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**MIGRANT WORKERS RIGHTS AS GUARANTEED  
BY THE EUROPEAN SOCIAL CHARTER**

Migrant workers rights are guaranteed in the European Social Charter<sup>1</sup> and the revised European Social Charter, in Articles 18 and 19.

Article 18 reads as follows:

- "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;
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;
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;
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."

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<sup>1</sup> The European Social Charter (hereinafter referred to as "the Charter") sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by States Parties. It was recently revised, and the 1996 Revised European Social Charter, which came into force in 1999, is gradually replacing the initial 1961 treaty. 37 States have ratified either the Charter or the Revised Charter. Three Protocols have been added to the initial 1961 treaty: Protocol No. 1 (1998) which adds new rights – Protocol No. 2 (1991) which reforms the procedure of control regarding reports – Protocol No. 3 (1995) which provides for a procedure of collective complaints.

Article 19 of the Revised Charter reads as follows:

"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;

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;

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;

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:

- a. remuneration and other employment and working conditions;
- b. membership of trade unions and enjoyment of the benefits of collective bargaining;
- c. accommodation;

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;

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.*

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;

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;

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;

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;

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;

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".

Articles 18 and 19 have given rise to a significant body of case law established during their supervision by the European Committee of Social Rights, ("the Committee").<sup>2</sup> This provides a valuable insight into the nature and scope of the Articles.

## Article 18

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>3</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>4</sup> This article also covers foreign workers who have obtained employment in a foreign country but subsequently lose it.<sup>5</sup>

In material terms, the right of migrant workers to engage in gainful employment entails:

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<sup>2</sup> The European Committee of Social Rights (referred to below as "the Committee") ascertains whether countries have honoured the undertakings set out in the Charter. Its fifteen independent, impartial members are elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once. The Committee determines whether or not national law and practice in the States Parties are in conformity with the Charter.

► A monitoring procedure based on national reports: Every year the states parties submit a report indicating how they implement the Charter in law and in practice. Each report concerns some of the accepted provisions of the Charter. The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as "conclusions", are published every year.

► A collective complaints procedure: Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the European Committee of Social Rights.

<sup>3</sup> Conclusions X-2, Austria, p. 137

<sup>4</sup> Conclusions XIII-1, Sweden, p. 204

<sup>5</sup> Conclusions II, Denmark, Germany, Ireland, Italy, United Kingdom, p. 61

### 1. The application of regulations in a spirit of liberality

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>6</sup>

### 2. Simplification of existing formalities

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application.<sup>7</sup> It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.<sup>8</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>9</sup>

### 3. Liberalisation of regulations governing employment

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers regarding 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>10</sup>

States are required to liberalise periodically also regulations governing the employment of foreign workers regarding the 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>11</sup>

Lastly, in the event of loss of employment regulations should be liberalised. 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>12</sup>

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<sup>6</sup> Conclusions XVII-2, Spain, p. 747

<sup>7</sup> Conclusions XVII-2, Finland, p. 243

<sup>8</sup> Conclusions XVII-2, Portugal, pp. 702 - 703

<sup>9</sup> Conclusions XVII-2, Portugal, p. 703

<sup>10</sup> Conclusions V, p. 119.

<sup>11</sup> Conclusions II, p. 60.

<sup>12</sup> Conclusions XVII-2, p. 247.

#### 4. The right to engage in a gainful occupation

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 Revised 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>13</sup>

### **Article 19**

The right of migrant workers and their families to protection and assistance entails:

#### 1. Adequate and free services - protection against misleading propaganda

Article 19§1 obliges States to provide free information and assistance to nationals wishing to emigrate and to nationals of other Parties who wish to immigrate<sup>14</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>15</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>16</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>17</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>13</sup> For examples of permitted restrictions, see inter alia Conclusions XI-1, p. 155, and Conclusions 2005, p. 105.

<sup>14</sup> Conclusions I, p. 82

<sup>15</sup> Conclusion III, p. 87, Cyprus

<sup>16</sup> Conclusions XIV-1, p. 366, Greece

<sup>17</sup> Conclusion XV-1, p. 59, Austria

## 2. Facilitation of departure, journey and reception

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>18</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>19</sup>.

## 3. Promotion of co-operation between social services

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>20</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>21</sup>.

## 4. Equal treatment regarding pay, membership of trade unions, housing

This paragraph obliges States to secure for migrant workers treatment not less favourable than that of their own 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>22</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

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<sup>18</sup> Conclusions III, p. 88

<sup>19</sup> Conclusions IV, p. 116

<sup>20</sup> Conclusions XIV-1, p. 137, Belgium

<sup>21</sup> Conclusions XIV-1, p. 165-166

<sup>22</sup> Conclusions III, p. 92

providing for more favourable treatment of migrant workers<sup>23</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>24</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>25</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>26</sup>, access to subsidised housing or housing aids, such as loans or other allowances<sup>27</sup>.

## 5. Equal treatment concerning taxes

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>28</sup>.

## 6. Right to family reunion

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 Revised 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>29</sup>.

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<sup>23</sup> Conclusions I, p. 81

<sup>24</sup> Conclusions VII, p. 103

<sup>25</sup> Conclusions XIII-3, p. 418

<sup>26</sup> Conclusions IV, p. 121

<sup>27</sup> Conclusions III, p. 92

<sup>28</sup> Conclusions II, p. 68

<sup>29</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>30</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>31</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>32</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>33</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>34</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.

## 7. Equal treatment concerning legal proceedings

Under this paragraph, States must ensure that migrants have access to courts, the assistance of lawyers and legal aid on the same conditions as their own nationals<sup>35</sup>. This obligation applies to all legal proceedings

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<sup>30</sup> Conclusions XVI-1, p. 316, Greece

<sup>31</sup> Conclusions XVI-1, pp. 227-228, Finland

<sup>32</sup> Conclusions I, p. 69

<sup>33</sup> Conclusions IV, p. 126

<sup>34</sup> Conclusion XIII-1, p. 209

<sup>35</sup> Conclusions I, p. 86



concerning the rights guaranteed by Article 19 (i.e. pay, working conditions, housing, trade union rights, taxes)<sup>36</sup>.

#### 8. Safeguards against expulsion

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>37</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>38</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>39</sup>.

States must ensure that foreign nationals served with expulsion orders have a right of appeal<sup>40</sup> to a court or other independent body, even in cases where national security, public order or morality are at stake.

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>41</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>42</sup>.

#### 9. Right to transfer earnings and savings

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>43</sup>.

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<sup>36</sup> Conclusions I, p. 217

<sup>37</sup> Conclusions VI, p. 126

<sup>38</sup> Conclusion V, p. 138

<sup>39</sup> Conclusion V, pp. 138-139

<sup>40</sup> Conclusions IV, pp. 129-130

<sup>41</sup> Conclusions XVI-1, pp. 460-461, The Netherlands

<sup>42</sup> Conclusions II, p. 198, Cyprus

<sup>43</sup> Conclusions XIII-1, p. 212

Migrants must be allowed to transfer money to their own country or any other country.

#### 10. Self-employed migrants

Under this paragraph, States must ensure that the protection and assistance provided for in paragraphs 1 to 9, 11 and 12 are extended to self-employed migrant workers and their families<sup>44</sup>.

States must ensure that there is no discrimination, in law or in practice on the one hand between wage-earners and self-employed migrants, and on the other hand, between self-employed migrants and self-employed nationals. However, even in the case of full equality between wage-earners and self-employed migrants and between self-employed migrants and self-employed nationals, the finding of non-conformity of paragraphs 1 to 9, 11 and/or 12 of Article 19 will lead to a non-conformity of paragraph 10.

#### 11. Language training / mother tongue teaching

Under Article 19§11, 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>45</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.

Under Article 19§12, the undertaking of States 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>46</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>44</sup> Conclusions I, p. 87

<sup>45</sup> Conclusions 2002, pp. 55-57, France

<sup>46</sup> Conclusions 2002, pp. 102-103, Italy

Further information on the rights of migrant workers and the European Social Charter can be obtained from the following publications:

- The European Social Charter - Collected texts (5<sup>th</sup> edition)
- Conclusions and decisions of the European Committee of Social Rights to be consulted on the website [www.coe.int](http://www.coe.int) and the Charter database <http://hudoc.esc.coe.int>.
- Migrant workers and their families - protection within the European Social Charter, Social Charter monographs- No 4, ISBN 92-871-3088-4
- Fundamental social rights- case law of the European Social Charter (2<sup>nd</sup> edition). ISBN 92-871-4932-5

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