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GUARANTEEING THE RIGHT TO FAMILY REUNIFICATION OF MIGRANT WORKERS IN EUROPE: THE INTERACTION BETWEEN THE EUROPEAN SOCIAL CHARTER AND EUROPEAN UNION LAW

Tatiana PUIU
ORCID [ID]: https://orcid.org/0009-0009-6519-6511
E-mail: puiutatiana@gmail.com
Affiliation: Free International University of Moldova

Abstract: *The right to family reunification constitutes an important component of the protection guaranteed to migrant workers under European social rights law, yet its legal treatment remains fragmented across the Council of Europe and European Union legal orders. This article examines family reunification under Article 19§6 of the European Social Charter (Revised) and analyses its relationship with EU migration law, in particular Council Directive 2003/86/EC, read alongside relevant developments in EU labor migration law, including the Blue Card and Single Permit regimes. The article argues that, notwithstanding the European Committee of Social Rights' consistent interpretation of Article 19§6, family reunification for migrant workers in Europe remains constrained by a structural gap between the Charter's social-rights guarantees and the regulatory logic of EU migration law. That gap is shaped by two interconnected factors: first, the Charter's limited personal scope and the uneven binding force of Article 19§6 across States Parties; and second, the discretion left to Member States under EU secondary law to impose conditions relating to resources, accommodation, integration requirements and waiting periods. EU minimum harmonization has not ensured effective convergence with the standards developed under Article 19§6 and may permit restrictive national rules that affect the practical enjoyment of family reunification. Through a doctrinal and comparative analysis of the case law of the European Committee of Social Rights and relevant EU migration instruments, the article identifies the principal points of divergence between the Charter and EU law, with particular attention to categories of migrant workers whose protection remains*

weaker or more fragmented, especially those engaged in temporary, seasonal or otherwise precarious forms of labor migration. On this basis, it highlights the need to improve coordination and strengthen coherence between the two legal systems.

***Keywords**: family reunification; social rights; migrant workers; European Social Charter; European Committee of Social Rights; EU migration law.*

Introduction

Family reunification is a core dimension of the protection of migrant workers' social rights in Europe. It is closely linked to the right to respect for family life, to the social integration of migrants and their dependants, and to the practical effectiveness of the broader catalogue of rights recognised to migrant workers under European labour and social rights law. Despite this centrality, the legal treatment of family reunification across the European continent remains fragmented, distributed between the Council of Europe and the European Union frameworks, and shaped by instruments adopted at different periods, with different normative ambitions, and addressed to different categories of beneficiaries.

Within the Council of Europe system, family reunification is expressly protected by Article 19§6 of the Revised European Social Charter, which requires States Parties that have accepted the provision *to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory* (Council of Europe, 1996, art. 19§6). In its supervisory practice, the European Committee of Social Rights has interpreted this obligation in an evolutive and effectiveness-oriented manner, scrutinising waiting periods, income and housing conditions, and integration requirements imposed by States Parties (European Committee of Social Rights, 2022, pp. 164–166). At the same time, the personal scope of the Charter, as defined in its Appendix, restricts its formal applicability to migrant workers who are nationals of another Charter State Party and are lawfully resident or working regularly within the territory, leaving migrant workers who are nationals of non-Party States outside its ordinary formal protection. This limitation is

compounded by the selective acceptance system of the Charter, under which Article 19§6 is binding only on States Parties that have expressly accepted it.

Within the European Union legal order, family reunification of third-country nationals residing in the Member States is primarily regulated by Council Directive 2003/86/EC, supplemented by sectoral instruments that introduce more favourable rules for certain categories of migrant workers, in particular Directive (EU) 2021/1883 on highly qualified employment (recast Blue Card) and Directive (EU) 2024/1233 (recast Single Permit), as well as instruments excluding family reunification entirely, notably Directive 2014/36/EU on seasonal workers (European Parliament and Council of the European Union, 2014a, 2021, 2024). Although Article 3(4)(b) of Directive 2003/86/EC expressly preserves more favourable provisions of the European Social Charter and of the European Convention on the Legal Status of Migrant Workers, the Directive itself adopts a model of minimum harmonisation that leaves Member States a wide margin of discretion in setting conditions for family reunification (Council of the European Union, 2003). The Court of Justice has progressively delineated the limits of this discretion, in particular in *Parliament v Council* (CJEU, 2006) and *Chakroun* (CJEU, 2010), but has also confirmed that the Directive still leaves Member States a margin of discretion in several areas of implementation, subject to the requirements of proportionality, individual assessment, fundamental rights and the effectiveness of the right to family reunification (Costamagna et al., 2022, pp. 55–57, 66–67).

Against this background, this article examines the right to family reunification of migrant workers in Europe through the lens of the interaction between the European Social Charter and EU law. It argues that, notwithstanding the consistent interpretation of Article 19§6 by the European Committee of Social Rights, the practical enjoyment of family reunification remains constrained by a structural gap between the Charter's social rights guarantees and the regulatory approach adopted by EU migration law. Two interconnected factors shape that gap: the limited personal scope of the Charter, which restricts its formal reach in respect of large segments of the migrant workforce, and the wide discretion left to

Member States under EU secondary law to impose conditions of reunification capable of undermining its effective exercise. The cumulative effect is a fragmented regime in which EU minimum harmonisation does not ensure substantive convergence with Charter standards and may leave space for national rules that fall short of the requirements developed by the European Committee of Social Rights.

The analysis proceeds in five sections. The first section sets out the framework of Article 19§6 of the European Social Charter and the interpretive practice of the European Committee of Social Rights. The second examines the EU legal framework on family reunification, focusing on Directive 2003/86/EC and its interaction with EU labour migration instruments. The third analyses the principal points of divergence between the two systems, with particular attention to conditions of income, housing, integration and waiting periods. The fourth addresses categories of migrant workers whose protection remains structurally weaker or more fragmented, in particular those engaged in temporary or otherwise precarious forms of labour migration. The fifth considers the prospects for improved coordination between the two legal orders. The article concludes that the European Social Charter retains autonomous normative significance and continues to provide a critical benchmark against which EU migration law and national implementing measures should be assessed.

The European Social Charter framework for family reunification of migrant workers

The right to family reunification under the European Social Charter is anchored in Article 19, which guarantees the right of migrant workers and their families to protection and assistance and articulates a set of specific obligations on States Parties. Within Article 19, paragraph 6 occupies a particular place, requiring States Parties that have accepted the provision *to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory* (Council of Europe, 1996, art. 19§6). The wording is deliberately programmatic, but it has been transformed by the supervisory practice of the European

Committee of Social Rights into a set of relatively concrete substantive and procedural standards (European Committee of Social Rights, 2022, pp. 164–166). As Kristensen observes, although the provision may appear imprecise in its scope, the Committee has interpreted it to impose a clear obligation on States to allow the families of migrant workers lawfully established in their territory to join them (Kristensen, 2015, pp. 187–188).

The personal scope of Article 19§6 is defined by Article 19, read together with the Charter's Appendix. Article 19 protects migrant workers who are nationals of one Charter State Party in the territory of another, while the Appendix clarifies the Charter's approach to foreign nationals and defines the family of a foreign worker for the purposes of Article 19§6. For the purposes of Article 19§6, the Appendix specifies that the term *family of a foreign worker* is understood to mean *at least* the worker's spouse and unmarried dependent children, as long as the latter are considered to be minors by the receiving State (Council of Europe, 1996, art. 19 and Appendix). This minimum definition has been treated by the Committee as a floor rather than a ceiling: States Parties remain free to extend the protected family circle, and the Committee has noted that broader inclusion under national law is to be assessed favourably (European Committee of Social Rights, 2022, p. 164).

The *ratione personae* limitation, by contrast, has more significant implications. Because Article 19§6 is formally restricted to migrant workers who are nationals of other Charter States Parties, migrant workers who are nationals of non-Party States fall outside the ordinary personal scope of the provision (Council of Europe, 1996, art. 19 and Appendix; European Committee of Social Rights, 2022, pp. 211–213). Article 19§6 is binding only on States Parties that have expressly accepted it under the Charter's selective acceptance system (Council of Europe, 1996, art. A). It should be noted that not all EU Member States have ratified the Revised Charter of 1996; some remain bound only by the original 1961 Charter, with corresponding differences in the scope of accepted provisions (Council of Europe, 2026). As Kristensen has observed, the restricted personal scope of the Charter and the uneven acceptance of Article 19§6 narrow the practical reach of the provision within the European social

rights system (Kristensen, 2015, pp. 191-193). The European Committee of Social Rights has acknowledged the formal scope limitation but has also clarified, in line with its consistent jurisprudence, that personal-scope restrictions cannot be applied in a manner that deprives individuals of the protection of the most basic Charter rights or produces outcomes incompatible with human dignity (European Committee of Social Rights, 2004, §§29–32). While this dignity-based line of case law does not extend Article 19§6 *ratione personae* to all migrant workers irrespective of nationality, it sets an interpretive boundary against constructions of the Appendix that would render Charter obligations functionally illusory.

On the substantive plane, the European Committee of Social Rights has developed a coherent body of standards setting limits to the conditions that States Parties may attach to family reunification under Article 19§6. As regards waiting periods, the Committee has held that a period of up to one year between the worker's establishment in the host State and the moment family members may join may be acceptable, whereas waiting periods of eighteen months or more are not in conformity with Article 19§6 of the Charter (European Committee of Social Rights, 1969, 2011a, 2022, p. 164). This standard reflects the Committee's understanding that prolonged separation undermines the very rationale of family reunification and risks rendering the right merely formal. It is also consistent with Article 12(1) of the European Convention on the Legal Status of Migrant Workers (Council of Europe, 1977, art. 12(1)), under which a waiting period for family reunion authorisation may not exceed twelve months.

With respect to income or means requirements, the Committee has consistently held that such conditions must not be set so high as to preclude reunification in practice. The Committee has further specified that *social benefits should not be excluded* from the calculation of the worker's resources, and that the assessment must take individual circumstances into account (European Committee of Social Rights, 2011b, 2022, p. 165). The same logic governs accommodation requirements: while States Parties may legitimately require that family members be received in adequate housing, such requirements must not be so restrictive as to prevent reunion, and individual exemptions or flexibilities must be available where strict

application would render the right ineffective (European Committee of Social Rights, 2015, 2022, pp. 165–166).

Integration and language requirements have attracted particular attention. In its Statements of Interpretation on Article 19§6, the Committee has held that language and/or integration requirements may be contrary to the Charter where they impede family reunion, deny entry or residence, impose prohibitive fees, or fail to take account of individual circumstances such as age, education, or family and work commitments (European Committee of Social Rights, 2011b, 2015, 2022, p. 166). This approach reflects the Charter's effectiveness-oriented logic: integration measures may pursue legitimate aims, but they cannot operate as instruments of exclusion.

The Committee has also clarified that Article 19§6 confers a distinct entitlement that interacts with the protection against expulsion under Article 19§8. Family members already lawfully present should not be deported merely because the principal worker is expelled, and Article 19§6 has been read as conferring an independent residence right on its beneficiaries, with the result that expulsion of family members must be assessed under that provision (European Committee of Social Rights, 2022, p. 166). The right to reunification is thus not merely an entry right but a continuing protection of the family unit once formed within the territory.

Read together with the non-discrimination clause in Article E, these standards may acquire additional bite. Article E prohibits both direct and indirect discrimination in the enjoyment of Charter rights and applies where formally neutral rules or practices produce disadvantageous effects for particular groups (European Committee of Social Rights, 2003, §52; European Committee of Social Rights, 2022, pp. 35–36). In the context of family reunification, this suggests that requirements that appear neutral in form, such as generally applicable income thresholds set by reference to a national average, may nonetheless be incompatible with the Charter when read in conjunction with Article E if they disproportionately disadvantage migrant workers in lower-paid or precarious employment.

Finally, the Charter framework imposes positive obligations on States Parties, requiring not merely the formal recognition of the right to family reunification but also the adoption of practical, administrative and procedural measures that render its exercise effective. This effectiveness-oriented approach is a recurring feature of the Committee's interpretation across all dimensions of Article 19. Accordingly, compliance with Article 19§6 is not a passive exercise: States must shape their laws, procedures and administrative practices so as to give the right to family reunification practical effect (European Committee of Social Rights, 2018, pp. 164–166, 210).

Family reunification of migrant workers within EU migration law

For third-country migrant workers, access to family reunification within EU law is governed primarily by the general framework of Council Directive 2003/86/EC on the right to family reunification, complemented by sectoral instruments addressing specific categories of third-country workers. Within this framework, the Directive sets out general rules applicable to third-country nationals lawfully resident in a Member State, while the Blue Card Directive and the Single Permit Directive in its recast version provide additional or differentiated guarantees for certain categories of workers (European Parliament and Council of the European Union, 2021, 2024). Other instruments, most notably Directive 2014/36/EU on seasonal workers, exclude family reunification altogether from the rights conferred on the workers concerned (European Parliament and Council of the European Union, 2014a, recital 46).

Directive 2003/86/EC was adopted as part of the early EU migration acquis under what is now Article 79 TFEU. Its purpose, as defined in Article 1, is to determine the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States (Council of the European Union, 2003, art. 1). The Directive's recitals expressly link family reunification to fundamental rights, in particular Article 8 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union (Council of the European Union, 2003, recitals 2 and 4). Critically

for the present analysis, Article 3(4)(b) provides that the Directive is without prejudice to more favourable provisions of, *inter alia*, the European Social Charter and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

The Directive's personal scope is, however, narrower than its title might suggest. It applies to third-country national sponsors holding a residence permit issued by a Member State for a period of validity of one year or more and having reasonable prospects of obtaining the right of permanent residence (Council of the European Union, 2003, art. 3(1)). Several categories are expressly excluded under Article 3(2), including persons whose residence in a Member State is based on subsidiary or temporary protection, applicants for refugee status whose status has not yet been definitively determined, and family members of EU citizens, whose situation is governed by Directive 2004/38/EC. Moreover, the Directive is not binding on Ireland or Denmark (Council of the European Union, 2003, recitals 17–18).

The substantive conditions under which Member States may grant or refuse family reunification are set out principally in Articles 4 to 8 of the Directive. Article 4(1) lays down precise positive obligations, requiring Member States to authorise the entry and residence of the sponsor's spouse and minor children, subject to compliance with the conditions of Chapter IV. As clarified by the Court of Justice in *Parliament v Council* (CJEU, 2006, §§ 60–62), these provisions impose precise positive obligations to which subjective rights correspond, leaving Member States no margin of appreciation in the cases covered. Article 4(5) permits Member States to require that the sponsor and the spouse be of a minimum age, set at most at twenty-one years, in order to ensure better integration and to prevent forced marriages, a requirement validated by the Court in *Marjan Noorzia* (CJEU, 2014a, §§14–18).

The conditions most directly relevant to the present analysis are those laid down in Article 7 of the Directive. Under Article 7(1), Member States may require evidence that the sponsor has accommodation regarded as normal for a comparable family in the same region, sickness insurance covering himself and his family members, and stable and regular resources

sufficient to maintain himself and his family without recourse to the social assistance system. Under Article 7(2), Member States may require third-country nationals to comply with integration measures, in accordance with national law. Article 8 in turn permits a waiting period of up to two years of lawful residence before reunification, which may be extended to three years where national legislation in force at the time of adoption of the Directive took into account reception capacity. The Court of Justice has progressively defined the limits of these provisions, in particular in *Chakroun* (CJEU, 2010), *K and A* (CJEU, 2015), and *Khachab* (CJEU, 2016), emphasising that the margin of discretion left to Member States must not be exercised in a manner that undermines the objective of the Directive, which is to promote family reunification.

The 2008 Commission's implementation report and the 2011 Green Paper concluded that the Directive itself leaves Member States too much discretion when applying its optional provisions, in particular as regards waiting periods, income requirements and integration measures (European Commission, 2008, 2011). The 2014 Communication on guidance for the application of Directive 2003/86/EC sought to address some of these concerns by clarifying the limits of national discretion in light of the Court's case law (European Commission, 2014), but the underlying structural feature of minimum harmonisation has remained unchanged. The 2019 implementation report confirmed continuing divergences between Member States in respect of conditions for reunification (European Commission, 2019).

Beyond the Family Reunification Directive, EU labour migration instruments organise family reunification along sectoral lines that reflect differentiated regulatory ambitions with respect to different categories of migrant workers. The recast Blue Card Directive provides for fast-tracked family reunification, granting family members of EU Blue Card holders simultaneous residence permits where applications are lodged together, immediate access to the labour market, and exemption from the waiting period set out in Article 8 of Directive 2003/86/EC (European Parliament and Council of the European Union, 2021, art. 17). The Directive also restricts Member States' ability to apply integration conditions before entry, allowing such conditions only after admission. These more

favourable rules reflect the broader policy objective of making the EU Blue Card scheme more attractive for highly qualified third-country workers, while their practical effectiveness remains dependent on Member States' implementation choices (De Lange and Vankova, 2022).

The Single Permit Directive in its 2011 version and its 2024 recast operates as a horizontal instrument applicable to a broad category of third-country workers (European Parliament and Council of the European Union, 2011, 2024). It does not regulate the conditions of entry for family reunification, which remain governed by Directive 2003/86/EC, but it confers equal-treatment guarantees on single permit holders and their family members in a number of fields, including working conditions, social security, and access to information on labour rights. The 2024 recast Directive strengthens procedural safeguards and broadens the common set of rights, but does not alter the underlying entry regime for family members.

By contrast, the Seasonal Workers Directive explicitly excludes family reunification from its scope. Recital 46 of the Directive states that *this Directive does not provide for family reunification*, and grounds this exclusion in the temporary nature of the stay (European Parliament and Council of the European Union, 2014a). Member States remain free under national law to permit family admission in individual cases, but the Directive itself does not confer an EU-level family reunification entitlement on seasonal workers. The Directive therefore treats the temporary nature of seasonal employment as a reason not to harmonise family reunification at EU level, without excluding the possibility of more favourable national rules (Zoeteweij-Turhan, 2017). The Intra-Corporate Transferees Directive takes a different position, providing for derogations from Directive 2003/86/EC in favour of family members of transferees, including the absence of waiting periods and immediate access to employment, in line with the policy preference for highly skilled mobility (European Parliament and Council of the European Union, 2014b).

The cumulative effect of these instruments is a stratified regime in which family reunification is facilitated for highly qualified or intra-corporate workers, remains conditional and discretion-laden for third-

country national sponsors falling within Directive 2003/86/EC, and is not provided at EU level for seasonal workers and some other categories engaged in short-term or precarious labour migration. Building on Verschueren's (2016) broader characterisation of EU labour migration law as an “incomplete patchwork of legal protection”, the present analysis identifies family-reunification stratification as a specific manifestation of that broader fragmentation. This stratification is the principal site of tension with the standards developed under Article 19§6 of the European Social Charter.

Points of divergence between Article 19§6 ESC and EU migration law

The interaction between Article 19§6 of the European Social Charter and the EU framework on family reunification is characterised by partial convergence and persistent divergence. Convergence is most evident at the level of general principle: both systems recognise family reunification as a normatively important component of the protection afforded to migrant workers, and both connect the right to fundamental rights guarantees, in particular the right to respect for family life. Divergence emerges, however, at the level of personal scope, of the conditions that may be imposed on reunification, and of the categories of workers protected.

Personal scope and the limits of the Charter

The first and most structural point of divergence concerns personal scope. Article 19§6 applies to the family reunion of a foreign worker who is *permitted to establish himself* in the territory of the host State, within the personal scope defined by the Charter's Appendix, namely nationals of other States Parties who are lawfully resident or working regularly within the territory (Council of Europe, 1996, art. 19§6 and Appendix; European Committee of Social Rights, 2022, pp. 165–166). Although the geographic reach of the Charter is broad, with all EU Member States being parties to either the 1961 or the 1996 version of the Charter, not all Member States have ratified the Revised Charter and not all have accepted Article 19§6; the nationality-based formal scope of Article 19§6, combined with the

Charter's selective acceptance system, means that the provision does not bind all States Parties and does not cover migrant workers who are nationals of non-Party States (Council of Europe, 1996, art. 19§6 and Appendix; Council of Europe, 2026).

Directive 2003/86/EC, by contrast, applies in the Member States bound by it, excluding Denmark and Ireland, to third-country national sponsors who satisfy the residence-permit and reasonable-prospects-of-permanent-residence conditions laid down in Article 3(1) of the Directive, irrespective of which third-country nationality they hold (Council of the European Union, 2003, art. 2(c), 3(1), recitals 17–18; European Commission, 2019; Costamagna, Montaldo, and Romanelli, 2022, pp. 47–48). In formal terms, the EU regime may therefore have a broader personal reach than Article 19§6 of the European Social Charter, whose application is framed by the Charter's personal scope. However, this broader formal scope is paired with a substantively narrower set of obligations: the Directive's many derogations and may-clauses confer on Member States a margin of discretion that, in practice, can substantially reduce the level of protection compared to the standards developed by the Committee (Council of the European Union, 2003, arts. 4(2)–(6), 7 and 8; Groenendijk, 2006). The result is a paradoxical configuration in which the Charter's higher substantive standards reach a smaller formal population, while the EU regime applies to a broader category of third-country national sponsors but leaves greater room for national discretion in several decisive areas. From the perspective of the migrant worker, neither system alone provides the comprehensive protection that a coherent right to family reunification would require.

This structural mismatch is partly mitigated by the fact that the European Committee of Social Rights has, in line with its general jurisprudence on personal scope, refused to interpret the Appendix in a manner that would deprive the Charter rights of their essential content or produce outcomes incompatible with human dignity (European Committee of Social Rights, 2004, §§29–32; European Committee of Social Rights, 2009, §§34, 36–37; European Committee of Social Rights, 2022, pp. 211–213). While this dignity-based line does not extend Article 19§6 *ratione*

personae to all migrant workers, it provides an interpretive baseline that may be relied upon in cases involving severe restrictions on family unity, and reinforces the argument that the Charter standards retain autonomous normative significance even where their formal application is limited.

Income, housing and resources requirements

The second point of divergence concerns the substantive conditions that Member States may attach to reunification. Under Article 7(1)(c) of Directive 2003/86/EC, Member States may require evidence that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system. The Court of Justice has clarified, in *Chakroun* (CJEU, 2010, §§43, 46, 48), that the discretion conferred on Member States by this provision must not be exercised in a manner that undermines the objective of the Directive and that reference amounts may serve as indicators but not as rigid thresholds below which all applications are refused without an individual assessment. In *Khachab* (CJEU, 2016, §§ 30, 35, 43), the Court further accepted that Member States may carry out a prospective assessment of the sponsor's resources, but emphasised that the assessment must take individual circumstances into account.

The Committee's interpretation of Article 19§6 converges with this case law on the requirement of an individualised assessment, but goes further on two specific points. First, the Committee has explicitly stated that *social benefits should not be excluded* from the calculation of the sponsor's resources, recalling that migrant workers who have sufficient income to provide for the members of their families should not be automatically denied family reunion on the ground of the origin of such income, where its origin is not unlawful or immoral (European Committee of Social Rights, 2011b, 2022, pp. 165–166; Kristensen, 2015, pp. 194-196). The exclusion of social benefits from the resource calculation, which several Member States operate either expressly or in practice, is therefore difficult to reconcile with the Charter standard. Second, the Committee has been clear that means tests must not be set so high as to preclude reunification, a standard that has been operationalised in its supervisory

practice through the assessment of specific national thresholds (Pascouau and Labayle, 2011, pp. 81 ff.).

Similar tensions arise with respect to accommodation. Article 7(1)(a) of Directive 2003/86/EC allows Member States to require accommodation regarded as normal for a comparable family in the same region. The Committee accepts that States Parties may impose accommodation requirements but has insisted that they must not be so restrictive as to prevent reunion and that exemptions or flexibilities should be available based on individual circumstances (European Committee of Social Rights, 2022, pp. 165–166). National regimes that operate strict size or quality thresholds, particularly in housing markets characterised by high prices and limited social housing, are liable to fall short of the Charter standard, even where they remain formally compatible with the Directive's wording (Council of the European Union, 2003, art. 7(1)(a); Strik, de Hart, and Nissen, 2013).

Integration requirements

Integration requirements constitute one of the most contested areas of divergence. Article 7(2) of Directive 2003/86/EC permits Member States to require third-country nationals to comply with integration measures, in accordance with national law. The Court of Justice in *K and A* (CJEU, 2015, §§. 51, 71) accepted that pre-entry integration tests may in principle be imposed, but it subjected such tests to a strict proportionality test. In particular, the Court held that Member States must consider individual circumstances which may make it excessively difficult or impossible to pass the test, and that fees associated with the test must not aim to or have the effect of making family reunification impossible or excessively difficult.

The Committee's position is more restrictive. In its Statements of Interpretation on Article 19§6, the Committee held that pre-entry or post-entry language and integration tests are *contrary* to Article 19§6 where, by reason of their stringency, they discourage applications for family reunion, where they impose prohibitive fees, or where they fail to take account of

individual circumstances such as age, education, or family and work commitments (European Committee of Social Rights, 2011b, 2022, pp. 165–166). While the Committee's standard is not formulated as an absolute prohibition, its operational effect is to subject integration requirements to closer scrutiny than the Court of Justice's proportionality test. National regimes that operate language tests with significant rates of failure, or that condition reunification on the completion of paid integration courses, are likely to encounter difficulties under the Charter standard even where they comply with the Directive as interpreted by the Court.

Waiting periods

Waiting periods constitute the fourth main point of divergence. Article 8 of Directive 2003/86/EC permits Member States to require the sponsor to have stayed lawfully in the territory for a period not exceeding two years before the family is allowed to join, and, where reception capacity is taken into account, to extend this period to three years (Council of the European Union, 2003, art. 8; Costamagna, Montaldo, and Romanelli, 2022, p. 65). The Committee, by contrast, has accepted waiting periods of up to one year as compatible with Article 19§6, while finding waiting periods of eighteen months or more to be in breach of the Charter (European Committee of Social Rights, 2018, pp. 165–166; Kristensen, 2015, pp. 191–192).

The gap is therefore substantial: a national regime providing for a two-year waiting period is, on the face of it, compatible with EU law but incompatible with the Charter as interpreted by the Committee. National authorities implementing the Directive are placed in a position of compliance tension, in which respect for one set of obligations may entail breach of the other. The Committee has, in its General Introduction to Conclusions 2011, expressly addressed this tension, recalling that it rules on the Charter and not on EU law, observing that the Directive itself is without prejudice to more favourable provisions of the Charter, and concluding that the Directive contains provisions allowing the Member States concerned to adopt and apply rules that infringe Article 19§6 (European Committee of Social Rights, 2011b; Council of the European

Union, 2003, art. 3(4)(b)). More generally, the Committee's case law confirms that EU-law origin does not exempt national measures from Charter scrutiny: States Parties remain bound by their Charter commitments when implementing EU law (European Committee of Social Rights, 2013, §§121, 132–142).

Categories of migrant workers with weaker or more fragmented family reunification protection

The structural divergences identified in the previous section affect different categories of migrant workers in differentiated ways. The stratification created by EU labour migration law produces differentiated access to family reunification that does not map neatly onto the protective rationale of Article 19§6 of the Charter, and that leaves several groups in a position of weaker or more fragmented protection. Building on Verschueren's broader characterisation of EU labour migration law as an "incomplete patchwork of legal protection" (Verschueren, 2016, pp. 373), this section identifies the stratification of family-reunification rights as a specific dimension of that broader fragmentation.

Seasonal workers

A particularly relevant case is that of seasonal workers. Directive 2014/36/EU does not provide for family reunification. This absence of protection must be understood in the light of the Directive's regulatory object, namely the admission and stay of third-country nationals for the purpose of temporary seasonal employment, rather than as an express statement that seasonal employment is inherently incompatible with family life (European Parliament and Council of the European Union, 2014a, recital 46, art. 1). Seasonal workers may stay and work in the host State for a maximum period to be determined by Member States, which must be between five and nine months in any twelve-month period (European Parliament and Council of the European Union, 2014a, art. 14(1)). In practice, seasonal work may involve repeated or recurrent

periods of mobility over several years, even though the legal regime remains formally temporary (Zoeteweij-Turhan, 2017). The absence of an EU-level family reunification entitlement means that workers in this regime may spend repeated periods working in EU Member States without a right under EU law to be joined by their spouses or minor children.

The compatibility of this absence of protection with Article 19§6 of the Charter requires a more nuanced assessment than a simple finding of incompatibility. Article 19§6 refers to a foreign worker *permitted to establish himself* in the territory, whereas seasonal work is formally structured as temporary employment (Council of Europe, 1996, art. 19§6; European Committee of Social Rights, 2022, pp. 165–166). Accordingly, the absence of family reunification protection for seasonal workers should not be presented as automatically incompatible with Article 19§6. Rather, repeated or long-term patterns of seasonal mobility may justify doctrinal scrutiny of the assumption that seasonal workers fall entirely outside family-unity guarantees. Under the current wording of Article 19§6, however, this remains an argument about coherence and possible future interpretation, not a settled obligation under the Charter (Kristensen, 2015, pp. 196–198).

Single permit holders and workers in lower-paid employment

Third-country workers who hold a single permit and who seek family reunification under Directive 2003/86/EC occupy an intermediate position. Their formal entitlement to family reunification is recognised, but their effective access depends on satisfying the conditions imposed under Article 7 of the Directive as transposed by national law (Council of the European Union, 2003, art. 7; European Parliament and Council of the European Union, 2024, arts. 1, 12; Costamagna, Montaldo, and Romanelli, 2022).

Workers in lower-paid employment – particularly those engaged in part-time work, fragmented employment trajectories or fluctuating incomes – may face substantial difficulties in meeting income thresholds set by reference to a national minimum or average wage. This is particularly relevant where national rules operate automatic or rigid

resource thresholds. The Court of Justice has held in *Chakroun* that reference amounts may serve as indicators, but may not be applied as automatic thresholds without individual assessment (CJEU, 2010, §§43, 46, 48). The European Committee of Social Rights has similarly held that means requirements must not be so restrictive as to prevent family reunion, and that social benefits should not be excluded from the calculation of the migrant worker's income (European Committee of Social Rights, 2022, p. 166). Accordingly, automatic exclusion of lawful income or social benefits from the resource calculation may be difficult to reconcile with Article 19§6, where the worker falls within the Charter's personal scope and the State has accepted the provision (European Committee of Social Rights, 2022, pp. 165–166; Kristensen, 2015, pp. 194–196).

Where the worker falls within the Charter's personal scope and the State has accepted Article 19§6, income and accommodation requirements may also require scrutiny under Article E read in conjunction with Article 19§6. This is particularly so where formally neutral requirements disproportionately affect certain categories of migrant workers (Council of Europe, 1996, art. E and art. 19§6; European Committee of Social Rights, 2022, p. 206). Although nominally neutral, income and accommodation requirements may have a disproportionate impact on migrant workers in occupations characterised by lower remuneration, and these labour-market patterns may intersect with sector, gender or origin. This does not mean that income or accommodation thresholds are automatically discriminatory; rather, their compatibility with the Charter depends on their design, proportionality, flexibility, and concrete effects in practice (European Committee of Social Rights, 2003, §§52–54; European Committee of Social Rights, 2022, p. 206; Strik, de Hart, and Nissen, 2013).

Posted workers

The European Committee of Social Rights has clarified, in its supervisory practice on Article 19§4, that posted workers fall within certain equal-treatment guarantees for the duration of their lawful stay and

work in the host State. In *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, the Committee stated that posted workers carry out their work for a limited period in the territory of a State other than the State in which they usually work and that, for the period of their stay and work in the host State, they fall within the scope of Article 19 and are entitled to treatment not less favourable than national workers as regards remuneration, other employment and working conditions, and enjoyment of the benefits of collective bargaining (European Committee of Social Rights, 2013, §134; European Committee of Social Rights, 2015). However, this position concerns Article 19§4(a) and (b) and should not be read as a settled extension of Article 19§6 to posted workers. Article 19§6 raises a distinct question because it refers to the family reunion of a foreign worker "permitted to establish himself" in the territory; the regulatory framework for posted workers is governed primarily by Directive 96/71/EC, as amended by Directive (EU) 2018/957, which does not directly address family reunification (European Parliament and Council of the European Union, 1996, 2018; Council of Europe, 1996, art. 19§6; European Committee of Social Rights, 2022, pp. 165–166). Accordingly, long-term or recurrent postings may justify doctrinal scrutiny from the perspective of family unity, but the application of Article 19§6 to posted workers remains an unresolved issue rather than established ECSR case law. The more secure conclusion is that posted workers illustrate the broader tension between cross-border labour mobility and family-unity guarantees, while the Charter's standards retain autonomous normative force in assessing national measures adopted in the context of EU law (European Committee of Social Rights, 2013, §122).

Workers in irregular situations

Workers in irregular situations represent the most vulnerable category. Both the Charter's Appendix and the personal scope of Directive 2003/86/EC formally exclude irregular migrants from family reunification protection (Council of Europe, 1996, Appendix; Council of the European Union, 2003, art. 3(1); see generally Fox-Ruhs & Ruhs, 2022). The

Committee has, however, consistently held that personal-scope restrictions cannot be construed in a manner that deprives individuals of basic rights linked to human dignity, and has applied this principle to children in irregular situations in cases such as *FIDH v. France*, *DCI v. the Netherlands* and *DCI v. Belgium* (European Committee of Social Rights, 2004, §§29–32; European Committee of Social Rights, 2009, §§34, 36–37; European Committee of Social Rights, 2012). While these cases concern access to health care and shelter rather than family reunification as such, they reinforce the Committee's interpretive baseline against constructions of personal scope that would render Charter obligations functionally illusory in cases involving severe interference with family life.

Towards greater coherence between the two legal orders

The structural divergences identified above raise the question whether, and how, the two legal orders may be brought into greater coherence. The relationship between EU law and the European Social Charter is asymmetrical: EU law enjoys primacy in the domestic legal orders of Member States, while the Charter binds States Parties as an international treaty. The European Union itself is not a party to the Charter, with the consequence that the conclusions and decisions of the European Committee of Social Rights do not, in formal terms, bind EU institutions. Member States, however, remain internationally responsible for compliance with the Charter even where their domestic measures implement EU obligations. As the Committee has consistently confirmed, the EU-law origin of national provisions does not remove them from the ambit of the Charter (European Committee of Social Rights, 2013, §122; see also De Schutter, 2016, pp. 40–49).

Within this framework, several possible pathways towards greater coherence may be identified. The first concerns interpretive and legislative practice at EU level. As De Schutter has argued in his study for the European Parliament, the EU institutions could systematically benchmark legislative proposals against Charter standards and Committee

interpretations, in addition to the existing benchmark of the Charter of Fundamental Rights of the EU (De Schutter, 2016, pp. 41–43). In the field of family reunification, this would imply, at minimum, an explicit assessment of conditions of income, housing, integration and waiting periods against the standards developed by the Committee under Article 19§6, both in the implementation review of Directive 2003/86/EC and in any future revision of the EU acquis.

The second pathway concerns interpretation and implementation at national level. Member States, as parties to both legal orders, are in a position to interpret and implement EU directives in a manner that satisfies both EU obligations and accepted Charter commitments. Where the Directive 2003/86/EC framework leaves margins of discretion, those margins should be exercised in a Charter-consistent manner. Where the Charter's substantive standards are stricter than the Directive's minimum, the more favourable Charter standards should inform national choices. Article 3(4)(b) of Directive 2003/86/EC, which expressly preserves more favourable provisions of the European Social Charter, provides a textual anchor for this approach.

The third pathway is institutional. The Court of Justice has, in its case law on Directive 2003/86/EC, drawn extensively on Article 8 of the European Convention on Human Rights and on the Charter of Fundamental Rights, but it has so far made limited use of the European Social Charter and of the interpretations of the European Committee of Social Rights (Costello, 2015, ch. 4). In *Parliament v Council* (CJEU, 2006), the Court referred to Article 19§6 of the Charter in its description of the international legal context but did not give it operative weight in its interpretation of the Directive. A more systematic use of the Committee's standards as interpretive sources could contribute to a substantive convergence between the two legal orders, in particular in the application of the proportionality test under Article 7 of the Directive as interpreted in the relevant EU family-reunification case law **(**Bornemann, Arévalo, and Klarmann, 2022).

The fourth and most ambitious pathway is EU accession to the European Social Charter which, as De Schutter argues, could be envisaged on the basis of Article 216(1) TFEU. Such accession would raise legal and

political questions analogous to those that have arisen in the context of EU accession to the European Convention on Human Rights – questions of competence, of compatibility with the autonomy of EU law, and of the relationship between the Court of Justice and the supervisory bodies of the receiving treaty (CJEU, 2014b). Despite these obstacles, accession would address at the structural level the asymmetry between the two legal orders and would bring EU institutions formally within the Charter's supervisory framework (De Schutter, 2016, pp. 44–67).

Recent legislative developments in EU social law may suggest cautious convergence with Charter principles. The European Pillar of Social Rights, proclaimed in 2017, expressly states in its preamble that *nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter* (European Parliament, Council of the European Union, and European Commission, 2017, recital 16). Recent instruments adopted in implementation of the Pillar, including Directive (EU) 2022/2041 on adequate minimum wages (European Parliament and Council of the European Union, 2022), reflect a renewed willingness to engage with social rights at EU level. While these instruments do not directly address family reunification, they reflect a policy orientation that, if extended to migration law, could contribute to greater coherence between the two legal orders.

Conclusions

The right to family reunification of migrant workers in Europe is shaped by the interaction between two legal orders that share fundamental rights commitments but operate according to different normative logics. Article 19§6 of the European Social Charter, as interpreted by the European Committee of Social Rights, sets out a coherent set of standards that frame family reunification as an entitlement to be facilitated as far as possible, subject to limited and proportionate conditions. Directive

2003/86/EC and the broader EU labour migration acquis adopt a model of minimum harmonisation that recognises family reunification as a right but leaves Member States considerable discretion to attach conditions to its exercise. As argued throughout this article, the practical enjoyment of family reunification continues to be constrained by a structural gap between the two systems, shaped by the limited personal scope of the Charter and by the wide discretion left to Member States under EU secondary law to impose conditions relating to income, housing, integration and waiting periods. The divergence is particularly acute in respect of categories of migrant workers whose protection is weaker or more fragmented: seasonal workers, workers in lower-paid employment, posted workers and workers in irregular situations. Improved coherence between the two legal orders does not require a single, unified instrument; it requires that EU legislators benchmark their proposals against Charter standards, that the Court of Justice draw more systematically on the Committee's interpretations in the application of Article 7 and 8 of Directive 2003/86/EC, and that Member States exercise the margins of discretion left by EU law in a Charter-consistent manner. EU accession to the European Social Charter, while ambitious, would address the underlying asymmetry between the two legal orders at the structural level, subject to the terms and institutional arrangements of such accession.

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