

Additional Protocol to the European Social Charter (Strasbourg, 5 May 1988)

Caption: Additional Protocol to the European Social Charter, opened for signature by the member States of the Council of Europe on 5 May 1988 and coming into force on 4 September 1992. This Protocol extends the protection of the Charter to new social rights.

Source: Additional Protocol to the European Social Charter, Strasbourg, 5.V.1988. European Treaty Series (ETS), No. 128. [ON-LINE]. [Strasbourg]: Council of Europe, Treaty Office, [07.10.2003]. Available on <http://conventions.coe.int/Treaty/en/Treaties/Word/128.doc>.

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Publication date: 26/09/2012

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Preamble

The member States of the Council of Europe signatory hereto,

Resolved to take new measures to extend the protection of the social and economic rights guaranteed by the European Social Charter, opened for signature in Turin on 18 October 1961 (hereinafter referred to as “the Charter”),

Have agreed as follows:

Part I

The Parties accept as the aim of their policy to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.
2. Workers have the right to be informed and to be consulted within the undertaking.
3. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.
4. Every elderly person has the right to social protection.

Part II

The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles:

Article 1 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

1. 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:

- access to employment, protection against dismissal and occupational resettlement;
- vocational guidance, training, retraining and rehabilitation;

- terms of employment and working conditions including remuneration;
- career development including promotion.

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 paragraph 1 of this article.

3. Paragraph 1 of 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.

Article 2 – Right to information and consultation

1. 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.

2. The Parties may exclude from the field of application of paragraph 1 of this article, those undertakings employing less than a certain number of workers to be determined by national legislation or practice.

Article 3 – Right to take part in the determination and improvement of the working conditions and working environment

1. 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.

2. The Parties may exclude from the field of application of paragraph 1 of this article, those undertakings employing less than a certain number of workers to be determined by national legislation or practice.

Article 4 – Right of elderly persons to social protection

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

1. 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;

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

2. to enable elderly persons to choose their life style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:

a. provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;

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

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

Part III

Article 5 – Undertakings

1. Each of the Parties undertakes:

a. to consider Part I of this Protocol as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

b. to consider itself bound by one or more articles of Part II of this Protocol.

2. The article or articles selected in accordance with sub paragraph b of paragraph 1 of this article, shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval of the Contracting State concerned is deposited.

3. Any Party may, at a later date, declare by notification to the Secretary General that it considers itself bound by any articles of Part II of this Protocol which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval, and shall have the same effect as from the thirtieth day after the date of the notification.

Part IV

Article 6 – Supervision of compliance with the undertakings given

The Parties shall submit reports on the application of those provisions of Part II of this Protocol which they have accepted in the reports submitted by virtue of Article 21 of the Charter.

Part V

Article 7 – Implementation of the undertakings given

1. The relevant provisions of Articles 1 to 4 of Part II of this Protocol may be implemented by:

- a. laws or regulations;
- b. agreements between employers or employers' organisations and workers' organisations;
- c. a combination of those two methods; or
- d. other appropriate means.

2. Compliance with the undertakings deriving from Articles 2 and 3 of Part II of this Protocol 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.

Article 8 – Relations between the Charter and this Protocol

1. The provisions of this Protocol shall not prejudice the provisions of the Charter.
2. Articles 22 to 32 and Article 36 of the Charter shall apply, *mutatis mutandis*, to this Protocol.

Article 9 – Territorial application

1. This Protocol shall apply to the metropolitan territory of each Party. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify by declaration addressed to the Secretary General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any Contracting State may, at the time of ratification, acceptance or approval of this Protocol or at any time thereafter, declare by notification addressed to the Secretary General of the Council of Europe that the Protocol shall extend in whole or in part to a non metropolitan territory or territories specified in the said

declaration for whose international relations it is responsible or for which it assumes international responsibility. It shall specify in the declaration the article or articles of Part II of this Protocol which it accepts as binding in respect of the territories named in the declaration.

3. This Protocol shall enter into force in respect of the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary General shall have notification of such declaration.

4. Any Party may declare at a later date by notification addressed to the Secretary General of the Council of Europe, that, in respect of one or more of the territories to which this Protocol has been extended in accordance with paragraph 2 of this article, it accepts as binding any articles which it has not already accepted in respect of that territory or territories. Such undertakings subsequently given shall be deemed to be an integral part of the original declaration in respect of the territory concerned, and shall have the same effect as from the thirtieth day after the date on which the Secretary General shall have notification of such declaration.

Article 10 – Signature, ratification, acceptance, approval and entry into force

1. This Protocol shall be open for signature by member States of the Council of Europe who are signatories to the Charter. It is subject to ratification, acceptance or approval. No member State of the Council of Europe shall ratify, accept or approve this Protocol except at the same time as or after ratification of the Charter. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force on the thirtieth day after the date of deposit of the third instrument of ratification, acceptance or approval.

3. In respect of any signatory State ratifying subsequently, this Protocol shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification, acceptance or approval.

Article 11 – Denunciation

1. Any Party may denounce this Protocol only at the end of a period of five years from the date on which the Protocol entered into force for it, or at the end of any successive period of two years, and, in each case, after giving six months' notice to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Protocol in respect of the other Parties provided that at all times there are not less than three such Parties.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any article of Part II of this Protocol accepted by it, provided that the number of articles by which this Party is bound shall never be less than one.

3. Any Party may denounce this Protocol or any of the articles of Part II of the Protocol, under the conditions specified in paragraph 1 of this article, in respect of any territory to which the Protocol is applicable by virtue of a declaration made in accordance with paragraphs 2 and 4 of Article 9.

4. Any Party bound by the Charter and this Protocol which denounces the Charter in accordance with the provisions of paragraph 1 of Article 37 thereof, will be considered to have denounced the Protocol likewise.

Article 12 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and the Director General of the International Labour Office of:

a. any signature;

- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 9 and 10;
- d. any other act, notification or communication relating to this Protocol.

Article 13 – Appendix

The appendix to this Protocol shall form an integral part of it.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 5th day of May, 1988, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council in Europe shall transmit certified copies to each member State of the Council of Europe.

Appendix – Scope of the Protocol in terms of persons protected

1. The persons covered by Articles 1 to 4 include foreigners only insofar as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19 of the Charter. This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.
2. Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951 and in the Protocol of 31 January 1967, 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 Party under the said instruments and under any other existing international instruments applicable to those refugees.
3. Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done at New York on 28 September 1954 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 Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Article 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.

Article 1, paragraph 4

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.

Articles 2 and 3

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 term “national legislation and practice” embraces 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 or provide 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 Articles 2 and 3 are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

Article 3

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 the bodies in charge of monitoring their application.

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.

Article 4, paragraph 1

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

Article 7

It is understood that workers excluded in accordance with paragraph 2 of Article 2 and paragraph 2 of Article 3 are not taken into account in establishing the number of workers concerned.