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EUROPEAN SOCIAL CHARTER STANDARDS ON THE PROTECTION OF MIGRANT WORKERS IN THE EUROPEAN UNION

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Abstract: *This paper examines the legal standards enshrined in the European Social Charter (ESC) concerning the protection of migrant workers' social rights in the Member States of the European Union, with a focus on normative content, personal scope, and the evolutive interpretation adopted by the European Committee of Social Rights (ECSR). The paper highlights the relevance of ESC standards in employment, social security, social assistance, family reunification, and equal treatment, as well as the positive obligations of States Parties. It also addresses the limited integration of ESC in the EU legal order and the risk of conflicting international obligations. Recommendations are made for improving normative alignment between the ESC and EU law, including initiating the EU's accession to the Charter under Article 216(1) TFEU.*

Keywords*: European Social Charter; migrant workers; social protection; EU law; legal coherence.*

Introduction

Migrant workers form a significant part of Europe's labour force, raising questions about the protection of their social rights under regional legal frameworks. Within the Council of Europe system, the European Social Charter (ESC) (1961, revised 1996) stands as a cornerstone treaty safeguarding a broad spectrum of socio-economic rights. Notably, all 27

EU Member States are States Parties to either the original or revised ESC, reflecting a pan-European commitment to social rights. The Charter's provisions cover rights ranging from employment and fair working conditions to social security, social assistance, and family welfare, many of which directly concern migrant workers and their families.

Contemporary international law faces the reality that the European Union has developed its comprehensive legal framework governing migration and social rights, creating a complex web of overlapping and sometimes conflicting obligations. The EU's approach to migrant worker protection has been characterised by what Verschueren (2016, p. 373) terms an "incomplete patchwork of legal protection," reflecting the fragmented nature of EU competences in this area and the political sensitivities surrounding migration policy. The adoption of various directives, including Directive(EU)2021/1883 (recast Blue Card), the Employers' Sanctions Directive2009/52/EC, Directive(EU)2024/1233 (recast Single Permit), the Seasonal Workers Directive2014/36/EU, and the Intra-Corporate Transferees Directive 2014/66/EU, has consolidated a sectoral EU approach to migrant worker protection that often do not ensure comprehensive coverage or consistent standards across different categories of workers.

The interaction between the ESC system and EU law has generated academic and institutional debate, particularly following Court of Justice of the European Union (CJEU) rulings such as Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet (2007) and International Transport Workers' Federation v. Viking Line ABP (2007). In these cases, the CJEU applied internal market freedoms to limit certain forms of collective action, raising concerns about the relationship between economic freedoms and social rights, especially given that the ESC is not part of the EU's primary legal order. The differing analytical frameworks employed by the CJEU and the European Committee of Social Rights (ECSR), particularly in applying proportionality tests, illustrate the potential for normative tension between the two systems.

One of the central issues in this relationship is the limited integration of ESC standards into EU law. As De Schutter explains, the current lack of coordination between the two regimes creates protection gaps and risks of conflicting obligations for Member States (De Schutter, 2016, pp. 24-26). A subsequent Council of Europe study reiterates that the EU legal order still shows major deficits in the protection of social rights and argues that stronger links to the ESC would reduce the risks of conflicts (De Schutter, 2019, pp.1-4, 46-47). Despite all EU Member States having ratified the ESC in either its 1961 or 1996 form, the absence of a comprehensive mechanism for ensuring coherence between ESC standards and EU law has resulted in what can be described as parallel systems of social rights protection that operate with limited coordination and occasional conflict.

1. The European Social Charter framework for migrant workers' protection

The European Social Charter sets out a framework for the social rights of migrant workers, with Article 19 ("The right of migrant workers and their families to protection and assistance") at its core, which imposes extensive obligations on States Parties, covering multiple aspects of employment, social protection, family reunion integration, linguistic/integration measures (Council of Europe, 2022, p.161). The main goal of Article 19 has been subject to evolutive interpretation by the European Committee of Social Rights, which has adopted an expansive approach to the definition of "migrant workers." Consistent with the Charter's Appendix, the provision applies to nationals of other States Parties who are lawfully resident or working regularly in the host State (Council of Europe, 2022, p.161). Nonetheless, the ECSR has clarified that such personal-scope limits cannot be applied in a manner that undermines human dignity (European Committee of Social Rights, 2014a, paras. 65–66; European Committee of Social Rights, 2014b, para. 185). For instance, in FIDH v. France , the Committee found a violation of Article 17 due to barriers to health care for undocumented children

(European Committee of Social Rights, 2004, paras. 27 - 32, 36). In DCI v. Belgium , it held that undocumented children must be afforded adequate shelter and assistance, finding violations of Articles 17, 7(10), and 11(1)-(3) (European Committee of Social Rights, 2012, paras. 35, 102, 122, 136).

The ECSR has interpreted Article 19 in an evolutive manner and extended the scope of Article 19 to include posted workers, a category that has become important in the context of European integration. In its interpretation of Article 19, par. 4, the Committee has held that posted workers must be considered as migrant workers for the purposes of the Charter, thereby entitling them to equal treatment with national workers, including in matters of remuneration, working conditions, and access to collective bargaining (European Committee of Social Rights, 2013).

While Article 19 is the Charter's dedicated provision on migrant workers, several other guarantees complement it. Article 18 commits States to facilitate access to employment for foreign nationals by applying existing regulations liberally, simplifying administrative formalities and charges, and liberalising the rules governing the employment of foreign workers. Article 12 secures equality of treatment in social security for nationals of other States Parties and the retention/aggregation of benefits, typically through bilateral or multilateral coordination instruments. Article 13 requires that social and medical assistance be applied on an equal footing to nationals of other Parties lawfully within the territory. These provisions aim to ensure that migrant workers do not lose access to basic social protection when moving between ESC States. For example, Article 12, par. (4) requires States to take measures, by means of social security agreements or otherwise, to ensure equality of treatment and maintenance of benefits for persons moving between States Parties (Council of Europe, 2022, p. 120). Also, Article 13, par. (4) explicitly extends the right to urgent social and medical assistance to all persons in need, "whether resident or not," which has been interpreted to cover migrants regardless of status for emergency care (Council of Europe, 2022, p. 129).

The interaction between these various provisions creates a comprehensive framework of protection that addresses the multiple dimensions of migrant workers' vulnerability. The ECSR has recalled that these provisions must be interpreted in a manner that ensures their practical effectiveness and that takes into account the particular circumstances and needs of migrant workers (Council of Europe, 2022, p.164).

The evolution of the ESC framework through the adoption of the Revised Charter in 1996 has strengthened several aspects of migrant worker protection. The Revised Charter includes enhanced provisions on non-discrimination, strengthened protection for family life, and improved mechanisms for monitoring compliance (Council of Europe, 2022, p.178). However, the fact that not all EU Member States have ratified the Revised Charter creates additional complexity in the application of these standards and highlights the need for greater harmonisation of ratification practices.

The relationship between the ESC framework and other international instruments, particularly ILO conventions on migrant workers, creates additional layers of protection that can be mutually reinforcing. The ECSR has frequently referenced ILO standards in its interpretation of Charter provisions, reflecting the complementary nature of these international frameworks (Council of Europe, 2022, p.188).

It must be acknowledged that the practical implementation of the ESC framework faces challenges, particularly in the context of increasing migration flows and evolving forms of mobility.

The Charter's normative content thus covers a broad range of social rights relevant to migrant workers and creates obligations for States to protect those rights. It is important to note, however, that the ESC's approach is not one of unconditional universality. The Charter was drafted with an "à la carte" ratification system that permits selective acceptance of provisions, subject core minimum being met. This has led to variation in commitments; for instance, not all EU States have accepted Article 19 or all its paragraphs. Furthermore, the ESC's Appendix, which forms part of the treaty text, limits the personal scope

of many rights by specifying that, as a rule, they apply only to foreigners who are nationals of other States Parties and who are lawfully resident or working regularly in the territory. Within these constraints, however, the ESC establishes a strong normative framework that champions the social rights of migrant workers. As O'Cinneide (2014) observes, the Charter's migrant-worker provisions, especially Article 19 and the active measures required by Article 18, provide a rights-based template for how migrant workers should be treated, which can be used to critique existing law and policy.

2. The European Committee of Social Rights' interpretation practice

The European Committee of Social Rights, as the Charter's supervisory body, plays a central role in interpreting and updating the meaning of ESC provisions. In the context of migrant workers' rights, the ECSR has demonstrated a distinctly evolutive and principled interpretative approach. This means that the Committee interprets the Charter as a living instrument, in light of contemporary conditions and in harmony with other international norms, rather than a static 1960s treaty. ECSR caselaw confirms that Charter protections cannot be interpreted to deprive persons in an irregular situation of essential guarantees of dignity. As Fox-Ruhs and Ruhs explain in their study, "the Charter must nonetheless be construed, in keeping with its spirit and purpose, to provide basic socio-economic rights to everyone where such rights are necessary to uphold basic entitlements such as human dignity and the right to life as protected under the European Convention on Human Rights" (Fox-Ruhs and Ruhs, 2022, p.23).

One distinctive sign of the ECSR's approach is its use of integrated interpretation, whereby it references external sources, such as UN treaties, ILO conventions, and EU law, to inform its reading of the Charter. For instance, in assessing states' compliance with Article 19 (migrant workers' rights), the Committee often considers relevant ILO Conventions. Although no EU Member State has ratified the International Convention on the Protection of the Rights of All Migrant

Workers and Members of Their Families (1990), the principles it enshrines (e.g. non-discrimination between regular and irregular migrants in fundamental human rights, per Article 7 of that Convention) resonate with the ECSR's dignity-based approach.

The ECSR's evolutive interpretation is also evident in how it fleshes out positive obligations and modernises older language. For example, Article19, par.(1) of the Charter requires to maintain adequate and free services to assist migrant workers, particularly in obtaining employment. The Committee has interpreted this in a contemporary context to require states to actively facilitate access to employment for foreign workers, which may include offering effective employment services, language training, or transparent information about job opportunities (Council of Europe, 2022, p. 161).

In Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, the ECSR found violations of Articles 6§2, 6§4, and 19§4(a)(b). The Committee interpreted the equal treatment guarantees in Article 19§4 as extending to posted workers and examined the restrictions at issue through the proportionality framework set out in Article G (European Committee of Social Rights, 2013, pp. 119 - 122).

In the same context it can be noted that the ESC addresses migrant workers' rights across several key domains, such as: (1) employment and labour rights, (2) social security, (3) social assistance, (4) family reunification, and (5) equal treatment and non-discrimination. In each area, the Charter establishes standards that States must uphold, and the ECSR's interpretations clarify the extent of these protections.

Employment and labour rights are central to the protection of migrant workers under the European Social Charter. Article 1 (right to work), while general in scope, has been interpreted by the European Committee of Social Rights (ECSR), read together with Article E (non-discrimination) and Articles 18 and 19, to require States Parties to prevent direct and indirect discrimination that would impede migrants' access to employment (European Committee of Social Rights, 2022, pp. 35–36).

Read in conjunction with Article E and subject to the Appendix's ratione personae limitation, Articles 5 and 6 of the European Social Charter secure trade-union freedoms and collective action for migrant workers. Article 18 specifically concerns nationals of other States Parties engaging in gainful employment in the host State. Under Article 18(2) and ECSR interpetation "States Parties are under an obligation to reduce or abolish chancery dues and other charges" paid by foreign workers or their employers (European Committee of Social Rights, 2022, p. 158). Under Article 18(3), "States Parties are required to liberalise periodically the regulations governing the employment of foreign workers," and conditions for access to the labour market "must not be excessively restrictive"; restrictions must be gradually lifted (European Committee of Social Rights, 2022, p. 159). Article 18(4) affirms the right to leave one's State, with the ECSR recalling that "blanket restrictions on the right of citizens to leave the national territory … are not in conformity with Article 18§4" and must be assessed under Article G (European Committee of Social Rights, 2022, p. 160).

Article 19 complements these obligations by addressing the situation of migrant workers and their families. The Charter text itself requires Parties "to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information" (Council of Europe, 1996, Art. 19(1)). The ECSR clarifies that such free information and assistance services "must be accessible in order to be effective" and cannot rely on online tools alone (European Committee of Social Rights, 2022, p. 161).

Social security coordination under the European Social Charter rests on Article 12(4), complemented - on the assistance side - by Article 13(4); Article 19 provides distinct equality guarantees in the labour field rather than a social-security regime (Council of Europe, 1996). Article 12(4) requires both equal treatment for nationals of other States Parties and the maintenance of acquired rights and rights in course of acquisition. To secure aggregation of insurance periods and export of benefits, the ECSR accepts that States "may choose between bilateral agreements or any other means such as unilateral, legislative or

administrative measures," the point being to avoid protection gaps for migrant workers and their dependants (European Committee of Social Rights, 2022, pp. 120–124). Residence conditions may be attached to non-contributory benefits only if reasonable; the Committee underlines that "a period of five years is considered to be too long" (European Committee of Social Rights, 2022, p. 123). National schemes may not be reserved to nationals or burden eligible foreigners - within the Charter's personal scope - with more restrictive conditions (European Committee of Social Rights, 2022, pp. 120–124, 123).

Within the European Union, much coordination for intra-EU movers is supplied by Union law (for example, Regulation 883/2004), but the Charter's duties apply beyond the EU and bind any Party that has accepted Article 12(4) (European Committee of Social Rights, 2022, pp. 120–124). By contrast, Article 19(4) concerns equal treatment in employment and working conditions, trade-union membership/benefits, and accommodation, not social security; equality in social security flows from Article 12(4), and equality in social and medical assistance from Article 13(4) (European Committee of Social Rights, 2022, pp. 162–164, 123, 131).

On assistance, Article 13(1) guarantees adequate aid to "any person," but foreigners' protection is channeled through the Charter's Appendix: as a rule it covers nationals of other States Parties who are lawfully within the territory, without prejudice to Article 13(4)'s explicit equal-treatment clause. Article 13(4) then requires that paragraphs 13(1) -(3) apply "on an equal footing" to such persons, and the Committee adds that eligibility and evidentiary rules must not be harder for foreigners to satisfy (European Committee of Social Rights, 2022, pp. 128 -131; 211 - 213). The dignity-based line of case law obliging emergency provision in narrowly defined circumstances does not displace the Appendix's general ratione personae rule (European Committee of Social Rights, 2022, pp. 128 - 129).

Article 13(1) of the European Social Charter (Revised) obliges States Parties to ensure that any person without adequate resources receives adequate assistance and, in case of sickness, the care

necessitated by their condition; these guarantees apply within the Parties' territories, while the Charter's Appendix governs the personal scope for "foreigners" (Council of Europe, 1996, art. 13(1); Appendix). The ECSR reiterated that social assistance covers benefits where individual need is the main criterion and is due to "any person" in need (European Committee of Social Rights, 2022, pp. 124 -126). Article 13(4) further requires Parties to apply paragraphs 1- 3 "on an equal footing with their own nationals to nationals of other Parties lawfully within their territories," reflecting the equal-treatment regimen for such foreigners alongside the Appendix (Council of Europe, 1996, art. 13(4); European Committee of Social Rights, 2022, p. 128).

The Committee has also clarified that, when human dignity is at stake, personal-scope limits cannot be construed to deprive irregularly present migrants of basic emergency assistance. For children in an irregular situation, the ECSR required effective access to essential health care and shelter: in FIDH v. France (No. 14/2003) it found a violation of Article 17 due to barriers impeding undocumented children's access to necessary health care (European Committee of Social Rights, 2004, paras. 27-32, 36); in DCI v. Belgium it required adequate shelter and assistance for undocumented children, finding violations of Articles 17, 7(10), and 11(1)-(3) (European Committee of Social Rights, 2012, paras. 35, 102, 122, 136). For adult migrants in irregular situation, the Committee held in CEC v. the Netherlands that "when human dignity is at stake," the Appendix's personal-scope restriction must not be read so as to deprive irregularly present migrants of their most basic rights (European Committee of Social Rights, 2014a, paras. 65–66); in FEANTSA v. the Netherlands it found violations under Articles 13 and 31, emphasising that emergency assistance extends to all individuals in a precarious situation (European Committee of Social Rights, 2014b, paras. 181–188, esp. 185). The Committee recalls a right to emergency social and medical assistance for foreigners in an irregular situation "in a limited and exceptional way" under Article 13, and confirming under Article 31 that the right to shelter applies to persons present in an

irregular manner for as long as they are within the jurisdiction (European Committee of Social Rights, 2022, p. 129; p. 200).

For nationals of other States Parties lawfully within the territory, Article 13(4) secures equal treatment in social and medical assistance vis-à-vis nationals, without discrimination (Council of Europe, 1996, art. 13(4); European Committee of Social Rights, 2022, p. 128). Read together, these standards establish a coherent framework: (i) a general guarantee for any person under Article 13(1), (ii) equal treatment for lawfully present nationals of other Parties under Article 13(4), and (iii) a dignity-based floor ensuring basic emergency assistance for irregularly present persons under Articles 13 and 31 as interpreted in the case law (European Committee of Social Rights, 2022, pp. 124 -129, 200).

Family reunion is expressly protected by Article 19(6) of the ESC (Revised), which requires States Parties to "facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory," while the Appendix defines the protected "family" at least as the spouse and unmarried minor dependent children (Council of Europe, 1996, art. 19(6); Appendix). For context, the Charter (1961; revised 1996) predates the EU's Family Reunification Directive; the Charter sets a general facilitation duty ("as far as possible"), whereas Council Directive 2003/86/EC specifies detailed conditions for family reunification by third-country nationals lawfully residing in a Member State - e.g., purpose and scope, core family members, resources/housing/integration requirements - and permits more favourable national rules (Council of the European Union, 2003, arts. 1, 3(5), 4, 7–8). Applying Article 19(6), the ECSR has set concrete limits on permissible conditions: a waiting period of up to one year may be acceptable, whereas 18 months or more is not in conformity; accommodation requirements must not be so restrictive as to prevent reunion and should allow exemptions based on individual circumstances; means tests must not be set so high as to preclude reunion and social benefits may not be excluded from resource calculations; and language/integration tests (pre- or post-entry) are contrary to Article 19(6) where they risk denying entry or deprive the right of its substance

(e.g., through prohibitive fees or failure to consider age, education, or family/work commitments) (European Committee of Social Rights, 2022, pp. 165–166). The ECSR also indicates that family members already present should not be deported merely because the worker is expelled under Article 19(8); Article 19(6) is read as conferring a personal right of residence on beneficiaries, and expulsions of family members must be assessed under Article 19(6) (European Committee of Social Rights, 2022, p. 166). Accordingly, claims that Article 19(6) requires inclusion of other dependent relatives (e.g., parents) overstate the standard: the Charter guarantees coverage at least for the spouse and unmarried minor dependent children, while broader inclusion depends on national law (Council of Europe, 1996, Appendix; European Committee of Social Rights, 2022, pp. 165 - 166).

Equal treatment is a structuring principle of the ESC, given effect both through specific equality clauses and the general non-discrimination clause in Article E. For migrant workers, the central specific guarantees are Article 19(4) (equal treatment in remuneration and other employment and working conditions, in trade-union membership/benefits, and in access to accommodation), Article 12(4) (equal treatment in social security for nationals of other States Parties), and Article 13(4) (equal treatment in social and medical assistance for nationals of other Parties lawfully within the territory) (European Committee of Social Rights, 2022, pp. 162–164, 123, 131). Article E - applied in conjunction with a substantive right - covers both direct and indirect discrimination and safeguards the effective enjoyment of Charter rights (European Committee of Social Rights, 2022, p. 206). These guarantees operate within the Charter's Appendix on personal scope, and interferences are reviewed under Article G (European Committee of Social Rights, 2022, pp. 211–213, 208–209).

In practice, Article 19(4) requires States to eliminate legal and de facto discrimination and, where necessary, to pursue a "positive and continuous course of action" to secure equality in fact; the Committee confirms that posted workers also fall under Article 19(4), with any restriction justified, if at all, under Article G (European Committee of

Social Rights, 2022, p. 163). Under Article 19(4)(c), equality in accommodation must be effective in practice - no legal or de facto nationality-based barriers, provision for independent appeal, and monitoring to detect and remedy discrimination (European Committee of Social Rights, 2022, p. 164). Further equality-linked guarantees include Article 19(5) (no heavier employment-related taxes/dues for migrants than for nationals), Article 19(7) (equal treatment in legal proceedings, including access to courts and legal aid), and Article 19(9) (freedom to transfer earnings and savings without excessive restrictions) (European Committee of Social Rights, 2022, pp. 164, 166, 168).

Equal treatment also structures the social-protection titles. Under Article 12(4), States must remove discrimination, direct and indirect, from social security law affecting nationals of other States Parties; a residence period may be required for non-contributory benefits, but it must be reasonable ("five years is considered to be too long") (European Committee of Social Rights, 2022, p. 123). Under Article 13(4), paragraphs 13(1) - (3) apply "on an equal footing" to nationals of other Parties lawfully within the territory; rules of eligibility and proof must not be harder for foreigners to meet (European Committee of Social Rights, 2022, p. 131).

This ESC framework resonates with parallel EU standards. Within the EU legal order, EU citizens benefit from Treaty-based non-discrimination, whereas third-country nationals' equality rights derive from specific directives (notably Directive 2011/98/EU on the single permit—common set of rights for legally resident third-country workers and Directive 2003/109/EC on long-term residents) (European Union, 2011; EU, 2003). In this landscape, the ESC functions as an additional regional layer: for nationals of other Charter States who are lawfully resident or working, equal-treatment obligations attach to the extent the State has accepted the relevant ESC provisions (in particular, Articles 12(4), 13(4) and 19(4)) and are applied subject to the Appendix and Article G (European Committee of Social Rights, 2022, pp. 123, 131, 162–164, 208–209, 211–213).

3. Positive obligations

A recurring theme in the ESC's provisions and their interpretation is that they impose positive obligations on states. Unlike some civil and political rights instruments that mainly require non-interference, the nature of social rights protection necessitates proactive steps by governments. In the context of migrant workers, positive obligations mean that States must take deliberate action to make the rights guaranteed by the Charter effective in reality.

This goes beyond merely refraining from discrimination or abuse; it involves implementing policies, providing services, and sometimes allocating resources to fulfil these rights. For instance, Under Article 18(2), States must "simplify existing formalities" and "reduce or abolish chancery dues and other charges" for foreign workers or their employers; such charges may not be set at a level "likely to prevent or discourage" engagement in work, and States should make "concrete efforts to progressively reduce" them (European Committee of Social Rights, 2022, pp. 158–159). Under Article 18(3), States are required to "liberalise, individually or collectively," and more specifically to "liberalise periodically," the regulations governing the employment of foreign workers; conditions for labour-market access "must not be excessively restrictive," with initial restrictions to be "gradually lifted," subject to the proportionality control of Article G (European Committee of Social Rights, 2022, pp. 159–160, 208–209).

A similar logic informs Article 19(1), which obliges States to "maintain or … satisfy themselves that there are maintained adequate and free services" to assist migrant workers, "particularly in obtaining accurate information." Crucially, the ECSR insists that such services "must be accessible in order to be effective," so reliance on remote or online tools alone is insufficient (Council of Europe, 1996, art. 19(1); European Committee of Social Rights, 2022, p. 161).

In the domain of social security, Article 12(4) translates positive obligation into coordination outcomes. The Committee requires equal treatment for nationals of other States Parties and maintenance of

acquired rights and rights in the course of acquisition; to secure export and aggregation—and thereby avoid protection gaps—States "may choose between bilateral agreements or any other means such as unilateral, legislative or administrative measures" (European Committee of Social Rights, 2022, pp. 123–124).

When the focus shifts to family reunification, Article 19(6) stipulates that States must "facilitate as far as possible" reunion for a foreign worker permitted to establish himself. The ECSR has specified operational parameters: a waiting period of up to one year may be acceptable, whereas eighteen months or more is not in conformity; means conditions must not be "so restrictive as to prevent family reunion," and "social benefits shall not be excluded" from the resource calculation; language/integration tests (including associated fees) are "contrary" to Article 19(6) where they effectively deny entry or stay, impose prohibitive charges, or disregard individual circumstances (Council of Europe, 1996, art. 19(6); European Committee of Social Rights, 2022, pp. 165–166).

Finally, equality-related provisions generate programmatic duties of their own. Under Article 19(4), States must eliminate legal and de facto discrimination and, where necessary, pursue a "positive and continuous course of action" to secure equality in fact; posted workers fall within Article 19(4), and any restriction on their equal treatment "must be objectively justified … having regard to the principles of Article G" (European Committee of Social Rights, 2022, p. 163). Under Article 19(4)(c), equal treatment in accommodation must be effective in practice, which requires the absence of legal or de facto barriers, monitoring (e.g., data collection), and a right of appeal before an independent body—a safeguard the Committee deems "important for all aspects" of Article 19(4) (ECSR, 2022, p. 164). And under Article 19(7), treatment "not less favourable" than for nationals must be secured in legal proceedings, including access "to courts, to lawyers and legal aid" on the same terms; where the interests of justice so require, migrants should receive free legal assistance and, if needed, an interpreter and translations (European Committee of Social Rights, 2022, pp. 166–167).

In summary, compliance with the ESC in the realm of migrant workers is not a passive exercise. States must proactively shape their laws and policies to realise the Charter rights. This perspective aligns with the broader conception of socio-economic rights in international law (as also reflected in the UN ICESCR's obligation "to take steps" towards full realization).

4. Limited Integration

Although every EU Member State is party to either the 1961 ESC or the 1996 Revised ESC, the Charter has a modest footprint within the EU legal order. By contrast, the European Convention on Human Rights (ECHR) enjoys recognised interpretive status through Article 6(3) TEU (ECHR rights as general principles of EU law) and Article 52(3) Charter of Fundamental Rights (corresponding Charter rights share the ECHR's meaning and scope), as reflected in the Explanations to the Charter of Fundamental Rights. Because the Union is not a party to the ESC, the case law of the ECSR does not bind EU institutions as such; Member States remain bound in their capacity as Contracting Parties, which can generate tension when national authorities implement EU measures (Consolidated version of the Treaty on European Union, 2016, art. 6(3); Charter of Fundamental Rights of the European Union, 2016, art. 52(3); Explanations relating to the Charter of Fundamental Rights, 2007).

At the level of primary law, the linkage is deliberately thin. Article 151 TFEU offers a declaratory reference to fundamental social rights "such as those set out in the ESC (1961) and the 1989 Community Charter of the Fundamental Social Rights of Workers," falling short of an incorporation clause. The CFR's Explanations identify the ESC as a source for several social-rights provisions (for example, fair and just working conditions; social security and social assistance), yet neither the ESC nor ECSR interpretations are treated by the CJEU as binding authorities. Institutional and academic assessments have long warned that this loose coupling risks gaps and conflict between EU measures and ESC obligations (Consolidated version of the Treaty on the Functioning

of the European Union, 2016, art. 151; Explanations relating to the Charter of Fundamental Rights, 2007; De Schutter, 2016, pp. 24–26).

In administrative practice, Commission impact assessments and legislative drafting systematically benchmark proposals against the CFR but do not consistently test them against the ESC/ECSR acquis, a pattern documented in De Schutter's study for the European Parliament (2016, pp. 22–26, 40–47). The European Pillar of Social Rights echoes many ESC guarantees but remains programmatic unless implemented through secondary legislation and administration; De Schutter's Council of Europe report recommends explicit cross-referencing to the ESC and to ECSR interpretations in EU monitoring and policy design (De Schutter, 2019, pp. 1–3, 46–48). Recent legislative follow-up, most notably Directive (EU) 2022/2041 on adequate minimum wages and Directive (EU) 2023/970 on pay transparency - has advanced social protection but still does not systematise reliance on ECSR case law (De Schutter, 2016, pp. 41–47; De Schutter, 2019, pp. 3–6, 46–48).

Coordination failures have produced concrete frictions. After the CJEU's judgment in Laval and Sweden's implementing reforms ("Lex Laval"), the ECSR in Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden found violations of Articles 6(2), 6(4), and 19(4)(a)-(b). During the Eurozone crisis, conditionality measures triggered a series of collective complaints; in Greek General Confederation of Labour (GSEE) v. Greece the Committee held that the 32% sub-minimum wage for under-25s breached Article 4(1) on fair remuneration. These episodes show how, absent systematic bridging techniques, EU-driven measures and ESC obligations may pull in different directions.

Improved coherence does not presuppose EU accession to the ESC. Two method-level adjustments are readily available: systematic cross-referencing to relevant ESC provisions and to ECSR interpretations in EU-level policy instruments, and transposition choices by Member States that satisfy both EU secondary law and accepted ESC obligations, especially in labour and migration fields where personal-scope limits and non-discrimination standards can collide. The ECSR's emergency-

assistance line Conference of European Churches (CEC) v. the Netherlands and FEANTSA v. the Netherlands (Complaint No. 86/2012) shows how exclusionary practices concerning shelter, food and urgent care may violate Article 13 read with Article E, while not displacing the Appendix's general ratione personae rule; this underlines the value of early compatibility checks when implementing EU measures (De Schutter, 2019, pp. 3–6, 46–48).

EU law often supports ESC aims, anti-discrimination directives, free-movement guarantees for Union citizens, and the recent social-policy directives just noted all contribute to higher protection. The difficulty is one of coverage and method: EU instruments are selective and do not map onto the ESC's catalogue or the ECSR's evolving interpretations. Unless ESC benchmarks and ECSR case law are expressly integrated into EU law-making and national implementation, selective protection and avoidable conflicts will persist (De Schutter, 2016, pp. 24–26, 40–47; De Schutter, 2019, pp. 1–4, 46–48).

Conclusions

The European Social Charter offers a dense, justiciable framework for protecting migrant workers' social rights across employment, social security, social assistance, equal treatment, and family life. ECSR case law has usefully adapted Charter provisions, most notably Articles 19, 12, and 13, to contemporary mobility patterns, clarifying States' positive obligations to make rights effective in practice and to guarantee emergency assistance and basic subsistence to persons in an irregular situation where human dignity is at stake. In the EU legal order, parallel developments can be leveraged to advance Charter-consistent outcomes, even if the ESC itself has only a limited formal footprint in EU primary law. To reduce norm collisions and implementation gaps, EU policymakers should systematically reference ESC provisions and ECSR case law in legislation and policy, and Member States must implement EU directives in ways that uphold their ESC obligations. Closer alignment between the EU's legal order and the ESC - potentially

through the EU's accession to the Charter - would ensure more consistent and comprehensive protection of migrant workers' rights across Europe.

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