Article 4§3 of the Charter, States must take or encourage other bodies to take positive measures to narrow the pay gap as much as possible. To assess the situation, it requests that the next report state:
- if and to what extent collective agreements deal directly or indirectly with equal pay;
  - what measures have been taken to improve job classifications and the role of job evaluation as a means of reducing inequalities in pay;
  - what measures have been taken to improve the quality and coverage of wage statistics, as provided for in the action plan on ‘Priorities and procedures in the enforcement of equality of men and women’;
  - how much attention is paid to the issue of equal pay for women and men in the National Action Plan (NAP) for employment.”

#### Article 4§4

133. **Conclusions XIV-2, Spain, p. 684:** “However, it appears that where the reason for the dismissal is the death, retirement or incapacity of the employer, the worker is entitled to one month’s pay (Article 49.1.g). Since Article 4 para. 4 also applies in such circumstances, the Committee finds that this arrangement is not in conformity with the Charter inasmuch as it fails to make allowance for longer periods of service (e.g. more than five years).”
134. **Conclusions XIII-4, Belgium, p. 352:** “The Committee pointed out that when accepting this provision of the Charter, a Contracting Party undertook to recognise the right of all workers to a reasonable period of notice for termination of employment and that the problem in this regard was therefore not that different notice periods applied to manual and non-manual workers, but that the notice periods of manual workers were unacceptable as they were too short.”
135. **Conclusions XIII-3, Portugal, p. 267:** “The Committee recalled that in the interpretation of this provision of the Charter, it had refrained from defining in absolute terms the word “reasonable”. In fact it followed the reverse procedure and examined on a case-by-case basis if the duration of certain periods of notice were clearly “unreasonable”.”
136. **Conclusions XIII-3, Portugal, p. 267:** “The Committee considered that a period of notice of seven days provided by Portuguese legislation for a worker with less than six months’ service, was insufficient with regard to its case law (Conclusions XIII-2, pp. 263-264) and to the purpose of Article 4 para. 4 of the Charter, which intended to allow a dismissed worker to find new employment.”
137. **Conclusions XVI-2, Poland, p. 616:** “The Committee recalls that a two-week termination notice for workers with a period of service of more than 6 months is not reasonable with regard to the rights guaranteed by the Charter.”

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138. **Conclusions XIV-2, Spain, p. 684:** "The Charter requires a period of notice of at least one month where the worker has more than one year's service. This arrangement is therefore inconsistent with Article 4 para. 4. The Committee asks what notice must be granted to workers who have fixed-term contracts lasting less than one year."
139. **Conclusions 2003, Bulgaria, p. 41:** "The Committee considers that a period of notice of one month is not reasonable for workers with five or more years of service."
140. **Conclusions XIV-2, Ireland, p. 398:** "— workers with between ten and fifteen years' service are entitled to a minimum period of six weeks. The Committee considers that this is not a reasonable notice period, having regard to the length of service concerned;"
141. **Conclusions XIV-2, Ireland, p. 398:** "— workers with more than fifteen years' service are entitled to a minimum period of eight weeks. The Committee takes the view that such long periods of service should bring entitlement to more than eight weeks' notice."
142. **Conclusions XIII-1, Greece, p.124:** "The Committee noted that the Greek report stated that the right of all workers to take leave of absence during notice periods to look for another job was guaranteed by Article 677 of the Civil Code.

The Committee, noting the text of Article 677, wished to receive confirmation that workers had the right to take such leave (not merely to request it), that it was for the worker to determine that there was no other adequate time to look for another job, and that in practice such leave was granted."

**Conclusions XIII-3, Greece, p. 220:** "The Committee noted from the Greek report that all workers were entitled to take leave of absence during their periods of notice to look for new employment."

## Article 4§5

143. **Conclusions XI-1, Greece, p. 76:**"It also noted that the law allowed employers to make deductions from wages to compensate for wilful damage caused by the worker. It would like the next report to indicate how, in such circumstances, a worker is guaranteed the minimum income needed to maintain himself and his family."
144. **Conclusions 2005, Norway, pp. 524-525:** "On the basis of the information provided in the Norwegian report and in previous reports under the Charter of 1961, the Committee notes that the situation, which it previously considered not to be in conformity with the Charter, on the ground that workers may waive their right to limited deductions from wages, has not changed."
145. **Conclusions V, Statement of interpretation on Article 4§5, p. 36:** "The examination of the contents of biennial reports relating to Article 4, paragraph 5, prompted the committee to clarify its interpretation of the scope of the appendix to this provision. In fact, if on the one hand this provision obliges contracting States to permit deductions from wages in respect of all workers only "under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards" thus implying that any other deductions must be considered as contrary to the Charter; on the other hand, the appendix states that "if the great majority of workers are not permitted to suffer deduction from wages..." the undertaking laid down in the Charter is satisfied.

As the "*travaux préparatoires*" show that the text of the appendix was inserted in order to permit states to satisfy the Charter even if only the great majority of workers were protected as required by Article 4, paragraph 5, the deductions not permitted by the Appendix are those which are not authorised either by law or regulations nor fixed by collective agreements or arbitration awards and which are consequently not in conformity with Article 4, paragraph 5, of the Charter.



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It follows that a state must be regarded as acting in conformity with this provision when deductions from wages are permitted for the large majority of workers only when they are expressly authorised by laws, regulations, collective agreements or arbitration awards.”



## Article 5

146. **Conclusions XVII-1, Poland, p. 375** : “The Committee points out that the notion of “worker” in the sense of the Charter covers not only workers in activity but also persons who exercise rights resulting from work. By way of consequence, the Committee considers that the granting of a separate legal regime for the right to organise to retired persons, homeworkers and to the unemployed is not in conformity with the Charter.”
147. **Conclusions XV-1, United Kingdom, p. 628** “A certificate of independence is granted by the Certification Officer once he is satisfied that the union meets the statutory definition of independence laid down in Section 5: Such a certificate is needed in order that a trade union may benefit from the statutory rights and guarantees afforded to trade unions, for example the right to take part in trade union activities, to gain information for collective bargaining and to take time off for trade union duties and activities.

An appeal against refusal to grant such a certificate lies to the EAT on point of law and fact.

Application for a certificate of independence costs currently £3,891. This amount appears high to the Committee and it asks whether it is charged exclusively to cover administrative costs.”

148. **Conclusions XVI-1, United Kingdom, p. 683**: “Previously, the Committee raised the issue of the amount of the fee charged for a certificate of independence, which a trade union must possess in order to benefit from statutory rights and guarantees. The report states that the certification process is very time-consuming and that this is reflected by the fee, which covers administrative costs only.”

Note :\_the Committee concluded that the situation is in conformity with the Charter on this issue.

149. **Conclusions XIII-5, Portugal, p. 172**: “The Committee considers that when the legislation sets a minimum number of members required to form a trade union which may be considered to be manifestly excessive, this could constitute an obstacle to founding trade unions and, as such, infringe the freedom of association.”
150. **Conclusions I, Statement of Interpretation on Article 5, p. 31**: “Employers and workers have the right to form national or international associations, for the protection of their economic and social interest.”
151. **Conclusions I, Statement of Interpretation on Article 5, p. 31**: “The Committee noted that two obligations were embodied in this provision, having a negative and positive aspect respectively. The implementation of the first obligation requires the absence, in the municipal law of each Contracting State, 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, the Contracting State is obliged to take adequate legislative or other measures to guarantee the exercise of the right to organise and, in particular, to protect workers' organisations from any interference on the part of employers. “
152. **Confederation of Swedish Enterprise v. Sweden, complaint N° 12/2002, decision on the merits of 15 May 2003, § 29**. “The freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker’s right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom.”
153. **Conclusions 2004, Bulgaria, p. 32**: “The Committee considers that where such discrimination has occurred, there must be adequate compensation proportionate to the damage suffered by the victim. In the particular case of termination of employment on the ground of trade union activities, it considers – in accordance with its ruling under Article 24 of the Charter, which prohibits termination of employment without valid reason (Conclusions 2003, pp. 76-82) – that the compensation must at least correspond to the wage that would have been payable between the date of the dismissal and the date of the court decision or reinstatement.”

154. **Conclusions III, Statement of Interpretation on Article 5, p. 30:** “The Committee is of the opinion that any form of legally compulsory trade unionism must be considered incompatible with the Charter.”
155. **Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, Decision on the merits of 15 May 2003, §29:** “The freedom guaranteed by Article 5 of the Charter implies that the exercise of a worker’s right to join a trade union is the result of a choice and that, consequently, it is not to be decided by the worker under the influence of constraints that rule out the exercise of this freedom.”
156. **Conclusions VIII, Statement of Interpretation on Article 5, p. 77 :** “While conceding that the Appendix to the Charter in respect of Article 1§2 stipulates that this provision “shall not be interpreted as prohibiting or authorising any union security clause or practice” the Committee considers in view of the clear wording of Article 5, that no Contracting Party can fail to provide legal remedies or sanctions for practices which unduly obstruct the freedom to form or join trade union organisations, for otherwise the scope of the aforementioned provision of the Appendix would be excessively widened and situations incompatible with the fundamental freedom secured by Article 5 would be considered lawful.”
157. **Conclusions XV-1, Denmark, p. 142:** “The Committee recalls that according to Article 5 of the Charter there can be no sort of obligation to become or remain a member of a trade union.”
158. **Conclusions XII-2, Germany, p. 98:** “Article 5 protects not only the right of workers to join or not to join a trade union, but also the right of trade unions to organise freely and to perform their activities effectively, which is essential for “the protection of workers' economic and social interests”.”
159. **Conclusions XVII, United Kingdom, p. 510:** “The Committee said that Section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992, which made it unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, constituted an unjustified incursion into the autonomy of trade unions inherent in Article 5 of the Charter.”
160. **Conclusions XV-1, France, p. 240:** The Committee considers that the provision of office premises and equipment for trade union organisations so that organisational or information meetings may be held inside office buildings either outside or during working hours, allowing trade union publications to be distributed and trade union dues to be collected in the administrative buildings and allowing trade union representatives to be granted special leave when they need to take part in trade union institutional activities (congresses and meetings of trade union management bodies) is in conformity with Article 5 of the Charter.
161. **Conclusions XV-1, Belgium, p. 74:** The Committee considers that a trade union that is not representative should enjoy certain prerogatives, for example, they may approach the authorities in the individual interest of an employee, they may assist an employee who is required to justify his or her action to the administrative authority; they may display notices on the premises of services and they receive documentation of a general nature concerning the management of the staff they represent.
162. **Conclusions XV-1, France, p. 240:** “The Committee observes that the criteria for establishing representativity, in particular for the purpose of collective bargaining, must be pre-established, clear and objective.”
163. **Conclusions I, Statement of Interpretation on Article 5, p. 31:** “All classes of employers and workers, including public servants, subject to the exceptions mentioned below, are fully entitled to the right to organise in accordance with the Charter. Certain restrictions to this right are, however, permissible under the terms of the two last sentences of Article 5 in respect of members of the police and armed forces.”

164. **European Federation of Employees in Public Services (EUROFEDOP) v. Italy, Complaint No. 4/1999, Decision on the merits of 4 December 20 00, §27:** "As the Committee has consistently held, it follows from the wording of the final sentence of Article 5 of the European Social Charter of 1961 that states are permitted to "limit in any way and even to suppress entirely the freedom to organise of the armed forces."
165. **Conclusions XVIII-1, Poland, p. 633:** "In order to determine how closely the status of staff of the Internal Security Agency (ISA) resembled that of armed forces personnel, the Committee requested information on the breakdown of its responsibilities into civil and military tasks. The ISA's duties are listed in section 5 of the Internal Security Agency Act. The Committee notes that the agency's role in identifying, preventing and eliminating threats to Poland's territorial integrity and defending the state means that it is indirectly involved in national defence.
- The Committee recalls that Article 5 of the Charter only authorises restrictions on or the removal of the right to organise for two categories of employees, namely members of the police and the armed forces. Any other measures aimed at restricting or abolishing the right to organise of members of the security and intelligence service must therefore be considered in the light of Article 31 of the Charter, which authorises restrictions on the right to organise if they are prescribed by law, have a lawful purpose and are 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. The Committee notes that the restriction is prescribed by law (section 5 of the ISA Act) and that the purpose – national security – is lawful. However, it considers that simply removing ISA members' right to organise cannot be deemed necessary in a democratic society to protect national security. It therefore finds that the situation is not in compliance with Article 5 of the Charter."
166. **Conclusions 2006, France, p 302:** "With regard to the status of the *Gendarmerie*, the Committee noted in its previous conclusion that "when it assessed a situation, it was not bound by the categorisation taken by the national authorities. However, the Committee considers that in the light of the wording of Article 5 of the Charter, it is reasonable for persons who defend national territory to be excluded from the benefit of the rights guaranteed in this article if they have military status and genuinely perform military duties".
- The Committee asked the French Government for detailed information on the precise functions and role of members of the *Gendarmerie*. The report states that the *Gendarmerie* performs both civilian and military duties. The *Gendarmerie's* civilian duties are identical to those carried out by national police officers where it comes to their administrative and judicial investigation work. In the course of its military duties, the *Gendarmerie*, which forms an integral part of the armed forces, helps to ensure the security of France's national defence potential and helps the government to control its strategic nuclear forces. It is also responsible for the operational defence of the country in the event of a crisis and can be called on, just like the other armed forces, to take part in foreign operations. The nature of the duties performed by the *Gendarmerie* and the readiness to serve that these duties entail require *gendarmes* to be governed by the conditions of service of military personnel on an equal footing with the members of the armed forces. As a result, they are not entitled to form trade unions."
167. **Conclusions I, Statement of Interpretation on Article 5, p. 31 :** "It is clear, in fact, from the second sentence of Article 5 and from the "travaux préparatoires" on this clause, that while a state may be permitted to limit the freedom of organisation of the members of the police, it is not justified in depriving them of all the guarantees provided for in the article."
168. **European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decision on the merits of 22 May 2002, §§25-26 :** "The Committee recalls that Article 5 permits states to restrict but not to completely deny police officers' right to organise. It follows, firstly, that police personnel must be able to form or join genuine organisations for the protection of their material and moral interests and secondly, that such organisations must be able to benefit from most trade union prerogatives."

169. **Conclusions I, Statement of Interpretation on Article 5, p. 31:** “The Committee considered, however, that any form of compulsory unionism imposed by law must be considered incompatible with the obligation arising under this article of the Charter.”

## Article 6

### Article 6§1

170. **Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35** : "The Committee interprets this provision as meaning that any Contracting State which has accepted it is bound to take steps to promote joint consultation between workers and employers, or their organisations, on all matters of mutual interest and on the following questions among others: productivity, efficiency, industrial health, safety and welfare."
171. **Conclusions V, Statement of Interpretation on Article 6§1, p. 41**: " ..., the Committee,... considered that the expression "joint consultation" was to be interpreted as being applicable to all kinds of consultations between both sides of industry – with or without any government representatives - on condition that both sides of industry have an equal say in the matter."
172. **Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41** : "The Committee interprets Article 6§1 to mean that States must take positive steps to encourage consultation between trade unions and employers' organisations. If such consultation does not take place spontaneously, the State should establish permanent bodies and arrangements in which unions and employers' organisations are equally and jointly represented (Conclusions XVI-2, Hungary, pp. 408-409). "
173. **Conclusions III, Denmark, Germany, Norway, Sweden, p. 33** : "...the Committee held, as mentioned below in connection with Article 6, paragraph 4, the provisions of Article 6 as a whole to be applicable not only to employees in the private sector, but to public officials subject to regulations, though with the modifications obviously necessary in respect of persons bound not by contractual conditions but by regulations laid down by the public authorities. Article 6, paragraph 1 can only be regarded as respected where such officials are concerned if consultation machinery is arranged for the drafting and implementation of the regulations, which should not give rise to any special difficulty."
174. **Centrale générale des services publics (CGSP) v. Belgium, Complaint No. 25/2004, Decision on the merits of 9 May 2005, §41** : "The Committee interprets Article 6§1 to mean that States must take positive steps to encourage consultation between trade unions and employers' organisations. If such consultation does not take place spontaneously, the State should establish permanent bodies and arrangements in which unions and employers' organisations are equally and jointly represented (Conclusions XVI-2, Hungary, pp. 408-409). These bodies and arrangements must allow the social partners to discuss and submit their views on all issues of mutual concern. In the case of officials bound by regulations laid down by the public authorities, such consultation will particularly concern the drafting and implementation of these regulations (Conclusions III, p. 33). "
175. **Conclusions 2004, Ireland, p. 264**: "The Committee takes note of the information contained in the Irish report. It deferred its previous conclusion pending receipt of information on the practice of consultation in the private sector at the enterprise level. Since consultation at this level is also provided by Article 22 of the Charter, which was accepted by Ireland, the Committee will examine this information under Article 22. "
176. **Conclusions I, Statement of Interpretation on Article 6§1, pp. 34-35** : "The Committee interprets this provision as meaning that any Contracting State which has accepted it is bound to take steps to promote joint consultation between workers and employers, or their organisations, on all matters of mutual interest and on the following questions among others: productivity, efficiency, industrial health, safety and welfare."

177. **Conclusions V, Ireland, pp. 42-43** : " ...furthermore, the committee wished again to draw attention to the importance of joint consultation within firms, especially in order to settle occupational problems (working conditions, vocational training and refresher courses, working hours, production rates, structures and number of staff, etc) and social matters (social insurance, social welfare, etc.)..."
178. **Conclusions 2006, Albania, p. 39** : "The Committee recalls in this respect that in order to render the participation of trade unions in the various procedures of consultation efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§1 of the Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in the consultations. In order to be in conformity with Article 6§1 of the Charter, the criteria of representativeness should be prescribed by law, be objective and reasonable and subject to judicial review which offers appropriate protection against arbitrary refusal."

## Article 6§2

179. **Conclusions I, Statement of Interpretation on Article 6§2, p. 35** : " ..... the Contracting Parties undertake not only to recognise, in their legislation, that employers and workers may settle their mutual relations by means of collective agreements, but also actively to promote the conclusion of such agreement if their spontaneous development is not satisfactory and, in particular, to ensure that each side is prepared to bargain collectively with the other. Where adequate machinery for voluntary negotiation is set up spontaneously, however, the government in question is not, in the Committee's opinion, bound to intervene in the manner prescribed in this paragraph."
180. **Conclusions III, Germany, p. 34** : "The Committee also pointed out that, in connection with the Federal Republic of Germany, while it was impossible to draw up proper collective agreements for civil servants subject to regulations, Article 6 para. 2 nonetheless entails the obligation to arrange for the participation of those concerned, through the intermediary of their representatives, in the drafting of the regulations which are to apply to them. "
181. **European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, Decision on the merits of 21 May 2002, §58** : "As a preliminary matter, the Committee recalls that the extent to which, if at all, ordinary collective bargaining applies to officials, it may be subject to regulations determined by law. Nevertheless, such officials always retain the right to participate in any processes that are directly relevant to the determination of the procedures applicable to them. "
182. **Conclusions 2006, Albania pp. 41-42** : "The Committee recalls that in order to render the participation in the various procedures of collective bargaining efficacious, it is open to States parties to require them to meet an obligation of representativeness subject to certain general conditions. With respect to Article 6§2 of the Revised Charter, any requirement of representativeness must not excessively limit the possibility of trade unions to participate effectively in collective bargaining."

## Article 6§3

183. **Conclusions I, Statement of Interpretation on Article 6§3, p. 37**: "The machinery for the settlement of labour disputes envisaged in this provision may be established by legislation, collective agreements, or industrial practice and its object may be the settlement of any kind of labour dispute.
- The Committee takes the view that, where conciliation machinery established, for example, on the basis of collective agreements, is sufficiently efficacious, there is no need for the government concerned to establish arbitration procedures or to promote their use."



184. **Conclusions III, Denmark, Germany, Norway, Sweden, p. 33:** "...the Committee held, as mentioned below in connection with Article 6, paragraph 4, the provisions of Article 6 as a whole to be applicable not only to employees in the private sector, but to public officials subject to regulations, though with the modifications obviously necessary in respect of persons bound not by contractual conditions but by regulations laid down by the public authorities."
185. **Conclusions V, Statement of Interpretation on Article 6§3, p. 45:** " ... the Committee wished to draw attention to the fact that this provisions concerned disputes which would arise when collective agreements were being negotiated or concluded... "
186. **Conclusions V, Italy, p. 46:** "...In these reports, especially in the 4<sup>th</sup>, the Italian Government gave extensive information on conciliation and arbitration. But this concerned only the resolution of conflicts – individual or collective – arising out of the interpretation or application of work contracts or collective agreements in force. However, Article 6, paragraph 3, does not deal with this subject. It is clear in fact from the introductory passage on this Article that its paragraph 3 refers only to conciliation and arbitration within the framework of collective bargaining, i.e. the purpose of which is to resolve the disputes, which can arise at the time of the negotiation and conclusion of *collective agreements*."
187. **Conclusions XIV-1, Iceland, p. 388:** "Moreover, the Committee shares the opinion of the ILO Committee on Freedom of Association that a system of arbitration shall be independent and that the substantive outcome of arbitration shall not be pre-determined by legislative criteria."
188. **Conclusions 2006, Portugal, p. 681:** "The Committee recalls that any form of recourse to arbitration constitutes a violation of Article 6§3 of the Charter, 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, unless such restrictions fall within the limits prescribed by Article G, i.e. they have to be prescribed by law and to 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."

## Article 6§4

189. **Conclusions I, Statement of Interpretation on Article 6§4, p. 34:** "In its fourth paragraph, Article 6 deals with the right of employers to take collective action in cases of conflicts of interest, including the right to strike. The Committee notes that by this provision, the right to strike is for the first time explicitly recognised in an international convention."
190. **Conclusions I, Statement of Interpretation on Article 6§4, p. 38:** "Where the limits within which the right to strike may be exercised have been determined, in a state, not by legislation but by the courts, it is for the Committee to examine whether the case law thus established is in accordance with the requirements of the Charter."
191. **Conclusion XVII-1, Netherlands, p. 317:** "The Committee recalls that since the judgment of 30 May 1986 in which the Dutch Supreme Court ruled that Article 6§4 and Article 31 of the Charter were directly applicable in national law (Conclusions XI-1, p. 88), it pays particular attention when examining case law of the Dutch courts, in particular Supreme Court rulings, in order to check whether the courts take decisions in the light of the principles laid down in the matter (Complaint No. 12/2002, Confederation of Swedish Enterprise v. Sweden, decision on the merits, 15 May 2003, §43). It is up to the Committee to verify, as a last resort, that the Dutch courts are ruling in a reasonable manner and in particular that their intervention does not so reduce the substance of the right to strike as to render it ineffective."
192. **Conclusions XVII-1, Netherlands, p. 319:** "The Committee considers that the fact that a Dutch judge may determine whether recourse to strikes are "premature" impinges on the very substance of the right to strike as this allows the judge to exercise one of the trade unions' key prerogatives, that of deciding whether and when a strike is necessary."

193. **Conclusions I, Statement of Interpretation on Article 6§4, p. 38:** "It is clear from the text that this provision relates to both strikes and lock-outs — even though the latter are not explicitly mentioned in the text of Article 6 para. 4 of the Charter, or in the gloss to this provision in the Appendix. The Committee came to this conclusion because the lockout is the principal, if not the only, form of collective action which employers can take in defence of their interests."
194. **Conclusions VIII, Statement of Interpretation on Article 6§4, p. 95:** "The Committee pointed out in the first place that if, by virtue of Article 6 para. 4, the Charter recognises the right of workers and employers to collective action where conflicts of interests arise, it certainly does not raise any obstacle to the existence of legislation regulating the exercise of the right to call a lock-out, as well as of the right to strike, provided that neither legislation nor judicial decisions affect the very existence of the right thus recognised.
- However, subject to the aforesaid, the Charter does not necessarily imply that legislation and case law should establish full legal equality between the right to strike — which the Charter indeed mentions explicitly and which is recognised as a fundamental right by the Constitution of several member States — and the right to call a lock-out. Consequently, the Committee, thought, in the first place, that a state party to the Charter cannot be found at fault for not having passed legislation regulating the exercise of lock-out and, in the second place, that 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 the 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. "
195. **Conclusions 2004, Sweden, pp. 565-566:** "In Conclusions 2002 the Committee concluded that the situation was not in conformity with Article 6§4 of the Charter because strikes could only be called by those entitled to be parties to collective agreements. However it has decided to re-examine the situation. It considers that the reference to "workers" in Article 6§4 relates to those who are entitled to take part in collective action but says nothing about those empowered to call a strike. In other words, this provision does not require states to grant any group of workers authority to call a strike but leaves them 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 Article 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."
196. **Conclusions XV-1, France, pp. 254-257:** "While taking into consideration, *inter alia*, the fact that the unionisation rate is very low in France, the Committee considers that the requirement that a strike must be initiated by one of the trade unions that are most representative at the national level, in the professional category or in the firm, organisation or department concerned, in order for a public sector strike to be lawful, amounts to a restriction of the right to collective action that is not compatible with Article 6 para. 4 of the Charter. "
197. **Conclusions IX-2, Italy, p. 48:** "..., the Committee noted in this State's report the information on lock-out showing that an employer can lawfully decide to close the firm down during a collective dispute if the action of the striking workers takes violent or extreme forms (sabotage, interference with the right to work of non-striking employees and violence). In such cases, the employer's action is designed to preserve the means of production and prevent disruption of the work process. The courts are able to verify whether this is in fact the case, and the Committee thought that these circumstances conformed to the principles which it had itself considered admissible (see Conclusions VIII) as justification for "regulating recourse to lock-out".

198. **Conclusions I, Statement of Interpretation on Article 6§4, p. 38:** "This provision recognises the right to collective action only in cases of conflicts of interest. It follows that 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. This interpretation should be adopted even where a collective agreement contains provisions purporting to permit such industrial action."
199. **Conclusions IV, Germany, p. 50:** "It does not, however, seem possible to accept that there should be no other type of collective bargaining in labour relations other than that aimed at concluding a collective agreement. There are many circumstances which, apart from any collective agreement, call for "collective bargaining", such as when dismissals have been announced or are contemplated by a firm and a group of employees seeks to prevent them or to serve the re-engagement of those dismissed. Any bargaining between one or more employers and a body of employees (whether 'de jure' or 'de facto') aimed at solving a problem of common interest, whatever its nature may be, should be regarded as 'collective bargaining within the meaning of Article 6."
200. **Conclusions X-1, Norway, p. 76:** "... in accordance with the Appendix to Article 6 para. 4 of the Charter, each Contracting Party may regulate the exercise of the right to strike by law, provided that any further restriction can be justified under the terms of Article 31. The latter provision ensures that the rights and principles enshrined in Part I of the Charter and their effective exercise provided for in Part II cannot be made subject to restrictions or limitations not justified under Parts I and II, except where they are prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest, national security, public health or morals."
201. **Conclusions I, Statement of Interpretation on Article 6§4, p. 38:** "Legislation denying the right to strike to persons employed in essential public services may, by virtue of Article 31, be compatible with the Charter 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."
202. **Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint n° 32/2005, Decision on the merits of 16 October 2006, § 24:** "The Committee recalls that the right to strike embodied in Article 6§4 of the Revised Charter is not absolute and may be restricted but that any restriction to the right to strike to certain categories of employees or in certain sectors is only in conformity with Article 6§4 of the Revised Charter if it satisfies the conditions laid down in Article G of the Revised Charter. Thus, any restriction has to be (i) prescribed by law, (ii) pursue a legitimate purpose, i.e. the protection of rights and freedoms of others, of public interest, national security, public health or morals and (iii) necessary in a democratic society for the pursuance of these purposes, i.e. the restriction has to be proportionate to the legitimate aim pursued (see Conclusions I, Statement of Interpretation of Article 6§4, p. 38)."
203. **Conclusions I, Statement of Interpretation on Article 6§4, pp. 38-39:** "As regards the right of public servants to strike, the Committee recognises that, by virtue of Article 31, 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, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter."

204. **Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint n°32/2005, Decision on the merits of 16 October 2006, § 44-46:** “Firstly, the Committee observes that Section 47 of the CSA limits the exercise of collective action in respect of all civil servants to wearing or displaying signs, armbands, badges or protest banners. Civil servants thus are only entitled to engage in symbolic action which the law qualifies as strike and do not have the right to collectively withdraw their labour. The Committee finds that this restriction amounts to a complete withdrawal of the right to strike for all civil servants.

Secondly, the Committee recalls that restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G (see Conclusions I, Statement of Interpretation, pp. 38-39).

However, the Committee considers that there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such restriction can therefore not be considered as being necessary in a democratic society in the meaning of Article G.”

205. **Conclusions I, Statement of Interpretation on Article 6§4, pp. 38-39:** “As regards the right of public servants to strike, the Committee recognises that, by virtue of Article 31, 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, the Committee takes the view that a denial of the right to strike to public servants as a whole cannot be regarded as compatible with the Charter.”
206. **Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour “Podkrepa” and European Trade Union Confederation (CES) v. Bulgaria, Complaint n°32/2005, Decision on the merits of 16 October 2006, § 46:** “Secondly, the Committee recalls that restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G (See Conclusions I, Statement of Interpretation, pp. 38-39).”
207. **Conclusions 2004, Norway, p. 404:** “The Committee decides to no longer consider, as part of the reporting procedure, the situations in which arbitration has been imposed by the Parliament to end a strike in the sectors which are *prima facie* covered by Article G. It considers that this examination is a natural part of the complaints procedure that Norway accepted during the reference period. The Committee notes that during the reference period arbitration was imposed on three occasions in the health sector. It considers that this sector is *prima facie* covered by Article G.”
208. **Conclusions 2004, Norway, p. 404:** “The Committee reconsiders the question of peace obligation. It recalls that, in the Norwegian system of industrial relations, collective agreements are seen as a social peace treaty of fixed duration during which strikes are prohibited. The peace obligation is a contractual obligation and is imposed by statute law. It is also relative since it applies to disputes concerning the existence, validity, interpretation and application of a collective agreement, as well as to disputes pertaining to claims based on the agreement. It also applies to matters regulated and sought to be regulated by collective agreement. The Committee wishes the next report to indicate whether a strike is nonetheless possible outside this framework e.g. to protest against a collective redundancy or dismissal of a trade union representative.

Taking into consideration all aspects of the Norwegian system, in particular that the peace obligation reflects the certain will of social partners and that the parties to a dispute have the possibility to have a recourse to a dispute settlement mechanism which is in conformity with Article 6§3, the Committee considers that the system is in conformity with Article 6§4 of the Charter.”

209. **Conclusions II, Cyprus, p. 187:** "The submission of a strike declaration to a secret ballot of the workers concerned was not incompatible with the Charter, since the vote did not prevent the expression of the free collective will of the interested parties. "
210. **Conclusions XIV-1, United Kingdom, p. 805:** "The Committee recalls in this context that it has previously criticised various provisions in the United Kingdom restricting the right to strike.... Among these limitations the Committee mentioned, *inter alia*, that (Conclusions XII-1, p. 131):
- [...]
  - strikes are only lawful if they have been approved by a majority of workers, through a secret ballot under very restrictive conditions; [...]"
211. **Conclusions XVII-1, Czech Republic, p. 100:** "Strikes that start before mediation has been tried are unlawful, by virtue of Section 20 (a) of the Act. In its previous conclusion the Committee considered that this mediation requirement, which was considerably more onerous than a cooling off period, constituted a restriction of the right to take collective action not in conformity with the Charter. In particular, it thought that the length of the period prescribed in Section 12 of the Act ("if the dispute has not been resolved within thirty days of the mediator being informed of the substance of the dispute, the mediation is considered to have failed") was excessive."
212. **Conclusions XIV-1, Cyprus, pp. 156-159:** "The Committee recalls that cooling off periods are, in principle, compatible with the Charter; such provisions do not impose a real restriction on the right to collective action, they simply regulate the exercise thereof (Conclusion II, p. 187). However, the Committee reserves the right to return to the issue of the length of such a period after examining the situation in all Contracting Parties to the Charter."
213. **Conclusions I, Statement of Interpretation on Article 6§4, p. 39:** "... the Committee examined the compatibility of a rule according to which a strike terminates the contracts of employment. In principle, the Committee takes the view that this is not compatible with the respect of the right to strike as envisaged by the Charter. Whether in a given case a rule of this kind constitutes a violation of the Charter is, however, a question which should not be answered in the abstract, but in the light of the consequences which the legislation and the industrial practice of a given country attaches to the termination and resumption of the employment relationship. If in practice those participating in a strike are, after its termination, fully reinstated and if their previously acquired rights, e.g. as regards pension, holidays and seniority in general, are not impaired, the formal termination of the contracts of employment by the strike does not, in the opinion of the Committee, constitute a violation of the Charter."
214. **Conclusions XIII-1, France, p. 154:** "The rule of the indivisible thirtieth, which makes possible a deduction in salary larger than that corresponding to the length of the strike and thus constitutes a form of sanction, did not appear compatible with the free exercise of the right to strike. "
215. **Confédération Française de l'Encadrement CFE-CGC v. France, Complaint No. 16/2003, Decision on the merits of 12 October 2004, §63:** "The Committee recalls its assessment in connection with Complaint No. 9/2000, CFE-CGC v. France, that Article 6§4 requires that deductions to the salaries of strikers be in proportion to the duration of the strike. "
216. **Conclusions XVIII-1, Denmark, p. 273:** "Workers who are not members of a trade union, but do participate in a strike called by a trade union can be liable to individual sanctions for breach of their contract of employment, irrespective of whether the strike is legal or illegal. The Committee recalls that States must ensure that workers, participating in a strike without being members of the trade union having called the strike, enjoy the same protection as members. It reiterates its finding that the situation in Denmark is not in conformity with Article 6§4 of the Charter in this regard."



## Article 7

### Article 7§1

217. **Conclusions I, Statement of interpretation on Article 7§1, p. 42:** “[...] the Committee considered, in fact, that the general admission of fourteen year olds to agricultural work and domestic work is not compatible with the requirements of this paragraph.”
218. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§27-28:** “27. The prohibition relates to:
- all economic sectors and all types of enterprises, including family businesses, as well as all forms of work, whether paid or not (see in particular Conclusions VII, p. 41),
  - agricultural and domestic work, which the Committee has declared cannot be automatically considered to be light work within the meaning of this paragraph (Conclusions I, p. 42),
  - home working and sub-contracting.
28. Work within the family (helping out at home) also comes within the scope of Article 7 para. 1 even if such work is not performed for an enterprise in the legal and economic sense of the word and the child is not formally a worker. Although the performance of such work by children may be considered normal and even forming part of their education, it may nevertheless entail, if abused, the risks that Article 7 para. 1 is intended to eliminate. The supervision required of states must, in such cases, as the Portuguese Government itself observes, concern not just the Labour Inspectorate but also the educational and social services.
219. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §32:** “Finally, the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3, pp. 283 and 286). It considers that the Labour Inspectorate has a decisive role to play in effectively implementing Article 7 of the Charter.”
220. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, Decision on the merits of 9 September 1999, §§29-31:** “29. If Article 7 para. 1 provides for an exception to the prohibition on work under the age of fifteen years in respect of “prescribed light work”, this can only mean work which does not entail any risk to the health, moral welfare, development or education of children. The light nature of the work is assessed on the basis of the circumstances of each case.
30. The nature of the work is a determining factor. Work which is unsuitable because of the physical effort involved, working conditions (noise, heat, etc.) or possible psychological repercussions may have harmful consequences not only on the child’s health and development, but also on its ability to obtain maximum advantage from schooling and, more generally, its potential for satisfactory integration in society. In order to comply with Article 7 para. 1, states are therefore required, under the supervision of the Committee, to define the types of work which may be considered light, or at the very least to draw up a list of those which are not.
31. Work considered to be “light” in nature ceases to be so if it is performed for an excessive duration. States are therefore required to set out the conditions for the performance of “light work”, especially the maximum permitted duration and the prescribed rest periods so as to allow supervision by the competent services. Even though it has not set a general limit on the duration of permitted light work, the Committee has considered that a situation in which a child under the age of fifteen years works for between twenty and twenty-five hours per week during school term (Conclusions II, p. 32), or three hours per school day and six to eight hours on week days when there is no school is contrary to the Charter (Conclusions IV, p. 54).
221. **Conclusions 2006, General question on Article 7§1, p. 16:** “The Committee asks how the conditions under which home work is performed are supervised in practice. In particular, it asks whether the Labour Inspectorate can enter homes, under what conditions and on what legal basis.”

## Article 7§2

222. **Conclusions 2006, France, pp. 310-313:** “The Committee has previously found that the situation was not in conformity with the Charter because the French Labour Code stipulates minimum ages ranging from 15 to 18 years of age for the performance of dangerous or unhealthy work, for example Article R. 234-16 sets 16 as the minimum age for working with dissolved, compressed or liquefied gases. The report indicates that Articles R. 234-20 and R. 234-21 of the Labour Code prohibit the employment of young workers under 18 in work of this kind. It notes that these more recent provisions, not Article R. 234-16 (an older provision setting the age limit at 16 years), apply in practice.

The Committee notes, however, that the situation is not clear. Article R. 234-21 allows young people aged 17 to be employed in work connected with industrial oil furnaces. The Committee stresses that while the more recent provisions meet the requirements of Article 7§2, their co-existence with other provisions such as Article R. 234-16 prevents the existence of a norm which is available and predictable for citizens and courts, and thereby contravenes the principle of legal certainty. Thus, only the repeal of the rules in question would make it possible to secure the right set forth in Article 7§2 of the Charter. Consequently, the Committee renews its conclusion that the situation is not in conformity.”

223. **Conclusions 2006, Norway, p. 631:** “The Committee recalls that the Appendix to Article 7§2 allows derogations from the rule that young persons under 18 years of age may not be permitted to undertake work that is potentially dangerous or unhealthy, if it is absolutely necessary for training and where such work is carried out in accordance with conditions prescribed by the competent authority.

The Committee considers that in principle the situation is in conformity with the Charter. However, it asks for information as to how it is ensured that such work is absolutely necessary for training and further how these arrangements are monitored by the Labour Inspectorate and any findings it has made in this respect.”

224. **Conclusions 2006, Sweden, p. 868:** “The Committee considers that the Appendix to Article 7§2 permits exceptions in cases where young people under the age of 18 have received training for performing dangerous tasks and, thus, received the necessary information.”

## Article 7§3

225. **Conclusions 2006, Portugal; pp. 690-692:** “Regarding the regime applying to cultural, artistic and advertising activities which the Committee also examined under Article 7§1, it notes that during school period, 6 year old children are authorised to work 2 hours per day and 4 hours per week, children aged from 7 to 11 years may work 3 hours per day and 6 hours per week while children from 12 to 15 years are allowed to work 4 hours per day and 8 hours per week. During the school holidays, children from 6 to 11 years are authorised to work 6 hours per day and 12 hours per week, whereas the children from 12 to 15 years can work 7 hours per day and 16 hours per week.

The Committee notes that the aforementioned activities are subject to additional limitations:

- the activity should not coincide with the school schedule or prevent in any way from participating in school activities;
- a rest of at least 1 hour must be provided for between the activity of the child and the attendance to the classes;
- the activity of the child must be suspended at least one day per week, this day of interruption having to coincide with the day of rest of the schooling;
- for the daily periods of the activity, one or more 30 minutes minimal duration pauses must be assured so that the consecutive activity of the child does not exceed half of these periods.



## 241 Article 7

The participation of children under 16 years in these activities depends on an authorisation of the Commission for the protection of children and young people (*CPCJ*). When children subject to compulsory education are concerned, the request for authorisation of the employer must mention, *inter alia*, the educational establishment attended by the child and must be accompanied by information on the timetable and the school results of the child. The authorisation is granted following the favourable opinion of the establishment. The aforementioned establishment must communicate to the *CPCJ* any negative school results of the child. The *CPCJ* must require that a modification of the conditions of participation of the child be introduced in order to correct the situation when the modification of the school timetable is incompatible with the exercise of the activity and when the activity can be at the origin of deteriorating school results. When its decision is not applied by the employer or when there is no modification which can solve this problem, the *CPCJ* cancels the authorisation granted for the exercise of this activity.

The Committee considers that this regime presents adequate safeguards for the purposes of Article 7§3.”

226. **Conclusions XVII-2, Netherlands, p. 582:** “The Committee considers that allowing children aged 15 and still subject to compulsory education to deliver newspapers from 6 a.m. for up to 2 hours per day, 5 days per week before school is not in conformity with the Charter.”
227. **Conclusions XII-2, Netherlands, p. 581:** “The Committee recalls its case law to the effect that the mandatory rest period must amount to at least half of the holiday period, to allow children a sufficient rest period in order that they may benefit fully from the next school year. For this reason, the obligatory rest period must be granted during the long school holidays, i.e. summer holidays.”

## Article 7§4

228. **Conclusions 2006, Albania, p. 55:** “The Committee reminds that with a view to ensuring the effective exercise of the right of children and young persons to protection, the States undertake, through the acceptance of Article 7§4, to limit the working hours of persons under 18 years of age in accordance with the needs of their development, and particularly with their need for vocational training. This limitation may be the result of legislation, regulations, contracts or practice.”
229. **Conclusions XI-1, Netherlands, p. 95:** “The duration of working hours i.e. 8 hours per day and 40 hours per week, (...) has been criticised by the Committee since it could be detrimental to their development and is therefore contrary to this provision of the Charter.”
230. **Conclusions 2002, Italy, pp. 85-86:** “The Committee considers this limitation of working hours to be satisfactory for young workers over the age of 16 years of age under Article 7§4 of the Charter, but viewed in isolation it is insufficient in respect of workers under 16.”

## Article 7§5

231. **Conclusions XI-1, United-Kingdom, p. 96:** “in its conclusion under Article 4, paragraph 1, the Committee expressed its deep concern over the very low wages paid to large numbers of workers (especially female workers). This in turn reflects upon the adequacy of wages paid to young workers who are paid but a percentage of adult workers’ wages.”
232. **Conclusions 2006, Albania, p. 56 :** “The Committee would point out that under Article 7§5 of the Charter, wages that are 30% lower than adult workers’ starting or minimum wage are acceptable in the case of young workers aged 15-16 and that a 20% difference is acceptable in the case of young workers aged 16-18.”
233. **Conclusions XII-2, Malta, p. 126:** “If, in effect, the reference wage for adults was very low, the wage for a young worker could not be considered as fair.”

234. **Conclusions 2006, Portugal, p. 693** : “The Committee points out that, in the context of Article 7§5, the allowance paid to apprentices must equal at least one-third of the adult minimum or starting wage.”

### Article 7§6

235. **Conclusions XV-2, Netherlands, p. 342** : “[The Committee] holds that vocational training within the framework of and for the purpose of an apprenticeship should be considered as working time and remunerated as such.”
236. **Conclusions V, Statement of interpretation on Article 7§6, p. 67**: “The Committee wished to make it clear that the fact that the time spent by young persons on their vocational training “during the normal working hours” shall be treated as forming part of the working day, implies in particular:
- that such time be remunerated (by either the employer or by public funds as the case may be) and
  - that it does not give rise to any form of recuperation which would result in the total number of working hours of the persons concerned being extended accordingly.”
237. **Conclusions V, Statement of interpretation on Article 7§6, p. 67**: “The Committee, in order to remove any ambiguity which might influence the interpretation of this provision in view of the expression “with the employer’s consent”, wished to make it clear that these words should not be interpreted in such a way as to constitute a *condition sine qua non* for recognising that young workers should be granted the right under this provision, although the employer’s consent might have some bearing in defining the way in which this right is to be exercised. For, on the one hand, any other interpretation would result in this provision being deprived of any scope at all; on the other, it would seem that this type of situation is being regulated by law more and more, and this consent is more often the outcome of a legal obligation, as has been borne out by several laws relating to apprentices, than of the employer’s own consent, which continues to be required when the law remains silent.”

### Article 7§7

238. **Conclusions 2006, France p. 316** : “The Committee points out that, according to Article 7§7 of the Charter, employees incapacitated for work by illness or accident during all or part of their annual leave must have the right to take the leave lost at some other time - at least to the extent needed to give them the four weeks’ paid annual leave provided for in the Charter. This principle applies in all circumstances, regardless of whether incapacity begins before or during leave - and also in cases where a company requires workers to take leave at a specified time (see, *mutatis mutandis*, Conclusions XII-2, Article 2§3, p. 63).”

### Article 7§8

239. **Conclusions I, Statement of interpretation on Article 7§8, p. 46**: “The Committee pointed out that it can only form an opinion as to whether or not Contracting States which have accepted this provision fulfil their obligations in the matter if they supply adequate data in their two-yearly reports on:
- the period defined in national regulations as “night” for the purposes of the prohibition of night work;
  - the occupations in which night work by minors under 18 is permitted, either in general or by special decision;
  - the extent of such derogation (maximum hours allowed, minimum age, etc.);
  - the percentage in each category of employment of minors under 18 not covered by national legislation on night work;
  - the numbers:
    - of all young people under 18 years at work;
    - of young people who in fact are normally required to work at night.

## Article 7§9

240. **Conclusions 2006, Albania, p. 58:** “The Committee recalls that, under Article 7§9 of the Charter, States Parties must provide for compulsory regular medical examinations for workers under 18 years of age employed in occupations specified by national laws or regulations. These examinations must be adapted to the specific situation of young workers and the particular risks to which they are exposed.”
241. **Conclusions VIII, Statement of interpretation on Article 7§9, p. 119:** “Considering the development of regular medical examination for the benefit of all workers and the extension of medical services in a certain number of countries the protection of young workers' health does not necessarily require widespread legislative provisions, calling for a specific organisation of medical services for young workers. However, this can only be envisaged in a state whose medical services and examinations for the benefit of workers have reached the necessary level of development, and should be wholly compatible with the development of a policy of prevention and protection of young workers which constitute the very scope of Article 7, paragraph 9. The committee considers it essential, in this case that precise guidelines and instructions axe expressly given to the bodies responsible for carrying out medical examinations of workers, so that, when such examinations concern young workers, prevention and protection of their health be taken into account.”
242. **Conclusions XIII-1, Sweden, p. 170:** “The Committee considered that the vocational training provided for could not replace the requirement for medical examinations when the nature of the activity rendered such necessary. It hoped that the next report would specify if medical examinations were provided for young persons carrying out a dangerous or unhealthy activity and that, as provided for in Article 7 para. 9, these examinations were indeed carried out not just on employment, but also at regular intervals.”
243. **Conclusions XIII-2, Belgium, p. 299:** “The Committee noted in the Belgian report that the General Labour Protection Regulations of 11 February 1946 and 27 September 1947 imposed an obligation on employers to ensure that all young workers under the age of twenty-one be required to undergo an initial medical examination when hired, with provision for periodical medical examinations thereafter (twice a year for young workers under the age of eighteen). It noted that the examinations were to be conducted by an "industrial health service", which could be specific to a single firm or common to several firms or parts of those firms, and was subject to the prior approval of the Ministry of Employment and Labour and had to be placed under the effective authority of a doctor whilst being managed by the employer. It therefore concluded that Belgium complied with this provision of the Charter.”
244. **Conclusions XIII-2, Italy, p. 99:** “With regard to Italy the Committee had received confirmation that the legislation complied with the requirements of this provision of the Charter, namely:
- that workers under the age of eighteen were required to show that they were physically fit for the job by producing a medical certificate, which had to be attached to the employment record;
  - that a regular check was kept on physical fitness by means of a compulsory medical examination at least once a year (Section 9 of Act No. 977/1967), which entailed updating the medical certificate and was treated as part of a preventive approach;
  - that the effective implementation of the above provisions was enforced by the Labour Inspectorate (Presidential Decree No. 432 of 20 January 1976).

The Committee therefore renewed its positive conclusion.”

## Article 7§10

245. **Conclusions XV-2, Statement of Interpretation, pp. 26-27:** “Cycle XV-2 is the first time for a number of supervision cycles that the Committee has had the opportunity to examine Articles 7 para. 10 and 17 for all Contracting Parties. The Committee has therefore endeavoured to develop and clarify its interpretation of these provisions. It has done so in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children.

As the scope of Articles 7 para. 10 and 17 is to a large extent overlapping, the Committee has decided, with respect to the Contracting Parties having accepted both provisions to deal with the following issues under Article 7 para. 10:

- Protection of children against moral dangers at work and outside work;
- Involvement of children in the sex industry and in begging.

The following issues will mainly be dealt with under Article 17:

- Establishment of parentage and adoption;
- Children and the law;
- Children in public care;
- Protection of children from ill-treatment and abuse.

The Committee has decided to deal with the various aspects of Article 17 relating to the protection of mothers under Article 16 with respect to Contracting Parties having accepted both provisions.

Preventative measures in the fields of drug addiction and alcoholism, will be considered mainly under Article 11.

The Committee is aware of the increased involvement of children and young persons in the sex industry in a number of European countries. It considers that Article 7 para. 10 requires a clear prohibition against any such practices in the legislation of the Contracting Parties. The prohibition must be combined with an adequate supervisory system and sanctions.

It also considers that Article 7 para. 10 requires Contracting Parties to prohibit and combat all forms of sexual exploitation of children.

Moreover, the Committee holds that the use of children in begging and other forms of exploitation prejudicial to any aspect of the child’s welfare must be prohibited and that measures must be taken to prevent such practices.”

246. **Conclusions 2004, Bulgaria, p. 55:** “Article 7§10 guarantees the right of children to be protected against physical and moral dangers within and outside the working environment. This covers, in particular, the protection of children against all forms of exploitation and against the misuse of information technologies. Trafficking of human beings is also covered because it is a form of exploitation.”
247. **Conclusions 2004, Norway, p. 412:** “An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. To implement such a policy, Parties should adopt legislation, which criminalize all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above.”

248. **Conclusions 2004, Bulgaria, p. 56:** "In order to comply with Article 7§10, Parties must take specific measures to prohibit and combat all forms of sexual exploitation of children, in particular their involvement in the sex industry. This prohibition shall be accompanied with an adequate supervisory mechanism and sanctions.

An effective policy against commercial sexual exploitation of children should cover the following three primary and interrelated forms: child prostitution, child pornography and trafficking of children. To implement such a policy, Parties should adopt legislation, which criminalise all acts of sexual exploitation, and a national action plan combating the three forms of exploitation mentioned above."

249. **Conclusions XVII-2, Poland, p. 638:** "As regards child pornography the Committee previously noted that the Penal Code only protected persons under the age of 15 years. The report states that amendments to the Penal Code are currently before the parliament and envisage prohibiting the production and dissemination of pornography involving minors under 18 years of age. It is further proposed to make it a criminal offence to possess pornography involving a minor under 15 years of age. The Committee asks to be kept informed of all developments in this respect."

250. **Conclusions XVII-2, Czech Republic, p. 122:** "The Committee notes that the Criminal Code has been strengthened to provide increased protection to young persons between the ages of 15 and 18 years; anyone who offers, promises or provides payment or another advantage or benefit to a person under 18 years of age in return for sexual intercourse or other defined acts is guilty of a criminal offence. Prostitutes under 18 years of age are not criminally liable."

251. **Conclusions XVII-2, United Kingdom, p. 817:** "The Committee notes that the Sexual Offences Act 2003 introduced new offences of trafficking of people for the purposes of sexual exploitation, of paying for the sexual services of a child, causing or inciting child prostitution, controlling a child prostitute and arranging or facilitating child prostitution, and the grooming of children both on and off line. Legislation also provides for extra territorial jurisdiction over sexual offences committed against children outside the United Kingdom where the accused is a national of the United Kingdom or resident therein. The Committee will examine the legislation in more detail during the next examination of Article 7§10, however it asks in particular whether the possession of child pornography is a criminal offence and whether criminal liability has been removed for children (under 18 years of age) involved in prostitution.

The Committee asks for information about the situation in practice as well as measures in place to assist child victims of sexual exploitation."

252. **Conclusions XVI-2, Poland, p. 623:** "The Committee notes from other sources that Poland is country of origin, transit and destination for the trafficking of women and girls for sexual purposes, boys are also victims. The Committee asks what measures apart from legislation have been taken to address the problems of commercial sexual exploitation and to implement the Stockholm Agenda for Action on Work Against the Commercial Exploitation of Children (and the follow up the Yokohama Global Commitment) and to implement the Council of Europe's Committee of Ministers' Recommendation Rec(2001)16 on the protection of children against sexual exploitation. The Committee notes that as yet there is no national plan on action to combat the sexual exploitation of children."

253. **Conclusions 2006, Albania, p. 60-61:** "In January 2002 the Government of Albania approved a Country Strategy Against the Trafficking of Human Beings and more recently a National Strategy for Children. Both strategies are strengthen the partnership between the Government and NGOs.

The Committee notes from another source that the National Strategy on Children aims to *inter alia* to combat the sexual exploitation of children. However, the necessary structures and financial and human resources have not been provided to allow for implementation of the national plan and that there is concern that the rather fragmented approach adopted by the Government may prove difficult to coordinate, causing overlap or gaps in certain areas. The Committee asks how the Government has ensured that adequate financial and human resources are provided for its implementation, as well as its monitoring and coordination mechanisms. The Committee furthermore asks whether the plan has been evaluated in which case it wishes to receive the results of this evaluation."

254. **Conclusions XVII-2, Portugal, p. 677:** “As regards child pornography, Section 172 [of the Criminal Code] criminalises the production and distribution of child pornography; the maximum penalty is 5 years’ imprisonment. Possession of child pornography is not yet criminalised, but a bill is pending on the subject. The Committee finds that the situation is not in conformity with the Charter in this respect.”

255. **Conclusions 2004, Romania, p. 473:** “Since the Internet is becoming one of the most frequently used tools for the spread of child pornography, the Committee considers that Internet service providers should be responsible for controlling the material they host, securing the best monitoring system for activities on the net (safety messages, alert buttons, etc) and logging procedures (filtering and rating systems, etc.).

The Committee observes that it is not self-evident that, as such, the Penal Code and Law no. 678/2001 on trafficking criminalises children pornography conducted through the means of Internet. It asks, therefore, the next report to indicate whether legislation, the adoption of codes of conduct by Internet service providers, the setting-up of Internet hotlines, or other kinds of activities are foreseen in order to protect children from Internet-related risks of sexual exploitation.

The Committee also asks information about existing rules protecting children and young people from access to morally dangerous audiovisual and print material.”

256. **Conclusions 2004, Bulgaria, p. 57:** “Parties shall prohibit the use of children in other forms of exploitation following from trafficking or being on the street, such as, among others, domestic exploitation, begging, pick pocketing, servitude or the removal of organs, and shall take measures to prevent and assist street children.”

257. **Conclusions XV-2, Statement of Interpretation on Article 7§10, pp. 26-27:** *op.cit.*

258. **Conclusions 2004, Romania, p. 472:** “Street children being a serious problem in Romania, the Government is active in the field in the wider context of the Governmental Strategy for the protection of children in difficulty (2001-2004). The Committee notes from the additional information provided by the Romanian Government (letter dated 7 February 2004), that a range of activities have been carried out through the Street Children Intervention Programme and other programmes, during the period of reference.”

259. **Conclusions 2006, Albania, p. 61:** “In light of the extent of the problem in Albania and the lack of evidence that the Government has taken sufficient measures, Committee concludes that the situation is not in conformity with Article 7§10 of the Charter.

It asks that the next report provide information on the efforts taken in the areas of reducing and preventing the occurrence of sexual exploitation, sale of children and trafficking, including by strengthening legislation and sensitizing professionals and the general public to the problems of sexual abuse of children and trafficking through education, including media campaigns. It asks for information on the strengthening of existing cooperation with the authorities of countries to which children are trafficked in order to combat the phenomenon and harmonize legislation in this respect.”

260. **Conclusions 2006, Bulgaria, p. 113:** “The Committee notes the efforts made by the authorities to tackle the phenomena of exploitation of children, trafficking for sexual or labour exploitation (and more recently trafficking for adoption), however it remains concerned that Bulgaria continues to be a country of origin for the trafficking in human beings, including minors. This is so even though according to other sources the number of minors trafficked has possibly decreased in recent years. According to information from International Organisation for Migration (IOM) the number of assisted victims trafficked for sexual exploitation was 159 in 2003 and 122, in 2004, only 8.5 % in 2003 and 5.7 % in 2004 were minors at identification. According to the IOM this represents a reduction in the comparison with the numbers for 2002.

The Committee notes that the information available indicates that there have been positive developments in this area and there seems to be a downward trend in the number of children being trafficked, however it considers that the number of children involved is still too high, indicating that the measures adopted have not yet been fully effective.

The Committee asks the next report to provide information on the results of the measures taken to reduce child sexual exploitation including the trafficking of minors.”





## Article 8

### Article 8§1

261. **Conclusions III, Statement of Interpretation on Article 8§1, p. 48:** "After paying particular attention to the various arguments advanced by certain governments in their 3<sup>rd</sup> biennial reports on the question of interpretation of paragraph 1 of Article 8, the Committee reaffirmed its earlier opinion that this provision of the Charter involves two obligations:

- a. to provide for women to take at least 12 weeks maternity leave, and
- b. to ensure that women are adequately compensated for their loss of earnings during the period of leave.

The Committee noted that by custom in certain countries women workers enjoyed maternity leave. It nevertheless held that a right of such capital importance ought to be guaranteed by law. It was hence unable to accept the assertion that legislation is unnecessary when the customary rights in question are solidly based."

262. **Conclusions XV-2, Addendum, Malta, p. 109:** "The Committee also notes that Malta's regulations on maternity leave cover home-workers, domestic employees and, since 1996, part-time workers. However, it does not apply to employees who are related to the employer, thus denying them the protection secured by Article 8 para. 1."

263. **Conclusions VIII, Statement of Interpretation on Article 8, p. 123:** "The provision of Article 8, paragraph 1 of the Charter should be examined in the light, in particular, of developments in national legislation and international conventions. They were designed both to grant working women increased personal protection in the case of maternity and to reflect a more general interest in public health - i.e. the health of the mother and child.

In connection with the first point, the Charter prescribes a minimum of 12 weeks' leave entitlement, matched by adequate financial safeguards. With regard to the second point, the aim is to prevent any work which might be harmful to the health of the mother or the child.

It should be pointed out, however, that the justifiable trend in most countries towards extending women's entitlement to maternity leave does not imply that the period for which they are prohibited from actually working must necessarily be the same as the period of leave to which they are entitled.

Having carefully studied the relevant national legislation and international conventions in force, the committee considered that the two requirements mentioned above were reconcilable insofar as national legislation on the one hand allowed women the right to use all or part of their recognised entitlement to stop work for a period of at least 12 weeks, allowing them freedom of choice by means of a scheme of benefits set at an adequate level. and, on the other hand, obliged the woman concerned and the employer to observe within this total period, a minimum period of cessation of work, which had to be taken after the birth and which it was reasonable to fix at six weeks."

264. **Conclusions XV-2, United Kingdom, p. 594:** "The Committee notes that the report makes no reference to any significant change in a situation which it has considered to be in breach of the Charter since the XI supervision cycle.

It recalls that, in the United Kingdom, women are entitled to statutory maternity pay (SMP). They must have worked for their employer for at least 6 months before the 15th week preceding the birth and have had average earnings in the 8 weeks preceding the 15th week before the birth such that they were paying national insurance contributions. During the first 6 weeks this maternity pay, which is not subject to any ceiling, is payable at 90% of the woman's average earnings (subsequently at a rate of 57.70 GBP per week (in 1998).

## 250 Article 8

Women who do not satisfy the SMP qualifying conditions can receive maternity allowance for 18 weeks if they have worked and paid national insurance contributions for at least 26 weeks during the 66 weeks preceding the expected date of childbirth. There are two rates of maternity allowance: 57.70 GBP per week (in 1998) if the beneficiary was gainfully employed in the reference week for entitlement to the allowance; 50.10 GBP per week (in 1998) if the beneficiary was not working or was self-employed in the reference week for entitlement to the allowance.

The Committee asks if periods of unemployment are reckoned as working time for the granting of maternity allowance.

Finally, a woman who does not satisfy the conditions either for SMP or for maternity allowance is entitled to sickness benefit (amounting to 57.70 GBP per week) for six weeks before the birth and for fourteen days after.

The Committee again notes that the SMP is paid at an adequate rate (90% of the previous earnings) for only six weeks. Furthermore, a weekly allowance of 57.70 GBP (SMP or maternity allowance) paid for the following twelve weeks or for eighteen weeks cannot be considered adequate. The Committee recalls in this connection that in April 1999 the minimum wage was set at 144 GBP per week."

265. **Conclusions XVII-2, Latvia, p. 488:** "The Committee notes the detailed information in the report on the calculation of maternity benefits, but wishes to know what proportion of the actual employee's salary maternity benefit represents. It recalls that Article 8§1 of the Charter requires maternity benefit to be at least equal 70% of the employee's previous salary (except for very high salaries)."
266. **Conclusions XV-2, Belgium, p. 86:** "The Committee draws attention to the fact that during maternity leave a female employee's financial situation must enable her to avoid having to work, so that she can really rest. This obligation can be fulfilled only by continuing payment of the woman's salary or by paying a benefit equivalent to or only slightly lower than that salary. The Committee nonetheless takes the view that, where the salary exceeds a certain ceiling, a substantial reduction in salary during maternity leave is not, in itself, contrary to Article 8 para. 1 of the Charter. In order to assess the situation and to ensure the fairness of the reduction, the Committee takes into account a number of factors such as the amount of the ceiling, the ceiling's position on the scale of earnings or the number of women earning more than that ceiling.
267. **Conclusions XV-2, France, p. 197:** "The Committee appreciates that eligibility for benefit may be subject to conditions such as a minimum period of payment of social security contributions and/or employment. It nevertheless reserves the right to examine the reasonableness of those conditions. In this case it notes that, although the minimum period required is not excessive, failure to take into account periods of unemployment as hours worked constitutes a restriction which might prevent the acquisition of a right to benefit and is consequently contrary to Article 8 para. 1."

## Article 8§2

268. **Conclusions XIII-4, Austria, p. 93:** "In its previous conclusion, the Committee had asked questions about the regulations governing the employment of women on fixed-term contracts, which could be used to undermine the protection provided by this provision. The Committee had observed that the law ensured that only legally or objectively justified contracts could expire on the due date, even if this occurred during the pregnancy of the employee. With all other fixed-term contracts, expiry was suspended until the employee went on maternity leave (eight weeks before the birth) or had to cease working at an earlier stage in her pregnancy. The Committee had asked if the reason for this arrangement was to ensure that such women would qualify for maternity leave and benefit. The report confirmed that this was so. "

269. **Conclusions X-2 Spain, p. 96:** "The only exception which its case law admitted to the prohibition, laid down by the Charter (Article 8, paragraph 2) against giving a woman notice of dismissal during her absence on maternity leave or at such a time that the notice would expire during such absence, was in the case of serious misconduct, the cessation of the firm's activities or the expiry of a fixed-term contract."
270. **Conclusions 2005, Estonia, p. 144:** "The 1992 Employment Contracts Act as amended in 2004 prohibits the termination of an employment contract of a pregnant woman or of a person raising a child under three years of age. Exceptions to this rule are made where the employer has gone into liquidation or bankruptcy, where the employee has failed the probationary period, lost the trust of the employer, breached duties or due to an indecent act by the employee. In all of the above cases the permission of the Labour Inspectorate must be sought prior to the termination of the contract of employment. The Committee finds that certain of the above mentioned exceptions to the prohibitions on dismissal go beyond those permitted by the Charter. Nevertheless, before reaching a conclusion on this point, it wishes to receive further information on how the above mentioned exceptions are interpreted by the Labour Inspectorate and the Courts."
271. **Conclusions XIII-4, Statement of Interpretation on Article 8, pp. 92-93:** "The Committee found it necessary to clarify the scope of Article 8 paragraph 2 in respect of the date of notice of dismissal.

Job security for a worker on maternity leave means that the contract of employment must not be terminated during this period. This is guaranteed by the prohibition on giving notice of dismissal at such a time that the period of notice would expire during the absence on leave. The giving of notice during maternity leave initiates the period of notice and, where appropriate, the interview, consultation or conciliation procedures to be carried out during this period. The Committee felt that, given the purposes of maternity leave and the unlawfulness of dismissal during this period, notice of dismissal as such was not incompatible with the Charter provided that the period of notice and any procedures were suspended until the end of the leave. The same rules governing suspension of the period of notice and procedures during maternity leave must apply in the event of notice of dismissal prior to maternity leave, irrespective of the length of the period of notice."

272. **Conclusions 2005, Cyprus, p. 73:** "The Committee had previously found that the situation was not in conformity with the 1961 Charter as the power of the courts to order reinstatement of an unlawfully dismissed employee was limited to cases where the enterprise concerned has more than twenty employees.

The Committee notes that there has been no change to this situation. In addition in notes that in these circumstances (and in general where a woman is not reinstated) the maximum amount of compensation payable is two years wages, the wages of the first year awarded by the court are paid by the employer and the second years wages are paid by the Redundancy Fund. However, women seeking higher compensation may apply to the District Courts (civil jurisdiction). The Committee recalls that compensation should be sufficient to deter the employer and compensate the employee. In order to assess the situation, it wishes to receive further information on the possibility for a worker unfairly dismissed to seek a higher level of compensation in the civil courts. "

273. **Conclusions 2005, Estonia, p. 144:** "Section 117 of the Employment Contracts Act states that if the dismissal is considered to have been unlawful, the employee is entitled to ask for reinstatement in his/her post and compensation for earnings lost (§1).

If the employee opts not to be reinstated, he/she will be entitled to compensation (Section 117§2). According to Article 30 of the Individual Labour Disputes Resolution Act the compensation is up to six months' average wages determined on the basis of the circumstances surrounding the dismissal and the nature of the irregularity.

The Committee recalls that the Charter requires that courts or other competent body be able to award a level of compensation that is sufficient both to deter the employer and fully compensate the victim. Therefore limits to levels of compensation that may be awarded are not in conformity with the Charter."

## Article 8§3

274. **Conclusions XVII-2, Spain p. 726:** "Contrary to what was stated in previous reports, the current report states that domestic workers do not have the right to time off for breastfeeding. The Committee therefore concludes that the situation is not in conformity with the Charter.

The Committee concludes that the situation in Spain is not in conformity with Article 8§3 of the Charter on the ground that domestic workers are not entitled to time off for nursing their children."

275. **Conclusions XIII-4, Netherlands, p. 102:** "The Committee recalled that it was critical of the situation in the Netherlands because the legislation on time off for breast-feeding (Section 11 para. 2 of the Labour Act of 1919) indicated neither whether such time was considered as working time, nor whether it was paid and that its criticisms were backed up by the comments by the Netherlands Trade Union Confederation (FNV) to the ILO, according to which on the one hand collective agreements did not comprise any provisions explicitly ensuring that breaks in work for nursing purposes were included in working hours and remunerated as such, and on the other that in practice many employers required women to make up for any time taken off for breast-feeding or refused to pay them the salary corresponding to this time.

In reply, the government pointed out that a widely disseminated publication on maternity protection stated that time off for breast-feeding was to be regarded as working time and paid as such. It pointed out that this was based on the ratification of ILO Convention No. 103 (Maternity Protection) and on the interpretation given to Article 5 of this convention (time off for breast-feeding) by the Minister of Foreign Affairs, and quoted a decision handed down by the President of the Amsterdam Court in 1979, also based on that interpretation.

The Committee noted in this connection that, in its 1994 Observation on the implementation of Convention No. 103 by the Netherlands, the ILO Committee of Experts had again requested that measures be taken to give effect to Article 5 of the convention, in legislation as well as in practice.

The Committee also noted that a provision explicitly stipulating that time off for breast-feeding was to be regarded as working time and paid as such had been included in the new Working Hours Bill which was currently before the Upper House of Parliament. It asked to be kept informed of developments in the enactment procedure and to receive a copy of the adopted text of the section of the new act relating to time off for breast-feeding in one of the official languages of the Council of Europe."

276. **Conclusions 2005, Sweden, p. 689:** "The Committee recalls that it has previously found that the situation was not in conformity with the Charter on the grounds that while women nursing their children may reduce their daily working time, this time is not remunerated as working time, although loss of income is compensated by parental benefit. However the Committee now considers that where loss of income is compensated in Sweden by parental benefit the situation is in conformity with the Charter."

277. **Conclusions 2005, Cyprus, p. 74:** "The Committee notes that the period (6 months) for which time off for nursing is permitted is short. The Committee considers that in principle nursing breaks should be granted until at least the child reaches the age of nine months. The Committee concludes that the situation in Cyprus cannot be considered as being in conformity in this respect."

278. **Conclusions I, Italy, p. 51:** "Having considered the first report presented by the Government of Italy, the Committee noted that Italy was satisfying the undertakings deriving from Paragraph 3 of Article 8, concerning the entitlement of nursing mothers to "sufficient" time off work for this purpose. As a matter of fact, under Italian legislation, the situation is as follows:

- (1) Working women who feed their children (breast-feeding or mixed-feeding) are entitled to two periods of rest a day for a year for the purpose of feeding;
- (2) In cases where the employer has not provided a crèche or nursing room for mothers, these periods of rest are of one hour each (otherwise one-half hour) and shall entitle the mother to leave the premises;
- (3) These periods are deemed to be hours of work and remunerated as such."

279. **Conclusions I, Germany, p. 191:** "When it examined the first Report submitted by the Government of the Federal Republic of Germany, the Committee found that that State satisfies the obligation arising from Article 8 (3). The Committee observed that in the Federal Republic working women who are feeding their children are entitled to at least two rest-periods of thirty minutes or one rest-period of an hour during the working day."
280. **Conclusions 2005, France, p. 228:** "The Committee has previously found that the situation in France was not in conformity with Article 8§3 of the Charter; although national law provides for time off from work for the purpose of breastfeeding up to a child's first birthday this is not treated as working time and therefore women do not have to be remunerated for such periods. However the Committee notes that in practice women who are breastfeeding are permitted to begin work half an hour later and finish work half an hour earlier than usual without loss of pay, further it is not possible to make a deduction from a woman's salary in these cases. The Committee asks for further information on a woman's legal entitlement to remuneration for time off for nursing"

### Article 8§4

281. **Conclusions 2003, France, p. 125:** "The Committee takes note from the French report of the Labour Code provisions concerning the employment in night work of pregnant women and women who have recently given birth. In accordance with Section L. 122-25-1-1, the employer is required to transfer the woman to day work if she so requests (no justification may be required by the employer) or where the occupational physician certifies that night work is incompatible with her condition. In such cases, the woman is entitled to her full salary. If a transfer to day work is not possible, the woman's employment contract is suspended until the end of the maternity leave. During this time, she is entitled to a payment corresponding to her remuneration.

The Committee notes that Labour Code makes no express provision for women who breastfeed their children beyond the end of the statutory maternity leave period although Article 8§4 requires some form of protection for women as long as they are breastfeeding their children. The Committee notes from the information provided in the French report concerning Article 2§7 that the general rules on night work contain provision on workers with family responsibilities. In particular, such workers may request transfer to a day work. A worker with family responsibilities cannot be obliged to move to night work. The Committee considers that this constitutes sufficient regulation on night work for the purpose of Article 8§4

The Committee concludes that the situation in France is in conformity with Article 8§4 of the Charter."

282. **Conclusions X-2, Statement of Interpretation on Article 8§4, p. 97:** "With regard to the undertaking to "regulate" the employment of women workers on night work in industrial employment" (sub-paragraph (a)), the Committee confirmed its case law to the effect that, to comply with this provision, a state is not obliged to enact specific regulations for women if it can demonstrate the existence of regulations applying without distinction to workers of both sexes. Such regulations must specify the conditions governing night work, such as the need to secure permission from the Labour Inspectorate (if necessary), the laying down of working hours, breaks, days of rest following periods of night work, etc. These regulations are designed in particular to limit the adverse effects of night work on the worker's health and family life and to prevent abuses."

### Article 8§5

283. **Conclusions X-2, Statement of Interpretation on Article 8§5, p. 97:** "With regard to the undertaking to "prohibit the employment of women workers in underground mining" (first part of sub-paragraph (b)), the Committee clarified its case law by specifying that the above-mentioned prohibition is concerned only with the employment of women on underground extraction work in mines, to the exclusion of all other occupations, and in particular those of a social or medical nature, management, inspection, etc."

284. **Conclusions 2003, Bulgaria, p. 46:** "Regarding the other forms of work that are forbidden to women, the report contains very few details. In order to be able to determine whether national rules are sufficiently extensive, the Committee requests information on the types of work that are forbidden to workers who are pregnant, have recently given birth or breastfeeding. It underlines that in order to comply with this provision of the Charter, national law must ensure a high level of protection against all known hazards to the health and safety of the women who come within its scope."
285. **Conclusions 2005, Lithuania, p. 321:** "An employer is obliged to assess and eliminate all occupational risks for pregnant, breastfeeding and women who have recently given birth. If all risks cannot be eliminated or the work involves exposure to a substance or process prohibited, the employer must transfer the worker to another post. Where this is not possible the worker may take unpaid leave. The Committee finds that this situation is not in conformity with the Charter; any leave due to the impossibility to find an alternative post should be remunerated or should be compensated by an allowance."

## Article 9

286. **Conclusions I, Statement of Interpretation on Article 9, p. 53:** " The purpose of this article is to make it compulsory for those states having accepted it to operate a service that helps all persons, free of charge, to solve their problems relating to vocational guidance."
287. **Conclusions XIV-2, Statement of Interpretation on Article 9, p. 56-61:** ".General social and employment trends during the latest reference period have revealed a growing need for and increasing importance of vocational guidance as a mechanism for striking a balance between social integration and personal professional fulfilment.

The globalisation of the labour market, and the use of new technologies have led to a rise in the rate of unemployment, especially in the more traditional branches of industry. In particular, long-term unemployment and unemployment among young people have reached high levels. Changing demographic trends, increased mobility of the work force, the economic recession and the political changes in Europe and around the world were factors that also influenced the labour market's absorption capacity and structure.

Traditionally vulnerable categories, such as women, young and older workers, unskilled or semi-skilled workers and migrants were the most affected by unemployment and consequently found themselves in search of new qualifications and professional re-orientation. Hence the greater need for improved, adapted, widely available guidance over the reference period.

In view of these changes, The Committee attaches a growing interest to the ways in which the member states have succeeded in finding appropriate solutions to the new guidance demands. It evaluates in particular the variety, efficiency and accessibility of the services provided, whether they are free of charge, with the overall aim of ensuring that all the segments of the population benefit from equal, adequate and real education and employment opportunities.

As in its previous conclusions, the Committee has taken the view that Article 9 foresees a two-fold obligation for the Contracting Parties: on one hand the promotion and provision of guidance relating to education possibilities, and on the other hand, guidance services for vocational opportunities.

The Committee appreciates that in the majority of countries the interdependence between the authorities responsible for educational guidance, usually the ministries of education and the labour market administration (Ministry of Labour, employment offices, etc.) has been reinforced. The presence of the social partners has also been more visible in the decision-making process for the content and structures of the guidance services.

Among the main indicators taken into consideration by the Committee in evaluating the commitment of states to providing appropriate guidance facilities are:

- i. whether guidance service are subject to a fee, and the budget dedicated to this service out of the total GDP;
- ii. the number and qualification of the specialised staff serving as guidance providers (teachers, psychologists, administrators, etc);
- iii. the geographical location and institutional distribution of both types of guidance;
- iv. the type of information available and the means used for its dissemination,
- v. the number of people benefiting from guidance, their age, social origin and educational level.

### *Financial resources*

The rise in the volume and importance of vocational guidance has implied that the total expenditure for guidance services as a share of national GDP increased in all countries during the reference period. Despite the scarcity of information on the different categories of expenditure, the rise in resources allocated to this service has proved the commitment of countries to providing and promoting appropriate services.

International funding also became more available, either from the European Union (exchange and training programmes) for its member states, or from the World Bank, as in the case of Turkey, which enhanced the quality of guidance and training opportunities.

### *Human resources*

Despite the increasing number of "self-service" centres and growing use of them, the number of administrative staff involved in the guidance services steadily increased in all the countries concerned. As vocational guidance is in most countries a compulsory part of the education curricula of all students, programmes for ensuring sufficient numbers of staff with appropriate skills have been put in place.

Quality improvement as an intrinsic part of the training of counsellors, psychologists and teachers represented a main preoccupation for the states (for instance, vocational guidance skills are a compulsory part of teacher training).

In order to keep pace with the internationalisation of social and employment relations, several countries set up specialised programmes to promote the European dimension of guidance services. This is the case of Norway and in Cyprus, where European oriented training programmes have been designed for counsellors and teachers (e.g. European Dimensioning Educational and Vocational Guidance in Norway).

### *Dissemination of information*

Assessment of the sufficiency of guidance distribution networks requires a twofold undertaking:

Firstly, the Committee examines whether all institutions in the educational and employment fields are provided with sufficient financial, technical and human resources to respond to demands.

Secondly, the even geographical availability of services of an equivalent standard is a fundamental factor to be taken into account in appreciating whether the countries meet the requirements of this provision of the Charter.

The institutional distribution of guidance services seems to be satisfactory in most of the countries, due to the above-mentioned compulsory character of the vocational guidance, integrated within the educational system from primary level (in Norway and Malta, for example) or from secondary level (Cyprus).

On the contrary, the geographical distribution is less satisfactory in countries where the number of guidance centres has remained unchanged since the last reference period and barely covers a few regions of the country, as in Turkey.

In addition to the increase in the number of centres and staff, more flexible programmes have been introduced, with longer opening hours, thus allowing an increasing number of people to access services (in Sweden, for example).

### *Content and means of dissemination of information*

The use of new technologies (e.g. Internet, computerised aid, self-service centres, CD-ROMs), for widespread dissemination of information is increasingly common, especially in Sweden, Norway and Cyprus, while the traditional means such as publications, TV and radio programmes remain popular, mainly in Malta and Turkey.

Furthermore, the Maltese and Luxembourg reports also mention the practice of career fairs, events that offer a meeting place for all those concerned (people in search of new career opportunities, education authorities, industry, social partners, etc).

New types of vocational guidance are also developing and gaining in popularity in most of the countries, caused by changes in the working environment. Consequently, programmes were launched to promote self-employment initiatives, alternative work-and-training schemes, and part-time work.



*Beneficiaries from vocational guidance*

The core of Article 9 remains the principle of equality of opportunities for all members of society. The Committee therefore considered the means employed by the states to make vocational guidance, training and retraining opportunities accessible to the whole population without any form of discrimination, on the sole criteria of individual competence.

The Committee has noted that gender equality plays an important part in all education and guidance services. It highly appreciated the Swedish initiative of encouraging women to take up traditionally male occupations and vice versa. The situation was less promising in Malta, where traditional attitudes mean that girls are reluctant to choose professions usually conceived as being men's occupations.

The social reintegration of people with disabilities through suitable and adequate programmes was another aspect closely examined by the Committee. The usual practice observed in the member states is to integrate the disabled within the mainstream programmes, while individualising services offered to respond to the particular needs of the person assisted and increasing the overall budget dedicated to their effective training and guidance.

Finally, another recurrent issue the Committee considered was the equal treatment of nationals of Contracting Parties legally resident or regularly working in another country. The Committee has observed that the majority of the states undertook measures to facilitate the integration of foreign nationals. These measures took either direct forms such as ensuring a proper legal framework and coherence in the application of non-discriminatory measures and abolishing any existing prejudicial differentiation, or indirect measures such as issuing guidance documentation in English language (Norway) in view of facilitating the access to guidance for non-nationals.

Although not compulsory under Article 9, the Committee appreciated Maltese initiatives in developing guidance and training programmes for inmates in prison, with a view to their future social and vocational reintegration on release.

In conclusion, after examination of the reports under Article 9, the Committee considers that the Contracting Parties are undertaking continuous efforts to adapt and develop the structure of guidance services in order to respond to the contemporary changes in the European economic and social landscape. However, the dissemination of information and effective equality of chances still remain areas where implementation should be improved and to which the national authorities need to devote their activities."

288. **Conclusions XVI-2, Poland, pp. 632-633:** "This length of the residence requirement implies that equal access to vocational guidance is provided only to non-nationals residing on the territory since at least three years.

[...]

The Committee concludes that the situation in Poland is not in conformity with Article 9 of the Charter because equal treatment for nationals of other Contracting Parties to the 1961 European Social Charter and of the Parties to the Revised European Social Charter lawfully resident or regularly working in Poland with respect to vocational guidance is not guaranteed."

289. **Conclusions 2003, France, p. 127:** "As [France] has accepted Article 15, the measures concerning training of persons with disabilities are dealt with under that provision."



## Article 10

### Article 10§1

290. **Conclusions 2003, France, p. 131:** “The Committee recalls that Article 10§1 covers all kind of higher education. In view of the current evolution of national systems, which consists in the blurring of the boundaries between education and training at all levels within the dimension of lifelong learning, the Committee considers that, today, the notion of vocational training of Article 10§1 covers initial training, i.e. general and vocational secondary education, university and non-university higher education, and continuing training. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.”
291. **Conclusions I, p. 55 :** “In the opinion of the Committee of experts the obligations implicit in this provision are twofold:
- The obligation to promote technical and vocational training for all persons, and ...”.
292. **Conclusions 2003, France, p. 131:** “...
- the most recent measures adopted to promote vocational training, including general and vocational secondary education, university and non-university higher education, apprenticeship, and continuing training (the description of the whole system may be recovered from existing database on the topic: Eurydice, Cedefop);
  - highlight the bridges between secondary vocational education and university and non-university higher education;
  - outline the mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general or technical education;
  - underline the measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
  - outline the mechanisms for the recognition of qualifications awarded by continuing vocational education and training;”.
293. **Conclusions I, p. 55:** “ ... the obligation to provide facilities for access to higher technical and university education, subject to no other criterion than individual fitness”.
294. **Conclusions 2003, France, p. 132:** “It is clear that access to higher technical or university education based solely on individual aptitude cannot be achieved only by setting up educational structures which facilitate the recognition of knowledge and experience as well as the transfer from one type or level of education to another; this also implies that registration fees or other educational costs do not create financial obstacles for some candidates”.
295. **Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 60:** “Among the main indicators reflecting state commitment to “provide and promote” vocational training are total expenditure (e.g. as a share of GDP), the total capacity of the system, in particular the availability of training places for all applicants, the proportion of young people completing a vocational education and geographical coverage”. (see also Conclusions 2003)
296. **Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 62:** “Under ...Article 10 a major preoccupation of the Committee is to verify that equal treatment in access to training institutions and programmes is ensured for all those interested, including nationals of other Contracting Parties legally residing or regularly working in the territory”.

297. **Conclusions 2003, Slovenia, p. 473:** “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. The Committee recalls that all these conditions are not in conformity with the Charter (with respect to the residence requirement see Conclusions XIV-2, Ireland, p. 403, with respect to the reciprocity clause see Conclusions XIV-2, Austria, p.96; and with respect to the working permit condition see Conclusions XII-2, pp. 156-157, XIII-2, p.220, XIII-3, p.162 all on Austria, and Appendix to Conclusions XIII-3, Luxembourg, p.58)”.
298. **Conclusions XIV-2, Statement of Interpretation on Article 10§1, p. 62:** “Vocational training for disabled persons remains an important concern to the Committee. However, for the sake of clarity in the presentation of its conclusions, it has decided to refer the detailed consideration of this issue to Article 15 for those Contracting Parties which have accepted both provisions (only Turkey has not accepted Article 15)”.

## Article 10§2

299. **Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61:** “Under paragraph 2 the Committee principally examines apprenticeship arrangements taking place within the framework of an employment relationship between the employer and the apprentice and leading to a vocational education...” and **Conclusions 2003, Sweden, p. 589:** “...apprenticeship training is included in upper secondary school programmes”.
300. **Conclusions XIV-2, Statement of Interpretation on Article 10§2, pp. 60-61:** “The Committee has consistently underlined the importance of combining theoretical and practical training and of maintaining a close contact between training institutions and the world of work”.
301. **Conclusions XVI-2, Malta, p. 498:** “Due to the evolution of the legal and practical framework of the organisation of apprenticeship at national level, the Committee has sometimes had difficulties in evaluating its conformity with Article 10§2 of the Charter. As a consequence, the Committee asks the next report to provide information on the following topics: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract”.
302. **Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 61:** “In assessing national situations the Committee is particularly concerned to determine the adequacy of apprenticeship arrangements, e.g. in terms of the number of participants, the availability of apprenticeship places for applicants, the proportion of trainees completing an apprenticeship and geographical coverage”.
303. **Conclusions XIV-2, Statement of Interpretation on Article 10§2, p. 62:** “Under ...Article 10 a major preoccupation of the Committee is to verify that equal treatment in access to training institutions and programmes is ensured for all those interested, including nationals of other Contracting Parties legally residing or regularly working in the territory”; and

**Conclusions 2003, Slovenia, p. 473:** “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

To this purpose the Committee recalls that, with respect to access to training, the length of residence or employment requirements and/or the application of the reciprocity clause are not in conformity with the Charter (with respect to the residence requirement see Conclusions XIV-2, Ireland, p. 403, with respect to the reciprocity clause see Conclusions XIV-2, Austria, p. 96; and with respect to the working permit condition see Conclusions XII-2, pp. 156-157, XIII-2, p. 220, XIII-3, p. 162 all on Austria, and Appendix to Conclusions XIII-3, Luxembourg, p. 58)."

### Article 10§3

304. **Conclusions 2003, Italy, p. 272:** "Under Article 10§3 of the Charter, the Committee considers continuing vocational training for employed and unemployed persons (with the exception of the long-term unemployed; their situation being considered under 1§4.) Accordingly, it will examine only those activation measures for the unemployed that strictly concern training. It is under Article 1§1 of the Charter that the Committee considers activation measures for unemployed people in general terms."
305. **Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61.** "Under paragraph 3 the Committee examines all forms of labour market training and education for adult workers..."
306. **Conclusions XIV-2, Statement of Interpretation on Article 10§3, p. 61:** "Indicators of particular interest are the number of participants, the development in national expenditure, and the results of the effort, i.e. the employment effect."
307. **Conclusions 2003, Italy, p. 273:** "In view of the growing importance of this type of training, the Committee also asks that the next report provide information on the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress."
308. **Conclusions 2003, Slovenia, pp. 477-478:** "The Committee asks whether legislation exists on the possibility of individual leave for training and, in particular, subject to what conditions, on whose initiative, of what length and whether it is paid or not. The Committee also requests information on the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training."
309. **Conclusions IV, Statement of Interpretation on Article 10§3, p. xv:** "...a special effort should be made on their behalf, so that unemployed migrant workers may benefit from the same help in the matter of vocational training and retraining as nationals."
310. **Conclusions XIV-2, Addendum, Ireland, p. 39:** "The Committee concludes that the situation in Ireland is not in conformity with Article 10§3 of the Charter because of indirect discrimination against nationals of the other Contracting Parties to the 1961 European Social Charter and nationals of the States Parties to the Revised European Social Charter, lawfully residing or regularly working in Ireland, who are potentially more affected than Irish persons by the length of residence requirement in order to access continuing vocational training."

### Article 10§4

311. **Conclusions 2003, Italy, p. 274:** "Article 10§4 of the Revised Social Charter concerns the measures designed to tackle long-term unemployment through retraining and reintegration. The Committee considers a person who has been without work for twelve months or more to be long-term unemployed".

## Article 10§5

312. **Conclusions XVI-2, United Kingdom, p. 941:** “The Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside by reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training. To this purpose, the Committee recalls that it has held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2, Austria, p. 221; XIII-3, Finland, p. 324; XIV-2, Belgium, p. 146, Finland, p. 238).”
313. **Conclusions VIII, Statement of Interpretation on Article 10§5, p. 136:** “The importance of financial assistance in the framework of vocational training is, in fact, so great that the very existence of the right protected by Article 10 of the Charter may depend on it”.
314. **Conclusions XVI-2, Slovak Republic, p. 773:** “The Committee asks information with respect to financial assistance for individuals following vocational training courses.”
315. **Conclusions XIV-2, Statement of Interpretation on Article 10§5, p. 62:** “Having examined the structure and wording of Article 10, notably the wording of paragraph 1 and paragraph 4b, the Committee finds that this interpretation should be revised. It emphasises that the words “as necessary” in paragraph 1 give each country a considerable margin of discretion in choosing the means to guarantee the right to vocational training, whereas paragraph 4 explicitly requires that financial assistance to trainees be granted in “appropriate cases” in order to encourage the full utilisation of available training facilities. Consequently, paragraphs 1, 2 and 3 should not be taken to confer on states an obligation to provide financial assistance for all trainees. In the light of these considerations the Committee decided to treat all questions of financial assistance exclusively under Article 10 para. 4.”
316. **Conclusions XIII-1, Turkey, p. 242:** “With regard to the granting of financial assistance in appropriate cases, the Committee reminded [the Turkish authorities] that this meant providing financial assistance to persons who would not otherwise be in a position to undergo apprenticeship or training.”
317. **Conclusion XVI-2, Slovak Republic, p. 772:** “The Committee asks whether the level of social scholarship is adequate in relation to the cost of living...”
318. **Conclusions XIV-2, Ireland, p. 406:** “...in order to assess the situation properly, [the Committee] needs a full description of all the allowances and grants available for different training programmes: criteria for awarding allowances, size of allowances, number of allowances granted in relation to number of applicants.”
319. **Conclusions 2003, Slovenia, p. 483:** “However, the Committee recalls that, according to the Appendix to the Charter, equality of treatment shall be provided to nationals of other Parties lawfully resident or regularly working on the territory of the Party concerned. This implies that no length of residence is required from students and trainees admitted to reside in any capacity other than being a student or a trainee, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

The Committee recalls that it held that length of residence or employment requirements for vocational training financial assistance are contrary to the provisions of the Charter (Conclusions XIII-2, Austria, p. 221; XIII-3, Finland, p. 324; XIV-2, Belgium, p. 146, Finland, p. 238).”

320. **Conclusions XIV-2, United Kingdom, p. 784:** "...the Committee again expresses its concern at the apparent lack of participation of workers' organisations in supervising the effectiveness of training schemes."





## Article 11

### Article 11

321. **Conclusions XVII-2 and Conclusions 2005, Statement of Interpretation on Article 11§5**, : “The Committee made the following observation regarding Article 11 of the Charter:

The Committee notes that the right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise. This normative partnership between the two instruments is underscored by the Committee's emphasis on human dignity. In Collective Complaint *FIDH v. France* (No. 14/2003) it stated that "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and [that] health care is a prerequisite for the preservation of human dignity".

322. **International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31**: “Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.”

323. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n°30/2005, Decision on the merits of 6 December 2006, §§194-195:**

“194. The Committee highlights that the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact (*International Commission of Jurists v. Portugal* (Complaint No. 1/1998), decision on the merits of 9 September 1999, §32). It therefore interprets the rights and freedoms set out in the Charter in the light of current conditions.

195. The Committee has therefore taken account of the growing link that states party to the Charter and other international bodies (see below) now make between the protection of health and a healthy environment, and has interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment.”

### Article 11§1

324. **Conclusions 2005, Statement of Interpretation on Article 11§5**: “Furthermore, the Committee henceforth pays attention to preventive policies regarding mental health taking into account also the recent Declaration of the WHO ministerial conference in Helsinki (12-15 January 2005).
325. **Conclusions XV-2, Denmark, pp. 126-129**: “It stresses that under Article 11 para. 1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge.”
326. **Conclusions 2005, Lithuania, pp. 336-338** : “The Committee recalls that to comply with the Charter States must demonstrate an improvement of the situation. Therefore it asks for detailed and up-to-date statistics in the next report as well as information on the effectiveness of the national programmes to prevent cardiovascular diseases and cancers, launched respectively in 2001 and 2002.”

327. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, Decision on the merits of 6 December 2006, §202:**

“202. Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The Committee sees a clear complementarity between Article 11 of the Charter and Article 2 (right to life) of the European Convention on Human Rights, as interpreted by the European Court of Human Rights (General Introduction to Conclusions XVII-2 and 2005, statement of interpretation of Article 11, §5). Measures required under Article 11 should be designed, in the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution (this link was established in Conclusions XV-2, Poland, Article 11§1, pp. 446-449).”

328. **Conclusions 2003, Romania, p. 390:** “The Committee recalls that the state of mother and child health is a key indicator as to whether the health system as a whole is functioning well or not in a given country. A particularly high infant mortality rate (18,6 deaths per 1000 live births) raises the problem of conformity with Article 11 of the Charter.”
329. **Conclusions 2003, France, p. 146 :** “The Committee stresses that maternal mortality is an avoidable risk that States Parties must deal with if they are to comply with Article 11 of the Charter. Considering in particular the level of development of the French health care system, it holds that all necessary measures should be taken in order to achieve the risk as near as possible to zero.”
330. **Conclusions 2005, Statement of Interpretation of Article 11, §5, p. 10:** “In assessing whether the right to protection of health can be effectively exercised, the Committee pays particular attention to the situation of disadvantaged and vulnerable groups. Hence, it considers that any restrictions on this right must not be interpreted in such a way as to impede the effective exercise by these groups of the right to protection of health. This interpretation imposes itself because of the non discrimination requirement (Articles E of the Charter and Preamble of the 1961 Charter) in conjunction with the substantive rights of the Charter.

[...]

The Committee notes that this approach calls for an exacting interpretation of the way the personal scope of the Charter is applied in conjunction with Article 11 on the right to protection of health, particularly with its first paragraph on access to health care. In this respect, it recalls that it clarified the application of the Charter's personal scope in its general introduction to Conclusions XVII-1 and 2004 (pp. 9-10; see also the general introduction to Conclusions XVI-1 and 2002).”

331. **Conclusions 2004, Statement of Interpretation on Article 11, §5, p. 10:** “The Committee notes that the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations.”
332. **Conclusions 2005, Statement of Interpretation on Article 11, §5, p. 10:** “The Committee therefore assesses the conditions under which the whole population has access to health care, taking into account also the Council of Europe Parliamentary Assembly Recommendation 1626 (2003) on "reform of health care systems in Europe: reconciling equity, quality and efficiency", which invites member states to take as their main criterion for judging the success of health system reforms effective access to health care for all, without discrimination, as a basic human right. In this respect, the Committee henceforth focuses on issues relating to emergency situations and to disparities between urban and rural areas.”

333. **Conclusions I, Statement of Interpretation on Article 11, pp. 59-60:** “The Committee was of the opinion that, with the text as it thus stands, a country bound by the Charter should be considered as fulfilling its obligations on this point if it provides evidence of the existence of a medical and health system comprising the following elements:
- [...]
6. The bearing by collective bodies of all, or at least a substantial part, of the cost of the health services.”
334. **Conclusions XV-2, Addendum, Cyprus, pp. 26-28:** “Cyprus still does not have a general health-care scheme covering the whole of the population. [...]
- The Committee draws the attention of the Cypriot authorities to the fact that in order to be in conformity with Article 11 para. 1 of the Charter, the health-care system must offer care accessible to the largest number, which presupposes sufficiently broad coverage of the population, and at best universal coverage, and “the bearing by collective bodies of all, or at least a substantial part, of the cost of the health services” (Conclusions I, page 59). The Committee notes that in the vast majority of Contracting Parties to the Charter, 98-100% of the population are today covered by the health-care system.”
335. **Conclusions XVII-2, Portugal, p. 681:** “The Committee noted in its previous conclusion that the cost of medicines was reduced for only two categories of the population: pensioners on low incomes and the chronically ill. There is no other scheme for reducing the cost for other disadvantaged population categories. The Committee recalls that it examines the conformity of the situation in light of Recommendation 1626 (2003) of the Council of Europe Parliamentary Assembly on “the reform of health care systems in Europe: reconciling equity, quality and efficiency”. This Recommendation urges states to use, as the main criterion for judging the success of health system reforms, effective access to health care for all without discrimination, as a basic human right. The Committee would therefore like the next report to state whether measures have been taken or are planned in the context of the current reform to ensure better cover for disadvantaged sections of the population.”
336. **Conclusions XV-2, United Kingdom, p. 599:** “The Committee is aware that the fact that waiting lists are getting longer has more than one cause and may in particular reflect growing demand and expectations of the population. However, the Committee notes that the duration of waiting times is long in absolute terms, that the situation is not improving and that simultaneously the number of hospital beds continues to decrease (see *infra*). It considers that on the basis of these data, the organisation of health care in the United Kingdom is manifestly not adapted to ensure the right to health for everyone. Nevertheless, before pronouncing itself on compliance with Article 11 para. 1 and referring to Recommendation No. RChs (99)21 of the Committee of Ministers of the Council of Europe on criteria for the management of waiting lists and waiting times in health care, the Committee requests information on the way in which waiting lists are managed (admission criteria and follow-up). The Committee underlines that it will pay particular attention to whether access to treatment is based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life.”
337. **Conclusions XV-2, Addendum, Turkey, p. 257:** “The number of private hospitals has risen and in 1997 accounted for 5.2% of the total number of beds, which rose from 2.1 beds per 1,000 inhabitants in 1990 to 2.5. This figure is still very low compared with other Contracting Parties and falls below the objective laid down by the World Health Organisation (WHO) for developing countries (3 beds per 1,000). Moreover, according to the OECD, 10% of the population live in provinces where there is only 1 bed per 1,000 inhabitants.”
338. **Conclusions XV-2, Denmark, p. 128:** “The number of hospital beds has continued to fall and stood at 24,525 in 1997, i.e. 40% down on 1975. The Committee notes from OECD figures that in relation to the total population, the number of beds (4.7 beds per 1,000 inhabitants in 1996) is among the lowest in OECD countries in Europe. It considers that the very low density of hospital beds, combined with the waiting lists, could be an obstacle to access to health care by the largest possible number of people.”

339. **Conclusions 2005, Statement of Interpretation on Article 11§5** : “Furthermore, the Committee henceforth pays attention to preventive policies regarding mental health taking into account also the recent Declaration of the WHO ministerial conference in Helsinki (12-15 January 2005). It focuses particularly on conditions in psychiatric institutions (including those for young persons) in accordance with the requirements of Articles 14 and 17 of the Charter and also in the light of Articles 3 and 5 of the European Convention on Human Rights as well as the Council of Europe Committee of Ministers Recommendation (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder. “
340. **Conclusions 2005, Romania, pp. 600-601**: “The Committee notes various reports concerning the alarming situation in certain psychiatric hospitals. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited three mental health establishments: [...]

The Committee observes that these findings are corroborated by other sources. The European Commission points out that there are continuing reports of ill treatment in psychiatric hospitals. Amnesty International particularly condemned the death in 2004 of 18 patients at the Poiana Mare psychiatric hospital – also visited by the CPT in June 2004 – due to malnutrition and hypothermia.

In light of this information, which reveals that the living conditions in certain psychiatric hospitals are manifestly inadequate, the Committee considers that the situation is not in conformity with Article 11§1 of the Charter.”

## Article 11§2

341. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, Decision on the merits of 6 December 2006, §§ 216 and 219**: “216. In connection with the measures that the authorities were required to take to develop a sense of individual awareness among exposed groups towards the health risks arising from lignite mining, the Committee notes firstly that Greek regulations satisfy all the requirements concerning information to the public about and their participation in the procedure for approving environmental criteria for projects and activities. For example, prefectures are obliged to publish the preliminary environmental evaluation and appraisal and the environmental impact study in the local press. However, the circumstances surrounding the granting and extension of several authorisations, at least those concerning the joint authorisation for several plants and the case of the “Dytiko Pedio” mine, show that in practice the Greek authorities do not apply the relevant legislation satisfactorily.

219. The Government maintains that it is following a policy of health promotion and culture in accordance with the objectives of the World Health Organisation (WHO) and that those concerned have been presented with the results of epidemiological studies undertaken at the request of the state. The Committee considers that this is too vague to amount to a valid education policy aimed at persons living in lignite mining areas. The Committee also notes, as does the complainant organisation, that the figures quoted by the Government to show that it organises environmental health education courses in primary and secondary schools themselves reveal the shortcomings in this area.”

342. **Conclusions XV-2, Belgium, p. 99**: “According to the information at the Committee's disposal, no systematic mass screening programmes are organised in Belgium. With particular regard to cancer's high impact on mortality in Belgium (see the conclusion in respect of Article 11 para. 1), the Committee considers that this situation, if it still holds true, could constitute a problem of compliance with Article 11 para. 2 of the Charter. Under that provision, preventive screening must play an effective role in improving the population's state of health. Consequently, the Committee believes that, in fields where it has proved to be an effective means of prevention, screening must be used to the full. The Committee wishes to receive the government's observations on this point and decides to postpone its assessment until the next supervision cycle.”

343. **Conclusions 2005, Moldova, p. 452:** “The Committee stresses that, according to Article 11§2 of the Revised Social Charter, counselling and screening should be free for pregnant women and children.”
344. **Conclusions XV-2, France, p. 210:** “The health of children aged over 6 is monitored by the school health service. Two compulsory check-ups are carried out, at ages seven and fifteen. Examinations are also carried out on request or in emergencies. Each year, doctors carry out around 2.5 million medical examinations on the 13 million primary and secondary schoolchildren in France. In 1995 the school health service employed 2,200 doctors and 5,000 nurses, with each doctor responsible for an average of 7,200 pupils and each nurse responsible for 2,500. The Committee considers that these figures demonstrate a clear shortage of medical staff. However, having learned that new posts were created outside the reference period in an effort to improve the situation, the Committee decides to await until the next time Article 11 is examined.”
345. **Conclusions 2005, Moldova, p. 452:** “The Committee points out that there should be screening, preferably systematic, for the diseases which constitute the principal causes of death. Since information on this does not appear in the report, the Committee cannot assess the situation. In the absence of information in the next report, and given the low life expectancy noted by the Committee in relation to Article 11§1 of the Charter, the Committee indicates that there would be nothing to show that the situation is in conformity with Article 11§2 of the Charter.”
346. **Conclusions XV-2, Belgium, p. 99:** “According to the information at the Committee's disposal, no systematic mass screening programmes are organised in Belgium. With particular regard to cancer's high impact on mortality in Belgium (see the conclusion in respect of Article 11 para. 1), the Committee considers that this situation, if it still holds true, could constitute a problem of compliance with Article 11 para. 2 of the Charter. Under that provision, preventive screening must play an effective role in improving the population's state of health. Consequently, the Committee believes that, in fields where it has proved to be an effective means of prevention, screening must be used to the full.”

### Article 11§3

347. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, complaint n° 30/2005, Decision on the merits of 6 December 2006, §§ 203 et 205:**  
“203. In order to fulfil their obligations, national authorities must therefore:
- develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2, Addendum, Slovakia, pp. 201-205);
  - take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3, pp. 452-457);
  - ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, *mutatis mutandis*, International Commission of Jurists v. Portugal, aforementioned decision, § 33);
  - inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2, pp. 450-452);
  - assess health risks through epidemiological monitoring of the groups concerned.

(...)

205. The Committee notes firstly that the Greek Constitution makes protection of the natural environment an obligation of the state and at the same time an individual right, and that Greek environmental legislation and regulations are well developed, have been regularly updated and substantially reflect the large number of European Union standards in this area. In particular, in the case of mining and fossil fuel combustion activities, an environmental impact study must be carried out, environmental criteria approved and an operating licence issued by the competent authorities. Provision is also made for the public to be informed and to participate in the decision making process. Limit values have been set for exposure to pollutants arising from lignite mining. Greece has also ratified all the relevant international treaties, in particular the United Nations Framework Convention on Climate Change of 9 May 1992 (UNFCCC) and the Kyoto Protocol to the UNFCCC of 11 December 1997.”

348. **Conclusions XV-2, Italy, Article 11§3, pp. 307-332:** “Regarding control of localised types of pollution, an earlier report indicated that an air quality monitoring system had been introduced but proved inadequate. The Committee wishes to be informed of the measures taken to remedy this state of affairs, and the air quality objectives and maximum permissible concentrations of the principal pollutants identified as responsible for its deterioration (sulphur dioxide, nitrogen dioxide, ozone, lead, fine and suspended particles, carbon monoxide and benzene).

As regards control over emissions of these polluting agents, the Committee finds from OECD data that in 1995 Italy achieved the goal, accepted by ratifying the Protocol on the reduction of sulphur emissions, of reducing sulphur dioxide emissions to 30% below the 1980 level, particularly through the use of low-sulphur fuels. On the other hand, Italy has not achieved any of the objectives set for the control of nitrogen oxide emissions.”

349. **Conclusions XV-2, Addendum, Slovakia, pp. 213:** “In the light of all this information, the Committee notes that substantial progress still needs to be made in order to provide the Slovak population with a healthy environment. It notes that the findings are the same in the UNDP report - which emphasises that the policy pursued with a view to giving protection of the environment an adequate legislative framework is not very ambitious, and that the Environment Ministry budget has declined steadily since 1993 - and in European Commission reports, which point to the weakness of the legislative framework, the slow speed of progress and the inadequacy of investments in the environment sector. The Committee emphasises that, in view of the proven effects of pollution on public health and of the poor indicators relating to the health of the Slovak population, particularly in polluted areas (see conclusion on Article 11§1), implementation of a more ambitious risk prevention strategy will be crucial to the assessment of compliance with Article 11§3. It therefore wishes that Slovakia make sustained efforts with a view to reporting noteworthy progress, especially as regards the strengthening of the legislative framework.”

350. **Conclusions 2005, Moldova, Article 11§3, p. 487:** “The Committee considers that, according to Article 11§3 of the Charter, urban air quality targets and threshold values should be laid down, accompanied by measuring arrangements and information for the public. The Committee asks what the situation is in this respect and the results obtained.”

351. **Conclusions XV-2, Italy, p. 332:** “As regards worldwide pollution processes, the Committee notes that in 1994 Italy ratified the United Nations Framework Convention on Climate Change (Rio de Janeiro, 1992). Its undertakings include reducing emissions of the principal greenhouse gases to 8% below the 1990 level over the period 2008-2012 in order to contribute to the achievement of the goals set following the Kyoto Conference in 1997 for the European Union.

The Committee observes, on the basis of OECD data and the first report on the application of the Rio Convention that in 1995 Italy was still far short of this target, particularly for carbon dioxide. The latter report indicated that in 1997 Italy had not established a concerted national action plan to combat climate change. The Committee will keep a close watch on the development of the situation.”

352. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, Decision on the merits of 6 December 2006, §§ 203, 209, 210, 215:**

“203. In order to fulfil their obligations, national authorities must therefore:

- develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2, Addendum, Slovakia, pp. 201-205);
- take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3, pp. 452-457);
- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, *mutatis mutandis*, International Commission of Jurists v. Portugal, aforementioned decision, § 33);
- inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2, pp. 450-452);
- assess health risks through epidemiological monitoring of the groups concerned.

209. Information supplied by the complainant organisation shows that when air quality measurements reveal that emission limit values have been exceeded, as in the case of the Aghios Dimitrios plant, the penalties imposed in the form of fines are limited and have little deterrent effect. The Government confines itself to stating that the financial penalties satisfy the proportionality principle and fails to show that when checks carried out reveal violations this leads to effective measures with a direct impact on emission levels.

210. Turning to measures to ensure that plant and equipment are adapted to the "best available techniques", the Government simply indicates that checks are mainly carried out by the supervisory authorities responsible for the authorisation procedure in Directive 96/61/EC concerning integrated pollution prevention and control (the IDEH Directive) and in the procedure for approving environmental criteria. Again, it does not show how these checks are carried out in practice and how effective they are.

215. The Government does admittedly claim that measures to monitor and record emissions are equivalent to adapting to "best available techniques". Apart from the fact that this argument is irrelevant and clearly incompatible with Greece's European commitments, the Committee has in any case found that Greece has failed to show that the checks concerned were sufficiently effective, since the Greek authorities considered it satisfactory to carry out these checks prior to the authorisation process and deemed it acceptable to distinguish between operational and environmental authorisation.”

353. **Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, Decision on the merits of 6 December 2006, §§ 203 et 220:**

“203. In order to fulfil their obligations, national authorities must therefore:

- develop and regularly update sufficiently comprehensive environmental legislation and regulations (Conclusions XV-2, Addendum, Slovakia, pp. 201-205);
- take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale (Conclusions 2005, Moldova, Article 11§3, pp. 452-457);
- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery (see, *mutatis mutandis*, International Commission of Jurists v. Portugal, aforementioned decision, § 33);
- inform and educate the public, including pupils and students at school, about both general and local environmental problems (Conclusions 2005, Moldova, Article 11§2, pp. 450-452);
- assess health risks through epidemiological monitoring of the groups concerned.

220. The Committee has already noted (§ 200) the health risks that lignite mining poses for local inhabitants. However, as the Government itself acknowledges, despite the importance the latter claims to ascribe to systematic epidemiological monitoring of those concerned very little has so far been done to organise such monitoring. For example, in 45 years of lignite mining in Greece, only two epidemiological surveys have been commissioned by the state, and these only covered part of the regions concerned. The results of these studies were presented to the public in 1998. Other epidemiological studies are admittedly scheduled or under way, but no morbidity studies have been carried out in the areas neighbouring the power plants.”

354. **Conclusions XV-2, France, pp. 213-214:** “As far as dose limits are concerned, the Committee notes that, in spite of its request in Conclusions XIV-2 (p. 288), France has still not adapted its regulations to apply the maximum values recommended by the ICRP in 1990 and has yet to transpose into domestic law Community Directive 96/29/Euratom on the protection of the health of workers and the general public against the dangers arising from ionising radiation.

In view of the energy sources in use in France, the Committee points out that public safety from nuclear accidents is a decisive factor in its assessment of conformity with Article 11 para. 3.”

355. **Conclusions XV-2, Denmark, pp. 131-132:** “Whilst stressing that the absence of nuclear power stations in Denmark means that the safety of the general public is not a major concern, the Committee considers that Denmark has implemented adequate measures to conform with Article 11 para. 3 of the Charter with regard to the protection of the population against ionising radiation.”

356. **Conclusions XVII-2, Portugal, pp. 686 :** “Asbestos – In addition to the information in the previous report, the Committee notes that Portugal has brought its legislation into line with Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, as modified by directives 83/478, 85/610 91/659, which ban the use of chrysotile other than for certain categories of products, and then subject to adequate labelling. Resolution No. 24/2004, in application of Commission Directive 1999/77/EC of 26 July 1999, prohibits the use of asbestos in the construction of public buildings and requires the government to draw up an inventory of all public buildings containing asbestos.

The Committee considers that these measures are consistent with Article 11§3 of the Charter. However, they are not sufficient. Compliance with this provision entails a policy that bans the use, production and sale of asbestos and products containing it.”

357. **Conclusions XVII-2, Latvia, p. 502 :** “The Committee recalls that in order to be in conformity with the Charter, legislation must provide for the prohibition of asbestos or at least restrict in an adequate manner its marketing, its use and its production; it must also set out obligations on residential property owners and in respect of public buildings to search for any asbestos and where appropriate to have demolition work carried out, as well as obligations on enterprises in relation to waste disposal.”

358. **Conclusions XV-2, Addendum, Cyprus, pp. 32 :** “The Committee points out that in order to comply with the Charter in this field, states must, at national level, lay down statutory food hygiene standards which take account of the relevant scientific data and set up and maintain machinery to monitor compliance with these standards throughout the food chain, and draw up, apply and update systematic measures aimed at preventing, including through appropriate labelling, and monitoring the occurrence of food-borne diseases.”



359. **Conclusions XVII-2, Portugal, p. 687:** “When coupled with the information noted in the previous conclusion, this information shows that the legal situation is consistent with Article 11§3 of the Charter.

The Committee asks for information in the next report on how measures taken to prevent and combat noise are applied in practice, in particular:

- the introduction of the surveillance arrangements and the noise maps;
- the prevention of locally generated noise linked to commercial activities: garages, restaurants, laundries and so on;
- measures to reduce noise caused by urban transport and airports;
- epidemiological studies of health problems linked to noise.”

360. **Conclusions XV-2, Greece, p. 252-253:** “Smoking – The Committee stresses the importance of measures against smoking in meeting the requirements of Article 11 of the Charter. It wishes to point out that smoking, a major cause of avoidable death in developed countries (in Europe 30% of deaths from cancer are attributable to smoking), is associated with a wide range of diseases (cardiac and circulatory diseases, cancers, pulmonary diseases, etc.). Smoking kills one adult in ten throughout the world. The World Health Organisation (WHO) forecasts an increase to up to one in every six deaths by 2030, which is more than the figure for any other cause of death. The Committee also notes that WHO is drawing up a convention on measures to combat smoking and points out that WHO, as part of the Health for All campaign, has set a target for European countries of raising the proportion of non-smokers in the population to at least 80% and protecting non-smokers against involuntary exposure to tobacco smoke.

Anti-smoking legislation in Greece includes a ban on direct or indirect advertising of tobacco products on television or radio (advertising in newspapers and magazines is permitted provided it refers to the health risks of smoking); a requirement that cigarette packets carry information about the dangers of smoking along with a health warning; rules on the maximum permissible levels of nicotine and tar in cigarettes; and a ban on smoking in places where health care is provided.

From the Eurostat figures, Greece has by far the highest level of annual per capita cigarette consumption in the European Union and European Economic Area (3,020 compared with a European average of 1,646 in 1997) and the figure has been rising steadily since 1988. The proportion of men who smoke every day (particularly in the 25-44 age group) is by far the highest in Europe.

The Committee considers that the policy of regulating tobacco sales is clearly inadequate to reduce tobacco consumption and lessen the extent of related health problems. It considers that this situation is not in conformity with Article 11 para. 3 of the Charter.

The Committee wants to know how the Government intends to tackle this situation, in particularly by toughening the existing legislation (e.g. to prohibit the sale of tobacco to young people and ban smoking in public places, including on public transport, ban on billboard advertising and advertising in newspapers and magazines).”

361. **Conclusions XVII-2, Malta, pp. 560-561:** “Any protection policy must place effective restrictions on the supply of tobacco, alcohol and drugs, particularly through controls on production, distribution, advertising and prices. To assess the effectiveness of such policies the Committee needs statistics on trends in tobacco, alcohol and drug consumption.”
362. **Conclusions XVII-2, Portugal, p. 499:** “The Committee notes that the government's 1998-2002 action plan to prevent smoking has the objective of increasing the number of 10 to 24 year old non-smokers by 10%. It considers this to be a very positive initiative but asks whether it can be achieved in the absence of a ban on young people smoking and on the sale of tobacco products to young persons.”

363. **Conclusions XV-2, Greece, p. 271-272:** “Anti-smoking legislation in Greece includes a ban on direct and indirect advertising of tobacco products on television or radio (advertising in newspapers and magazines is permitted provided it refers to the health risks of smoking); a requirement that cigarette packets carry information about the dangers of smoking along with a health warning, rules on the maximum permissible levels of nicotine and tar in cigarettes; and a ban on smoking in places where health care is provided.”
364. **Conclusions XVII-2, Malta, pp. 560-561, *op. cit.***
365. **Conclusions XVII-2, Malta, pp. 560-561, *op. cit.***
366. **Conclusions XV-2, Belgium, p. 103:** “(...) Article 11 para. 3, (...) requires states to ensure high immunisation levels, in order not only to reduce the incidence of these diseases, but also to neutralise the amount of virus and thus to pursue the goals set by the WHO (in particular, eradicating measles and poliomyelitis). It underlines that large-scale vaccination is recognised as the most efficient and most economical means of combating infectious and epidemic diseases. This objective is all the more important in that Europe is currently experiencing a resurgence of this type of infectious, epidemic disease.”
367. **Conclusions XVII-2, Latvia, p. 504:** “The Committee recalls that States must demonstrate their ability to cope with infectious diseases (arrangements for reporting and notifying diseases, special treatment for AIDS patients, emergency measures in case of epidemics).”
368. **Conclusions 2005, Moldova, p. 457:** “The Committee notes firstly the adoption of a series of instruments concerning the prevention of drink driving and secondly that road safety is a priority for the 2003-2008 period. In the absence of more detailed information, the Committee is unable to evaluate the situation. It requests that such information be included in the next report, with detailed facts and figures. The Committee also stresses that domestic accidents, accidents at school, accidents occurred during leisure time and those caused by animals are also covered by this heading. Since the report contains no information on this subject, it requests that the next report include information on these issues.”

## Article 12

### Article 12§1

369. **Conclusions XIV-1, Ireland, p. 424:** "...self-employed workers in Ireland are apparently not covered by the national social insurance scheme in respect of disability, sickness and maternity. It asks that the next report confirm that this is the case and, if so, whether measures are envisaged to extend the welfare provisions in these branches to self-employed workers".
370. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 36:** "Social security, which includes universal schemes as well as professional ones, is seen by the Committee in its application of Article 12 of the Charter as including contributory, non-contributory and combined allowances related to certain risks (sickness, disablement, maternity, family, unemployment, old age, death, widowhood, vocational accidents and illnesses). These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself".
371. **Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10:** "The notion of a social security system implies that a significant proportion of the population is covered and in essence based on collective funding and that the social risks which are considered essential must be covered by the system. Further the State must be the guarantor of contributions. The Committee will re-examine the proportion of persons covered by the social security system. It will further examine to what extent coverage of the needs for social protection is ensured by social security, by private insurance and savings or by social assistance and will verify that the proportion of social security does not fall below a level to be determined".
372. **Conclusions 2006, Bulgaria, p. 116:** "The Committee recalls that, under Article 12§1, the social security system should protect a significant proportion of the population in the following branches: health care, sickness, unemployment, old age, employment injury, family, and maternity."
373. **Conclusions 2006, p. 116:** "The Committee asks the next report to provide figures, for the period of reference, for all branches in percentage in order to be able to assess the effective coverage of the population (health care, sickness insurance and family benefits) and of the active population (sickness and maternity benefits, unemployment benefits, pensions, and work accidents or occupational diseases benefits)".
374. **Conclusions XVI-1, Statement of Interpretation on Article 12, p. 10:** "Where the system is financed by taxation (or budgetary resources), its coverage in terms of persons protected should rest on the principle of non-discrimination without prejudice to the conditions for entitlement (means test, etc.)".
375. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 36:** "The Committee is nevertheless not satisfied by the mere existence of a social security system: it ensures that the system in question covers a significant percentage of the population and at least offers effective benefits in several areas".
376. **Conclusions 2006, Bulgaria, p. 118:** "[the Committee] recalls that Article 12§1 of the Charter requires that social security benefits are effective, which means that, when they are income-replacement benefits, their level should be fixed such as to amount to reasonable proportion of the previous income and it should never fall below the poverty threshold defined as 50% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value".
377. **Conclusions 2006, Estonia, p. 107:** "The Committee notes that the values of the minimum pensions are manifestly inadequate because it is below the poverty threshold, even when this is defined as 40% of the median equivalised income. In such a case the Committee considers that their aggregation with means-tested kinds of benefits, including social assistance, does not bring the situation into conformity with Article 12§1".

378. **Conclusions XVIII-1, Austria, p. 20:** “The Committee notes that the level of the unemployment benefit for a single person calculated on a salary reference basis of € 1,000 falls below the poverty threshold even when defined as 40% of median equivalised income and as calculated on the basis of the Eurostat at-risk-of-poverty threshold value. Therefore, its accumulation with other benefits, including social assistance, does not alter its conclusion that such level is manifestly inadequate and not in conformity with Article 12§1”.
379. **Conclusions 2006, Portugal, p. 703** “The Committee concludes that the situation in Portugal is not in conformity with Article 12§1 of the Charter on the ground that the level of sickness benefit is manifestly inadequate”.
380. **Conclusions XVIII-1, Malta, p. 215:** “Unemployment benefits last a maximum of 156 days (5 months) and at any event no longer than a certain number of days calculated on the basis of contributions (for example an employee who worked 70 weeks since his entry into the scheme will be entitled to 70 days). The Committee considers that the duration for which unemployment benefits are payable to be too short”.
381. **Conclusions XVIII-1, Germany, p. 131:** “...the legislation is not in conformity with the Charter since there is no reasonable initial period during which the unemployed may refuse a job not matching with his previous occupation and skills without losing his unemployment benefits. The Committee considers this measure to undermine the adequate coverage of the unemployment risk for which every worker has contributed during his working activity”.
382. **Conclusions 2006, Bulgaria, p. 119:** “The Committee recalls that the scope and level of family benefits are assessed under article 16.”

### Article 12§2

383. **Conclusions 2006, Italy, p. 448:** “The Committee recalls that in order to comply with Article 12§2 of the Charter the social security system of states party shall satisfy, at least, six risks (old-age counting per three under the European Code of Social Security), it follows that during the period of reference Italy gave full effect only to five risks”.
384. **Conclusions XIV-1, Finland, p. 223:** “Consideration of all the information made available to the Committee indicates that Finland's social security system is at least sufficient for ratification of ILO Convention No. 102, in accordance with the requirement of Article 12 para. 2 of the Charter”.

### Article 12§3

385. **Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11:** “...whether the protection provided by the social security system has been extended to cover more of the population and whether new risks/benefits have been introduced”.
386. **Conclusions XVI-1, Statement of Interpretation on Article 12, p. 11:** “The restrictions on the right to social security should be assessed in the light of Article 31§2 of the Charter. In view of the changes made to social security systems as a result of economic and demographic factors the Committee requested in cycle XIII-4 that *inter alia* the following information on any changes to the social security system be submitted:
- The nature of the changes (field of application, conditions for granting allowances, amounts of allowance, lengths etc...);
  - The reasons given for the changes (the aims pursued) and the framework of social and economic policy in which they arise;
  - The extent of the changes introduced (categories and numbers of people concerned, levels of allowances before and after alteration);
  - The existence of measures of social assistance for those who find themselves in a situation of need as a result of the changes made (this information can be submitted under Article 13);
  - The results obtained by such changes (their adequacy)”.

387. **Conclusions XIV-1, Statement of Interpretation on Article 12, p. 47:** “The Committee reminded most of the Contracting Parties that it has clearly made allowances for alterations in social security systems to the extent that these are necessary in order to ensure the maintenance of the system in question (general observation on Article 12 para. 3) and where any restrictions do not interfere with the effective protection of all members of society against the occurrence of social and economic risks and do not tend to gradually reduce the social security system to a system of minimum assistance”.
388. **Conclusions XIV-1, Statement of Interpretation on Article 12, p. 48:** “According to the Committee, the effective social protection of all the members of society, which should be the aim of all the states having accepted Article 12 para. 3, involves maintaining in the Contracting Parties social security systems functioning through solidarity, as this represents a basic safeguard against differentiation in this field. Financing by the community as a whole in the form of contributions and/or taxes is a vital factor of this safeguard, as it guarantees the sharing of risks between the various members of the community”.

#### Article 12§4

389. **Conclusions XIV-1 Turkey, p. 769 :** “ The Committee notes that foreign workers are excluded from the scope of Act No. 1479 of 2 September 1971 on the social insurance of self-employed workers and that refugees and stateless persons have no social security coverage, in clear violation of the principle of equal treatment laid down by Article 12§4a”.
390. **Conclusions XIV-1, Turkey, p. 768:** “The Committee recalls that ...Act No. 506 of 17 July 1964 on the wage-earners’ social security scheme excludes from the scope of the act foreign workers on secondment who declare that they are covered by a foreign scheme. The Committee considers that this provision does not pose any problem of conformity with the Charter inasmuch as it concerns foreigners working on behalf of a company based abroad and it only applies to long-term benefits”.
391. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43:** “[Article 12 para. 4] does not require reciprocity: it directly empowers the Contracting Parties to implement its principles by means other than concluding bilateral or multilateral agreements”.
392. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 43:** “...equal treatment between the nationals of all the Contracting Parties to the Charter presupposes...not to grant entitlement to social security benefits solely to their own nationals or those of specific Contracting Parties, [nor] to impose additional conditions on nationals of other Contracting Parties. This rule has its limits because the appendix to Article 12 para. 4 allow Contracting Parties to require the recipients of non-contributory benefits who are nationals of other Contracting Parties to complete a prescribed period of residence. However, ...the Committee reserves the right to assess the proportionality of length of residence required”.
393. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44:** “...the Committee is concerned that the Contracting Parties should avoid indirect discrimination, for instance conditions which are imposed on both their own nationals and those of other Contracting Parties but are more difficult for the latter to meet and which therefore represent a greater obstacle for them”.
394. **Conclusions 2004, Lithuania, p. 370:** “The report confirms that in order to be come entitled to benefits which are based on permanent residence status, a foreign national must have been living in Lithuania without interruptions for the past five years. The Committee considers that this amounts to a length of residence requirement which is not in conformity with the Charter where contributory social security benefits are concerned. Moreover, although the Appendix to Article 12§4 permits states to require the completion of a prescribed period of residence before granting non-contributory benefits to non-nationals, the Committee considers a period of five years to be too long”.

395. **Conclusions 2006, Statement of Interpretation on Article 12§4, p. 13:** “The Committee again considered Article 12§4 as regards the issue of subjecting the payment of child benefits to a residence requirement in respect of the children. Following a thorough examination, it decided that a residence requirement in respect of children is in conformity with Article 12§4”.
396. **Conclusions 2006, Cyprus p. 160:** “As regards the payment of family benefits, the Committee considers that according to Article 12§4, any child resident in a state party is entitled to the payment of family benefits on an equal footing with nationals of the state concerned. Therefore, whoever is the beneficiary under the social security system, i.e. whether it is the worker or the child, state party are under the obligation to secure through unilateral measures the actual payment of family benefits to all children residing on their territory. In other words, imposing an obligation of residence of the child concerned on the territory of the state is compatible with Article 12§4 and its Appendix. However since not all countries apply such a system, states applying the 'child residence requirement' are under the obligation, in order to secure equal treatment within the meaning of Article 12§4, to conclude within a reasonable period of time bilateral or multilateral agreements with those states which apply a different entitlement principle”.
397. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 44:** “Equality of treatment does not necessarily mean that family allowances should be paid at the same amount when the children for whom it is granted are not residents of the same country as the recipient. The Committee indeed considers that the level of benefit may in this case be reduced where the cost of living in the child's country of residence is significantly lower. As it pointed out to Germany and Belgium in this supervision cycle, the Committee nevertheless reserves the possibility to examine whether the reduction is proportional to the differences in the cost of living in the countries concerned”;
398. **Conclusions XIV-1, Germany, p. 314:** “...Turkish workers in Germany whose children are being brought up in Turkey are entitled to a lower level of family allowance because the cost of living is lower in the latter country. Considering that family allowance can in principle be paid at a reduced rate when the children do not reside within the territory of the institution paying the benefit, provided that the cost of living in the children's country of residence is considerably lower and the reduction is proportional to the difference in the cost of living between the countries in question...”.
399. **Conclusions XIV-1, Finland, p. 230:** “The Committee recalls that in the absence of an agreement, Finland is required under Article 12 para. 4 of the Charter to take unilateral steps to comply with the requirements of this provision, including the retention of benefits arising out of Finnish social security legislation, irrespective of the person's movements, particularly for long-term benefits”.
400. **Conclusions XIV-1, Norway, p. 630:** “The Committee finds that because of the particular characteristics of unemployment benefit which is a short-term allowance closely linked to the trends in the labour market, the Contracting Parties may justifiably restrict the exportation of these benefits and that the situation does not raise any problem with respect to Article 12§4a”.
401. **Conclusions XVI-1, Belgium, p. 74:** “The Committee notes that obligations entered into by the Contracting Parties must be fulfilled irrespective of any other multilateral social security agreement that might be applicable and that in making the right to export acquired benefits conditional on the existence of bilateral or multilateral agreements other than the Charter, Belgian legislation is not in conformity with Article 12§4a”.
402. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 54:** “[Article 12 para. 4] directly empowers the Contracting Parties to implement its principles by means other than concluding bilateral or multilateral agreements. The Committee has pointed out in this respect that unilateral measures are possible. In the absence of a social security agreement every Contracting Party is required to adopt unilateral measures in order to ensure the application of the principles of Article 12 para. 4 for nationals of the other Contracting Parties”;

403. **Conclusions XIII-2, Norway, p.122:** “[The Committee] recalled that Article 12 para. 4 did not require that bilateral agreements exist, nor was it based on principles of reciprocity. Any state having accepted it could comply either through bilateral agreement or through unilateral action”.
404. **Conclusions XIII-4, Statement of Interpretation on Article 12, p. 45:** “Under the Contracting Parties' national legislation the right to certain social security benefits is made conditional on the completion of qualifying periods, that is periods of employment, insurance or length of residence, even though Article 12 para. 4*b* does not mention the latter. As a result, when persons change their country of employment or residence they often sustain financial loss if they have not completed the qualifying period required for entitlement to benefits under the legislation of the competent Contracting Party, or, in the particular case of long-term benefits, if they have not completed the requisite minimum periods under the various insurance systems for entitlement to a pension which would, in total, be comparable to that which they would have received if they had remained in the territory of only one Contracting Party. This situation therefore has to be remedied by ensuring the granting, maintenance and resumption of social security rights by the accumulation of periods completed as laid down in Article 12 para. 4*b*”.
405. **Conclusions XIV-1, Portugal, p. 669:** “...the Committee considers that in the absence of an agreement, there is a direct obligation on Portugal under Article 12§4 of the Charter to introduce appropriate measures in order to comply with this provision. It asks the Portuguese Government what steps, such as administrative arrangements, are planned to bring the situation into line with the Charter...”.
406. **Conclusions 2006, Italy:** “Italy has ratified the European Convention of Social Security thereby securing its commitment to equal treatment as regards aggregation of insurance or employment periods towards non-nationals”.





## Article 13

### Article 13§1

407. **Conclusions I, Statement of Interpretation on Article 13, pp. 65-67:** "The four paragraphs of this article ensure for persons without adequate resources the right to social and medical assistance.

An attempt was made, when the Charter was drafted, to break away from the old idea of assistance, which was bound up with the dispensing of charity. The expressions in the Charter reflect a new concept of assistance - the use of the words "person without adequate resources", for instance, instead of "the poor" and "want" instead of "poverty". The scope of the various provisions in Article 13, however, is even more significant in this respect. First, under Paragraph 1 it is compulsory for those states accepting the article to accord assistance to necessitous persons as of right; the Contracting Parties are no longer merely empowered to grant assistance as they think fit; they are under an obligation, which they may be called on in court to honour.

Even greater advances seem to have been made when it comes to Paragraph 2 of Article 13, which makes it compulsory for those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance. The compilers of the Charter were anxious that necessitous persons should not be prevented from exercising their civil and political rights in full or from taking up certain kinds of employment and office. Persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves.

This refusal to exclude from society persons receiving assistance is to be related to the purely provisional nature of such assistance, as reflected in the terms of the Charter.

The Contracting Parties must do all they can, in fact, to remove or alleviate want once it has arisen, as they must try to prevent want from arising (Paragraph 3). Like several other provisions in the Charter, Article 13 is thus progressive in that it binds the states accepting it to set up an effective system of assistance, but also to ensure that such assistance gradually becomes unnecessary, until it completely disappears - the ultimate aim.

The Committee had to deal with a delicate problem of interpretation in connection with this paragraph. The field of application of Paragraph 3 of Article 13 appeared at one stage in the elaboration of the Charter to overlap with that of Article 14. At first sight, the two provisions might seem to duplicate each other, since the measures referred to in Paragraph 3 of Article 13 generally come within the sphere of the social welfare services which are the subject of Article 14. This possibility is not to be ruled out a priori, in fact, since the Contracting Parties only have to accept a certain proportion of the Charter provisions. The Committee took the view, in the case in point, in the light of the travaux préparatoires, the wording of Paragraph 3 of Article 13 and its context, that this provision concerned only advisory services for persons without or liable to be without adequate resources, Article 14 being concerned with social welfare services in general. The Committee felt that the obligation stated in Paragraph 3 of Article 13 was much more precise and more restricted than that in Article 14.

The gist of the matter is that, although both texts are concerned with the way in which social services are organised, Article 14 is a general provision while Paragraph 3 of Article 13 is special. The Committee came to the conclusion that the manner in which the Contracting Parties implemented the two provisions needed to be assessed separately. On the basis of this assessment, a Contracting Party could be deemed to be complying with the requirements of Article 14, even if its social services did not meet all the requirements of Article 13, Paragraph 3. Again, the fact of complying with Paragraph 3 of Article 13 did not necessarily mean that the requirements of Article 14 were being fulfilled.

These are the main features of the concept of assistance as set out in the first three paragraphs of Article 13. The fourth paragraph is not an autonomous provision, in so far as it merely indicates which persons are to receive protection under the previous three paragraphs. The Contracting Parties are bound, by this paragraph, to guarantee that nationals and aliens receive equal treatment when it comes to social and medical assistance, in accordance with the obligations incumbent upon them under the European Convention on Social and Medical Assistance, signed in Paris on 11 December 1953."

408. **Conclusions 2006, France, pp. 329-330:** "... the Committee would point out that it has taken due note of the whole mechanism that has been introduced to combat poverty and exclusion, which is the specific aim of a different provision in the Charter, namely Article 30, accepted by France. It recalls that from the angle of Article 13§1 it only considers one aspect of this mechanism, i.e. the level of, and conditions of access to, the main social assistance benefits and the corresponding right of appeal in order to ascertain whether individuals have a subjective right to subsistence aid."

409. **Conclusions XIII-4, Statement of Interpretation on Articles 12 and 13, pp. 34-36:** "The Committee noted that current trends in most of Europe's social security systems show a tendency towards the expansion both of the categories of persons protected and the range of benefits paid and, in several cases towards the creation of benefits unconnected with the completion of periods of contribution. It has also observed that in several countries the system of social protection did not include or no longer included any distinction between social security and social assistance benefits.

Although the dichotomy between social security and social assistance is highly controversial, it appears in the Charter, which approaches the two areas in two separate Articles (Article 12 and Article 13) carrying different undertakings. The Committee must therefore take this division into account. The wording of the Charter itself contains no specific indications as to the scope of each of these two concepts. Whilst taking into consideration the views of the state concerned as to whether a particular benefit should be seen as social assistance or as social security, the Committee pays most attention to the purpose of and the conditions attached to the benefit in question.

It thus considers as social assistance, benefits for which individual need is the main criterion for eligibility, without any requirement of affiliation to a social security scheme aimed to cover a particular risk, or any requirement of professional activity or payment of contributions. Moreover, as Article 13 para. 1 demonstrates, assistance is given when no social security benefit ensures that the person concerned has sufficient resources or the means to meet the cost of treatment necessary in his or her state of health.

Social security, which includes universal schemes as well as professional ones, is seen by the Committee in its application of Article 12 of the Charter as including contributory, non-contributory and combined allowances related to certain risks (sickness, disablement, maternity, family, unemployment, old age, death, widowhood, vocational accidents and illnesses). These are benefits granted in the event of risks which arise but they are not intended to compensate for a potential state of need which could result from the risk itself.

When the Committee does not feel that it possesses sufficient data on some benefits, it asks the Contracting Party concerned to provide additional information in order for it to be in a position to assess whether the benefits in question should be examined in connection with social security or with social assistance.

The Committee is aware of the fact that the distinguishing criteria retained are imperfect and that borderline cases exist (which are tending to multiply) so that the division no longer corresponds entirely to the current situation as regards the European systems of social protection characterised by their complexity and their varying structures, the result of successive reforms and which often put social security and social assistance together. However, it observes that this distinction has been maintained in the revised Social Charter and was not questioned by the member states of the Council of Europe during discussion on this new instrument."

410. **Conclusions X-2, Spain, p. 121:** "The Committee felt it should draw the attention of the Spanish Government to the obligation under Article 13 paragraph 1 to ensure that "any person who is without resources" receives adequate assistance, and to its own case law (Conclusions IV, p. 88) asking that the whole of the population be protected by the social assistance system.

In the circumstances, the Committee could not but express concern over the possible situation of certain deprived persons, especially unemployed people no longer entitled to benefits, who do not have an adequate income guarantee in accordance with Article 13 paragraph 1 of the Charter.

It also pointed out that according to its case law, social assistance should be granted "as of right" and not depend solely on a decision at the administration's discretion. Such right should furthermore be supported by a right to appeal to an independent body."

411. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57:**

*"A — Right to social and medical assistance (Article 13 para. 1)*

The Committee considers that in the light of the development of its case law with respect to this right and of the importance it attaches to the progress achieved in the field of social assistance, the exact scope of the Contracting Parties' undertakings in this relation must be clarified. It also hopes that the next reports under Article 13 para. 1 will provide updated information on several points.

**a. Social assistance**

The Committee noted in its first Conclusions (Conclusions I, p. 64) that the Charter required that social assistance should be granted to persons in need as of "individual" right. This requirement implies that the right to assistance is to be supported by a right of appeal to an independent body:

- where this is not a legal body and in order to assess its independence, the Committee asks in particular that the report state how its members are appointed, the length of their term of office and what statutory factors ensure the required independence. Should the body not be an independent one, the Committee asks whether its decisions could be subject to subsequent review by a court;
- the Committee considers that the adequacy of such an appeal is subject to the following considerations: firstly, the appeal should be judged on the merits of the case; secondly the competent authorities cannot be allowed total discretion in assessing persons' state of want, their need for assistance, or even the level of that assistance and therefore that the body rule on the basis of objectively determined criteria and lastly that the applicants may benefit from legal assistance despite their lack of resources.

The Committee needs regular information on the general organisation of social assistance in each Contracting Party: the relevant legislation, the various forms of assistance and the categories of persons covered, as well as the competent authorities.

As far as the form of assistance is concerned, the Committee has noted a development in national situations and that an income guarantee has been established in most Contracting Parties although its form varies. Whatever the nature of this assistance, with benefits provided in cash and/or in kind, the assistance must be provided as long as the need persists in order to help the person concerned to continue to lead a decent life.

When social assistance is granted in cash, adequate information should be provided on the level of financial assistance (basic and maximum amounts, percentage of the statutory minimum wage, readjustment, etc.). In order to assess the effectiveness of the assistance, the Committee reserves the right to determine whether the level is manifestly inadequate in comparison with the cost of living and/or a minimum level of subsistence fixed on a national level and account taken of eligibility for other forms of assistance (such as housing, transport or clothing).

Reports must further provide information on the conditions governing entitlement to assistance, for the Committee to establish whether the entire population is potentially covered by some system of assistance. For example, age, health or length of residence conditions may exclude a particular group of the population from assistance, thus failing to comply with the requirements of Article 13 para. 1.

The Committee must also be supplied with information on the objective criteria that are applied and the factors taken into account in assessing need and on the procedure for determining whether a person is without adequate resources and, in particular, the methods used to investigate needs and resources.

The Committee also asks the Contracting Parties to supply regular information on the amount of funds devoted to social assistance and the percentage of the social welfare expenses they represent.

Finally the Committee asks to know how many persons are permanently in receipt of social assistance during each reference period. The Committee considers it important that Contracting Parties undertake, in pursuance of the aims of Article 13 para. 3, to remove or alleviate as far as possible want once it has arisen, and equally to prevent want from arising. In the wording of the Charter, social assistance is temporary in nature, even though the parallel rises in long-term unemployment and poverty have demonstrated the need for more "constant" assistance.

**b. Medical assistance**

The Committee's supervisory activities in this field focus, *mutatis mutandis*, on the same aspects as in respect of social assistance, especially as far as national systems without free health care are concerned.

The right to medical assistance should also be regarded as a "personal" right in so far as a refusal either to grant to persons in need financial assistance for the purpose of obtaining medical care or to provide them with such care free of charge should be subject to an appeal to an independent body. The Committee nevertheless considers that it is not within its competence to define the nature of the care required, or the place where it is given.

Adequate information must be supplied on the types of medical assistance as well as the conditions governing it and its scope. In this respect the Committee ensures that people in need are entitled, depending on the system of each Contracting Party, either to financial assistance allowing them to meet the costs of treatment necessitated by their condition or to free health care.

Reports are required to indicate, especially for states in which health care is not given free of charge, how many persons receive medical assistance in each reference period and to provide information on the amount of funds devoted to medical assistance and the percentage of the social welfare expenses they represent.

*B — Exercise of political and social rights by persons receiving social and medical assistance (Article 13 para. 2)*

The Committee stated in its first Conclusions that this provision obliges "those states accepting it to eradicate from their legislation any remnants of social and political discrimination against persons receiving assistance" and that the compilers of the Charter wished to ensure that "persons receiving assistance were not to be regarded as second-class citizens, merely because they were unable to support themselves".

This requirement implies that Contracting Parties must eradicate any discrimination against persons receiving assistance which might result from an express provision, such as a legislative text. During this cycle, the Committee had occasion to remind Denmark of this objective. It noted that Article 29, paragraph 1, of the 1953 Constitution on voting rights stated that "it shall be laid down by Statute to what extent (...) public assistance amounting to poor relief within the meaning of the law shall entail disenfranchisement". It asked how this provision had been applied. In addition, the Committee noted that the ban on discrimination with respect to persons receiving assistance was expressly guaranteed.

The Committee has taken note that the legislation of some Contracting Parties contains a compulsory residence requirement for entitlement to social services in general or to benefit from social and medical assistance in particular. It has expressed its concern over this situation in so far as it could have a greater effect on persons actually or potentially dependent on assistance, who might not necessarily have sufficient resources to establish a place of residence. The Committee therefore asks the Contracting Parties to provide information in their next reports on this point and on any planned steps to improve this situation. In this respect the Committee noted with interest the changes in Belgium brought about by the Act of 12 January 1993 containing a programme for greater social solidarity, to be implemented through Public Social Assistance Centres (PSACs). The PSACs are henceforth to grant social assistance and the minimum subsistence income to homeless persons staying within the municipal territory without being entered on the population registers.

More generally, the Committee pays attention to any measure taken in order to ensure that persons receiving social and medical assistance are able to exercise their political and social rights. In this cycle it has therefore asked for updated information on this point.

*C — Advice and help in case of want (Article 13 para. 3)*

Contracting Parties which have accepted Article 13 para. 3 are required to provide that everyone may receive, through the appropriate services, all advice and personal help that may be required to prevent, remove or alleviate personal or family want. It completes Article 13 para. 1 as it makes compulsory the provision of social welfare services in favour of persons in need, giving them information and help in order to enable them to exercise effectively their right to social and medical assistance.

This provision concerns only social services providing advice or help to persons without or liable to be without adequate resources. Accordingly Article 13 para. 3 is a special provision which is more precise than Article 14 para. 1, which is concerned with social welfare services in general. The Committee considers it important to stress this distinction so that the governmental reports under Article 13 para. 3 provide information concerning, in particular, social welfare services for persons without, or liable to be without, adequate resources.

The Charter does not require these services to be specific and separate from the social welfare services of Article 14. Specific care is to be given, however, to persons without, or liable to be without adequate resources.

In order to be able to assess compliance of national situations with Article 13 para. 3, the Committee needs regularly updated information on the following:

- the main social welfare services as provided for under this provision, the way these services operate and are organised, including their geographical distribution;
- the number, qualifications and duties of the staff employed, including voluntary staff;
- funding provided for those services.

Services must be adequate in view of the needs. In this respect, having noted the significant increase in the number of social and medical assistance recipients in several Contracting Parties, the Committee asks that the next reports provide information on the one hand on the adequacy of the number of social workers employed in providing personal advice and help for persons without, or liable to be without adequate resources and on the other hand on the increasing needs in this area.

The effectiveness of the social welfare services provided for in Article 13 para. 3 also depends on their accessibility to users. In order to determine whether these services are accessible enough, the Committee needs information on their geographical distribution and on information given to users on the social and medical assistance services available.

The Committee considers the effective implementation of Article 13 para. 3 to be an important condition for ensuring the right of every person to social and medical assistance.

*D — Situation of nationals of other Contracting Parties with regard to assistance (Article 13 para. 4)*

**a. Personal scope of Article 13**

The Committee considers that Article 13 para. 4 extends the scope of the first three paragraphs and covers not only foreigners who are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned, but also those who are simply staying in the territory of another Contracting Party without residing (including refugees within the meaning of the Geneva Convention of 28 July 1951). To date therefore, the situation of all nationals of other Contracting Parties in relation to social and medical assistance has been examined by the Committee under Article 13 para. 4, and the situation of nationals under paragraphs 1 to 3 of Article 13.

The Committee is however anxious to stress that the wording of the appendix to the Charter — "without prejudice to ... Article 13, paragraph 4 ..." — does not refer to Article 13 in its entirety but only to paragraph 4, thus implying firstly, that paragraphs 1 to 3 are applicable in accordance with the appendix, meaning that the Contracting Parties must grant equal treatment to nationals of other Contracting Parties lawfully resident or working regularly in their territory, and secondly, that Article 13 para. 4, through the exception in the appendix and according to the wording of para. 4 itself, applies also to the nationals of the other Contracting Parties who are lawfully present in the territory of a Contracting Party without legally residing there.

In order to take those elements in account, the Committee has decided henceforth to deal with the situation of nationals of other Contracting Parties lawfully resident or working regularly in their territory under paragraphs 1, 2 and 3 of Article 13 and with the situation of nationals of the other Contracting Parties lawfully present in the territory of a Contracting Party without residing there under Article 13 para. 4. This method affects the definition by the Committee of the material scope of the provisions of Article 13 as regards nationals of other Contracting Parties.

**b. Material scope of Article 13 as regards nationals of other Contracting Parties**

1. *Article 13 para. 1*

The Committee considers that according to the terms of the appendix, this provision requires that nationals of Contracting Parties working regularly or residing legally in the territory of another Contracting Party must be entitled to social and medical assistance as of right on an equal basis with nationals in accordance with Article 13 para. 1 (see above A). This implies that no length of residence requirement may be demanded and that repatriation on the sole ground that those nationals are asking for social or medical assistance is excluded as long as their regular work or lawful residence on the territory of the Contracting Party concerned lasts.

2. *Article 13 para. 2*

Nationals of Contracting Parties working regularly or residing legally in the territory of another Contracting Party must not, in accordance with Article 13 para. 2 (see above B), suffer any diminution of their political or social rights on the sole ground that they are receiving assistance. The assessment of a possible discrimination on this basis must of course be made in the light of the political rights these foreigners may claim under domestic law, it being understood that foreigners with a certain length of residence may enjoy more extensive rights.

3. *Article 13 para. 3*

Nationals of Contracting Parties working regularly or residing legally within the territory of another Contracting Party must have access to advice and personal help offered by social services on the same conditions as nationals in accordance with Article 13 para. 3 (see above C).

4. *Article 13 para. 4*

With regard to the scope of assistance which has to be granted to those lawfully present in the territory of a Contracting Party without regularly working or lawfully residing, the Committee stresses that as their stay is essentially temporary, the most appropriate form of assistance would be emergency aid to enable them to cope with an immediate state of need (accommodation, food, emergency care and clothing). In this way the grant of a guaranteed minimum income to someone who is only temporarily staying in the territory of a Contracting Party cannot be regarded as assistance under Article 13 para. 4.

The Committee considers in addition that the appendices I and II to the European Convention on Social and Medical Assistance of 1953 (Appendix I, containing the legislation on assistance applicable in each Contracting Party; Appendix II, containing the reservations formulated by the Contracting Parties) should be taken into account in an assessment of the compliance of national situations with the commitments entered into under this provision, as the wording of paragraph 4 itself provides.

Furthermore, the Committee recalls that appropriate assistance granted to someone staying in the territory of a Contracting Party is to be provided until the repatriation, if applicable, of the person concerned, which may be permitted but strictly in accordance with the limitations and conditions stipulated by the 1953 Convention. In this respect the Committee stresses that Article 13 para. 4 refers to the convention principally for the purpose of determining the Contracting Parties' substantive obligations with regard to repatriation. The 1953 Convention prohibits repatriation solely on grounds of need for assistance, except within the limitations and conditions laid down by this instrument, which may be regarded as specific to the Convention in comparison with the commitments entered into under the Charter. Therefore the Committee recalls regularly that according to the wording of the Convention, Contracting Parties may have recourse to repatriation only with great moderation and asks in particular during this cycle whether any recourse is had to repatriation of nationals of Contracting Parties lawfully in the territory of another Contracting Party without residing there on the sole ground that they need assistance and, if so, whether and on which basis the conditions prescribed by Articles 6 to 10 of the 1953 Convention are observed."

412. **Conclusions XV-1, France, pp. 270-271:**"The Committee considers that insufficient provision is made for social assistance to those under the age of twenty-five years. While it accepts the concern of the French authorities to avoid benefit dependency in early adulthood is not without foundation, it appears to the Committee that the age group in question experiences as at least as much deprivation as the rest of the adult population without being able to claim subsistence benefits."
413. **Conclusions XVIII-1, Czech Republic, p. 238:** "The Committee notes that under Article 13§1 of the Charter, any person lawfully residing in the territory of another state party to the Charter or the Charter must be entitled to social assistance, including benefits offering a minimum income. The definition of "residence" is left to national legislation and a length of residence condition may be applied so long as it is not manifestly excessive (see *mutatis mutandis* Conclusions XVII-2, Poland, Article 14§1). In this case, the Committee notes that under the aforementioned rules, foreign nationals' eligibility for social assistance is subject to ten years' continuous presence in the country. It considers that this period is manifestly excessive and that the situation is not in compliance with Article 13§1."
414. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, *op. cit.***

415. **Conclusions XIV-1, Portugal, pp. 701-702:** "In the absence of information on the cost of living in Portugal, the Committee is unable to determine with certainty whether the minimum income benefit and the other allowances which exist are sufficient to meet basic needs in an adequate manner, as required by this provision of the Charter."
416. **Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 52-55:**  
"[Article 13] Paragraphs 1 to 3  
The Committee observes that the term "social assistance", as used in Article 13 para. 1, should not be limited to the payment of a subsistence allowance. As it has already pointed out in the general introduction to Conclusions XIII-4 (p. 55), the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required. In other words, the system of social assistance must embrace an integrated strategy of alleviation of poverty and empowerment of individuals to regain their place as full members of society, through the means most appropriate to their personal circumstances, wishes and ability, and customary in the society where they live. In most cases, employment opportunities, together with vocational training or re-training, constitute the core element in any such strategy.  
Article 13 para. 3 expressly obliges Contracting Parties to ensure that adequate services are available to the public to offer advice and help to persons experiencing or threatened with deprivation. It is an essential complement to the obligation laid down under Article 13 para. 1. Thus, compliance with both provisions is contingent on the existence and effective operation of a social assistance system in each state which is based on the integrated approach outlined above.  
In many cases, an individual must comply with certain conditions (such as to be available for work, to undergo vocational training, etc.) in order to receive assistance payments. The Committee observes that in so far as such conditions are reasonable and fully consistent with the objective of providing a long-lasting solution to the problems of deprivation experienced by the individual, they are not inconsistent with the Charter. However, the right of appeal which attaches to entitlement to benefits must also apply to such conditions. [...]
417. **Conclusions 2006, Estonia, p. 208:** "The Committee recalls that making eligibility for a guaranteed income conditional on the acceptance of "suitable" employment or participation in training does not, in itself, raise problems of compliance with Article 13§1. However, such conditions must be reasonable and consistent with the objective of finding a long-term solution to the individual's problems (General introduction to Conclusions XIV-1, p. 52). Moreover, there must be a right of appeal against refusals to grant assistance (Conclusions XIV-1, France, Article 13§1, pp. 271-273) and those concerned must not in any circumstances be left without means of subsistence."
418. **Conclusions XIII-2, Greece, p. 129:** "The Committee took note of the reply according to which family solidarity in Greece was a moral value not legally defined. The Committee wished to know if there was any other legal obligation applicable to this situation other than that of maintenance obligations for children, as for example, a similar obligation towards the parents and other relatives."
419. **Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57, *op. cit.***



420. **Conclusions 2006, Moldova, pp. 122-123:** “According to the report, there is no general system of social assistance for all persons who lack adequate resources. Establishing a system for allocating resources to individuals and families in real need is one of the objectives of the 2004-2006 economic growth and poverty reduction strategy. The Committee asks to be informed of progress in this respect.

Cash social assistance benefits are currently granted to certain categories of the population, either because they are considered to be particularly vulnerable, such as invalids, large families and elderly persons, or as a reward for services rendered to the nation (persons who served in the Second World War, helped to clear up the after-effects of the Chernobyl disaster or were actively involved in the siege of Leningrad). Such benefits are not means tested.

[...]

The Committee concludes that the situation in Moldova is not in conformity with Article 13§1 of the Charter on the ground that there is no system offering appropriate social assistance to all persons in need.”

421. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, *op. cit.***
422. **Conclusions XIII-2, Greece, p. 181:** “Under Article 6 of Legislative Decree No. 57 of 1973, Greek nationals who satisfied the basic requirements laid down in Article 1 of that decree were entitled to free medical and pharmaceutical assistance and to be admitted to hospital free of charge. In reply to a question from the Committee, the report stated that medical assistance was guaranteed to all irrespective of the seriousness of their case, but that priority was given to people in urgent need of assistance. The Committee considered that, where Greek nationals were concerned, the Charter's requirements were respected.”
423. **Conclusions 2004, Lithuania, p. 373:** “The amount of the benefit is calculated as 90% of the difference between the amount of the state-supported income and the actual average monthly income of the family. From Eurostat information the Committee observes that 50% of median equalised income corresponded to about 78 € per month in 2001 and it considers that social assistance which does not even attain the level of the state supported income (39 €) and notwithstanding the existence of certain supplementary benefits (see *infra*) is inadequate and not in conformity with Article 13§1 of the Charter.”
424. **Conclusions XVIII-1, Spain, p. 745:** “The Committee refers to its case-law on the subject, namely that individual need is the only permissible condition for entitlement to social assistance and that the only ground for refusing, suspending or reducing such assistance is that adequate resources are available. Social assistance must therefore be granted for as long as the need persists.”
425. **Conclusions I, Statement of Interpretation on Article 13§1, p. 64, *op. cit.***
426. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, *op. cit.***
427. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, *op. cit.***
428. **Conclusions I, Statement of Interpretation on Article 13§1, p. 64, *op. cit.***

429. **Conclusions XVIII-1, Iceland, p. 444:** “The Committee notes that within the meaning of Article 13§1, “the appeal should be judged on the merits of the case” (General Introduction to Conclusions XIII-4, p. 56) and not merely on points of law. It considers that the possibility in Iceland of appealing to the courts against the decisions of the Appeals Committee is not sufficient because the courts normally only carry out a review of legality. The Committee therefore asked in its previous conclusion for information about safeguards to ensure the independence of members of the Social Services Appeals Committee other than those related to the length of their term of office and method of appointment. Having found no information in the report, the Committee repeats its question. It wishes to receive information that would enable it to determine whether the Social Services Appeals Committee is independent both from the executive and from the parties. It accordingly wishes to know what safeguards are in place to protect its members against outside pressure (rules on removal from office, revocation, instructions, requisite qualifications for members appointed by the Ministry of Social Affairs, etc.).”
430. **Conclusions XVIII-I, Hungary, p. 406:** “The Committee recalls that for the situation to comply with Article 13§1, applicants for social assistance must have a right of appeal against unfavourable decisions by the authorities. The appeal body must be independent [...] The Committee therefore considers that the situation in Hungary is not in conformity with Article 13§1.”
431. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, op. cit.**
432. **Conclusions XVIII-1, Hungary, p. 406, op. cit.**
433. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, op. cit.**
434. **Conclusions XVI-1, Ireland, p. 366:** “In the light of these explanations, the Committee considers that there is no guarantee of an effective right of appeal against unfavourable Regional Health Board decisions, in the absence of any real legal aid scheme. It considers that this situation is contrary to this provision of the Charter and should be rectified.”
435. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, op. cit.**
436. **Conclusions VII, Statement of Interpretation on Article 13§4, p. 77:** “In response to one government's observations regarding the category of persons covered by Article 13.4 and regarding the relevance of the principle of reciprocity to certain provisions of the Charter, the committee felt it necessary to state more completely its interpretation of the scope of this paragraph.
1. The committee noted first that the Charter was designed to be complementary to the European Convention on Human Rights (cf. Preamble). While the Convention covers all persons within the jurisdiction of a Contracting Party, the field of application of the Charter is limited to the nationals of the Contracting Parties: no other restriction is provided by the Charter. Neither instrument has any provisions for reciprocity, either general or specific.”
437. **Conclusions XVIII-1, Czech Republic, p. 240:** “The Committee notes that under Article 13§1 of the Charter, any person lawfully residing in the territory of another state party to the Charter or the Charter must be entitled to social assistance, including benefits offering a minimum income. The definition of “residence” is left to national legislation and a length of residence condition may be applied so long as it is not manifestly excessive (see *mutatis mutandis* Conclusions XVII-2, Poland, Article 14§1). In this case, the Committee notes that under the aforementioned rules, foreign nationals' eligibility for social assistance is subject to ten years' continuous presence in the country. It considers that this period is manifestly excessive and that the situation is not in compliance with Article 13§1.”

438. **Conclusions XIV-1, Greece, p. 378:** “As to the existence of any nationality condition for receiving the pension granted to uninsured persons over the age of sixty-five, the report states that the Ministry of Health issued clear instructions in 1990 that this benefit should be available to nationals of all Contracting Parties to the Charter who fulfilled the other conditions. In relation to assistance under Legislative Decree No. 57/1973, the report confirms that a circular was sent to all relevant authorities extending eligibility to all Contracting Party nationals resident in Greece.”
439. **Conclusions XVIII-1, Belgium, p. 88:** “The Committee notes that foreigners who are nationals of States party to the Charter and the Charter which are not covered by community law or which have not concluded reciprocity agreements with Belgium may not receive the GRAPA when they have inadequate resources, particularly because they are not entitled to a retirement or survivor's pension under the Belgian scheme. The Committee points out that any foreigner who is a national of a State Party to the Charter and Charter and is lawfully resident in Belgium must be treated on the same footing as nationals and receive the GRAPA when they satisfy the other conditions for it to be granted. The Committee therefore considers that the situation is discriminatory and that it is not in conformity with Article 13§1.”
440. **Conclusions XVIII-1, Germany, p. 319:** “The Committee considers that the information provided by the Government fails to demonstrate that foreign nationals are granted the assistance referred to in section 30 BSHG on an equal footing with German nationals because it has not established that the authorities do not apply different criteria according to nationality when examining claimants' personal circumstances. It therefore maintains its conclusion that the situation is not in conformity.”
441. **Conclusions XVII-1, Denmark, pp. 144-145:** “The right to continued assistance, including the right to protection against repatriation on the sole ground of being in need of social assistance, is not ensured on equal terms to nationals of all Contracting Parties.

[...]

The right to assistance allowance is conditional on the applicant having resided in the Kingdom of Denmark for a total of seven years within the last eight years. The condition is not applicable to EU or EEA nationals insofar as their entitlement may follow from Community law. Applicants who do not fulfil this condition will if they are in need be entitled to the starting allowance, which is paid at a significantly lower rate (see *infra*). Although the residence requirement in principle applies equally to Danish nationals and foreign nationals (except, where applicable, EU/EEA nationals), the Committee considers that the requirement in practice restricts access of foreign nationals to assistance to a much larger extent. It therefore amounts to indirect discrimination, which is not in conformity with the Charter.”

442. **Conclusions XIII-4, Statement of Interpretation on Article 13§1, pp. 54-57, *op. cit.***
443. **Conclusions XIV-1, Statement of Interpretation on Article 13, pp. 54-55:** “The Committee considers that the link between the two instruments resides in the area of repatriation only, otherwise the reference to the convention in the text of the Charter would be redundant because the social and medical assistance which must be granted to foreigners covered by Article 13 is set down by the Charter itself: in case of want, they are entitled, in the same way as nationals, to adequate social assistance and, in case of illness, to the care necessitated by their condition. As the Committee emphasised in Conclusions XIII-4, the scope of this obligation varies according to the category of foreigner:
- nationals of Contracting Parties who work regularly or reside lawfully within the territory of another Contracting Party have an individual right to social and medical assistance on the same basis as nationals under Article 13 para. 1;
  - as regards those who are lawfully within the territory of a Contracting Party without residing there, the adequate assistance which they may claim should take the form of at least an emergency aid enabling them to deal with an immediate state of need (shelter, food, urgent care and clothing), their presence being essentially temporary.

The scope of the reference to the 1953 Convention is, therefore, as follows: if a Contracting Party to the Charter repatriates nationals of other Contracting Parties who are lawfully within its territory without residing there on the ground that they are in need of assistance, it must respect the provisions of the 1953 Convention on repatriation which can be applied to them, i.e. Articles 7b and c, 8, 9 and 10.

As the Committee has stated in the general introduction to Conclusions XIII-4, nationals of other Contracting Parties who work regularly or reside legally within the territory of another Contracting Party cannot be repatriated on the sole ground that they are in need of assistance. As long as their legal residence or regular work continues, they enjoy equal treatment laid down in the Appendix. Where such persons are migrant workers, they are also protected by Article 19 para. 8, which would not permit expulsion on the ground of needing assistance.

444. **Conclusions XIV-1, Norway, p. 661:** "On the question of the assistance entitlements of non-nationals, the report states that foreigners who apply to enter Norway for the purpose of family reunion may, in some cases, be permitted to do so only where their family will support them financially. Such persons may not claim social assistance, and, if their family ceases to support them, their residence permit may be withdrawn. The Committee stresses that by virtue of the Appendix to the Charter, nationals of the other Contracting Parties who are lawfully resident or working regularly in Norway must be entitled to social and medical assistance on the same basis as nationals. The withdrawal of a residence permit in the circumstances described in the report would amount to repatriation on the sole ground that the person concerned is in need of assistance."

## Article 13§2

445. **Conclusions I, Statement of Interpretation on Article 13§2, p. 64, *op.cit.***
446. **Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 58-59, *op.cit.***
447. **Conclusions 2006, Bulgaria, p. 126:** "[The Committee] specifies that it would like to know whether the granting of social assistance is subject to holding an identity document and/or a residence document in the municipality paying the benefits. If so, the Committee asks whether measures have been taken to facilitate effective access by undocumented persons or persons of no fixed abode to social assistance benefits under the same conditions as any other Bulgarian citizen."
448. **Conclusions XVIII-1, Malta, pp. 528-529:** "The Committee has previously noted that the European Convention Act as amended by Act XXI of 2002 ensures that there is no discrimination in the enjoyment of political and social rights in Malta. The Act incorporates the European Convention on Human Rights (ECHR) into domestic law and includes a non-discrimination clause (Article 14).

The Committee considers that the incorporation of the European Convention on Human Rights (ECHR) into Maltese law, in particular Article 14 of the ECHR, effectively contributes to the implementation of Article 13§2 as regards rights protected by the ECHR. However the scope of Article 13§2 is wider as it prohibits discrimination both direct and indirect in relation to all civil, political, social and economic rights, including in relation to rights not guaranteed by the ECHR. It therefore seeks confirmation that discrimination on the grounds that a person is in receipt of social assistance is prohibited in relation to all rights."

449. **Conclusions XIII-4, Statement of Interpretation on Article 13§2, pp. 54-57, *op. cit.***

### Article 13§3

450. **Conclusions 2005, Statement of Interpretation on Article 14§1:** Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services concerns everybody lacking capabilities to cope, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

451. **Conclusions 2005, Statement of Interpretation on Article 14§1, *op. cit.***
452. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, *op. cit.***
453. **Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52:** “The Committee observes that the term “social assistance”, as used in Article 13 para. 1, should not be limited to the payment of a subsistence allowance. As it has already pointed out in the general introduction to Conclusions XIII-4 (p. 55), the ultimate aim in any system of social assistance must be to work towards a situation where assistance is no longer required. In other words, the system of social assistance must embrace an integrated strategy of alleviation of poverty and empowerment of individuals to regain their place as full members of society, through the means most appropriate to their personal circumstances, wishes and ability, and customary in the society where they live. In most cases, employment opportunities, together with vocational training or re-training, constitute the core element in any such strategy.
- Article 13 para. 3 expressly obliges Contracting Parties to ensure that adequate services are available to the public to offer advice and help to persons experiencing or threatened with deprivation. It is an essential complement to the obligation laid down under Article 13 para. 1. Thus, compliance with both provisions is contingent on the existence and effective operation of a social assistance system in each state which is based on the integrated approach outlined above.”
454. **Conclusions XVIII-1, Iceland, p. 447:** “[The Committee] recently examined the situation of Iceland with regard to Article 14§1 of the Charter (right to social services) and considered that the organisation of, access to and quality of Iceland’s general social services – which run the advice and support services referred to in Article 13§3 – were in conformity with Article 14§1 (Conclusions XVII-2, pp. 436-439).”
455. **Conclusions 2005, Statement of Interpretation on Article 14§1, *op. cit.***

## Article 13§4

456. **International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 8 September 2004, §32:** 32. The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.”
457. **Conclusions XIV-1, United Kingdom, p. 845:** “The Committee notes from the report of the United Kingdom that the persons covered by this provision, i.e. nationals of other Contracting Parties to the Charter who are lawfully within the state without residing there, are subject to the habitual residence test already criticised under Article 13 para. 1 if they seek social assistance. As the presence of such persons in the country is essentially temporary, the existence of this condition practically excludes them from seeking social assistance. The exception which is made for nationals of European Union or European Economic Area states who enjoy the status of "worker" under European Community law is not relevant here, as Article 13 para. 4 only covers persons who are lawfully present in the country, without either residing or regularly working there. Accordingly, the Committee finds that the United Kingdom fails to comply with this provision of the Charter.”
458. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, op. cit.**
459. **Conclusions XIV-1, Netherlands, p. 598:** “The Committee notes from the report of the Netherlands that nationals of Contracting Parties which are not bound by the 1953 Convention on Social and Medical Assistance, lawfully present in the country without residing there, only receive assistance under the National Assistance Act for "very urgent reasons". This refers to situations "of a life-threatening nature or which may result in permanent serious injury or permanent disability". The report adds that all Contracting Party nationals who are in the same position are subject to this rule. [...] the Committee considers that the situation in the Netherlands is too restrictive to comply with the Charter. Contracting Parties are not obliged to grant normal social assistance benefits to the persons covered by this provision, but they are required to provide temporary assistance, of an appropriate nature, where such persons are faced with an immediate and serious state of need.
- The Dutch authorities take the view that, as regards repatriation of non-nationals on the sole basis of being in need, the limitations imposed by the 1953 Convention only apply to foreigners who reside in the state, and not to the category of foreigners covered by Article 13 para. 4 of the Charter. The Committee cannot accept this reasoning and refers to its comments on the subject in the general introduction.”
460. **Conclusions XIV-1, Iceland, p. 417:** “The report states that non-resident foreigners who seek medical care are expected to pay for any services they receive. On the other hand, it also states that hospitals and doctors are obliged to treat the sick, irrespective of their ability to pay. The Committee recalls that this provision requires the Contracting Parties to ensure that if such persons are without resources, they will be provided with emergency care without charge.”
461. **Conclusions XIV-1, Statement of Interpretation on Article 13, p. 52, op. cit.**
462. **Conclusions XIII-4, Statement of Interpretation on Article 13, pp. 54-57, op. cit.**

## Article 14

### Article 14§1

463. **Conclusions 2005, Bulgaria, pp. 32-33** : “The right to benefit from social welfare services provided for by Article 14§1 requires Parties to set up a network of social services to help people to reach or maintain well-being and to overcome any problems of social adjustment. The Committee reviews the overall organisation and functioning of social services under Article 14§1.

Social services include in particular counselling, advice, rehabilitation and other forms of support from social workers, home help services (assistance in the running of the home, personal hygiene, social support, delivery of meals), residential care, and social emergency care (shelters). Issues such as childcare, childminding, domestic violence, family mediation, adoption, foster and residential childcare, services relating to child abuse, and services for the elderly are primarily covered by Articles 7§10, 16, 17, 23 and 27. Co-ordination measures to fight poverty and social exclusion are dealt with under Article 30 of the Revised European Social Charter, while social housing services and measures to combat homelessness are dealt with under Article 31 of the Revised European Social Charter.

The provision of social welfare services concerns everybody lacking capabilities to cope, in particular the vulnerable groups and individuals who have a social problem. Groups which are vulnerable – children, the family, the elderly, people with disabilities, young people with problems, young offenders, refugees, the homeless, alcohol and drug abusers, victims of domestic violence and former prisoners – should be able to avail themselves of social services in practice. Since many of these categories are also dealt with by more specific provisions of the Charter, under Article 14 the Committee reviews the overall availability of such services and refers to those other provisions for the detailed analysis of the services afforded. This overall review follows the criteria mentioned below as regards effective and equal access to, and quality of the services delivered as well as issues of rights of clients and participation.

The right to social services must be guaranteed in law and in practice. Effective and equal access to social services implies that:

- The general eligibility criterion regulating access to social services is the lack of personal capabilities and means to cope. The goal of welfare services is the well-being, the capability to become self-sufficient and the adjustment to the social environment of the individual;
- An individual right of access to counselling and advice from social services shall be guaranteed to everyone likely to need it. Access to other kind of services can be organised according to eligibility criteria, which shall be not too restricted and at any event ensure care in case of urgent need;
- The rights of the client shall be protected: any decision should be made in consultation with and not against the will of the client; remedies shall be available in terms of complaints and a right to appeal to an independent body in urgent cases of discrimination and violation against human dignity;
- Social services may be provided subject to fees, fixed or variable, but they must not be so high as to prevent the effective access of these services. For persons lacking adequate financial resources in the terms of Article 13§1 such services should be provided free of charge;
- The geographical distribution of these services shall be sufficiently wide;
- Recourse to these services must not interfere with people's right to privacy, including protection of personal data.

Social services must have resources matching their responsibilities and the changing needs of users. This implies that:

- staff shall be qualified and in sufficient numbers;
- decision-making shall be as close to users as possible;
- there must be mechanisms for supervision the adequacy of services, public as well as private.”

## Article 14§2

464. **Conclusions 2005, Bulgaria, pp. 37-38:** “Article 14§2 requires States to provide support for voluntary associations seeking to establish social welfare services. This does not imply a uniform model, and States may achieve this goal in different ways: they may promote the establishment of social services jointly run by public bodies, private concerns and voluntary associations, or may leave the provision of certain services entirely to the voluntary sector. The "individuals and voluntary or other organisations" referred to in paragraph 2 include the voluntary sector, private individuals, and private firms.

The Committee examines all forms of support and care mentioned under Article 14§1 as well as financial assistance or tax incentives for the same purpose. It also verifies that the Parties continue to ensure that services are accessible on an equal footing to all and are effective, in keeping with the criteria mentioned in Article 14§1. Specifically, Parties must ensure that public and private services are properly coordinated, and that efficiency does not suffer because of the number of providers involved. In order to control the quality of services and ensure the rights of the clients as well as the respect of human dignity and basic freedoms, effective preventive and reparative supervisory system is required.

Article 14§2 also requires States to encourage individuals and organisations to play a part in maintaining services. The Committee looks at action taken to strengthen dialogue with civil society in areas of welfare policy which affect the social welfare services. This includes action to promote representation of specific user-groups in bodies where the public authorities are also represented, and action to promote consultation of users on questions concerning organisation of the various social services and the aid they provide.”



## Article 15

465. **Conclusions 2003, Statement of Interpretation on Article 15 p. 10§5:** “In respect of Article 15 of the Revised Social Charter, the Committee considers that this provision reflects and advances the change in disability policy that has occurred over the last decade or more away from welfare and segregation and towards inclusion and choice. In light of this, the Committee emphasises the importance of the non-discrimination norm in the disability context and finds that this forms an integral part of Article 15 of the Charter. It is fortified in its views on Article 15 with reference to Article E on non-discrimination.”
466. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48 :** “As emphasised in the General Introduction to its Conclusions of 2003 (p. 10), the Committee views Article 15 of the Charter as both reflecting and advancing a profound shift of values in all European countries over the past decade away from treating them as objects of pity and towards respecting them as equal citizens – an approach that the Council of Europe contributed to promote, with the adoption by the Committee of Ministers of Recommendation (92) 6 of 1992 on a coherent policy for people with disabilities. The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”.
467. **Association interationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48 :** “It should be noted that Article 15 applies to all persons with disabilities regardless of the nature and origin of their disability and irrespective of their age.”

## Article 15§1

468. **Conclusions 2007, Statement of interpretation on Article 15§1, p. 12:** “Under Article 15§1, the Committee therefore considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. Legislation may consist of general anti-discrimination legislation, specific legislation concerning education, or a combination of the two.”
469. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §48 :** “The underlying vision of Article 15 is one of equal citizenship for persons with disabilities and, fittingly, the primary rights are those of “independence, social integration and participation in the life of the community”. Securing a right to education for children and others with disabilities plays an obviously important role in advancing these citizenship rights. This explains why education is now specifically mentioned in the revised Article 15 and why such an emphasis is placed on achieving that education “in the framework of general schemes, wherever possible.”
470. **Conclusions 2005, Cyprus, p. 96:** “The Committee considers that the explicit reference to “education” in Article 15§1 of the Charter brings important aspects of the right to education for children with disabilities within the remit of that sub-paragraph. Already under Article 15§1 of the 1961 Charter, the Committee had assessed general education schemes to test them for their level of inclusiveness and had held that States were required to make tangible progress towards the development of inclusive education systems. In so far as Article 15§1 of the Charter explicitly mentions “education”, the Committee considers necessary the existence of non-discrimination legislation as an important tool for the advancement of the inclusion of children with disabilities into general or mainstream educational schemes. Such legislation should, as a minimum, require a compelling justification for special or segregated educational systems and confer an effective remedy on those who are found to have been unlawfully excluded or segregated or otherwise denied an effective right to education. “

## Article 15§2

471. **Conclusions I, Statement of Interpretation on article 15§2, p. 208:** “The Committee interpreted this paragraph, which requires States to take adequate measures for the placing of disabled persons, as covering both physically and mentally handicapped persons.”
472. **Conclusions 2003, Slovenia p. 503:** “The Committee had previously decided under the 1961 Social Charter that non-discrimination legislation is required in order create genuine equality of opportunities in the open labour market. A fortiori, this reasoning also applies to Article 15§2 of the Revised Social Charter.”
473. **Conclusions 2007, Statement of Interpretation on article 15§2, §10, p. 12:** “There must be obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment and to keep in employment persons with disabilities, in particular persons who have become disabled while in their employment as a result of an industrial accident or occupational disease.”
474. **Conclusions XIV-2, Belgium, p. 152:** “Article 15§2 does not require the establishment of a quota system; on the other hand, if such a system is applied, the Committee reserves the right to examine its effectiveness.”
475. **Conclusions XVII-2, Czech Republic, pp. 145-146:** “The Committee recalls that people working in sheltered employment facilities where production is the main activity, must enjoy the usual benefits of labour law on the open labour market and in particular the right to fair remuneration and respect for trade union rights.”

## Article 15§3

476. **Conclusions 2005, Norway, p. 558:** “The Committee wishes to receive information on how cultural activities such as exhibitions, performances, etc are made accessible to persons with disabilities. It also wishes to be informed about the promotion, organisation and funding of cultural and sporting activities for the disabled.”
477. **Conclusions 2007, Slovenia, p. 1033 :**” Article 15§3 requires :
- the existence of comprehensive non-discrimination legislation covering both the public and private sphere in fields such as housing, transport, telecommunications and cultural and leisure activities and effective remedies for those who have been unlawfully treated;
  - the adoption of a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.”
478. **Conclusions 2003, Italy, p. 297:** “Article 15§3 requires that persons with disabilities and their representative organisations should be consulted in the design, and ongoing review of such positive action measures and that an appropriate forum should exist to enable this to happen.”
479. **Conclusions 2007, Finland, p.455 :** “ The Committee notes that pupils and students are provided with technical aids. It asks whether they are given free of charge and whether also other categories of persons with disabilities are entitled to free technical devices or if they must contribute towards their costs.”
480. **Conclusions 2005, Estonia, p.188:** “The report further states that libraries, day centres and boards for persons with disabilities provide access to the internet free of charge or for a reasonable price. The Committee asks for further information on measures to promote access to new information technology and telecommunications.”

481. **Conclusions 2003, Slovenia, p. 509:** “The *Use of Slovenian Sign Language Act* which will allow deaf persons to use Slovenian sign language as their first language and will accord it equality/parity with spoken Slovenian was due to come into force in 2002. The Committee finds this to be in conformity with the Charter”
482. **Conclusions 2003, Italy, p. 299:** “[The Committee] considers that all newly constructed or renovated public buildings and facilities, and buildings open to the public should be physically accessible. “
483. **Conclusions 2003, Italy, p. 299:**“Article 15§3 requires the needs of persons with disabilities to be taken into account in housing policies. The Committee wishes to know whether the needs of persons are taken into account in the construction of new housing, both public and private and whether financial assistance is available for the adaptation of existing housing.”



## Article 16

484. **Conclusions 2006, Statement of Interpretation on Article 16, p. 13:** “The Committee examines the means used by states to ensure the social, legal and economic protection of the various types of families in the population, especially single parent families, with a particular emphasis on vulnerable families, including Roma ones. States can choose such means freely, with the proviso that they must not jeopardise the effective protection of Roma families.”
485. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, Decision on admissibility of 10 October 2005, §9:** “The Committee considers that the fact that the right to housing is stipulated under Article 31 of the Charter, does not preclude a consideration of relevant housing issues arising under Article 16 which addresses housing in the context of securing the right of families to social, legal and economic protection. In this context and with respect to families, Article 16 focuses on the right of families to an adequate supply of housing, on the need to take into account their needs in framing and implementing housing policies and ensuring that existing housing be of an adequate standard and include essential services.”
486. **Conclusions XIII-1, Turkey, pp. 258-259:** “The Committee therefore asked: [...] 3. does the owner or occupier have administrative or judicial remedies before or after such action is taken.”
487. **Conclusions XIII-3, Turkey, pp. 381-385:** “The facts established in the instant case allowed the Commission on Human Rights to find *inter alia* that the state had failed to take measures in order to rehouse or to provide substantial financial assistance to villagers whose dwellings had been burned down.”
488. **Conclusions XVII-1, Turkey, p. 490:** “The report indicates that the General Directorate of Social Services and Child Protection (SHÇEK) is responsible for the establishment and the running of childcare, including inspection. Childcare is provided by Crèches and Daily Care Centres (for 0 to 6 years old) and Children’s Club (from 7 to 12 years of age). Childcare structures can be public or private. According to the report, there are 12 public crèches and daily care centres run by SHÇEK gathering for about 540 children. 500 additional children attend temporary structures established after the 1999 earthquake. Private registered institutions (1,179) offer their service to some 17,430 children. Childcare is free both in public and private structures for low income families benefiting about 542 children. The Committee observes from other sources that, in 1998, about 4.5% of the children aged 3 to 6 were attending pre-school education, or that in 1999/2000, the enrolment rates were 10% in pre-school education.
- Taking into consideration that, according to official sources there are about 3.2 million children aged 0-4 years, the Committee finds the situation not to be in conformity with the Charter because of the manifestly inadequate provision of childcare places.”
489. **Conclusions 2006, Statement of Interpretation on Article 16, p. 15 :** “To ensure that the views of families are taken into account when family policies are drawn up, the Committee asks whether all the civil organisations representing families are consulted.”
490. **Conclusions XVI-1, United Kingdom, p. 699:** “The report indicates that property law in Northern Ireland is not entirely free of sex discrimination. As detailed in the report of the Law Reform Advisory Committee for Northern Ireland (LRAC) on matrimonial property, the common law presumption of advancement discriminates against the male spouse, while the common law rule on housekeeping money discriminates against the female spouse. According to the report, the continued existence of these rules prevents the United Kingdom from ratifying Protocol No. 7 to the European Convention on Human Rights. The LRAC has recommended that both of these rules be abolished in order to bring the United Kingdom fully into line with international standards. The Committee considers that these recommendations should be acted on, as the United Kingdom is already required to ensure full sexual equality in matrimonial property under Article 16 of the Charter.”

491. **Conclusions 2006, Statement of Interpretation on Article 16, p. 14** : “The Committee examines the conditions governing access to family mediation services, which help settle disputes and ensure that future relations between parents and between them and their children are not unduly damaged, whether such services are free of charge and cover the whole country, and how effective they are.”
492. **Conclusions 2006, Statement of Interpretation on Article 16, p. 14** : “... the Committee examines whether women are offered protection, both in law (appropriate measures – including restraining orders - and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). The Committee assesses these issues in the light of the principles laid down in Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.”
493. **Conclusions 2006, Statement of Interpretation on Article 16, p. 14**: “the Committee examines whether women are offered protection, both in law (appropriate measures – including restraining orders - and punishments for perpetrators, fair compensation for the pecuniary and non-pecuniary damage sustained by victims, the possibility for victims – and associations acting on their behalf – to take their cases to court and special arrangements for the examination of victims in court) and in practice (recording and analysis of reliable data, training, particularly for police officers, and services to reduce the risk of violence and support and rehabilitate victims). The Committee assesses these issues in the light of the principles laid down in Recommendation Rec (2002)5 of the Committee of Ministers of the Council of Europe on the protection of women against violence and Parliamentary Assembly Recommendation 1681 (2004) on a campaign to combat domestic violence against women in Europe.”
494. **Conclusions 2006, Statement of Interpretation on Article 16, p. 14**: “To ensure consistency between the conclusions on Articles 12, 13 and 16, the Committee has decided to apply the "median equivalised income" indicator, as calculated by Eurostat in relation to the at-risk-of-poverty threshold, to Article 16 as well.”
495. **Conclusions 2006, Estonia, p. 215**: “The Committee considers that, to comply with Article 16 of the Charter, child allowance must represent an adequate income supplement representing a significant percentage of the monthly median equivalised net income.”

## Article 17

496. **Conclusions XV-2, Statement of Interpretation on Article 17, p. 26:** "Cycle XV-2 is the first time for a number of supervision cycles that the Committee has had the opportunity to examine Articles 7 para. 10 and 17 for all Contracting Parties. The Committee has therefore endeavoured to develop and clarify its interpretation of these provisions. It has done so in the light of the case-law developed under other international treaties as regards the protection of children and young persons, such as the UN Convention on the Rights of the Child and the European Convention on Human Rights. It has also taken into account developments in national legislation and practice as regards the protection of children.

As the scope of Articles 7 para. 10 and 17 is to a large extent overlapping, the Committee has decided, with respect to the Contracting Parties having accepted both provisions to deal with the following issues under Article 7 para. 10:

- Protection of children against moral dangers at work and outside work;
- Involvement of children in the sex industry and in begging.

The following issues will mainly be dealt with under Article 17:

- Establishment of parentage and adoption;
- Children and the law;
- Children in public care;
- Protection of children from ill-treatment and abuse.

The Committee has decided to deal with the various aspects of Article 17 relating to the protection of mothers under Article 16 with respect to Contracting Parties having accepted both provisions.

Preventative measures in the fields of drug addiction and alcoholism, will be considered mainly under Article 11."

497. **World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, Decision on the merits of 7 December 2004, §§61-63:** "61. The Committee sets out its reasoning on the substance of the issue below, but by way of preliminary remarks the Committee recalls that when it stated the interpretation to be given to Article 17 in 2001 (see *infra*), it was influenced by an emerging international consensus on the issue and notes that since this consensus is stronger. As regards its reference to the UN Convention on the Rights of the Child, the Committee recalls that this treaty is one of the most ratified treaties, and has been ratified by all member states of the Council of Europe including Ireland, and therefore it was entirely appropriate for it to have regard to it as well as the case law of the UN Committee on the Rights of the Child."

62. The Committee recalls its interpretation of Article 17 of the Charter in the General Introduction to Conclusions XV-2 (Vol. 1, 2001).

63. The Committee furthermore recalls that the Charter is a living instrument which must be interpreted in light of developments in the national law of member states of the Council of Europe as well as relevant international instruments. In its interpretation of Article 17 the Committee refers, in particular to, a. Article 19 of the United Nations Convention on the Rights of the Child as interpreted by the Committee on the Rights of the Child."

498. **International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 5 September 2003, §36:** "Article 17 of the Charter is further directly inspired by the United Nations Convention on the Rights of the Child. It protects in a general manner the right of children and young persons, including unaccompanied minors, to care and assistance. Yet, the Committee notes that a) medical assistance to the above target group in France is limited to situations that involve an immediate threat to life; b) children of illegal immigrants are only admitted to the medical assistance scheme after a certain time.

[...]

For these reasons, the Committee considers that the situation is not in conformity with Article 17."

499. **Conclusions XVII-2, Malta, p. 567:** “The Committee recalls that it previously considered the situation in Malta not to be in conformity with the Charter on the grounds that children born outside marriage are discriminated against in matters of succession, and inequalities also exist between children of a first and second marriage. As the report indicates that there has been no change to this situation, the Committee concludes that the situation in Malta is not in conformity with Article 17 of the Charter.”
500. **Conclusions 2003, France, p. 173:** “The Committee previously stated that it considered that the right of a child to know his origins was not adequately protected in certain situations in France; namely where the mother of a child has requested that her identity should be kept secret during the birth and declaration of the birth (“*accouchement sous X*”) and where parents who place their child in care request that their identity remain secret. New legislation on this issue entered into force in 2001; the law on Access to origins for adoptees and children under the guardianship of the State (“*L'accès aux origines des personnes adoptées et des pupilles de l'Etat*”). This legislation permits where the mother agrees, for her identity to be revealed. A new body, the National Council for Access to Personal Origins (Cnaop) has been created in order to facilitate this (to find the mother and seek her permission for her identity to be revealed). However, despite this, the Committee notes that the legislation creates no right for a child to know his origins in these circumstances, and should the mother refuse to allow her identity to be revealed the matter cannot be pursued further. The Committee asks whether the over-ruling of the mother’s decision might become possible in the future.”
501. **Conclusions 2003, France p. 173:** “The Committee had noted that the minimum age for marriage was 15 years for females and 18 years for males and had questioned the reasons for this difference. According to the report this situation is to be modified and the minimum age is to be 18 years (with certain exceptions) for both males and females.”
502. **Conclusions 2003, Statement of interpretation on Article 17, France, p. 174:** “The text of Article 17 of the Charter has been revised considerably, in some respects in order to reflect the approach of the Committee under this provision of the 1961 Charter (e.g. reference to mothers has been omitted and now includes legal protection as well as social and economic). Paragraph 1 a now contains a reference to the right to education and paragraph 2 guarantees the right to free primary and secondary education.

Therefore Article 17 as a whole requires states to establish and maintain an education system that is both accessible and effective. In assessing whether the system is effective the Committee will examine under Article 17:

- whether there is a functioning system of primary and secondary education;
- the number of children enrolled in school as a percentage of the number of children of the relevant age
- the number of schools
- class sizes
- the teacher pupil ratio
- whether there is a mechanism to monitor the quality of education delivered both in public and private schools and to ensure a high quality of teaching
- whether education is compulsory in general until the minimum age for admission to employment
- whether there is a fair geographical distribution of schools in particular between rural and urban areas
- whether, considering that equal access to education should be guaranteed for all children, particular attention is paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, children deprived of their liberty etc. and whether necessary special measures have been taken to ensure equal access to education for these children;



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- the cost of education, whether basic education is free of charge, whether there are hidden costs such as books uniforms, whether these are reasonable, and whether assistance is available to limit their impact
- The number of children dropping out, not completing compulsory education or failing compulsory education, rate of absenteeism, measures taken to encourage school attendance and to reduce dropping out.”

503. **Conclusions 2003, Slovenia, p. 511:** “The report states that primary schools may set up special units for Roma children or may include them in their regular units. According to additional information received from the Government special units are becoming increasingly rare, in the 1998/99 school year there were only seven such units (classrooms).

The Committee expresses concern over the existence of separate schooling facilities for Roma children and notes that this is contrary to the principles laid down in Recommendation No. R(2000)4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe. The Committee finds that the situation is not in conformity with the Charter in this respect.”

504. **Conclusions 2003, Bulgaria, p. 66:** “As regards children with disabilities (children with specific educational needs) and chronic ailments, the Committee notes that on the one hand the Public Education Act 1991 provides for the establishment of specialized schools and auxiliary units for the education of these children, while on the other hand the law on the Protection, Rehabilitation and Social Integration of Disabled Persons 1996 appears to favour integration. The Committee recalls that integrated education for children with disabilities and special needs should be the norm. It notes that according to the observations of the Bulgarian Helsinki Committee<sup>1</sup> very few children have so far been integrated and apparently only children with impaired hearing. There are, according to these observations, 138 special schools in Bulgaria (including socio-pedagogical boarding houses and reformatory boarding schools) which provided education for a total of 16 346 children, however only 618 children completed primary education and only 199 completed secondary education in 2000/01. Further according to the observations of the Bulgarian Helsinki Committee children with intellectual disabilities living in institutions under the responsibility of the Ministry of Labour and Social Policy receive virtually no education or training.

The Committee notes that the situation is not in conformity with the Charter, as children with disabilities are not guaranteed an effective right to education”.

505. **Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 29:** “The Committee considers that any restrictions or limitations of custodial rights of parents' should be based on criteria laid down in legislation and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family.

In this respect the Committee interprets Article 17 in the light of the case law developed under Article 8 of the European Convention on Human Rights. It asks states to provide information in their reports on the criteria for the restriction of custody or parental rights and on the extent of such restrictions.

The Committee furthermore holds that it should only be possible to take a child into custody in order to be placed outside his/her home if such a measure is based on adequate and reasonable criteria laid down in legislation. In order to assess whether national situations meet these requirements, the Committee needs information on the criteria for taking children into public care in order to place them in a foster home or an institution. It also needs information on such matters as the right of children to meet persons of importance for them, such as their parents and siblings during a placement period, etc.

However, in this context the Committee also underlines the positive obligation of the states concerned to take measures, such as foster family placement, to protect children against dangers to which they may be exposed by their families or close surroundings.”

506. **Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 30:** “Children taken into public care shall as far as possible be placed within such a distance to their natural family that they can maintain links with it, unless considered undesirable for the child (Resolution (77)33 on placement of children adopted by the Committee of Ministers on 3 November 1977 (point 2.11)). The Committee moreover considers that siblings should be kept together as far as possible (cf. judgment of the European Court of Human Rights in the case of *Olsson v. Sweden* of 24 March 1988).

The Committee finds that the aim of the states’ involvement in the upbringing and protection of children, must be to rehabilitate the biological family as far as this is possible, taking the child’s interests into consideration.

The Committee is of the opinion that long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. In this respect it refers to Article 20 of the UN Convention on the Rights of the Child and to Resolution (77)33 on placement of children adopted by the Committee of Ministers on 3 November 1977 (point 2.13). It considers that long term placement of very young children in residential units should be avoided as much as possible. The organisation of public care of children should reflect these priorities, the aim being to place a significant share of the children concerned in foster families or in institutions which resemble the family model.

In order to assess national situations, the Committee requires information on how many children have been taken into care, (how many are placed outside their home, how many are placed in foster families and how many are placed in institutions. The Committee also requires information on the selection of foster families, the training and monitoring of foster families and on the support that is given to them.

Children placed in institutions shall be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall be of such size as to resemble the home environment. The Committee requires Contracting Parties to provide detailed information permitting it to establish whether these criteria are fulfilled.”

507. **Conclusions 2005, Moldova, p. 474:** “The Committee recalls that, in order to comply with Article 17§1 of the Charter, children placed in institutions should be entitled to the highest possible degree of satisfaction of their developing emotional needs and their physical well-being as well as to special protection and assistance. In order to be considered as adequate institutions shall provide a life of human dignity for the children placed there and shall provide conditions promoting their growth, physically, mentally and socially. A unit in a child welfare institution shall resemble the home environment and shall not accommodate more than 10 children. The Committee asks the next report to provide information on the size of units in child welfare institutions.”

508. **Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31:** “Fundamental rights and freedoms such as right to integrity, privacy, secrecy of mail and telephone conversations, protection of property and contacts with persons close to the child shall be guaranteed in legislation also for children living in institutions. Only the restrictions necessary for the security, physical and mental health and development of the child or the health and security of the others are admissible. The conditions for any restrictions to the freedom of movement and for isolation as a disciplinary measure or punishment, should also be laid down in legislation and be limited to what is necessary for the purpose of the upbringing of the young person.”

509. **Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 31:** “The Committee moreover considers that national legislation must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. With respect to other restrictions for example for children living in institutions, there should be an opportunity for them or their tutor's to complain about the conditions in the institution.
- The Committee underlines that Contracting Parties must provide for an adequate supervision of the child welfare system and in particular of the institutions involved.”
510. **Conclusions 2005, Lithuania, p. 370:** “It asks whether there are specific procedures for children to complain about the care and treatment in institutions.”
511. **World Organisation against Torture (OMCT) v. Portugal, Complaint No. 34/2006, Decision on the merits of 5 December 2006, §§19-21:** “19. To comply with Article 17, states' domestic law must prohibit and penalise all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children.
20. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children.
21. Moreover, states must act with due diligence to ensure that such violence is eliminated in practice.”
512. **Conclusions XVII-2, Malta, p. 795:** “The Committee repeats its request for information on whether the Government intends to maintain the age of criminal responsibility which is set at 9 years. Meanwhile considering the age of criminal responsibility to be manifestly too low, the Committee finds that the situation is not in conformity with the Charter.”
513. **Conclusions XV-2, Statement of Interpretation on Article 17§1, p. 32:** “The Committee holds that the procedure with respect to children and young persons must be suitable for them and that they must be afforded the same procedural guarantees as adults, although proceedings involving minors should be conducted rapidly. Moreover, minors should as a rule not be held on remand in custody, and if so only for serious offences and for a short duration. Furthermore, minors should in such case be kept separate from adults.
- The Committee is moreover of the opinion that prison sentences should only exceptionally be administered to young offenders. It refers to the various alternative measures mentioned in Recommendation No. R(87)20 on social reactions to juvenile delinquency adopted by the Committee of Ministers on 17 September 1987. Prison sentences for young offenders should only be for a short duration and the length of the sentence must be laid down by a court. The Committee is furthermore of the view that young offenders should not serve their sentence together with adult prisoners.
- In conclusion, the Committee underlines the importance of enabling young offenders to maintain contact with their family, *inter alia* by placing them as close to the family as possible and by allowing them to receive correspondence and visits.”
514. **Conclusions XVII-2, Statement of interpretation on Article 17§1, Turkey p. 795:** “The Committee notes that no change to the situation concerning the minimum length of certain prison sentences, which it previously found excessive. The Committee finds that a minimum sentence of not less than 15 years for young offenders aged between 11 and 15 years and 20 years for young offenders aged between 16 and 18 years, who have committed a crime punishable by death is not in accordance with the principle that the imprisonment of minors should be for the shortest appropriate period of time and therefore concludes that the situation is not in conformity with Article 17 of the Charter.”

515. **Conclusions 2005, Bulgaria, pp. 42-43:** "The Committee recalls that States need to ensure a high quality of teaching and to ensure that there is equal access to education for all children, in particular vulnerable groups, including children in rural areas.

Article 53 of the Constitution states that everyone has the right to education. Section 7 of the Public Education Act 1991 (PEA) states that education is compulsory up to the age of 16 years.

Primary and secondary education in state and municipal schools is free of charge. First grade students and all students attending specialised schools, in the meaning of Section 27 of the PEA, shall receive textbooks free of charge. The Committee asks whether there are any measures to assist families in need to meet possible hidden costs in schools and costs for textbooks for grades 2 and above, especially as it notes from another source that there is no formal provision for schools to buy textbooks for needy children.

The Committee notes that students, after having completed basic education can, in certain circumstances, receive financial assistance or scholarships. It asks that the next report contain details on which criteria are applied for awarding financial assistance and scholarships and any information on the funds to be established by the Ministry of Education and Science for *inter alia* children suffering from chronic diseases, or with specific educational needs.

The Committee notes that in the school year 2001/2002 there were 372 primary schools (grade I-IV), 1,950 basic schools (grade I-VIII), 22 lower secondary schools and 160 upper secondary schools. The numbers for the school year 2002/2003 were respectively, 325, 1,901, 22 and 161. The total number of pupils in primary and lower secondary education in 2001/2002 was 708,092, with a total number of 52,389 teachers and in 2002/2003 there were 681,333 pupils with a total number of 48,783 teachers. The Committee notes that there has been an overall decline in the number of schools and the pupils attending. It asks the reasons behind this decline and whether this has prevented children, especially in rural areas, from attending school.

The Committee notes that from school year 2003/2004 preparative groups and classes in kindergartens and schools give children of *inter alia* Turkish ethnic origin the opportunity for obtaining learning skills and learning the Bulgarian language. It repeats its request for information on all other education measures available for children from minorities, in particular the Turkish-speaking minority. Finally, it asks for a copy of the document Draft Strategy on Ensuring Equal Integration to the Education System of Children and Students from Ethnic Groups to be included in the next report.

The Committee notes from another source that the net primary school enrolment rate in 1997-2000 was 93% for females and 95% for males. From the report, the Committee notes that 15,000 children, including children who occasionally go to school, dropped out during the school year 2002/2003. According to the report, truancy accounts for one third of the drop-outs. Most of the drop outs in basic education are children from Roma origin and socially disadvantaged families. According to another source the official drop out rate is 6-7%, which accounts for 45,000 children not in school. The Committee considers the drop out rate to be manifestly too high and hence the situation is not in conformity with the Charter.

It asks that the next report indicate all the results achieved through measures taken to ensure access to school and to prevent drop-out. In particular it asks whether the initiatives of the Ministry of Education and Science have lead to a reduction of the number of children dropping out and have ensured equal access to quality education for children of different ethnic groups. The Committee repeats its request for information on the level of truancy in compulsory schooling. It asks for an update on the number of drop outs, including data by ethnic groups.

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According to the report, the amended Public Education Act and the Regulation for the Implementation of this Act, which entered into force for the school year 2003/2004, outside of the reference period, provide for integrated education to children with special needs and/or with chronic diseases. Pursuant to the Amended Section 27(3) of said Regulation, children with special educational needs and/or with chronic diseases shall enter special schools when all other possibilities of receiving education in municipal schools have been exhausted. The Committee asks that the next report provide full texts of the abovementioned Acts.”



## Article 18

### Article 18§1

516. **Conclusions X-2, Austria, p. 137:** "In order to be better able to judge whether the present regulations are applied in a spirit of liberality, the Committee would like to find in the next Austrian report a reply to the following questions:

- How many work permit applications are lodged by young second-generation immigrants?
- How many such applications are rejected?

As regards access to employment for immigrant workers' spouses, allowed into Austria for the purpose of family reunification, about whom no information is provided in the report, either of a statistical nature or regarding the applicable rules, the Committee would like to find in the next report replies to the following questions:

- What are the rules governing access to employment in Austria for immigrant workers' spouses allowed into the country for the purpose of family reunification?
- How many work permit applications are lodged by such persons?
- How many such applications are rejected?"

517. **Conclusions XIII-1, Sweden, p. 204:** "Having noted that in the Government's opinion the liberalisation of regulations required under this provision should affect only those foreign workers already in the country, the Committee would like the Government to clarify its position in this respect. Whilst recalling that the provisions of Article 18 do not cover regulations governing the entry of foreigners to the territory of the Contracting Party, the Committee felt it could not accept an interpretation which would undermine its aim, which is "to ensure the effective exercise of the right to exercise a gainful activity in the territory of another Contracting Party," by restricting the benefits of liberalisation to only those nationals of other Contracting Parties already in the country.

The Committee considered it necessary to stress that regulations preventing nationals of another Contracting Party who were not in the country from applying for the grant of a work permit (other than a short term permit) owing to the combined effects of the various rules on entry, length of stay, residence and the exercise of a gainful activity would be not be in keeping with this provision of the Charter even where regulations governing foreign residents have been liberalised sufficiently in other respects."

518. **Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61:** "... This assessment requires each country concerned to provide the following information: .... 3. (a) What is the position of the beneficiary if he loses his job or ceases his activity during the period of the permit? ..."

519. **Conclusions XVII-2, Spain, p. 747:** "The Committee recalls that the assessment of the degree of liberality used in applying existing regulations is based on figures showing the granting and refusal rates for work permits for first-time as well as for renewal applications with respect to nationals of Contracting Parties. In the absence of such data in respect of the reference period there is no evidence that existing regulations with regard to the right to engage in a gainful occupation in Spain are applied in a spirit of liberality. The Committee wishes to be provided with the corresponding data in the next report."**Article 18§2**

520. **Conclusions IX-1, United Kingdom, p. 102:** "... Since matters relating to regulations concern more particularly Article 18.3, the Committee would like the next British report to contain, in the section relating to Article 18.2, updated information concerning solely the administrative formalities which must be satisfied by foreign workers who are nationals of other Contracting Parties and are already in the United Kingdom with a view to engaging in an occupation in that country (e.g. what formalities are necessary to obtain a work permit or its renewal, what dues must they pay on that occasion and what other formalities are they subject to?)."

521. **Conclusions XVII-2, Finland, p. 243:** "The Committee recalls that with regard to the formalities to be completed in connection with the application for the granting of a work permit, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin."
522. **Conclusions XVII-2, Germany, pp. 285-286:** "The Committee also asked for confirmation whether there are still two distinct procedures for the issuance of work and residence permits in place in Germany which it had previously held as not being in line with the requirement for simplification of procedures under Article 18§2 of the Charter."
523. **Conclusions XVII-2, Portugal, pp. 702-703:** "The Committee asked in its last conclusion on Article 18§2 what is the average time between submission of an application for a work permit and the issuing of that permit. The report states in this respect that the average time frame for the granting of both work/residence visa for employees as well as self-employed is two months. The Committee considers that this time frame complies with Article 18§2 of the Charter. However, it wishes to receive clarification as to whether this period includes the time necessary to obtain the prior advisory opinion of the Foreign and Frontiers Service as well as the approval of the Institute for the Development and Inspection of Working Conditions if needed."
524. **Conclusions XVII-2, Portugal, p. 703:** "... The Committee noted in its last conclusion on Article 18§2 that the sum to be paid for a permanent residence permit is high and asked for the Government's comments on how the payment of such sum is justified. The report does not contain information in this respect but merely stresses that the fees charged for visa and permits have remained the same since 1998. The Committee further recalls that it has previously held (Conclusions XV-2, p. 72, Austria) that it does not see any justification for charging a fee, even though modest, at the application stage and asks the Government to explain why it continues to make such a charge."

### Article 18§3

525. **Conclusions V, Germany, p. 119:** "The information on Article 18 paragraphs 1 to 3, contained in the 5th report of the Federal Republic of Germany did not make it possible for the committee to confirm its previous decision and this for the following reasons:
1. Though the German Government states, in its 5th report, that the ban on the recruitment of foreign workers does not apply to nationals of the states party to the Charter, the same would not appear to be the case in the Länder, where preferential treatment seems to be granted only to nationals of the European Communities.
  2. Assuming that migrant workers are entitled to a work permit, its validity would seem to be limited to one year and to one firm, a state of affairs which the committee, following its established practice, cannot consider as demonstrating a spirit of liberality.
  3. The geographical restrictions imposed on migrant workers in their choice of residence - which affect the exercise of their right to engage in a gainful occupation in the territory of a Contracting State other than their own - do not seem to meet the requirements of these paragraphs of Article 18 of the Charter."
526. **Conclusions II, Statement of Interpretation on Article 18§3, p. 60:** "With these considerations in mind, the Committee defined the interpretation of the relevant paragraphs in Article 18 as follows:
1. Any regulation which de jure or de facto restricts an authorisation to engage in a gainful occupation to a specific post for a specific employer cannot be regarded as satisfactory. To tie an employed person to an enterprise by the threat of being obliged to leave the host country if he loses that job, in fact constitutes an infringement of the freedom of the individual such that it cannot be regarded as evidence of "a spirit of liberality" or of liberal regulations. Moreover, economic or social reasons might justify restricting the employment of aliens to specific types of jobs in certain occupational and geographical sectors, but not the obligation to remain in the employment of a specific enterprise.



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2. "Liberal" regulations should normally make it possible for the foreign worker gradually to have access to activities other than those he was authorised to engage in when entering the host country, and to be perfectly free to do so after a certain period of residence or of activity in his occupation. In the Committee's view, this interpretation of the provisions of Article 18 could not, in any way, be regarded as prejudicing the provisions of the European Convention on Establishment, as laid down in the Appendix to the Charter.

3. The letter and spirit of Article 18 mean that the situation of national of States bound by the Charter should gradually become as far as possible like that of nationals."

**527. Conclusions XVII-2, Finland, p. 247:** "Consequences of job loss

In reply to the Committee's question, the report states that if a foreign employee loses his/her job during the validity of his work permit, he/she may seek a new job and use the same labour services as Finnish citizens. A holder of a sector-specific work permit may work for another employer in the sector specified in the permit. The report further states that an employee who has obtained a work permit for a certain employer may apply for renewal of the permit within the framework of his/her residence permit.

However, the report also states that the validity of a residence permit may not be extended only on the ground that the permit holder is seeking work. The Committee recalls that it has held in the past that in the event of loss of employment Article 18 of the Charter requires extension of the validity of the residence permit to provide sufficient time for a job to be found. It wishes the next report to provide information on what are the corresponding regulations under the new Aliens Act (301/2004).

The Committee reiterates its question whether a residence permit can be extended pending a court ruling on an appeal made by a foreign worker against his/her dismissal."

### Article 18§4

**528. Conclusions XI-1, The Netherlands, p. 155:** "The Committee noted from the Netherlands report that an interim Passport Act had come into force on 17 January 1988 and that it would apply until the approval of the Passport Bill, thereby providing a legislative basis for restrictions on the right of nationals to leave the country. Nine situations warranting restrictions on this right are provided for by the Act.

Eight of them concern cases of criminal delinquency, maintenance obligations, debts to the State, bankruptcy, military obligations and security, and are founded on the presumption that the person's departure from the country might permit the person concerned to evade his obligations or might jeopardise the security of the Netherlands or allied States (Section 7). The Committee held that these cases related to the public interest or to national security and were therefore not contrary to Article 18, paragraph 4."

**529. Conclusions 2005, Cyprus, p. 105:** "The Committee takes note of the information provided in the Cypriot report.

Article 13 paragraph 2 of the Constitution of the Republic of Cyprus stipulates that every person has the right to leave the territory of the Republic permanently or temporarily subject to reasonable restrictions imposed by law.

According to the report, nationals of the Republic of Cyprus may be prevented from leaving the country on the following grounds as stipulated, *inter alia*, under the Children's Act and the National Guard Laws:

- an arrest warrant or a court order are pending with respect to the person;
- the person is legally liable for the care and maintenance of a child or children under the age of sixteen years and wants to leave the country without the child or children in which case the Director of Social Welfare Services is under an obligation to prevent the person from leaving the country unless this person can provide evidence that the child or children are not likely to become dependent of public funds or be exposed to moral danger or neglect;
- the person has been called for military service unless a special license is granted by the Minister of Defence.

While the Committee finds that these are the kind of restrictions authorised by Article G of the Charter, it nevertheless asks for the regulatory criteria or basis for a rejection to leave the country in these cases. Furthermore, the Committee would like to know whether nationals of the Republic of Cyprus may be prevented from leaving the country on any other grounds than those mentioned in the report."



## Article 19

530. **Conclusions I, Statement of Interpretation on Article 19§1, p. 82:** "This paragraph is one of those provisions under Article 19 that apply both to the nationals of any given Contracting State who are located in the territory of another or who wish to go there and to any nationals of a state who are moving out of it or wish to do so for the same reasons. The Committee finds that, as a general rule, the governments that have accepted this paragraph appear to have taken appropriate measures for meeting its requirements but to have done so for the benefit of either one or the other of the two categories of persons, not for both categories at the same time."
531. **Conclusions III, Cyprus, p. 87:** "The Committee concluded that Cyprus did not satisfy the obligation under this provision of the Charter and expressed the view that more should be done by the government of this State to ensure that immigrants and emigrants to and from Cyprus have accurate, reliable information at their disposal concerning, for example, employment prospects and conditions, housing, education, health services, etc."
532. **Conclusions XIV-1, Greece, p. 366:** "This paragraph of the Charter requires Contracting Parties to take steps to prevent misleading propaganda relating to emigration and immigration. Propaganda is taken to mean information about employment and other prospects for a and conditions of work which could mislead migrant workers. The report makes no reference to any specific measures in this area. The Committee therefore again asks for the next report to include information on the measures taken to counter misleading propaganda relating to emigration and immigration (such as provisions for sanctions under the Criminal Code)."
533. **Conclusion XV-1, Austria, p. 59:** "The Committee is of the opinion that the fight against misleading propaganda is not entirely effective unless it includes measures to combat racism and xenophobia. These measures should target national populations and combat, *inter alia*, the spread of stereotypical views according to which migrants are likely to be violent criminals, given to drug abuse and prone to illness."
534. **Conclusions III, Cyprus, p. 88:** "While the Committee noted that , in Cyprus, all travellers, irrespective of nationality or profession, enjoy the same facilities as regards departure, travel, reception, health services etc, it nevertheless expressed the hope of receiving details of these facilities in the third Cyprus report, as well as statistics on the numbers of migrant workers entering and leaving Cyprus. In this connection, it felt it appropriate to emphasise that, except where the general measures taken to facilitate the departure, travel and reception of travellers are of an exceedingly high standard, the satisfaction of the obligation arising under this provision normally involves the taking of special measures for the benefit of migrant workers."
535. **Conclusions IV, Germany, p. 116:** "With regard to the reception of such workers and their families, the fourth German report only gives specific information with regard to placement and integration into the workplace; on other aspects of reception, the report only described the generally available advice and assistance services for migrant workers, and not how these services ensured appropriate reception of migrant workers and their families in overcoming problems (for example, of short-term accommodation, illness, shortage of money) at the time and point of arrival and immediately afterwards. Pending this information, the Committee was obliged to maintain its previous conclusion that the Federal Republic could only provisionally be held to fulfil this undertaking."
536. **Conclusions XIV-1, Belgium, p. 137:** "The Committee points out that the term "social services", as used in Article 19 para. 3, covers all public or private organisations which make life easier for migrant workers and their families, help them to adapt to their new environment and at the same time facilitate relations between migrant workers and any member their family who have remained in their country of origin. Co-operation therefore entails such public and/or private services working together."

537. **Conclusions XV-1, Finland, pp. 165-166:** “The Committee recalls that the previous Finnish report referred to co-operation in different forms between the social services (conferences, exchanges of information and statistics, etc.), and that closer co-operation existed with the social services of Nordic countries.

The Committee considers that this information is not sufficient to permit it to assess the situation and, in particular, to determine whether inter-service co-operation allows migrant workers to resolve any personal and family difficulties. Co-operation of this nature is useful, for example, where the migrant worker who has left their family in the country of origin fails to send money home or needs to be contacted for another family reason, or where the migrant worker has returned to his country but still has to receive unpaid wages or benefits, or needs to deal with any outstanding matters in the country of employment. The Committee therefore asks the Finnish authorities to confirm that in such situations there can be co-operation between the social services of the countries concerned.”

538. **Conclusions III, Italy, p. 92:** “While concluding provisionally that Italy continues to satisfy the obligation under paragraph 4 of Article 19, the Committee wished to learn whether or not any housing assistance measures in Italy, such as loans, housing allowances etc, were restricted to Italian nationals or in any way withheld from migrant workers in Italy. It would also like to learn whether steps have been taken to eliminate all levels of discrimination in practice against migrant workers in the fields covered by this paragraph of the Charter, of conditions of employment and work (including pay), training in the course of employment and promotion etc; and whether migrant workers, nationals of other Contracting Parties and resident in Italy, enjoy the rights provided for under Articles 1 to 17 of the Charter on a basis of equality with Italian nationals.”

539. **Conclusions I, Italy, Norway, Sweden, United Kingdom, p. 81:** “Examination of the first reports submitted by the Governments of Italy, Sweden, Norway and the United Kingdom respectively enabled the Committee to establish the fact that in these states there is no discrimination between national and foreign workers as regards employment or trade union membership. The Committee was thus able to conclude that, in principle, these states should be regarded as fulfilling the undertaking deriving from this paragraph. At the same time, the Committee expressed the hope that the British Government in its future reports might include useful information on the practical application of existing legislation in the United Kingdom designed to ensure that foreign workers should be treated as provided for in this paragraph.”

540. **Conclusions VII, United Kingdom, p. 103:** “The committee has already concluded in regard to Article 10, paragraph 1, that any exclusion from access to vocational training based on discrimination against foreign workers, nationals of Contracting Parties bound by the Charter, be it only a discrimination concerning a part of them, is incompatible with the Charter. The scope of paragraph 4 of Article 19 is, in accordance with the committee's case-law, wide enough to cover all vocational training and any exclusion therefore from access to such training is contrary to the Charter.”

541. **Conclusions XIII-3, Turkey, p. 418:** “As regards membership of trade union organisations and the enjoyment of the benefits of collective bargaining, the Committee took note that Article 5 of the Trade Union Act (No. 2721) prohibited aliens from becoming founding members of a trade union. It considered that membership of a trade union should also cover the right for foreign workers to become a founding member, in the same way as nationals. It considered therefore that the restriction contained in Turkish legislation was incompatible with this paragraph in so far as it applied to the nationals of Contracting Parties to the Charter. The Committee wished to be informed of any measure that the Turkish Government might take to remedy this situation.

In view of these restrictions as regards membership of trade union organisations, the Committee concluded that Turkey did not fulfil its undertaking under Article 19 para. 4 of the Charter.”

542. **Conclusions IV, Norway, p. 121:** “According to the report under consideration, the law discriminates indirectly between Norwegians and foreigners in respect of the purchase of real estate. To the extent that this discrimination affected access by foreigner to housing, it would be contrary to Article 19, paragraph 4.”

543. **Conclusions III, Italy, p. 92:** "While concluding provisionally that Italy continues to satisfy the obligation under paragraph 4 of Article 19, the Committee wished to learn whether or not any housing assistance measures in Italy, such as loans, housing allowances etc, were restricted to Italian nationals or in any way withheld from migrant workers in Italy."
544. **Conclusions II, Norway, p. 68:** "The second report of the Norwegian Government mentions a change in tax legislation, which came into force on 1 January 1970. Since the new legislation does not apply to the period covered by the report, the Committee need not take it into account and there is no reason not to confirm (see Conclusions I, pp. 85 and 216) that Norway fulfils its undertakings under paragraph 5. Nevertheless, more details would enable the Committee to judge whether the new provisions satisfy the rule of equality of taxation between workers, as laid down in the Charter; the Committee hoped to find them in the third Norwegian report."
545. **Conclusions VIII, p. 212:** "The concept of "dependent" persons should be understood, under this provision of the Charter, as being that of persons who depend, for their existence, on their family, in particular because of economic reason or, as the case may be, for such reasons as continuation of education without remuneration or of reasons of health."
546. **Conclusions XVI-1, Greece, p. 316:** "In reply to a question from the Committee the report states that Article 29§1 of the Act No. 2910/2001 on immigration explicitly stipulates that only contagious diseases listed in the World Health Organisation's health regulations can be an obstacle to the granting of an application for family reunification. The Committee considers that this condition is in conformity with Article 19§6."
547. **Conclusions XV-1, Finland, pp. 227-228:** "Although there were no cases in practice of refusal on health grounds, the Committee draws the attention of the Finnish authorities to the requirements of Article 19 para. 6. Refusals on these grounds should be restricted to specific illnesses which are so serious as to jeopardise public health. These illnesses are those subject to quarantine listed in the World Health Organisation's International Sanitary Regulation No. 2 of 25 May 1951, or other serious infectious or contagious illnesses such as tuberculosis or syphilis. The Committee also accepts that drug addiction or very serious psychological disorders may justify the refusal of family reunion, providing, however, that the authorities ascertain on a case-by-case basis that these illnesses or disorders are likely to threaten public order or security."
548. **Conclusions I, Germany, pp. 216-217:** "The Committee noted that residence permits are only granted to members of the family of migrant workers if the workers have been resident in the Federal Republic for at least three years. In those circumstances the Committee found that it was not in a position to decide whether or not the Federal Republic of Germany satisfies its undertaking under this paragraph and hoped to find additional information in the Federal Government's second biennial Report."
549. **Conclusions IV, Norway, p. 126:** "Despite having studied the fourth Norwegian report, the Committee did not find the information which it needed to conclude that Norway fulfilled the undertaking arising from paragraph 6 of Article 19.

Indeed, there seemed to be a certain contradiction between:

- the requirement that evidence be given of accommodation for a family, as a precondition for its admission to Norway on the one hand, and
- the absence of practical measures to assist migrant workers in finding suitable housing or solve the housing problem in general, on the other.

Accordingly, the Committee could only confirm its previous verdict that Norway did not fulfil its undertaking, despite the importance which seemed to be attached in Norway to the principle of uniting families."

550. **Conclusions XVII-1, Netherlands, p. 209:** "The Committee considers that the level of means required to bring in the family should not be so restrictive as to prevent any family reunion. It can be concluded from Dutch legislation and practice, that a migrant worker who receives welfare support is prevented from exercising the right to family reunion. The Committee observes that this restriction could have the effect of discouraging applications for family reunion in respect of dependents rather than facilitating the process as required by Article 19§6."
551. **Conclusions I, Italy, Norway, United Kingdom, p. 86:** "On examination of the reports submitted by the Governments of Italy, Norway and the United Kingdom, the Committee found that these states are fulfilling the undertaking deriving from Paragraph 7 of Article 19. These reports contain nothing to suggest the existence in those countries of any discrimination between nationals and aliens in the field covered by this paragraph."
552. **Conclusions I, Germany, p. 217:** "With respect to the first Report submitted by the Government of the Federal Republic of Germany, the Committee was bound to hold that the Report did not deal with the right of access to the courts - including legal aid - available to foreigners except in connection with contracts of employment. In view of the interpretation given above and of the general scope of Article 19, the Committee found that this information was not sufficient. In those circumstances it was unable to decide whether or not the Federal Republic of Germany was fulfilling its undertaking under this paragraph. It therefore hoped to receive additional information in the Federal Government's second biennial Report, especially about the right of access to the courts available to foreign workers in the other fields covered by article 19."
553. **Conclusions VI, Cyprus, p. 126:** "The committee was pleased to note that by the enactment of the Aliens and Immigration (Amending) Law 54/1976, Cyprus legislation had been brought in line with the Charter in that it prohibited the expulsion of migrant workers unless they endangered national security or offended against the public interest or morality. In these circumstances the committee was able to change its previous negative stand and conclude that Cyprus satisfied the requirements of this provision of the Charter."
554. **Conclusions V, Germany, p. 138:** "When examining the laws and regulations mentioned in the 5th German report, the committee noted that migrant workers in the Federal Republic of Germany who were found to have - or were suspected of having - certain diseases (epidemic diseases subject to notification or contagious venereal diseases) could be expelled if "special protective measures did not suffice, in such cases, to prevent the health of third parties from being endangered".

The German Government, explaining the reason for this measure, drew attention to the fact that protection of the health of third parties was, in all the above-mentioned cases, a "public health" measure and that the purpose, in this instance, was to avoid a threat to the "public interest", a concept appearing in Article 19, paragraph 8.

The committee could not accept such assimilation of quite distinct concepts. Article 19, paragraph 8, provided for exceptions to the prescribed rule only where the persons concerned "endangered national security or offended against public interest or morality"; the concept of a threat to "public health", which had not been added here as in the case of other provisions, was one which could not be considered in terms of the Social Charter as included in the concept of "public interest" and which, in any event, would not justify expulsion except in the case of a refusal to undergo appropriate treatment. That being so, the committee was bound to conclude that, in this regard, the Federal Republic of Germany was not fulfilling its undertaking, unless it was shown that the law and regulations concerned were not applicable to nationals of the other Contracting Parties."

555. **Conclusions V, Italy, pp. 138-139:** "The committee was informed, in the Italian Governments 5th report, of the existence of a new Act (No. 152 of 22 May 1975), Article 25 of which stipulates, *inter alia* as follows:

"Subject to the restrictions deriving from international conventions, foreigners who, when asked to do so by the public security authorities, are unable to produce proof of sufficient licit means of subsistence in Italy, may be expelled from the state in the conditions provided for in Article 150 (2) and (5) of the consolidated text (*testo unico*) of the PS Act approved by RD.No. 773 of 18 June 1931, subject to the provisions of Article 152 of the same text..."

As these provisions do not appear, at first sight, to be compatible with Article 19, paragraph 8 of the Charter unless the expression "subject to the restrictions deriving from international conventions" refers also to the Charter, the committee hopes to find in the 6th Italian report a reply to the question whether the Italian authorities regard the European Social Charter as being among the conventions referred to in the said Act. Pending this reply, the committee is obliged to make its previous decision provisional."

556. **Conclusions V, United Kingdom, p. 129-130:** "The committee considered, however, that Article 15 of the 1971 Immigration Act whereby no appeal could be made to an independent body against a decision to deport a worker, the national of another Contracting State lawfully resident in the United Kingdom, for political reasons, national security or relations between the United Kingdom and other countries, could not be regarded as consistent with Article 19, paragraph 8 of the Charter."

557. **Conclusions XVI-1, Netherlands, pp. 460-461:** "In reply to a question from the Committee, the Government states that the expulsion of a migrant worker entails the automatic expulsion of his family members where they have been admitted to Netherlands territory as a measure of family reunion.

The Committee considers that for the purposes of Article 19§8, even where the requirements for the expulsion of a migrant worker are met, the members of the worker's family who are in the territory of the receiving state should not be deported as consequence of the migrant worker's expulsion. The right to family reunion provided for in Article 19§6 must be regarded as conferring on each of its beneficiaries a personal right of residence distinct from the original right held by the migrant worker."

558. **Conclusions II, Cyprus, p. 198 :** "The Committee also expressed concern that a foreign worker who, during the four first years of his residence in Cyprus, lost the job for which he had been granted a work permit, was apparently obliged to leave Cyprus. Although this allowed employers to exert intolerable pressure on the migrant worker concerned, the Committee had to recognise that, in view of the interpretation given above, the situation was not incompatible with the Charter."

559. **Conclusions XIII-1, Greece, p. 212:** "The Committee noted that, according to the regulations concerning transfer of earnings and savings outside the territory that no limit is imposed as to the amount which may be transferred either during residence or upon departure and that the regulations apply equally to migrant workers permanently resident within the territory and Greek nationals.

[...]

The Committee concluded that Greece was in conformity with this provision of the Charter."

560. **Conclusions I, Norway, p. 87:** “The Committee noted that the first report submitted by the Government of Norway contains an indication that self-employed migrant workers there enjoy only the facilities provided under Paragraph 6 of Article 19. Apart from the Committee having been unable to judge, even as regards that paragraph, whether or not Norway is fulfilling the undertaking deriving there from (see above), the Committee was obliged to conclude that Norway did not fulfil the undertaking deriving from Paragraph 10 of this article. It considered, therefore, that the Norwegian Government should be recommended to adopt national regulations conforming to the requirements of this paragraph.”
561. **Conclusions 2002, France, p. 55-57:** “In general terms, the Committee stresses that the teaching of the national language of the host country is the main means of integrating migrant workers and their families into normal employment and society as a whole. It considers that Contracting Parties should facilitate the learning of the national language by (a) children of school age and (b) migrant workers themselves and members of their families who are no longer of school age.”
562. **Conclusions 2002, Italy, pp. 102-103:** “The Committee considers that the system described here is likely to promote and facilitate, as far as practicable, the teaching of migrant workers' mother tongues to their children. However, it asks for the next report to supply additional information on the number of children concerned, the number of languages taught, how such teaching is financed and whether a minimum number of children is required before such classes can be organised.”



## Article 20

563. **Conclusions 2002, Statement of Interpretation on Article 20, pp. 12-13:** "For States which have accepted both Article 1§2 and Article 20, the Committee examines under the later the general framework for guaranteeing equality between women and men (equal rights, specific protection measures, situation of women in employment and training schemes, measures to promote equal opportunities). As a result it does not deal specifically with discrimination based on sex under Article 1§2."

Since the right to equality under Article 20 covers remuneration, the Committee will no longer examine the national situation in this respect under Article 4§3 (right to equal pay). Consequently, States which have accepted both provisions, are no longer required to submit a report on the application of Article 4§3. States which have accepted Article 4§3 only will continue to submit a report on the application of this Article."

564. **Conclusions 2002, Italy, pp. 84-85:** "The report states that "the matters indicated do not fall within the scope of the provision under examination". The Committee points out that in as much as it concerns the implementation of equal treatment and equal opportunities, social security comes within the scope of Article 20 of the Charter. It draws the attention of the Italian authorities to the wording of the appendix to Article 20, according to which social security matters *may* be excluded from the scope of Article 20. It therefore considers that the Italian Government was entitled to make a declaration when ratifying the Charter to the effect that social security matters were excluded, but that it did not exercise this right."
565. **Conclusions XIII-5, Sweden, Article 1 of the Protocol, pp. 272-276:** "The Committee underlines that under Article 1 of the Protocol, the Parties are obliged to protect workers not only from direct discrimination on grounds of gender but also from the indirect discrimination that may result from the fact that the number of women or men is larger in a certain category of workers with less favourable conditions, such as part-time workers."
566. ***Syndicat national des professions du tourisme v. France, Complaint No. 6/1999, Decision on the merits of 10 October 2000, §25:*** "A difference in treatment between people in comparable situations constitutes discrimination in breach of the Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds."
567. **Conclusions XVI-1, Greece, Article 1§2, pp. 208-209:** "In its previous conclusion, the Committee found that the maximum quota of 20% applied to the admission of women to the police college under Act No. 2226/94 constituted direct discrimination based on sex is contrary to Article 1§2 of the Charter. [...] limiting the number of women eligible for police training could be justified under Article 31 of the Charter. The Committee then has to establish whether the restriction on the right to equal treatment is necessary in a democratic society to protect public interest or national security. Such a restriction might also be justified where sex is a decisive criterion due to the nature of the activities concerned or the conditions under which they are exercised. [...] The Committee notes that this situation results in women's exclusion from the majority (85%) of police duties, exhaustively listed in Act No. 2713/99. It finds nothing in this "argument" - a simple description of the nature of the duties - that adequately justifies the need to restrict these duties to men on the grounds permitted by the Charter. The Committee considers that arguments based on men's greater muscular capacity (the report also mentions quickness, endurance, courage and composure as being more characteristic of men than of women) and on the carrying and/or use of firearms (mentioned in the previous report) are not sufficient to show that excluding women really helps to achieve the outcome sought. "

568. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §52:** “The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the *Thlimmenos* case [*Thlimmenos c. Greece* [GC], n° 34369/97, CEDH 2000-IV, § 44)], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case:

*“The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”*

In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.

In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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.”

569. **European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, Decision on the merits of 7 December 2005, §20:** “Similarly, equal treatment requires a ban on all forms of indirect discrimination, which can 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” (*Autism-Europe v. France*, Complaint No. 13/2002, Decision on the merits of 4 November 2003, §52).“

570. **Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423:** “Article 1 of the Protocol affirms the right to equality of opportunity and equal treatment in the field of employment and occupation, without discrimination based on sex, which entails greater commitments than those set down under the terms of the Charter, in particular Articles 1 para. 2, 4 para. 3 and 8.

Acceptance of Article 1 of the Protocol entails the following obligations for States:

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

The Committee took account of all of these elements in order to evaluate the situation in law and in practice in the four areas specified at points a, b, c, and d of paragraph 1 of Article 1 of the Protocol.

The Committee requested that each state indicate explicitly whether or not it excluded from the scope of Article 1 of the Protocol social security matters as well as provisions concerning unemployment benefit, old age benefit and survivor's benefit.

The dynamic nature of this provision led the Committee to assess the situation existing at a given moment, taking into account the progress achieved and ongoing efforts.”

571. **Conclusions XV-2, Addendum, Slovak Republic, Article 1 of the Protocol, p. 235:** “By accepting this provision, states undertake to promulgate the rights concerned in legislation (Conclusions XIII-5, pp. 253-257). With respect to each of the above areas, the Committee considers that Slovak law sets out the right to equal treatment in very general terms only.”

572. **Conclusions XVII-2, Netherlands (Aruba), Article 1 of the Protocol, pp. 618-625:** “The Committee notes that Article 1 of the Protocol require states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact legislation explicitly imposing equal treatment in all aspects.”
573. **Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423, op cit.**
574. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 269-270 :** “[...] not only clauses in collective agreements but also clauses in employment contracts which are contrary to the principles laid down in Article 1 of the Protocol may be rendered null and void.”
575. **Conclusions XIII-3, Statement of Interpretation on Article 1 of the Protocol, pp. 422-423, op cit.**
576. **Conclusions 2004, Romania, p. 495:** “The Committee recalls that Article 20 of the Charter implies a modification of the burden of proof in favour of workers who believe that they have been the victims of a discriminatory measure. It therefore asks what the applicable rules are under the above-mentioned laws and what the practice of the courts is.”
577. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276: op. cit.**
578. **Syndicat SUD Travail et Affaires Sociales v. France, Complaint No. 24/2004, Decision on the merits of 8 November 2005, §34:** “The Committee notes that from the point of view of effective application of rules on protection against discrimination the purpose of rules on alleviation of the burden of proof is to enable courts to deal with discrimination in the light of the effects produced by a rule, act, or practice. The Committee observes that it is the administrative courts that are the competent courts in discrimination cases involving civil servants, as well as public servants without tenure and employees of ANPE. It also observes that the administrative courts apply an “inquisitorial procedure” in which issues of burden of proof may present themselves differently from in adversarial litigation. However, the Committee is forced to note that it is unable to see that for the categories of employees concerned in the present context French law contains statutory provisions geared to guarantee the alleviation of the burden of proof consistent with the requirements of Article 1§2 of the Charter. The Government has adduced no evidence or submitted no reference to any statutory text or case law to show that the situation in law is in accordance with the obligations incumbent on it pursuant to Article 1§2.”
579. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276: op. cit.**
580. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Protocol, pp. 272-276: op. cit..**
581. **Conclusions XVII-2, Finland, Article 1 of the Protocol, pp. 249-250:** “The Committee recalls that, to be in conformity with Article 1 of the Protocol, national law must ensure that sufficient compensation is provided for the victim of discrimination, that is to say through:
- reinstatement in or retention of employment in the event of unlawful or unfair dismissal, and compensation for any pecuniary damage suffered;
  - payment of compensation in proportion to the damage suffered, i.e. covering pecuniary and non-pecuniary damage, if the employee does not wish to return to his or her job or it is impossible for the employment relationship to continue;
  - the ending of discrimination and the award of compensation in proportion to the damage suffered in all other cases (see, in particular, Conclusions XIII-5, pp. 253-257; Conclusions XVI-1, p. 342).”

582. **Conclusions XVI-2, Germany, Article 4§3, p. 299:** “According to the Committee, whether the consequences resulting from reprisal dismissals are regulated by general or specific rules, it is essential that interest allowed as damages must compensate for any loss of earnings or damages resulting from unlawful dismissal. It notes that in the present case, due to its ceiling, the maximum level of compensation (*Abfindung*) does not necessarily cover this requirement.”
583. **Conclusions XVII-2, Finland, Article 1 of the Protocol, pp. 249-250, *op. cit.***
584. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, pp. 272-276 :** Text to be inserted
585. **Conclusions XVI-2, Greece, Article 1 of the Protocol, p. 338-341:** Insert
586. **Conclusions XVII-2, Netherlands (Aruba), Article of the Protocol, pp. 623-625:** Insert
587. **International Commission of Jurists (CIJ) v. Portugal, Complaint no 1/1998, Decision on the merits of 9 September 1999, §32:** “Finally, the Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact. In this regard, it considers that the satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised (see for example Conclusions XIII-3, pp. 283 and 286). It considers that the Labour Inspectorate has a decisive role to play in effectively implementing Article 7 of the Charter.”
588. **Conclusions XVII-2, Netherlands (Antilles and Aruba), Article 1 of the Protocol, pp. 618-625 :** “The report also states that Article 7 of the International Covenant on Economic, Social and Cultural Rights offers a basis for the courts to enforce women's and men's right to equal pay for work of equal value. It cites in support a Supreme Court decision of 7 May 1993. However, the Committee notes that the wording of Article 7 of the Covenant differs too much from the Charter (Article 4§3 – right to equal pay for work of equal value) to be considered adequate for the purposes of Article 1 of the Protocol.”
589. **Conclusions XVII-2, Greece, Article 1 of the Protocol, pp. 338-341:** “The Committee considers that gender mainstreaming, as recommended in particular by the Committee of Ministers of the Council of Europe, should form part of a strategy covering all aspects of the labour market, including remuneration, career development and occupational recognition, and extending to the education system. The Committee will consider progress made in this area when it next assesses the situation under Article 1 of the Protocol.”
590. **Conclusions XVII-2, Greece, Article 1 of the Protocol, pp. 338-341:** *op.cit.*
591. **Conclusions XIII-5, Statement of Interpretation on Article 1 of the Additional Protocol, pp. 272-276:** *op. cit*
592. **Conclusions 2002, Romania, p. 127:** “The Committee stresses the importance of adopting affirmative measures to reduce the differences between women and men and to achieve *de facto* equality between the sexes in accordance with Article 20 of the Charter. Considering that the fulfilment of this obligation is progressive by nature, and bearing in mind the situation which applies in practice to women in employment and education systems in Romania, the Committee will assess the conformity of the situation with the Charter in the light of the efforts made to attain this standard during the next reference period.”

## Article 21

593. **Conclusions XIII-3, Finland, p. 441:** "The Committee noted that the requirements of Article 2, workers' rights "within the undertaking" and the definition of an undertaking given in the section of the Appendix relating to Articles 2 and 3 (paragraph 3) entailed pursuit of financial gain and the power for the undertaking to determine its own market policy. It followed from the text that, in the public sector, only state-owned companies, or some of those companies, were obliged to allow workers the benefit of the right to information and consultation.
594. **Conclusions 2003, Romania, p. 420:** "The Committee asks whether all employees or their representatives have a legal capacity to trigger an administrative action against their employer and whether they have a subsequent right of appeal before a court."
595. **Conclusions 2005, Lithuania, p. 378:** "The Committee asks whether there are other kinds of sanctions and whether workers or their representatives are entitled to some kind of compensation in case of a violation."



## Article 22

596. **Conclusions 2005, Estonia, pp. 202-203:** "As the Committee has noted in its conclusion under Article 21 of the Charter, as far as health and safety are concerned, employees are represented by working environment councils or by working environment representatives depending on the size of the undertaking. In undertakings employing less than 10 people, employees are in direct contact with the employer.

[...]

The Committee considers that the situation in Estonia is in conformity with Article 22 of the Charter as far as employees' participation in the protection of health and safety is concerned."

597. **Conclusions 2003, Bulgaria, p. 75:** "The Committee notes that those employers who infringe their obligations under the above-mentioned provisions may face criminal sanctions.

It asks whether workers or their representatives have a right to lodge a complaint or file suit before competent courts where their rights have been infringed."

598. **Conclusions 2003, Slovenia, p. 526:** "The Committee notes that individual and collective dispute over the implementation of the right of workers to take part in the determination and improvement of their working conditions, work organisation and working environment as well as the protection of their health and safety may be brought before labour and social courts and ultimately before the Supreme Court of the Republic of Slovenia.

It further notes that employers who fail to comply with their obligations in this respect may be sanctioned by fines of no less than 250,000 Slovenian Tolars (1,084 €)."





## Article 23

599. **Conclusions XIII-3, Statement of Interpretation on Article 23, p. 455:** "Article 4 of the Protocol establishes a fundamental right: the right of elderly persons to social protection which responds to an increased need on account of the ageing of the population.

The novelty of this right, not just in relation to the Charter but to other existing international instruments, deserves special mention since it represents the first international norm specifically protecting elderly persons.

The measures envisaged by this provision, by their objectives as much as by the means of implementing them, point towards a new and progressive notion of what life should be for elderly persons, obliging the Parties to devise and carry out coherent actions in the different areas covered.

The dynamic character of Article 4 led the Committee to assess the existing situation at a given moment, taking into account the progress achieved and ongoing efforts."

600. **Conclusions XIII-5, Finland, p. 305:** "The Committee also asks for an assessment of the situation in Finland as regards the level and development of national expenditure for social protection and services for the elderly and their funding, and the accessibility of measures, including the number of elderly people benefiting from them."

601. **Conclusions 2003, France, p. 186:** "The Committee asks whether there exists non-discrimination legislation protecting elderly persons against discrimination on grounds of age."

602. **Conclusions 2003, France, p. 186:** "The Committee notes that elderly persons sometimes have reduced decision making powers or no such powers or capacity, it wishes therefore to know whether in these circumstances there exists a procedure for 'assisted decision making'"

603. **Conclusions 2003, France, p. 186:** "Although Article 23§1b only refers to the provision of *information* about services and facilities, the Committee considers paragraph 1b of Article 23 as presupposing the existence of services and facilities. It has decided to examine information not only relating to the provision of information about these services and facilities but about the services and facilities themselves under this provision as opposed to under Article 14 of the Charter.

The report provides information on home help services (*l'aide ménagère*), which are in France a legal social security benefit. They are provided by public and private bodies and financed by the *départements* and retirement insurance funds (the largest being the CNAVTS *Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés*) although a contribution may be payable by the recipient of the services. In 1999, there were 306,868 recipients of home help financed by the CNAVTS and in 2000 there were 61 000 beneficiaries of home help financed by the *départements*.

The Committee wishes to receive further information on the content of the services provided under the guise of home help (*aide ménagère*), as it appears that it includes day care provided in special centres, and further information on the fees payable by the user.

It also asks for further information on specialised day care provision for persons with dementia and related illnesses and on services such as information, training and respite care for families caring for elderly persons, in particular highly dependent persons. The Committee wishes to know whether financial assistance (carer's allowance) is available for persons caring for an elderly person."

604. **Conclusions 2005, France, p. 248:** “The Committee further notes that old age pension benefits in France are index linked by taking into account inflation and the purchasing power of the pension benefit.”

605. **Conclusions 2005, Slovenia, p. 659:** “The report specifies that the so-called “sheltered homes” currently appear to be the most popular new form of housing for the elderly. They are funded by public-private partnership ventures and some entirely by private investors. The report further states that legislation is currently under consideration regulating the availability and technical standards for sheltered homes. The Committee wishes to receive further information on the adoption of this legislation in the next report and in particular on the minimum standards for the services and care provided. It also wishes to know whether the observation of these standards is subject to control by an independent inspection mechanism. According to the report, the majority of elderly persons in Slovenia live in private (mostly owner occupied) dwellings. In reply to the Committee’s question, the report states that the *National Housing Programme* and future programmes of institutions such as the National Housing Fund, the Municipal Housing Funds and the Real Estate Fund are or will be paying special attention to the development of financial instruments to enable the elderly to obtain loans and grants to adapt their dwellings to their needs.

The report also states that the concept of “lifetime adaptable housing” has been given consideration by universities and research institutions but has only partially been implemented in practice. The Committee wishes to receive information on the extent of practical implementation of this concept in the next report. “

606. **Conclusions 2003, Slovenia, p. 530:**” According to the report the National Health Care Programme – Health for All – pays special attention to the further development of domiciliary nursing services and community health care. It further provides for the development of palliative care services, which currently are only provided by NGOs. The Committee wishes to receive further information on the development of these services.

Domiciliary nursing/health care services are available and are provided through the basic health care system. They include both treatment and health education. The Committee wishes to receive in the next report information on:

- the proportion of the cost of medicines to be born by elderly persons,
- health care programmes and services (in particular primary health care services) specifically aimed at the elderly;
- guidelines on health care for elderly persons if any;
- mental health programmes for persons with dementia and related illnesses;

*Institutional care*

*Old Peoples Homes* offer *inter alia* institutional care for elderly persons. They may be run by a public service body alternatively they may be run by licensed private bodies. Two types of institutional care exist; general and special. Special institutional care is for adults with disabilities.

In 1996, there were 10,763 places in institutions for elderly persons, in 2000 there were 11,651 places in 58 institutions. There is still however, according to the report, a shortage of places and regional disparities in the provision of places. The aim under *the Programme for the Protection of Elderly Persons in the Area of Social Protection for the period up to 2005* is to provide sufficient places for 4.5% of the elderly population (those over 65 years of age). This will necessitate the provision of an additional 3,800 places. In 2000 seven new licences were granted for the operation of new homes. The Committee wishes to be kept informed of all developments in this area.

According to the report most residents in *Old Peoples Homes* have health problems and come directly from hospitals.

Regulations require *Old Peoples Homes* to establish a board and council of residents; the board must contain a representative of the residents. A book of complaints must always be available, residents may also complain to the Ministry of Labour, Family and Social Affairs or to the Ministry of Health.

No information was provided in the report on the inspection system for Old People's Homes, the Committee considers that any inspection system should be independent of the entity that establishes or manages the residential facility and asks whether steps are envisaged to create an independent inspection mechanism or whether such a system exists.

It further wishes to receive information on the following topics:

- requirements of staff qualifications and training and wage levels;
- guidelines on the care of persons suffering from dementia or related illnesses;
- policies on the right of persons to participate in the organisation of the life of the institution;
- can persons be compulsorily placed in such institutions? What is the procedure?
- guidelines on the use of physical restraints in institutions;
- guidelines on the social and cultural amenities to be provided in institutions."

607. **Conclusions 2003, France, p. 189:**" The Committee considers that any inspection system should be independent of the entity that establishes or manages the residential facility and asks whether steps are envisaged to create an independent inspection mechanism to examine in particular, the quality of care.

The Committee wishes to receive information on the following topics:

- requirements of staff qualifications, training and wage levels;
- can persons be compulsorily placed in such institutions? What is the procedure?
- guidelines on the social and cultural amenities to be provided in institutions;
- how the rights to personal dignity and privacy are guaranteed in institutional facilities.

Complaints about services and care

The Committee wishes to receive further information on the procedures for complaining about the availability of services and care and/or the standard of the service, care or treatment in both residential and non- residential facilities."

608. **Conclusions 2003, Slovenia, p. 530, *op. cit.***
609. **Conclusions 2005, Slovenia, p. 659, *op. cit.***
610. **Conclusions 2005, Slovenia, p. 659, *op. cit.***
611. **Conclusions 2003, Slovenia, p. 530, *op. cit.***



## Article 24

612. **Conclusions 2003, Statement of Interpretation on Article 24:** "Article 24 of the Charter obliges states to establish regulations with respect to termination of employment for all workers who have signed an employment contract. To assess whether the regulations applied in cases of termination of employment are in conformity with Article 24, the Committee's examination will be based on:

- the validity of the grounds for dismissal under the general rules on termination of employment and increased protection against dismissal based on certain grounds (Article 24a and the Appendix to Article 24);
- penalties and compensation in cases of unfair dismissal and the status of the body empowered to rule on such cases (Article 24 b).

The Committee recalls that a series of Charter and Charter provisions require increased protection against termination of employment on certain grounds:

- Articles 1§2, 4§3 and 20: discrimination
- Article 5: trade union activity
- Article 6§4: strike participation
- Article 8§2: maternity
- Article 15: disability
- Article 27: family responsibilities
- Article 28: worker representation.

Most of these grounds are also listed in the Appendix to Article 24 as non-valid reasons for termination of employment. However, the Committee will continue to consider national situations' conformity with the Charter with regard to these reasons for dismissal in connection with the relevant provisions. Its examination of the increased protection against termination of employment for reasons stipulated in the Appendix to Article 24 will thus be confined to ones not covered elsewhere in the Charter, namely "filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" and "temporary absence from work due to illness or injury".

The Committee considers that national legislation should include explicit safeguards against termination of employment for "the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities" (the Appendix as it relates to Article 24). Indeed, safeguarding persons who resort to the courts or other competent authorities to enforce their rights against reprisals, particularly in the form of dismissal, is essential in any situation in which a worker alleges a violation of the law (see *mutatis mutandis* Articles 1§2 and 4§3). In the absence of any explicit statutory ban, states must be able to show how national legislation conforms to the requirements of the Charter."

613. **Conclusions 2003, Italy, pp. 318-321:** "To enable it to decide whether the reasons the Italian courts accept as justifying termination of employment correspond to the valid reasons required by Article 24 of the Charter, the Committee asks for information in the next report on judgments and decisions establishing relevant case-law (question A of the Form for reports).

The Committee recalls that under the Appendix to Article 24 of the Charter only workers engaged for a specified period of time or a specified task, undergoing a period of probation or engaged on a casual basis may be excluded from protection against termination of employment.

[...]

It considers that the non-application in Italian law of the protection against redundancy for household employees, professional athletes and employees over the age of 60 obviously goes beyond the provisions of the appendix. It also considers that the exclusion of employees from protection against redundancy during a probationary period violates Article 24 as the six-month probationary period does not depend on the qualifications of the employees.

[...]

The Committee has found no trace in Italian legislation of a formal ban on reprisal dismissals. It therefore asks whether the Italian courts consider employees' dismissal following proceedings to enforce their rights as unjustified termination of employment and if so what the consequences are."

614. **Conclusions 2005, Cyprus, pp. 107-111:** “In order to assess the conformity of the ground relating to retirement age, the Committee asks the next report to provide the following information:

- is it for contracts of employment, collective agreements and/or legislation to fix the retirement age mentioned by this provision?
- is the employee automatically retired once he or she has reached the retirement age? If not, are there additional conditions to fulfil or specific procedure to follow?”

[...]

“Employees who have not completed a continuous period of 26 weeks of employment with their employer are not entitled to any compensation in the event of unfair dismissal. The Committee recalls that it has considered that the exclusion of employees from protection against dismissal during a six months period violates Article 24. Taking into consideration that this exclusion is provided for regardless of the employee’s qualifications, the Committee finds the six months period manifestly unreasonable (Conclusions 2003, Italy, pp. 318-323). The Committee notes that Cypriot law excludes from protection against dismissal employees who have not completed a continuous period of 26 weeks with their employer. Taking into consideration that this exclusion is provided for regardless of the employee’s qualifications, it finds the 26 weeks period manifestly unreasonable and considers that the situation is not in conformity with Article 24 of the Charter.”

615. **Conclusions 2003, Italy, pp. 318-321, *op.cit.***

616. **Conclusions 2005, Estonia, pp. 205-210:** “Since Article 24 of the Charter applies only to persons working under a contract of employment, the Committee will not consider the situation of officials “elected or appointed to an office or the staff of an administrative agency” within the meaning of Section 6 of the Public Service Act.”

617. **Conclusions 2007, Statement of interpretation on Article 24, General Introduction :** “Dismissal on grounds of age will not constitute a valid reason for termination of employment except in accordance with a valid retirement age justified by the operational requirements of the undertaking, establishment or service.

States should take adequate measures to ensure protection for all workers against dismissal on grounds of age.”

618. **Conclusions 2003, Bulgaria, p. 76:** “As concerns dismissal in case of injury:

- is immediate dismissal for reasons of permanent injury permitted regardless of the origin of the injury? In particular, may this occur in cases of injuries sustained in the workplace or in cases of occupational diseases?
- do employers pay compensation for termination in cases of immediate dismissal for reasons of permanent injury?

if the permanent injury allows the worker to carry out light work, is the employer obliged to offer a different placement ? If so, if the employer is unable to do this, what alternatives may be envisaged?

[...]

The Appendix to Article 24 prohibits illness as a valid ground for termination of employment. The Committee notes, however, that under Bulgarian law, employee illness is a valid reason for termination of employment if it is covered by a ministerial regulation and has been authorised by the Labour Inspectorate (see above, Section 333 of the Labour Code) In order to decide whether the situation is in accordance with the appendix to Article 24, the Committee asks what criteria the Labour Inspectorate takes into account when deciding whether or not to approve dismissal on health grounds and whether the victims of employment injuries or illnesses enjoy special protection.

[...]

### 335 Article 24

The Committee wishes to emphasise that the right of appeal to an independent body, stipulated in Article 24 of the Charter, implies that this body is empowered to examine at the very least the facts underlying economic measures.

[...]

The Committee considers with regard to Article 24 of the Charter that when a dismissal is ruled to be null and void and an employee's reinstatement is ordered, or the employment relationship is held to have been uninterrupted, such decisions must at a minimum be accompanied by an entitlement to receive the wage that would have been payable between the date of the dismissal and that of the court decision or effective reinstatement. The Committee therefore considers that in Bulgaria, the maximum compensatory payment of six months' wages cannot be considered as adequate with respect to Article 24."

619. **Conclusions 2003, France, p. 191:** "The Committee asks whether legislation and case law is limited when considering the concept of economic redundancy, merely to take account of difficulties experienced by the undertaking or whether it also includes consideration of other strategic company practices."
620. **Conclusions 2005, Norway, pp. 572-575:** "As to temporary absence from work due to illness or injury, section 64 of the WEA protects employees from dismissal for the first six months following a period of incapacity and the first twelve months if the employee has been employed by the company for five consecutive years or more. If the incapacity is the result of an employment injury or occupational disease, dismissal may not be justified by absence for illness for twelve months following the period of incapacity. The Committee considers that the situation in Norway is in conformity with Article 24 in this respect."
621. **Conclusions 2003, Statement of Interpretation on Article 24, *op.cit.***
622. **Conclusions 2005, Estonia, pp. 205-210, *op.cit.***
623. **Conclusions 2005, Norway, pp. 572-575, *op.cit.***
624. **Conclusions 2003, France, p. 191, *op.cit.***
625. **Conclusions 2003, Bulgaria, p. 78, *op.cit.***
626. **Conclusions 2005, Norway, pp. 572-575, *op.cit.***
627. **Conclusions 2003, Bulgaria, p. 78, *op.cit.***





## Article 25

628. **Conclusions 2003, France, p. 199:** “Article 25 of the Charter guarantees individuals the right to protection of their claims in the event of the insolvency of their employer. States having accepted this provision benefit from a margin of appreciation as to the form of protection of workers’ claims and so Article 25 does not require the existence of a specific guarantee institution. However, the Committee wishes to emphasise that the protection afforded, whatever its form, must be adequate and effective, also in situations where the assets of an enterprise are insufficient to cover salaries owed to workers. Moreover, the protection should also apply in situations where the employer’s assets are recognised as insufficient to justify the opening of formal insolvency proceedings.”
629. **Conclusions 2003, Bulgaria, p. 83:** “The Committee notes that workers’ claims arising from the employment relationship are ranked fourth after mortgage obligations, foreclosure on property and bankruptcy costs. The Committee does not consider that the privilege system in this form has been shown to amount to effective protection equivalent to a guarantee institution and the situation is therefore not in conformity with Article 25 of the Charter.”
630. **Conclusions 2003, Sweden, p. 632:** “However, it wishes to know what is the normal or average duration of the period from a claim is lodged until the worker is paid. It also requests an estimate of the overall proportion of workers’ claims which are satisfied by the wage guarantee and/or the privilege system.”
631. **Conclusions 2005, Estonia, pp. 211-212:** “The Committee notes that the regulation governing the procedure for disbursements from the Guarantee Fund was valid during the reference period but has been invalid since 31 December 2002. The claims of the employees in the event of insolvency were guaranteed by the Guarantee Fund, financed as part of the national budget. Employees would be paid wages, holiday pay and compensation for mandatory health insurance in the amount of up to three times the employee’s average monthly wages, not exceeding three times the Estonian average monthly wages.

[...]

Pending receipt of the information requested, the Committee concludes that the situation in Estonia is in conformity with Article 25 of the Charter.”



## Article 26

### Article 26§1

632. **Conclusions 2005, Statement of Interpretation on Article 26§1:** “As a preliminary observation, the Committee notes that sexual harassment qualifies as a breach of equal treatment manifested mainly by an insistent preferential or retaliatory conduct of a sexual nature, directed towards one or more persons which may harm their dignity or their career”.
633. **Conclusions 2005, Statement of Interpretation on Article 26§1:** “The Committee considers that there is no need for a state's legislation to make express reference to harassment where that state's law encompassed measures making it possible to afford employees effective protection against the various forms of discrimination”.
634. **Conclusions 2003, Italy, p. 324:** “The Committee asks whether an employer can be held liable towards persons working for him in a capacity other than as an employee (such as independent contractors, self-employed, etc.) who have suffered sexual harassment from employees under his responsibility or persons working at premises under his responsibility and whether the obligation and liability of the employer towards workers (employees or otherwise) extend to sexual harassment suffered by persons not employed by him, such as customers, visitors, clients, guests, etc”.
635. **Conclusions 2005, Moldova, pp. 493-494:** “The Committee notes that there are no provisions under civil or administrative law under which victims of sexual harassment may sue their employer or colleagues and seek compensation for material and moral damages before civil or administrative courts or seek reinstatement in the event of unlawful dismissal in the context of sexual harassment cases”.
636. **Conclusions 2005, Lithuania, p. 390:** “The Committee wishes to receive information on the scale of the damages available in order to assess whether they may be regarded as sufficiently reparatory for the victim and a sufficient deterrent for the employer”.
637. **Conclusions 2003, Slovenia, p. 537:** “ From the procedural standpoint, effective protection of employees requires somewhat of a shift in the burden of proof, making it possible for a court to find in favour of the victim on the basis of sufficient prima facie evidence and the personal conviction of the judge or judges”.

### Article 26§2

638. **Conclusions 2005, Statement of Interpretation on Article 26§2:** “Article 26§2 of the Charter is the first international provision to establish a fundamental right to protection of human dignity against harassment creating a hostile working environment related to a specific characteristic of a person. Parties are required to take all necessary preventive and reparatory measures to protect individual workers against recurrent reprehensible or distinctly negative and offensive actions directed against them in the workplace or in relation to their work, since these actions constitute a humiliating behaviour”.
639. **Conclusions 2003, Slovenia, p. 539:** “The Committee recalls that States Parties to the Charter having accepted Article 26§2 shall ensure an adequate legal protection of employees against moral harassment at work. This protection shall include the right to challenge the offensive behaviour before an independent body, the right to obtain adequate compensation and the right not to be discriminated for having pursued the respect of these rights”.



## Article 27

### Article 27§1

640. **Conclusions 2005, Statement of Interpretation on Article 27§1a, Estonia, p. 213:** “The Committee recalls that the aim of Article 27§1a of the Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training.”
641. **Conclusions 2003, Sweden, p. 637:** “The Committee observes that the aim of Article 27§1 of the Charter is to provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that the disadvantage of such people lies within the very nature of family responsibilities, which exclude people not only from an employment relation but, what is most important, from professional life; they often do not have time to monitor labour market developments and take measures in order to stay competitive on it. To be able to return to professional life, they need special assistance in terms of vocational guidance and training.
- On the other hand however, if the standard employment services (those available to everyone) are well developed, than the lack of extra services for people with family responsibilities cannot be regarded as a human right violation. Since under Articles 10§3 and 10§4 the Committee expressed no objections as to the level of Swedish standard training and employment services, it raises no concern over the quality of vocational guidance and training offered to people with family responsibilities.”
642. **Conclusions 2005, Statement of Interpretation on Article 27§1b, Estonia, p. 213:** “The Committee recalls that the aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment.”
643. **Conclusions 2005, Lithuania, p. 397:** “It further notes that pursuant to Article 46 of the Act on Safety and Health at Work, upon agreement of the employee and the employer part-time work may be agreed to. If requested by *inter alia* a pregnant woman, a nursing mother, a woman or single parent raising a child (children) under 14 years of age or a disabled child under 16 years of age, or a person nursing a sick family member, part-time work schedule must be agreed to. The Committee notes that there is no obligation to agree to part-time work for a father who is not single. The Committee considers this to constitute discrimination and can therefore, not be considered to be in conformity with Article 27§1 of the Charter combined with Article E.”
644. **Conclusions 2005, Statement of Interpretation on Article 27§1c, Estonia, p. 215:** “The Committee recalls that the aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities.”
645. **Conclusions 2005, Norway, p. 578:** “The Committee asks information on whether Norwegian legislation provides for arrangements enabling parents to reduce or cease their professional activity because of serious illness of a child. “

## Article 27§2

## Article 27§3

646. **Conclusions 2003, Statement of Interpretation on Article 27§3, Bulgaria, p. 89:** "According to the Appendix to the Revised European Social Charter, the notion of "family responsibilities" is to be understood as obligations in relation to dependent children and also other members of the immediate family who need care and support. The purpose of Article 27§3 is to prevent these obligations from restricting preparation for and access to working life, exercise of an occupation and career advancement."
647. **Conclusions 2005, Estonia, p. 217:** "The Committee recalls that Article 27§3 of the Charter requires that courts or other competent bodies are able to award a level of compensation that is sufficient both to deter the employer and proportionate the damage suffered by the victim. Therefore limits to levels of compensation that may be awarded are therefore not in conformity with the Charter."

## Article 28

648. **Conclusions 2003, Bulgaria, p. 91:** “Article 28 of the Charter guarantees the right of workers’ representatives to protection in the undertaking and to certain facilities. It complements Article 5, which recognises, inter alia, a similar right in respect of trade union representatives.”
649. **Conclusions 2003, Bulgaria, p. 91:** “According to the Appendix of Article 28, the term “workers representatives” means persons who are recognised as such under national legislation or practice. States may therefore establish different kind of workers’ representatives other than trade union representatives.”
650. **Conclusions 2003, France, pp. 208-209:** “The Labour Code provides for the protection of worker representatives. According to the report, these are staff representatives (Section L 421-1), members of works councils (Section L 431-1), members of committees on health, safety and working conditions, and worker representatives on company boards. These workers cannot be dismissed for reasons connected, even marginally, to their mandate. The protection lasts for the duration of their mandate plus an additional period of between 3 months and 5 years depending on the type of mandate. Unsuccessful candidates in workplace elections also benefit from employment protection for 6 months.

An employer who seeks to terminate the employment of a worker representative is required to consult the works council. For the termination to take effect, authorisation must be sought from the labour inspectorate, which will investigate to ensure that the grounds alleged are genuine and bear no relation to the worker’s mandate. If authorisation is granted, the worker may appeal either to the administrative or civil courts. In the former case, while there is no shifting of the burden of proof to the worker, the court is entitled to consider all evidence before it and conclude accordingly. If the worker brings an action before the civil courts alleging discrimination on the part of the employer, the burden of proof will shift to the latter once the worker establishes facts from which it may be presumed that there has been direct or indirect discrimination. Worker representatives employed on fixed-term contracts enjoy equivalent protection, since the contract may only expire if the labour inspectorate consents.

In addition to protection against dismissal, the terms and conditions of the employment of worker representatives are protected. Such workers cannot be compelled to accept changes in their employment contracts that would hinder the exercise of their mandate.

Dismissal of a worker representative without the authorisation of the labour inspectorate is null and void and constitutes an offence for which the employer may be fined. The worker is entitled to seek reinstatement and to receive compensation for loss of earnings. If the employer fails to reinstate, the worker also may claim damages for non-compliance with the statutory protection and for unlawful dismissal.

The Committee considers that French law affords adequate protection to worker representatives for the purpose of Article 28.”

651. **Conclusions 2003, Slovenia, p. 545:** “Provision is made in ZSDU to facilitate the performance by worker representatives of their duties. This includes paid time off work to participate in workers’ council sessions, consult with workers and attend training courses (Sections 62-64). The employer is required to meet the expenses of the workers’ council, including use of premises and materials and for administrative staff, in the course of its operation.”





## Article 29

652. **Conclusions 2003, Statement of Interpretation on Article 29:** "Article 29 of the Charter guarantees workers' representatives the right to be informed and consulted in good time by employers who are planning collective redundancies. The collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity. 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.

For this purpose, all relevant documents must be supplied before consultation starts: reasons for the redundancies, planned social measures, criteria for being made redundant, order of redundancies.

The right to be informed and consulted must be backed by guarantees to ensure that consultation actually takes place. If an employer fails to respect his obligations, provision must be made for minimum administrative or judicial proceedings before the redundancies take effect, to ensure that they do not take place until the obligation to consult has been fulfilled. Provision must be made for sanctions after the event, and these must be effective, i.e. sufficiently deterrent for employers. The right of individual employees to contest the lawfulness of their being made redundant is examined with reference to Article 24 of the Charter."

In other words, trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions, or elected representatives, namely, representatives who are freely elected by the workers of the undertaking and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned."

653. **Conclusions 2003, Sweden, p. 641:** "Employers' general obligation to inform and negotiate derives from sections 11, 12 and 19 of the Co-Determination Act and concerns any employee organisation with which an employer has reached a collective agreement. Employers who are not bound by collective agreements are also required to negotiate with all affected employees' organisations on all matters relating to redundancy resulting from insufficient work or the total or partial transfer of an undertaking (section 13).

Taking into account that in 1997 more than 83 % of Swedish workers were members of trade unions, according to the statistics provided by the National Statistical Committee of Sweden, the Committee considers that the situation in Sweden is in conformity with Article 29 of the Charter in this respect."

654. **Conclusions 2003, Statement of Interpretation on Article 29, *op. cit.***

655. **Conclusions 2005, Lithuania, p. 404:** "The Committee considers that in order for there to be an adequate dialogue between employer and workers' representatives on ways of avoiding redundancies or limiting their number and mitigating their effects, all relevant documents must be supplied before consultation starts. To that end, prior information must cover not only the reasons, time period and category of workers concerned, but also proposed social measures, criteria for dismissals and the order of dismissals. As this is not the case in Lithuania, the Committee considers that the situation is not in conformity with Article 29 of the Charter in this regard."

656. **Conclusions 2003, Statement of Interpretation on Article 29, *op. cit.***



## Article 30

657. **Conclusions 2003, France, p. 214:** “By introducing into the Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings”.
658. **Conclusions 2005, France, p. 261:** “The Committee adds that by poverty it is meant deprivation due to the lack of resources”.
659. **Conclusions 2003, France, p. 214:** “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach”.
660. **Conclusions 2003, France, p. 214:** “The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. The Committee emphasizes that this list does not exhaust the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena”.
661. **Conclusions 2003, France, p. 214:** “The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions”.
662. **Conclusions 2005, Norway, p. 580:** “Particular attention should be given to the effectiveness of the policies, measures and actions undertaken”.
663. **Conclusions 2005, Slovenia, p. 674:** “The Committee recalls that, in order to comply with Article 30 of the Charter, adequate resources are one of the main elements of the overall strategy to fight social exclusion and, therefore, requires the necessary resources to be allocated to attain the objectives of the strategy. The Committee asks to be regularly informed about the situation in this respect”.
664. **Conclusions 2003, France, p. 214:** “Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the Committee systematically reviews the definitions and measuring methodologies applied at the national level and the main data made available”.



## Article 31

665. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint n°31/2005, decision on the merits of 18 October 2006, §35:** “35. The Committee considers that the effective enjoyment of certain fundamental rights requires a positive intervention by the state: the state must take the legal and practical measures which are necessary and adequate to the goal of the effective protection of the right in question. States enjoy a margin of appreciation in determining the steps to be taken to ensure compliance with the Charter, in particular as regards to the balance to be struck between the general interest and the interest of a specific group and the choices which must be made in terms of priorities and resources (*mutatis mutandis* most recently European Court of Human Rights, *Ilascu and others v. Moldova and Russia*, judgment of 8 July 2004, § 332). Nonetheless, “when the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources” (*Autism-Europe v. France*, Complaint N° 13/2002, decision on the merits of 4 November 2003, § 53).”
666. **International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 58-71:** “58. The Government argued strongly in its written submissions and at the hearing that the Charter's provisions on the right to housing, in particular Article 31, only imposed on states an obligation of means. In other words, so long as suitable measures were taken with a view to securing the right to housing, the situation would be in conformity with the Charter.
- 59. *The Committee agrees that the actual wording of Article 31 of the Charter cannot be interpreted as imposing on states an obligation of “results”. However, it notes that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).***
60. ***This means that, for the situation to be in conformity with the treaty, states party must:***
- a) ***adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;***
  - b) ***maintain meaningful statistics on needs, resources and results;***
  - c) ***undertake regular reviews of the impact of the strategies adopted;***
  - d) ***establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;***
  - e) ***pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable.***
61. ***In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, the Committee wishes to emphasise that implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).***
62. ***When one of the rights in question is exceptionally complex and particularly expensive to implement, states party must take steps to achieve the objectives of the Charter within a reasonable time, with measurable progress and making maximum use of available resources (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).***

63. *The requirement to maintain statistics is particularly important in the case of the right to housing because of the range of policy responses involved, the interaction between them and the unwanted side-effects that may occur as a result of this complexity. However statistics are only useful if resources made available and results achieved or progress made can be compared with identified needs.*
64. *The Committee refers in this context to the Guidelines on Access to Housing for Vulnerable Groups, of which the Committee of Ministers took note at the Deputies' 995<sup>th</sup> meeting on 16 May 2007. According to paragraph 11 of the Guidelines:*
- "Housing policies should be evidence based, and therefore the knowledge base should be improved through research and regular data collection. Adequate knowledge of housing situation, especially statistical information, is a prerequisite for effective housing policy design and implementation. Regular collection of relevant statistical information on housing issues, including housing needs assessment should be carried out."*
65. *The Committee notes that in several areas the Government fails to supply relevant statistical information or does not compare identified needs with the resources made available and results achieved. Regular checks do not appear to be carried out on the effectiveness of the policies applied. In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective.*
66. *In connection with timetabling – with which other regulatory bodies of international instruments are also very concerned – it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely.*
67. *The authorities must also pay particular attention to the impact of their policy choices on the most vulnerable groups, in this case individuals and families suffering exclusion and poverty (Autisme Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).*

***b) Interpretation of Article 31 in the light of other international instruments***

68. *The Committee considers that Article 31 must be considered in the light of relevant international instruments that served as inspiration for its authors or in conjunction with which it needs to be applied.*
69. *This applies above all to the European Convention on Human Rights. The Committee is particularly concerned that its interpretation of Article 31 is fully in line with the European Court of Human Rights' interpretation of the relevant provisions of the Convention.*
70. *Further, the United Nations Covenant on Economic, Social and Cultural Rights is a key source of interpretation. Article 11 recognises the right to housing as one element of the right to an adequate standard of living:*

***"Article 11***

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

### 351 Article 31

71. The Committee also attaches great importance to General Comments 4 and 7 of the UN Committee on Economic, Social and Cultural Rights. The Committee has also paid close attention to and greatly benefited from the work of the United Nations Special Rapporteur on the Right to Adequate Housing, Miloon Kothari.”

### Article 31§1

667. **Conclusions 2003, France, p. 221:** “The Committee considers that “adequate housing” means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law”.
668. **Conclusions 2003, Italy, p. 342:** “Parties shall guarantee equal treatment with respect to housing on the grounds of Article E of the Charter. Equal treatment must be assured to the different groups of vulnerable persons, particularly low-income persons, unemployed, single parent households, young persons, persons with disabilities including mental health problems, persons internally displaced due to wars or natural disasters etc. The principle of equality of treatment and non-discrimination covers not only paragraph one but the rest of Article 31 as well.”
669. **Conclusions 2003, France, p. 221:** “[Adequate housing] means ...:
- a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control.
  - over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.
  - security of tenure means protection from forced eviction and other threats, and it will be analysed in the context of Article 31§2.”
670. **Conclusions 2003, France, p. 221:** “According to the Committee, the standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners.“
671. **Conclusions 2003, France, p. 224:** “The Committee considers that it is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.”
672. **European Roma Rights Center v. Italy, Complaint n° 27/2004, decision on the merits of 7 December 2005, §26:** “26. The Committee recalls that “even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, states parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised” (ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29). Thus, ultimate responsibility for policy implementation, involving at a minimum oversight and regulation of local action, lies with the Italian state. Moreover, as a signatory to the Revised Charter and the party against which complaints are lodged, the Government must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective.”
673. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §79:** “79. As regards the responsibility for adequate housing, the Committee has persistently pointed out over the last years that general supervision was absent at national level (see Conclusions 2005, Article 31§1, France). In addition, it finds that the adoption and implementation at the regional and local level of regulations aimed at improving the quality of dwellings is not always ensured in practice and varies between the departments.”

674. **Conclusions 2003, France, p. 224:** “The Committee considers that effectiveness of the right to adequate housing implies its legal protection. This means that tenants or occupiers must have access to affordable and impartial judicial and other remedies.”
675. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §80-81:** “80. A final shortcoming identified by the Committee concerns the legal protection of the right to adequate housing (the occupiers’ right of appeal). On the basis of information from the High Committee for the housing of disadvantaged persons – consultative body to the Prime Minister – the Committee notes the inefficacy of means of redress, which most often result in a compensatory payment or reduction in rent. Furthermore, it notes that tenants are reluctant to start proceedings against their landlord because they do not know their rights and are afraid of losing their home if they take the landlord to court.
81. The Committee therefore holds that insufficient progress as regards the eradication of substandard housing and the lack of proper amenities of a large number of households constitute a violation of Article 31§1 of the Revised Charter.”

### Article 31§2

676. **Conclusions 2003, Italy, p. 345:** “The Committee considers as homeless those individuals not legally having at their disposal a dwelling or other forms of adequate shelter.”
677. **Conclusions 2005, Lithuania, p. 409:** “The Committee considers that the parties must prevent categories of vulnerable people from becoming homeless. This requires states to introduce a housing policy for all disadvantaged groups of people to ensure access to social housing”
678. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint N° 31/2005, decision on the merits of 18 October 2006, §54:** “54. The Committee finds that the legislation allowing, *inter alia*, the legalisation of illegal constructions did exist (2001 Territorial Planning Law), but that it set conditions too stringent to be useful in redressing the particularly urgent situation of the housing of Roma families (respect of constructions’ safety and hygiene rules, official documents attesting property, residence in the district for more than five years), situation which is also recognised by the Government. Moreover, the Committee considers that it follows from the fact that illegal Roma settlements have been existing for many years and that, though not uniform, provision of public services, as electricity, was ensured and inhabitants charged for it, that state authorities acknowledged and tolerated *de facto* the actions of Roma (*mutatis mutandis* European Court of Human Rights, Oneryildiz v. Turkey, judgment of 30 November 2004, Appl. No. 48939/99, § 105 and §§127-128). Accordingly, though state authorities enjoy a wide margin of appreciation as to the taking of measures concerning town planning, they must strike the balance between the general interest and the fundamental rights of the individuals, in the particular case the right to housing and its corollary of not making individual becoming homeless.”
679. **Conclusions 2003, Sweden, pp. 650-655:** “Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular an obligation to consult with the affected parties in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during winter and provide legal remedies and offer legal aid to those who are in need to seek redress from the courts. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.”
680. **European Roma Rights Center (ERRC) v. Greece, Complaint n°15/2003, decision on the merits of 8 December 2004, §51:** “51. The Committee considers that illegal occupation of a site or dwelling may justify the eviction of the illegal occupants. However the criteria of illegal occupation must not be unduly wide, the eviction should take place in accordance with the applicable rules of procedure and these should be sufficiently protective of the rights of the persons concerned. The Committee considers that on these three grounds the situation is not satisfactory.”



681. **European Roma Rights Center (ERRC) v. Bulgaria, Complaint n°31/2005, decision on the merits of 18 October 2006, §52:** “52. It also recalls that “States Parties must make sure that evictions are justified and are carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation is available (see Conclusions 2003, Article 31§2, France, p. 225, Italy, p. 345, Slovenia, p. 557, and Sweden, p. 653). The law must also establish eviction procedures, specifying when they may not be carried out (for example, at night or during winter), provide legal remedies and offer legal aid to those who need it to seek redress from the courts. Compensation for illegal evictions must also be provided” (ERRC v. Italy, Complaint No. 27/2005, decision on the merits of 7 December 2005, § 41).”
682. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §107:** “107. Another deficiency in the French system is the shortage of places in emergency shelters. The Committee observes that many of the requests for this type of assistance remain unfulfilled. Most of the calls processed by the 115 emergency telephone concern a request for emergency shelter or for housing, but these services are only partly able to meet the requests. The Committee therefore considers that the shortage of places in shelters for the homeless, as well as the insufficiency of arrangements at municipal level for day reception and overnight accommodation capable of suiting different situations, illustrate the underlying failure of State policy in this field, and that the situation does not comply with the conditions required by the Revised Charter.”
683. **European Federation of National Organisations Working with the Homeless (FEANTSA) v. France, Complaint n° 39/2006, decision on the merits of 5 December 2007, §§109-110:** “108. As regards living conditions in sheltering facilities, the Committee believes these should be such as to enable living in keeping with human dignity, and that support should be routinely offered to help the persons within the facilities to attain the greatest possible degree of independence. It also recalls that the temporary provision of accommodation, even decent accommodation, cannot be considered a satisfactory solution, and people living under such conditions must be offered housing of an adequate standard within a reasonable time.
109. In this regard, the Committee finds that in general lines the reception facilities for persons in very insecure circumstances could be improved in France. There is too much of a fallback on makeshift or transitional forms of accommodation which are inadequate both in quantitative and qualitative terms, and which offer no definite prospect of access to normal housing. The Committee considers it would be positive if the conversion of homeless shelters into around-the-clock structures became a general practice. It also considers that any offer of accommodation in them should lead in the short or medium term to an independent housing solution.”
684. **Conclusions 2003, Italy, p. 345:** “The Committee considers that Article 31§2 obliges Parties to gradually reduce homelessness with a view to its elimination. Reducing homelessness implies the introduction of measures, such as provision of immediate shelter and care for the homeless and measures to help such people overcome their difficulties and prevent a return to homelessness”.

### Article 31§3

685. **Conclusions 2003, Sweden, p. 655:** “The Committee considers housing to be affordable when the household can afford to pay the initial costs (deposit, advance rent), the current rent and/or other costs (utility, maintenance and management charges) on a long-term basis and still be able to maintain a minimum standard of living, as defined by the society in which the household is located”.
686. **Conclusions 2003, Sweden, p. 656:** “Parties are required...to adopt appropriate measures for the construction of housing, in particular social housing.”

687. **International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 98-100:** “98. However, the Committee notes that even if all these objectives were achieved, that is 591 000 new social housing units were built by 2009, there would still apparently be a considerable shortfall compared with needs, insofar as needs can be measured by the amount of applications made for access to social housing. There would also appear to be no clear policy mechanism in place to ensure that due priority is given to the provision of housing for the most deprived members of the community, and that the assessment of the needs of the most deprived is built into the programme of providing social housing.

99. Moreover in answer to questions raised at the public hearing the Government, which has not directly responded in its written submissions to ATD Fourth World's arguments concerning housing for the most disadvantaged, stated that the apparent trend towards the construction of more expensive social housing could be explained by the fact that they were responding to a broad range of demand. The provision of such housing was concerned not only with the most disadvantaged but also with a wide spectrum of the population in need of decent housing on account of short-term financial difficulties or local housing crises.

100. The Committee considers that the implementation of this policy does not by itself constitute a sufficient step or a sufficient justification for the ongoing manifest inadequacy of the existing policy mechanisms for ensuring due priority for the provision of of social housing for the most socially deprived. The situation therefore constitutes a violation of Article 31§3.”

688. **International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §131:** “131. In addition, the system of legal redress for people who are denied social housing, is also subject to serious shortcomings, namely: the mediation commissions foreseen by the Act to examine applications which are pending after an excessive waiting time have only been created in a minority of municipalities. The Committee considers that this remedy is not sufficiently efficient, and therefore that the situation on this point is not in conformity with Article 31§3 of the Revised Charter.”

689. **Conclusions 2003, Sweden, p. 656:** “Parties are required...to introduce housing benefits for the low-income and disadvantaged sectors of the population”.

690. **Conclusions 2003, Sweden, p. 734:** “[...the Committee] asked whether the housing allowance was an individual right, that is whether all qualifying households received it in practice and remedies were available for those who were refused it”.

691. **International Movement ATD Fourth World v. France, complaint n° 33/2006, decision on the merits of 5 December 2007, §§ 149-155 :** “149. As regards housing for Travellers, the Committee refers to Committee of Ministers Recommendation No. (2005) 4 on improving the housing conditions of Roma and Travellers in Europe, which states, *inter alia*, that Member States should ensure that, within the general framework of their housing policies, integrated and appropriate housing policies targeting Roma and Travellers are developed.

150. The Committee also recalls that as regards evictions these must be justified and carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation should be made available (see Conclusions 2003, Article 31§2, France). When confronted with Roma or Traveller settlements of undefined legal status, public authorities should make every effort to seek solutions acceptable for all parties, in order to avoid situations in which Roma and Travellers are in danger of being excluded from access to services and amenities to which they are entitled as citizens of the state where they live.

### 355 Article 31

151. The Committee notes that legislation on settlements/stopping places for Travellers was adopted in 2000 (the Reception and Accommodation of Travellers Act, No. 2000-614 of 5 July 2000). The legislation requires municipalities with over 5,000 residents to prepare a plan for the setting up of permanent camp sites for Travellers. However, the Committee also notes that the Act has only implemented in a minority of the municipalities concerned. The Government in its written submissions acknowledges that there is a delay in the implementation of the departmental schemes for the reception of Travellers and estimates that there is a deficit of around 41 800 places. The Committee finds that the delay in implementing the above-mentioned Act is regrettable, since it compels Travellers to make use of illegal sites and therefore exposes them to the risk of forcible eviction under the 2003 Act on internal security.

152. In this respect, the Committee notes from a recent joint statement by Council of Europe Commissioner for Human Rights Thomas Hammarberg and UN Special Rapporteur on the Right to Adequate Housing Miloon Kothari, that there has been an increasing number of complaints on the abuse of housing rights of Roma in several European countries, including in France. Most of the complaints are related to evictions of Roma communities and families which have been carried out in violation of human rights standards especially as regards the right to adequate housing and privacy, procedural guarantees and remedies.

153. The Committee notes that a 2005 report by the *Conseil National de l'Habitat* (CNH) (National Council for Housing) on the "Fight against discrimination in access to housing" confirms that the great majority, if not all, discriminatory practices on access to housing are based on nationality or origin of applicants (the name, or racial/ethnic features of the applicant being decisive factors for a refusal). The Committee furthermore notes from another source that there have been a number of cases of eviction of Roma in which the response of the French authorities has been alleged to be not in conformity with human rights standards, namely the clearing of around 600 Roma gypsies from a shantytown where they had been living for more than a year in the north Paris suburb of Saint-Denis in September 2007. The source indicates that the families were moved in a "very brutal way", at least 400 of them had disappeared and would probably resurface in other shanties north of Paris with no electricity or water.

154. In general, the Committee observes that the Government has not provided any substantial counter arguments to the complainant organisation's analysis and that its own submissions often contain a certain number of arguments which point to the inability or persisting failure of the local authorities to redress the problems that exist in respect of the housing of Traveller groups. Despite the efforts of central and local authorities in this area and the positive results that have been achieved at times, there appears to have been a long period during which local authorities and the State have failed to take into account to a sufficient degree the specific needs of the Roma/Traveller community.

155. The Committee therefore holds that the deficient implementation of legislation on stopping places for Travellers constitutes a violation of Article 31§3 of the Revised Charter in conjunction with Article E."



## Article E

692. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52:** “The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights.”
693. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51:** “The Committee considers that the insertion of Article E into a separate Article in the Revised Charter indicates the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It further considers that its function is to help secure the equal effective enjoyment of all the rights concerned regardless of difference.”
694. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51:** “it (Article E) does not constitute an autonomous right which could in itself provide independent grounds for a complaint.”
695. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §51:** “Although disability is not explicitly listed as a prohibited ground of discrimination under Article E, the Committee considers that it is adequately covered by the reference to “other status”.”
696. **Association internationale Autisme-Europe (AIAE) v. France, Complaint No. 13/2000, decision on the merits of 4 November 2003, §52:** “The Committee observes further that the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights. As the European Court of Human Rights has repeatedly stressed in interpreting Article 14 and most recently in the *Thlimmenos* case [*Thlimmenos c. Greece* [GC], n° 34369/97, CEDH 2000-IV, § 44)], the principle of equality that is reflected therein means treating equals equally and unequals unequally. In particular it is said in the above mentioned case: “The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.” In other words, human difference in a democratic society should not only be viewed positively but should be responded to with discernment in order to ensure real and effective equality.
- In this regard, the Committee considers that Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may 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.
697. **European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §36:** “The Committee recalls that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in absence of objective and reasonable justifications (see paragraph 1 of the Appendix), any group with particular characteristics, including Roma, benefit in practice from the rights in the Charter. On the contrary, by persisting with the practice of placing Roma in camps the Government has failed to take due and positive account of all relevant differences, or adequate steps to ensure their access to rights and collective benefits that must be open to all.”



## Article I

698. **International Commission of Jurists (CIJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32:** “The satisfactory application of Article 7 cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.”

699. **Confederation of Swedish Enterprise v. Sweden, Complaint No. 12/2002, decision on the merits of 15 May 2003, §§27-28:** “27. (...) When, in order to implement undertakings accepted under Article 5, use is made of agreements concluded between employers’ organisations and workers’ organisations, in accordance with Article I.b, States should ensure that these agreements do not run counter to obligations entered into, either through the rules that such agreements contain or through the procedures for their implementation.

28. The commitment made by the Parties, under which domestic legislation or other means of implementation under Article I, bearing in mind national traditions, shall not infringe on employers’ and workers’ freedom to establish organisations, implies that, in the event of contractual provisions likely to lead to such an outcome, and whatever the implementation procedures for these provisions, the relevant national authority, whether legislative, regulatory or judicial, is to intervene, either to bring about their repeal or to rule out their implementation.”

700. **Association internationale Autism-Europe (AIAE) v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53:** “When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected including, especially, their families on whom falls the heaviest burden in the event of institutional shortcomings.”

701. **Conclusions I**

702. **Conclusions XIV-2, Norway p. 578:** “There is no need to assess how many workers are affected by this kind of working hours as Article 33 has no effect, a legislative provision is being criticised which potentially has general application.”

703. **Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§39-41:**

*“b) As to the application of Article I of the revised Social Charter*

39. Article I of the revised Social Charter reads as follows:

*“1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:*

- a. laws or regulations;*
- b. agreements between employers’ organisations and workers’ organisations;*
- c. a combination of those two methods;*
- d. other appropriate means.*

2. *Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.”*

**360 Article I**

40. The Committee considers that, in view of the reference made in its very wording to the workers concerned, the application of Article I of the revised Social Charter cannot give rise to a situation in which a large number of persons forming a specific category are deliberately excluded from the scope of a legal provision.

41. There is, therefore, no need to vary the conclusion reached at paragraph 38 above.”



## Annex

704. **Conclusions 2004, Statement of Interpretation, p. 10:** “As regards the personal scope of the Charter, the Committee made the following observation:

### Personal Scope of the Charter

The personal scope of the Charter is defined in the Appendix. It covers:

- i. nationals of other Parties lawfully resident or working regularly within their territory;
- ii. refugees and stateless persons lawfully staying in their territory.

The Committee recalls that States Parties to the Charter can extend its scope beyond the minimum laid down in the Appendix.

The Committee notes that the Parties to the Charter (in its 1961 and revised 1996 versions) have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention of Human Rights – or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations.

Whereas these obligations do not in principle fall within the ambit of its supervisory functions, the Committee does not exclude that the implementation of certain provisions of the Charter could in certain specific situations require complete equality of treatment between nationals and foreigners, whether or not they are nationals of member States, Party to the Charter.

705. **International Federation of Human Rights (FIDH), Complaint n° 14/2004, decision on the merits of 8 September 2004, §§ 26-32 :**

“i. On the interpretation of the Appendix to the Charter

26. The present complaint raises issues of primary importance in the interpretation of the Charter. In this respect, the Committee makes it clear that, when it has to interpret the Charter, it does so on the basis of the 1969 Vienna Convention on the Law of Treaties. Article 31§1 of the said Convention states:

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

27. The Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights. It is a living instrument dedicated to certain values which inspired it : dignity, autonomy, equality and solidarity. The rights guaranteed are not ends in themselves but they complete the rights enshrined in the European Convention of Human Rights.

28. Indeed, according to the Vienna Declaration of 1993, all human rights are “universal, indivisible and interdependent and interrelated” (para. 5). The Committee is therefore mindful of the complex interaction between both sets of rights.

29. Thus, the Charter must be interpreted so as to give life and meaning to fundamental social rights. It follows *inter alia* that restrictions on rights are to be read restrictively, i. e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter.

30. As concerns the present complaint, the Committee has to decide how the restriction in the Appendix ought to be read given the primary purpose of the Charter as defined above. The restriction attaches to a wide variety of social rights in Articles 1-17 and impacts on them differently. In the circumstances of this particular case, it treads on a right of fundamental importance to the individual since it is connected to the right to life itself and goes to the very dignity of the human being. Furthermore, the restriction in this instance impacts adversely on children who are exposed to the risk of no medical treatment.

31. Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and health care is a prerequisite for the preservation of human dignity.

32. The Committee holds that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter.”

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