



# Young Persons and the case-law of the European Convention on Human Rights and the European Social Charter



by **David Hayward**  
(postgraduate law student  
at the University of Glasgow)

October 2013

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# Preface

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**by Maria Paschou, Chair of the Advisory Council on Youth**

**S**ince its inception, the Youth Sector of the Council Europe has placed a high importance on the elaboration of policies that increase the access of young people to their fundamental rights. But youth in Europe are sometimes faced with specific challenges that are different from those of children or other adults. This publication looks at how the existing Council of Europe human rights instruments, notably the European Convention on Human Rights and the European Social Charter, attempt to remedy these problems.

Meant as a first case-law compilation of important decisions involving young people from the European Court on Human Rights, including references to the work of the European Committee of Social Rights, this publication is a contribution to the on-going evidence-based policy debate on how young people's access to rights can be improved. It includes an initial analysis of the case-law and identifies those areas in which the rights of young people have been violated.

Published on the initiative of the Advisory Council on Youth, this document presents an open invitation to researchers and policy actors at the national and European level, governments and NGOs, to consider how the European human rights instruments can be further strengthened to ensure that all young persons in Europe can enjoy their fundamental rights.

I would like to thank Mr. David Hayward for his hard work in preparing a first analysis of the findings and my colleagues of the Advisory Council on Youth for the interesting debates whilst preparing the "youth" response to them, which you can find in this publication.

I would also like to express my gratitude to the Mr. Michael O'Boyle, Deputy Registrar of the European Court of Human Rights and the Research Division of the ECHR for their valuable support in providing us with the ECHR case-law compilation, as well as Mr. Regis Brillat, Executive Secretary of the European Committee of Social Rights and his team for their willingness to work with us on the provisions of the European Social Charter. Finally, I would like to thank Ms Antonina Bejan, trainee in the Council of Europe, who prepared a first discussion paper on the findings for the Advisory Council on Youth.

We hope that this publication will help our institutions, governments and other policy actors to map out future strategies when it comes to young people and their rights and continue the study of youth rights from various angles both at the Council of Europe level as well as and among youth researchers and academics.

Enjoy your reading!

# Foreword by the Advisory Council on Youth

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## A rights-based approach to youth policy and how to get there

### **1. The role of the Advisory Council on Youth**

The Council of Europe's Youth Sector features a unique structure of co-management bringing together on the one hand governmental officials, and on the other hand representatives of international non-governmental youth organisations (INGYOs). These two bodies together establish priorities for the Youth Sector and make recommendations for future budgets and programmes. Subsequently, these proposals are adopted by the Committee of Ministers, the Council of Europe's decision-making body.

The youth organisations meet in the Advisory Council on Youth, in short Advisory Council (AC), which is made up of thirty young people representing the aforementioned international non-governmental youth organisations or networks. Their role, as established in the Terms of Reference, include in particular to:

- contribute to the mainstreaming of youth policies across the Council of Europe programme of activities by formulating opinions and proposals on general or specific questions concerning youth in the Council of Europe;
- be invited by the Committee of Ministers to formulate opinions on general or specific questions concerning youth policy;
- formulate opinions and proposals concerning the priorities, expected results and budget allocations for the youth sector.

The AC meets with the governmental European Steering Committee for Youth to together form the Joint Council on Youth.

### **2. The state of play for youth rights at the Council of Europe**

Young people, to the same extent as people of all other age groups, deserve to have their rights respected. As obvious as this may sound, the reality is less so. This is recognised up to the highest level in the Council of Europe. In 2011, the Parliamentary Assembly of the Council of Europe in its Recommendation 1978 entitled "Towards a European framework convention on youth rights", considered that it is "necessary to provide opportunities for youth to effectively benefit from their rights, while raising awareness of them in society and among young people themselves". The Assembly noted measures are needed to make young people take advantage of existing possibilities and to build upon them, as well as to harmonise access to rights. At the same time, the Assembly called for a stronger legal basis and outlined principles that could form the basis for a framework convention on youth rights.

This recommendation sparked a lively debate within the statutory bodies of the Youth Sector at the Council of Europe, and together with added interest from the NGO sector, placed the issue of access of young people to rights central in the elaboration of policies. The Joint Council on Youth, in its opinion recommended a cautious approach, noting that a wide variety of views exists regarding the necessity, the relevance and the feasibility of an instrument such as a convention. The Committee of Ministers also did not agree to the proposal of the Parliamentary Assembly by stating in its reply "that in the present situation priority should be given to the effective implementation of existing instruments". It therefore highlighted the importance of looking at young people from a human rights angle, but was not convinced that new instruments would be needed.

This was not the end of the debate. The Advisory Council mandate of 2012-2013 considered in their Action Plan that a rights-based approach to youth policy is needed and needed to be cross-sectoral in its nature. Such an approach thus offers a way of not only combating the problems and challenges that youth today already face, but also to create a policy with the aim of preventing marginalisation and exclusion of young people. A lot was expected from the 9th Conference of Ministers Responsible for Youth in Saint-Petersburg. The main theme of the conference was “Young people’s access to rights: development of innovative youth policies”.

Taking note of the lack of outcomes of the 9th European Conference of Ministers responsible for youth on 24-25 September 2012 due to political differences, the Assembly, in its turn again, reiterated in 2013 its call for a binding legal framework at European level in order to secure young people’s access to fundamental rights, including socio-economic rights in Recommendation 2015 - “Young people’s access to fundamental rights”. Appended to the report on the Recommendation are the conclusions, with specific proposals to improve the access to rights of young people, of the Youth Event prior to the 9th European Conference of Ministers responsible for Youth (St Petersburg, 22-23 September 2012).

Meanwhile, the Advisory Council continued to look at the state of implementation of existing legal instruments with regard to young people and human rights. This also fit in its decision to follow an evidence-based policy approach. Through co-operation with the European Court on Human Rights, a compilation of case-law involving young people from the European Court on Human Rights was produced. It examined the compilation and analyses that were made to check whether the legal instruments are indeed sufficient or if they are lacking in its actual implementation. As a positive contribution to the on-going debate, the AC also adopted a “Rights for Youth Agenda in the Council of Europe 2014-15” with concrete proposals on how the debate can be brought forward.

### **3. Findings of the report and conclusions on behalf of the Advisory Council**

The report and the information contained in the appendices explore different angles of youth rights and raises questions. Are they sufficiently protected under the current instruments? Are young people able to access them? Should there be a new instrument? Should existing instruments be expanded? Should access improve? Can rights be enforced? This publication is by no means a final answer to these questions or a full and comprehensive account of everything related to youth rights in Europe. Nor does this report purport to provide the one true solution to the difficulties faced by young people in Europe today. It is a holistic reflection on the current state of play and an open invitation for everyone to carry out follow-up research and act.

David Hayward’s report highlights how when it comes to different rights in various domains young people are faced with specific challenges concerning access to these rights. The specific situation of young people, in the phase between childhood and full adulthood, does not always appear to be properly taken into account and leads to decisions on the enforcing of rights that evidently do not seem to be a proper remedy for the young people concerned. In addition, when it comes to young people, not only is protection needed in the form of substantive rights, but also the provision within these rights for empowerment and autonomy that can make these rights tangible. The link between rights and opportunities also very well exemplifies the need for both youth rights as well as youth policies, which are both a focus for the Advisory Council. An important precondition here is also the real participation of young people as full citizens in society.

When it comes to the various examples, the report also shows that young people might have equal rights in various domains, but that mostly access, availability or quality of the provision of these rights is lacking when it comes to young people. The current rights are not always concrete in how certain rights should be interpreted, creating specific issues for young people who are facing particular challenges. The policy formulations when it comes to political rights, education, employment, mobility or health are useful for the Advisory Council to stress the need for rights-based youth policies at the Council of Europe level. The issue of resource allocation for policies is of course particularly difficult in times of crisis and austerity measures.

The report includes a recommendation to appoint an Ombudsperson to make recommendations for consistent reform of the application of rights. This idea is also present in the Parliamentary Assembly recommendation and is a position that has been supported by the Advisory Council. Alternatively, it can be explored whether the Commissioner on Human Rights of the Council of Europe can play such a role, either by specifically expanding his mandate or by requesting the compilation of thematic reports on the situation of young people. This will also bring a greater coherence and standards to the application of rights in the Council of Europe area.



#### **4. The next steps for rights for young people**

This publication focuses on a range of non-exhaustive areas identified for this publication. Naturally, there are many matters that have not received due attention, or might have been missed completely. The fact that the case-law compilation for example makes no mention of specific cases involving gender-based discrimination, Roma discrimination or the situation of young persons with disabilities is a case in point. While it is felt that the situation is precarious, this shows that not everyone has had access to “Strasbourg”. Needless to say there is much work still to be done.

The Advisory Council would like to call upon the future AC members, governments and other policy actors to use this document to map out future strategies when it comes to young people and their rights on the Council of Europe level. Our call is to remain vigilant for developments in the ECHR and ESC case-law, not only by following cases and compiling reports, but also by encouraging parties to bring cases before the relevant courts and bodies, so that the case-law can further develop. An interesting mechanism here is the collective complaints procedure that the Additional Protocol to the European Social Charter introduced, which allows specific INGOs to submit complaints. The Advisory Council has invited in particular the European Youth Forum to submit an application to be included on the list of INGOs that have the right to submit such complaints as currently there are no NGOs on the list that specifically target young people.

Finally we call to the academic field and youth researches to holistically continue the study of youth rights. This will ensure that the AC and all other actors at the Council of Europe can continue to act based on evidence and research on the implementation of rights for young people. Through this work, it must become clear that the Youth Sector of the Council of Europe does not only concern itself with so-called “soft human rights law”, but is also placed to be one of the standard bearers when it comes to developing initiatives for “hard human rights law” in the field of youth policies and defending the interests of youth. The Advisory Council sees the Youth Sector at the Council of Europe as an indispensable, committed and truly transversal policy player within the Council of Europe and its work in defending democracy, human rights and the rule of law.

## Executive Summary

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**T**here is no doubt that at present Europe is going through a period of great difficulty on all fronts. Every Council of Europe Member State is struggling to cope with the economic challenges which have come about from the global recession and the Eurozone debt crisis, and also the resultant social difficulties desecrating the lives of many in Europe and which have emerged, to varying extents, for almost all persons. Not only this, but internal and external conflicts around the world continue to dominate our attention and cause suffering to millions of people.

This means that human rights, and particularly mechanisms for enforcing human rights, are of even greater importance. The European Convention on Human Rights, an instrument properly borne from the ashes of the 20th century World Wars, was created for the express purpose of ensuring equality and freedom for all individuals in the aftermath of terrible misery and conflict. In other words, to prevent exactly the violations of human integrity which have been outlined and which, in particular, affect the young persons of today.

There is no group of persons requiring greater protection of their human rights than the innocent bystanders, this group of young people, who are suffering as a result of the actions and excesses of their older generations. The European Convention on Human Rights, and other instruments like the European Social Charter, are – in principle – capable of affording enforceable rights to our young citizens. In fact, this report aims to highlight some of the ways in which these instruments have protected, and continue to protect, the interests of young persons by applying the “living” interpretation method; analysing the construction of the provision in light of modern day conditions. But the problem is that the practical realities of living in 21st century Europe create discrepancies in human rights which generally applicable provisions cannot resolve, either by virtue of the lengthy time taken by the European Court of Human Rights to update the interpretations, or because the provisions are formulated in such a way that unforeseen issues cannot be dealt with even by an updated interpretation. The external Council of Europe documents enclosed in this report, alongside supplementary comments by this author, have been chosen so as to focus on the main issues and right-deficiencies that face young people today.

The report begins by briefly considering the role of the young person in 21st century European society in a general sense and sets out some of the central concepts which are recurring in this area: including what a “young person” is, why they require particular attention as regards to rights and why a “rights based approach” is necessary to tackle these problems. The unique period between childhood and adulthood is an extremely challenging time, not only as an individual growing up in it, but also from the perspective of legislators and policymakers who must deal with this unique and problematic half-way zone. This study summarises the various ways in which more could be done to allow for greater inclusiveness for those going through this particularly unique period of life. These issues have been dealt with by considering specifically the following loosely divided illustrations, chosen on the basis that they exemplify the difficulties this particular category of persons, young persons, face:

(1) Civil and Political:

Case Study (i): Political participation

Case Study (ii): Conscientious Objection

(2) Social Rights:

Case Study (iii): Education

Case Study (iv): Labour and employment

Case Study (v): Mobility

Case Study (vi): Health

These areas focus on the essential requirements of living as a young person and how the relationship between young people and their state could be improved. In highlighting the very real human rights issues facing young persons, general changes to the approaches taken by member states are clearly required and recommended. But also specific issues within these broad areas are brought to the fore and recommendations for improved access and enforcement are made.

One option to rectify these imbalances is to introduce a binding instrument in this area. Such a radical step is called upon by numerous organisations and is the focus of Recommendation 2015 (2013). The main argument is that in order to shift momentum back to a human-rights based approach for dealing with the major issues of today, an updated declaration of rights and method of enforcement for young persons would help to fill the variety of different gaps outlined in current human rights provisions.

But such an instrument, at present, looks unlikely. Arguably, it may also not be necessary, or at least not necessary for every right which requires protection. In which case, greater consideration needs to be paid to how member states can better protect these rights, still ensuring that the rights themselves remain the focus of amendments to the law (a rights based approach). As is acknowledged, practically every “right” being discussed is, in a broad sense, an unrealised right. In other words, the right is protected to an extent or in a general sense, but more could be done to ensure that the full potential magnitude of the right as is necessary for young people is realised (for example, healthcare is the title of a right protected by the European Social Charter and the European Convention on Human Rights, but that “right” does not include the guarantee to a minimum level of access and quality to healthcare for all persons).

To amend the status quo would require specific provisions and recommendations to provide for the contextualisation of rights which are presently stated in a universal, generally-applicable way in the current legal regime (i.e. the European Convention of Human Rights and the European Social Charter primarily). This reform would act, therefore, in a supplementary fashion. In analysing what is necessary to transform the general rights into rights which include the central innate particularities which young people require, providing legal tools to organisations concerned with this area can work to drive this agenda forward. Proposals, recommendations and suggestions are given throughout and summarised in the final section. The hope is that this report can rejuvenate the debate by highlighting specific legal problems, providing suggestions for reform and the direction for discussing the merits and implementation of these potential solutions.

## Introduction

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The whole purpose of this report is to consider to what extent young persons within the Council of Europe, regardless of their sex, gender, etc., are entitled and treated to the same level and quality of living standards; in other words, whether they have access to rights which can be enforced. In this regard, it must be acknowledged that a great deal of progress, generally for all groups of persons, has been made over time, particularly since the adoption of the European Convention on Human Rights; be it the recognition of transgender<sup>1</sup> individuals to marry under Article 12, or the recognition that brutal treatment against women which is met with unresponsiveness by a state is akin to a form of discrimination,<sup>2</sup> as well as numerous other examples whereby the Court has interpreted the provisions of the Convention in such a way as to ensure the applicability of the guarantees to all individuals. One of the most notable aspects of the Convention setup is the ability of the European Court of Human Rights to act “in light of present day conditions”<sup>3</sup> and ensure that situations of inequality which were unforeseen by the original drafters are not allowed to continue to go by unnoticed.

Yet, there is an argument that this reliance on the Convention process is not only too slow, but that it is also missing important finer details, especially in the sphere of young people and their distinct rights, as a result of its unspecific and universal application. Admittedly, the European Social Charter and the work of the European Committee of Social Rights does provide an additional gloss to the generally relevant provisions applicable to young people. However, particular gaps are still, despite these instruments and bodies, identifiable in several areas of central importance to a young person, which this report intends to consider in further depth.

But first, there are some explanatory issues which require further elucidation; namely, what is meant by a “young person”. The general consensus to this is to avoid placing an age restriction on this category of person and rather to focus on considering it as a period of life which depends on the individual person in question. As the phrase represents a transitional period from childhood to adulthood, the length of the passage varies depending on the particular circumstances. A young person can be seen, loosely, as an individual whose independence and autonomy over life decisions is increasing, but doing so in such a way as to open him or herself up to a degree of vulnerability given the uncertainty of this new-found stage of life. Hence the requirement for a rights-based approach, meaning “basing policy and political decisions on rights, rights agreed internationally”. Certainty, in the form of rights, provides redress and protection whilst in this unique period of vulnerability.

As a further precursory note to the discussion on particularly deficient rights, what must be stressed is the importance of ensuring that there is a level playing field for the modern young person to be a part of; meaning, that there is an accessible and equal set of rights available to all. It is perhaps one of the most difficult stages in life, where a person is straddling the line between no longer being a child, but not yet at the stage of being a fully-fledged independent adult. What is therefore required is not only protection, in the form of substantive rights, but also the provision within these rights for empowerment and autonomy. For example:

“A right to housing and a right to protection against poverty and social exclusion is included in the ESC [European Social Charter]. However, this insufficiently reflects the needs of young people who are willing but not capable to cover the financial burdens and do not want to rely on public means... [What is also needed is t]he right to development and to live in a healthy and balanced environment.”<sup>4</sup>

It is undoubtedly a difficult balance to strike; yet at present there is scope for refinement on both sides of this equation. What are needed are greater rights providing, concurrently, greater opportunities.

1. *Christine Goodwin v the United Kingdom* 28957/95 [2002] ECHR 588.

2. *Opuz v Turkey* 33401/02 [2009] ECHR 870.

3. *Tyrer v the United Kingdom* 5856/72 [1978] ECHR 2 .

4. Report of the European Youth Forum Expert Group on Youth Rights, “European Youth, claim your rights!” (September 2012).

This report aims to supplement and update existing materials, many of which have outlined what they consider to be “youth rights” or necessary youth rights. The recurring themes – such as political participation, health, education, employment and mobility – all form the basis of this report. This report, however, does not seek to define an exhaustive list of youth rights; rather, the intention is to analyse the law applicable to these prominent areas of life and see whether there is a necessity for greater protection of existing rights as regards their application to the uniquely positioned group of people, vis-a-vis young people. Hence the reference to “case studies”. These case studies are related to important aspects of human life, but are not a comprehensive list of the rights young people require. Instead, they have been selected as focal points to test whether the law has so far been adequate to protect the underlying nature of the rights. It is argued that the adequacy of the rights differs depending on the area and right in focus, and various degrees and types of improvements may be necessary.

# Civil and Political Rights

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In some areas of the current Council of Europe legal framework, there are rights stated in sufficient terms to protect the fundamental underlying core of the right, but they need to be adjusted, applied and shaped practically in such a way as to provide for greater opportunities for young people. Generally speaking, it is asserted that most civil and political rights would come within this category.

## Case Study (i): Right to vote

Many of the reports and comments made by organisations in this area point, for example, to the lack of youth representation, particularly at a policy-level, within States and the Council of Europe generally. But the Convention guarantees do provide a great deal of protection; safeguarding – amongst other rights – the right to freely express, associate and vote. Yet, if we take the example of the right to vote we can see that its application for young people, at present, clearly varies as between member states. In any democracy, the right to vote – which is clearly so fundamental to the process of building a democratic government and is expressly protected by the Convention under Article 3 of the First Protocol – ought to be applicable and accessed with consistency by young persons within the Council of Europe. Using the example of the internal situation in the United Kingdom, the voting age is 18, yet for the Scottish independence referendum there are plans afoot to have the voting age lowered to 16.<sup>5</sup> And this is all occurring in just one state, without even mentioning the various differences between separate states. Likewise the situation is similar in Switzerland and Germany, where some states allow voting at 16,<sup>6</sup> and then compare this to Italy, where Senate elections require a person to be 25 to vote and age 40 to actually stand as a senator (and over 25 to run for a position as a deputy).<sup>7</sup> This very brief discussion on voting eligibility begins to highlight some of the concerns that many have regarding the unsatisfactory realisation of existing rights when the content of generally stated provisions is applied to particular groups of persons, particularly young people. The fact is that more needs to be done to engage young people with the political process, which can only be done with the provision of greater opportunities to express, represent and participate in it.

Access to representation and participation in a democratic process is necessary to ensure equality between persons and, importantly, to ensure the autonomy of the young person in today's globalised society. But arguably this is less an issue of creating new rights, and more an issue of ensuring that these existing rights are equally accessible.

## Case Study (ii): Conscientious objection

Similarly, there is the right to manifest one's own beliefs which is primarily protected in the form of an absolute right under Article 9 of the Convention. In considering particular case studies which have been hot-topics in recent years, both publically and for the European Court of Human Rights, there is no better choice than the issue of conscientious objection to compulsory civil or military service. By way of background, the European Convention on Human Rights rightly prohibits forced labour under Article 4. However, there are exceptions to the rule, most notably including military service which undoubtedly affects young persons as the participants of this service. Importantly, however, the Convention has been interpreted recently<sup>8</sup> – given its status as a "living instrument" – to inherently include the right to conscientiously object.

5. See Scottish Independence Referendum (Franchise) Bill 2013 available at: [www.scottish.parliament.uk/parliamentarybusiness/bills/60464.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/bills/60464.aspx).

6. [www.voteat16.ie/content/situation-across-world](http://www.voteat16.ie/content/situation-across-world).

7. [www.senato.it/3801](http://www.senato.it/3801).

8. *Thlimmenos v Greece*, see Appendix V p. 38.

As a brief aside, decisions like this one, and another recent decision finding that the trafficking of humans falls within Article 4,<sup>9</sup> highlight the improvements to the interpretation of the Convention which the Court is making. And as a result of this evolving body of case-law, all Council of Europe Member States must recognise this right to conscientiously object and provide alternatives to military service when such conscientious objection is made.

To consider this issue further, whether or not one is of the opinion that compulsory military or civil service is an acceptable requirement of a civil society is perhaps an argument for another day. There is almost no doubt that, given the traditions and practices varying from state-to-state, it would be near impossible to reach a European consensus on this particular issue at this present moment. Instead, what is perhaps more worthy of consideration are two distinct and more nuanced arguments:

- Whether alternatives to military service for those who conscientiously object are fair.
- Whether conscientious objection should be reframed less in favour of religious views, but in a more inherently open way. In other words, whether every individual should have the choice between civil or military service if either is compulsory in a Member State.

As regards the first issue, there are concerns that, in practice, an alternative civil service may become more onerous in terms of the length of time required in comparison to military service. This would, in effect, add a punitive element to choosing the alternative service. This potential concern is expressed in a report of the European Youth Forum.<sup>10</sup> It would be hoped that a flagrantly punitive alternative to military service would be held to be a violation of Convention rights, likely Article 14 in conjunction with Article 9 on the basis that the manifestation of religious beliefs has resulted in an alternative and more onerous form of service which, consequently, is discriminatory. But where the difference between civil and military service is more marginal, it would probably be likely for the Court to afford a margin of appreciation to the State wide enough to accept more subtle differences.<sup>11</sup> Consequently, there is still room for inequalities to manifest.

This brings us onto the second issue, where some may be concerned to see decisions which do appear to attach greater weight to accepted religious views than to other internal thoughts. For example, the decision in *Koppi v Austria*<sup>12</sup> which found that the applicant's religious group ought to have applied for recognition as such in order to be excused from civilian service. It could be argued that to have any form of compulsory service is enough of a barrier on the personal autonomy of young persons that there ought to be an element of choice in the type of service to be carried out or an equally applicable exemption that can be applied for on the basis of internal thought; an element of choice that ought not to be purely determined by accepted religious values. Otherwise, there is no minimum standard that can be applied to all young persons.

For this reason, the formulation of youth rights in this area requires greater emphasis on freedom; if a range of choices are unavailable, then a life decision can only be made in one certain way. Freedom to go down the only route is merely an illusion of freedom. That is why there needs to not only be a modification to the theory of conscientious objection, but also a more general re-focus on providing a range of opportunities available to all young persons as was indicated in the discussion of voting eligibility.

On this basis, it is reasoned that there is no absolute requirement for the creation of a new civil and political rights framework for young people, but rather an increased appreciation and focus on the prospects young people can enjoy in a democratic society; requiring practical measures which allow for greater facilitation of a young person's autonomy.

In order to achieve such a result, there needs to be greater cohesion between the application of policy responses to these rights throughout member states. Whilst it would not hurt to reformulate existing provisions into a new convention or document, it would not be entirely realistic nor wholly necessary to achieve the desired outcomes. Reform could therefore take place along the lines of appointing a young person's ombudsperson, or giving legal powers to an existing body, to provide for the step-by-step improvement of these rights when relied upon by young people. This recommendation is considered in greater detail in the final section of this report.

9. *Rantsev v Cyprus and Russia*, see Appendix V p. 38.

10. Report of the European Youth Forum Expert Group on Youth Rights, "European Youth, claim your rights!" (September 2012).

11. Has there not been a recent case saying just that?

12. *Koppi v Austria*, summary available in Appendix III at p. 38.

## Do other “rights” require a restated rights-based approach?

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**A**s is alluded to, this report is focusing specifically on areas where what is necessary is a greater restatement of rights as regards young people. This will allow for fresh and wider opportunities in order to reform the existing, generally stated provisions which are presently – to varying extents – deficient as regards the interests of young people. This is not to diminish the importance of the aforesaid issues (i.e. civil and political rights), which must also be considered and improved in their application to, and enforceability by, young people.

Having said that, what is to be considered further is this author’s assertion that certain other “rights” are, when relied upon by young people, lacking the fundamental core of what such a right should contain. In other words, recommendations for the adjustment or uniform European application of certain “rights” (as presently stated in the European Convention on Human Rights and European Social Charter) may not be enough. This would be sufficient to address the majority of the concerns one could have with political and civil rights, but there is a subtle distinction here; some “rights” – particularly certain social rights – need to arguably be restated and improved to actually have practical effect for young people. In essence, the actual inherent foundation within certain legal formulations of the “rights” may be unrealised to a greater extent than with the civil and political rights addressed above.

To take this argument further, this report considers central issues relevant to young people – mobility, education and employment, and health – as covered by the two European legal instruments acting as a focal point to this report (ECHR and ESC) and the relevant and respective court decisions (European Court of Human Rights and European Committee of Social Rights).

In outlining the gaps which presently exist in these areas, this report is wary of the fact that the reason for such holes in the law are as a result of both the divergence in different state’s political leanings and the financial pressures they are under. Ensuring enforceable and equally applicable rights to young people to a minimum standard of healthcare, for example, costs the State a great deal in terms of resources and may also be opposed by those who don’t believe the State should be the gatekeeper and key master of healthcare. Therefore, recommendations must be sensitive to these issues whilst also recognising that there does need to be enforceable provisions which can be interpreted and relied upon by young people.

### Case Study (iii): Education and Employment

Education is undoubtedly one of the cornerstones of human life and perhaps, in terms of importance, many would claim it is only marginally behind the basic fundamental essentials required to maintain life, i.e. water, food and shelter. The transition from childhood to adulthood, aside from the physical changes, is about updating and generating the knowledge about oneself and the world around us.

To highlight this, it is worth adding that for a rights-based approach to be successful, both the current and future generation of subscribers and implementers to such an approach need to be aware of its purpose and benefits. In other words, young persons need to understand why youth rights and a rights-based enforcement mechanism are important. This, of course, specifically requires greater awareness and accessibility to this information; in other words, education.



For this reason, this report must now consider education; because without enabling the availability of quality education to all young persons within the Council of Europe, a rights-based approach cannot be adopted or maintained.

The European Convention on Human Rights does ensure access to the principle of education and ensures that parents can have their children educated in accordance with their religious and other views.<sup>13</sup> The jurisprudence of the court has also worked to narrow the margin of appreciation given to a state when it comes to primary, and particularly secondary, education, having grown to appreciate the importance of secondary education in facilitating successful personal development.<sup>14</sup> But it does not guarantee these absolutely in the form of separate provisions. As a result, there is no provision which can be relied upon to ensure that a young person receives a minimum standard of quality education and no safeguards as to the access of such education.

It also does not safeguard the availability of higher or vocational education, with the European Court providing a greater margin of appreciation to states when it comes to these issues. As a consequence, the rights of a child to the first two stages of education are safeguarded to a far greater extent than a young person's access to the third stage: higher and vocational education.

As regards the case-law of the European Court on Human Rights and cases where accessibility has been at issue, the Court does expand the width of Convention articles, to an extent, by considering the facts of a complaint on a case-by-case basis and usually on the basis of a proportionality assessment.<sup>15</sup> For instance, in *Leyla Sahin v Turkey*, the court took into consideration the particular problems in Turkey as regards secularism when determining that it was proportionate for a university to refuse admission and participation to those wearing Islamic headscarves.<sup>16</sup> But even a broader interpretation of the Convention guarantees does not provide an overarching and fundamentally reliable right to a standard of education. In particular, a proportionality assessment which takes into account divergences between different Member States makes a minimum standard even harder to locate.

The European Social Charter provides more detailed guarantees; including the right to both primary and secondary education<sup>17</sup> and the right to vocational training.<sup>18</sup> The European Committee of Social Rights also expands on these guarantees by:

” examin[ing] whether there is a functioning system of primary and secondary education, the number of children enrolled in school, the number of schools, class sizes, the teacher pupil ratio, and the system for training teachers. School drop-out rates and the number of children who successfully complete compulsory education and secondary education must be monitored.”<sup>19</sup>

But again we are not provided with any type of laid-out minimum standard as to the quality of education which is to be provided. Further, the legal formulations of these rights to be “provide[d] or promote[d]” under the ESC also allows too much latitude for state choice, in that a state can merely promote rather than ensure the availability of opportunities. Therefore, as is mentioned in the Report of the European Youth Forum Expert Group on Youth Rights, despite these guarantees, “[e]qual access to quality education is an unrealised right.”<sup>20</sup>

To summarise, what has been identified are the issues of (i) quality of education, and (ii) accessibility of higher and vocational education.

The first problem is by far the most difficult and most politically charged, and potential harmonisation at this stage of a minimum standard would, at present, not be possible to achieve. But by considering the second issue of further education, the quality of education generally can also be improved as a positive effect of guaranteeing such a right.

What is required is a greater facilitation of education. In turn, greater resources are necessary for investment, to raise awareness, to provide support and to consequently ensure a greater quality of education is available to all. There also, alongside higher education, needs to be greater attention paid to the value of forms of education outside of solely schooling – in other words, vocational training. Higher education and vocational training together generally, therefore, need protection. But in a period of time where resources are thin around the

13. Article 2 of the First Protocol.

14. *Ponomaryovi v Bulgaria* paras 55-57.

15. For the sake of technical accuracy, it is worth stating that a strict proportionality assessment is not, however, necessary in examining an Article 2 of the First Protocol complaint.

16. *Leyla Sahin v Turkey*. See p.27 of case-law document in Appendix III.

17. ESC Article 17(2).

18. ESC Article 9, 10, 15(1) and 17(1).

19. See Appendix V – page p. 64.

20. Chapter 2.3.

Council of Europe, and diverging even further as between particular countries, there requires to be a greater provision stated in law upon which individuals can rely. Of course, the next difficulty is how to state a new standard: it would need to be framed wide enough so as to ensure implementation is left to the individual states, but narrow enough so as to be effective.

The next logical question is how can such a difficult proposal be achieved. The purpose of this report is not to call for a subscribed list of content to which all young persons must be educated in. Not only is that unrealistic, but it is dictatorial and also risks treading on the legislative competence of member states. What is, however, necessary is a provision which allows access to higher or vocational education as a stated right. To understand how this can be achieved, it is important to briefly outline why it needs to be achieved:

Hugely significant life decisions are made in the transitional stage between childhood and adulthood. In most situations, with of course notable exceptions, a young person’s future is dictated by the steps that they take in adolescence; whether they decide to go into further education, begin employment immediately, or embark on another route entirely. After all, after undergoing education, the majority of an average person’s life is spent working and earning money, which is the central resource needed to provide the basic amenities humans require.

Yet, the unemployment figures for young people in Europe is 2.6 times higher than it is for the rest of the population.<sup>21</sup> Some countries, like Spain, are notably struggling to deal with very high youth unemployment rates – reaching a high of as much as 56% unemployment.<sup>22</sup> Whilst a proportion of this number could be discounted for the very reason that they are still in education, there is clearly a problem here.

What is therefore required is a system whereby every person has the possibility to develop their interests and find the career path that suits them. What is needed, more than anything else, is **freedom** to choose and, therefore, availability of **choice**. As a consequence of choice, the **quality** of a young person’s future will be improved.

A new range of provisions should build on the more specific guarantees provided in the European Social Charter – for example, Articles 1-10 generally provide a range of guarantees in the workplace for specific groups including young persons. Rather than dictating to a state the exact type of education and employment opportunities that ought to be provided and in what forms they ought to be provided, a new right ought to allow for opportunities, and consequently choice. This is why there needs to be obligations on the state to improve the availability and quantity of these opportunities, and not solely a focus on developing the quality of the opportunities; quality of an opportunity is irrelevant if an opportunity cannot even be freely accessed. So far the legally applicable instruments do not do enough to provide for a scope of paths on which young persons can embark and begin their careers – due to the unavailability of a right to “higher education or vocational training”. This right, with education and training bracketed together, would ensure that young people are not left stranded and are being prepared to work until such work becomes available. But it ensures that the individual traits of all individuals can be catered for, whilst also providing scope for a state to place emphasis on the opportunities they believe to be most important in preparing young people to work.

### Case Study (iv): Mobility

All of the reports and discussions which have taken place specifically on the topic of youth rights have all noticed one glaring omission from current human rights instruments; the issue of **mobility**. But having identified a need for mobility, these same discussions have all struggled in identifying what type of mobility they wish to see and what exactly is meant by the term beyond a loose understanding of improving “education, training and employment” opportunities<sup>23</sup> or a physical definition of mobility (in other words, the ability to freely move across borders). This is a specific problem that is mentioned, for example, in the “Claim your Rights!” report produced by the European Youth Forum. Unlike the other rights which are discussed in this report and which are unrealised rights (in other words, rights which do exist but are not implemented for young persons<sup>24</sup>), mobility appears to be an entirely unrecognised right. In Case Study (I), the former definition of mobility has begun to be addressed, but the physical conception has so far been untouched and it is to this issue which this report now turns.

21. [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Unemployment\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Unemployment_statistics) – period ending 2012.

22. *Ibid.*

23. Report of the European Youth Forum Expert Group on Youth Rights, “European Youth, claim your rights!” (September 2012).

24. *Ibid.*

As stated, this report aims to consider the literature and discussions in the area of youth rights and to take a step back to consider particular problems which presently exist and how they can be resolved. One particular facet that appears to continuously crop up is the issue of to what extent young persons are able to freely move around and reside in a place of their choosing. To narrow this down into a discussion which can be focused, this report will focus on one high profile aspect whereby the free ability to move and reside is threatened: the expulsion of migrants. It seems to be the case at present that no week goes by without a tragic incident occurring to migrants, either trying to come into a country (for example, the Lampedusa disaster) or being met with revulsion, prejudice or discriminatory treatment whilst residing in a country.<sup>25</sup> Young migrants are particularly vulnerable in that generally, upon turning 18, a young migrant is no longer able to access the full range of additional protections which migrant children have and are exposed to dangers as to their presence and rights within their residing state.<sup>26</sup>

Issues relating to migrants is, therefore, a topic that the European Court on Human Rights, in particular, has spent a great deal of court time considering. This specific theme, and related issues of residence, deportation, etc., almost always involve a claim under Article 8 and the right to private and family life. This invariably leads to a discussion of the proportionality of a particular state decision to remove a person from a country; as an interference with this right can be justified if it is necessary in a democratic society, a narrower margin of appreciation given when the rights of a child are concerned.<sup>27</sup> Numerous important decisions in this regard are described in Appendix (iii). To summarise loosely, one part of the Court's reasoning is that they will likely uphold a state decision to deport or expel a migrant on the grounds of having committed a serious criminal offence as a young person and where their ties to the country ordering the expulsion are not strong enough to make expulsion disproportionate.

However decisions like *Baghli v France* and *El Boujaidi v France* seem to provide controversial arguments as to the "ties" required to remain in a country. For example, in the second quoted case against France, the applicant had been in France since the age of 7 and was not charged with the relevant offence until around the age of 19. It was said that he had not made an effort to become a French resident and the court also considered relevant the fact that he had still held onto, or could be holding onto, a part of his Moroccan identity. They upheld an expulsion order against this young person. In another case, *Boujlifa v France*, the Court found that the seriousness of the offences committed, although at a young age, was sufficient to remove the Applicant from France despite there being no doubt that his ties with France were, overall, strong.

It appears from an analysis of these and other cases that the Court's proportionality assessment is arguably balanced within slightly out-of-tune parameters, and that the margin of appreciation afforded to states is too wide. In a democratic society, it could be said that it is more appropriate to punish an individual for crimes committed within a state in the very state in which these crimes were committed where an individual clearly has a connection to that state and has done from a young age (i.e. the applicants were living in the country ordering the expulsion for more than a decade in all three of the cases above). It also does not seem "necessary" to remove a person from a state when mechanisms for punishment are available internally, particularly where such an extreme punishment disrupts the life of the young applicant and, often, the applicant's innocent family. And finally, the expulsion almost always follows a period of imprisonment or other criminal punishment, further increasing the weight of such an unnecessarily onerous and life-altering secondary punishment for a young person still trying to formulate a foothold in society. This is particularly unfair for a young person who commits an offence whilst young, and there seems to be a greater need to rebalance the current interpretation, reliant on the Convention's conception of justice, in a way that allows young offenders to be **rehabilitated** into the society in which they have lived and continue to choose to live in, rather than a blinkered focus on punishment and treating young people in the same way as the law treats adult offenders.

The particular case study raises interesting secondary issues regarding the way the criminal justice system treats young persons and emphasises that imprisoned young persons ought to always be dealt with in a way which is focused primarily on rehabilitation and reintegration, rather than punishment. If imprisonment is necessary, then it ought only to be for as long as necessary and should not prohibit access to high-quality education, for example. From this, it can be seen that more needs to be done to ensure the protection of those young people who have a **substantial connection** to a state, but whose physical presence in that state – be it

25. For instance, cases involving Roma families and also riots in Russia after a migrant was alleged to have killed a Russian citizen ([www.rferl.org/content/russia-buryulyovo-killing-shopping/25135577.html](http://www.rferl.org/content/russia-buryulyovo-killing-shopping/25135577.html)).

A great deal of time spent by the European Committee on Social on complaints is made up of cases concerning the treatment of Roma families, see for example: [www.coe.int/t/dGHI/monitoring/Socialcharter/Theme%20factsheets/RomaRightsFactsheet\\_en.pdf](http://www.coe.int/t/dGHI/monitoring/Socialcharter/Theme%20factsheets/RomaRightsFactsheet_en.pdf)

26. UNHCR Consultative Meeting 17-18 November 2011 Report, DJS/CM Refugees (2011) 7, at page 15, available at: [www.coe.int/t/dg4/youth/Source/Resources/Documents/2011\\_Report\\_CM\\_Young\\_Refugees\\_Asylum\\_Seekers\\_en.pdf](http://www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_Report_CM_Young_Refugees_Asylum_Seekers_en.pdf)

27. *Maslov v Austria* 1638/03 [2008] ECHR 546.

because of expulsion or imprisonment – is being threatened. In other words, there needs to be a **rebalancing** in favour of the young, and often vulnerable, individual. A recent case from the European Court on Human Rights found that Article 2 of Protocol 1 had not been violated by the state in the situation where an imprisoned young person was unable to continue his high school education because of a lack of resources.<sup>28</sup> Other forms of education were offered, but what raises questions here is the fact that this was not even debated on the merits; this case was declared inadmissible, highlighting that there needs to be a more protective right in place.

Similar to the issue of health and education, existing rights do not offer sufficient protection for this category of young, vulnerable individuals. It is important that those who move within borders, either with or without choice, are still accorded basic human rights. Article 17 of the European Social Charter, whilst offering social, legal and economic protection, makes no specific reference to migrants or to those who are struggling to adopt a physical presence within a state. There ought to be an obligation on the state to protect young people whose ability to locate themselves in a country and live their life is being threatened or obstructed. Again, this is not a case of allowing all migrants into a country, but rather ensuring that those young and vulnerable migrants who have made it into a country have their personal interests, when the subject of a state or court decision, taken into account to a greater extent than at present.

### Case Study (v): Health

” The right of children and young people to protection of health is one of the priorities of public health policies of European states. The goal is to preserve the future by preserving those who will participate in its construction.”<sup>29</sup>

Again, and perhaps most significantly in terms of the areas we are looking at, health – as regards equal access – is governed by the particular resource allocation afforded by the individual member states. Particularly in light of the current economic situation, there is certainly an inequality in the way that health treatment can be provided for depending on the resources allocated for health and the quality of available treatment (as facilitated by staff, facilities, etc.). The reason for this is that healthcare, as indicated by the excerpt above, is at present almost solely a decision of policy left to the discretion of member states; states whose resources and policy-focuses differ.

Within the European Convention, there is **no right to healthcare** or to a particular minimum level of healthcare treatment. One notable case that springs to mind is *N v the United Kingdom*, where a young woman with HIV who came to the United Kingdom at the age of 24 was deported to Uganda despite the fact that the healthcare treatment in Uganda would be nowhere near the standard she would enjoy in the UK and her life would almost undoubtedly end sooner as a result of no longer being provided with the equivalent healthcare. The court held that such a decision was not in violation of Article 3 (the prohibition against torture or inhuman or degrading treatment or punishment), and future state decisions would only be held to be in violation of this article in “very exceptional circumstances.”<sup>30</sup>

The European Social Charter does, instead, provide for a “right to the protection of health” under Article 11. But the content of this right is not to ensure the availability of healthcare to young persons, for example, but rather to ensure that States “remove as far as possible the causes of ill-health”, “provide advisory and educational facilities”, and “prevent as far as possible epidemic(s)”. The measure is **solely preventative**, and does not deal with those cases which cannot or have not been prevented.

In any case, as regards the terms of the preventative guarantees afforded by the Charter, there is an air of generality about the provisions and arguably not enough focus on particular areas of concern. This, of course, is partly as a result of the provisions being aimed at no specific group of person in particular. But as regards young persons, there almost certainly needs to be a greater focus on sexual education and protection against sexual abuse and exploitation, for example.<sup>31</sup> For children, these issues are of vital importance and require **specific measures** of both general education and prevention.

Then there is the issue of those young persons suffering in ill-health which could not be prevented and now in a position where they require treatment. Currently, there is no right available at a European level to provide for a minimum level of treatment or care. Given the importance of young persons in the future organisation

28. *Epistatu v Romania* 29343/10 [2013] ECHR 855.

29. Appendix V, p. 63.

30. *N v the United Kingdom*, 26565/05 [2008] ECHR 453 at para 51.

31. Whilst Article 7(10) “ensure[s] special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work”, the provision is widely-stated and general.

and running of democratic societies, the protection of life in the form of at least basic availability to medical treatment ought to be guaranteed in such a way that young persons can rely and benefit from it. In the current context, where resources are tight, a **common and minimum provision** is an even more vital requirement.

Again, the formulation of this type of provision will require compromise and a retention of member states' individual policy and resource priorities. But many would argue that the protection of an endangered life ought to be of sufficient importance that some right to even basic treatment ought to be afforded and stated in law. This does not mean that every member state needs to formulate a National Health Service, because that does not even guarantee quality of healthcare or protection of life; consider how often the UK's NHS is criticised for providing inadequate treatment, for example.

What is required is a greater right to healthcare; the right presently stated in the Charter is insufficient and it is completely omitted from the Convention. Such a right would not say that every illness must be paid for and treated by the state, but would instead allow – for example – an individual to challenge more powerfully a state decision to not fund healthcare. Having to adapt a challenge under, say, Article 3, is not appropriate. Instead, young people need the test to be applied by the states in making a decision, and the courts when evaluating a decision, readjusted in favour of the protection of their health, particularly since their personal resources to fund treatment will be lower than older, working persons.

## Summary of recommendations

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### General

- I. A greater and shared understanding of what is meant by “young person”, but without formulating a strict age-based definition.
- II. Young people require both greater rights and, at the same time, greater opportunities.
- III. A rights-based approach is necessary to tackle any identifiable shortcomings in the law as this is the only way to ensure equality, consistency and enforceability throughout Europe.
- IV. A state’s margin of appreciation ought to be construed more narrowly when dealing with young persons’ rights than would be the case with an adult. Importantly, however, the margin must still remain.
- V. There is a need to start assessing and beginning constructive dialogue on the issue of member states’ resource allocation in the provision of certain rights, with attempts to bridge gaps and inequalities.

### Civil and Political Rights

- I. Improved autonomy and empowerment of young persons through representation and participation in, for example, policy making and implementation. In turn, this will open up greater opportunities for young people.
- II. Greater consistency for young people in the application of existing rights. For example, the time where the right to vote becomes accessible for young people ought to become more coherent throughout Europe. This can be achieved by formulating recommendations which supplement the existing right protected in law, because the pre-existing provisions whilst protecting the essence of the right needs to be enhanced in order to cater for the needs of young persons rather than simply being stated and applied in a manner generally applicable to all persons.
- III. Any limitations on freedoms or manifestations of beliefs ought to be construed as narrowly as possible and ensure no discrimination is tolerated. For example, the jurisprudence of the Strasbourg court is acting too slowly as regards the issue of conscientious objection, and measures need to be taken in order to protect this right from being applied by states in such a way that the consequence of conscientiously objecting leads a young person to conducting a more onerous and discriminatory type of service.

**A body or youth ombudsman ought to be given the power(s) to provide recommendations for consistent reform of the application of rights and to provide greater avenues for youth political participation and representation.**

## Education and employment

- I. Specifically, young people require equal access to the information and discussion on shared Council of Europe values to ensure that they, as current and future lawmakers and implementers, uphold and improve on the rights for future generations. This requires both awareness and accessibility.
- II. There needs to be greater emphasis and critique of the State's role as the primary facilitator of education.
- III. The current legal provisions protecting education fail to (i) protect and ensure quality of education and (ii) ensure the provision of adequate opportunities for young people to gain employment.
- IV. Expressly creating a right to a quality of education at all stages may, given the difficulty in formulating such a right, not be possible at this stage. But further discussion ought to be had as to how quality can be improved and be given consistency throughout member states without interfering with the individual state's role in formulating and enforcing educational policy.
- V. Further, in tackling the second issue (increasing opportunities), one consequence is that the preparation of a young person for adulthood and employment will be improved.
- VI. Consequently, a greater focus needs to be had for the third level of education after primary and secondary education: higher education and vocational training.
- VII. Whilst the quality of opportunities for young individuals ought to be continually improved, there requires – in particular – a rejuvenation of the quantity and accessibility of existing opportunities.
- VIII. This requires ensuring fairness and choice to all young persons in such a way as can be relied upon and enforced.

**Creating a right to higher education or vocational training ensures that there is an option for a young person to embark on. It also allows a state to prioritise which type of educational training they prefer, whilst opening up opportunities which can ease the high state of youth unemployment that exists at present.**

**Recommendations can be provided by some sort of educational watchdog or ombudsperson (considered further below) as to how improvements can be made in the balance between providing higher education and vocational training, and, generally, on how best to facilitate effectively these two types of education.**

**Further discussion on this issue and how quality of education can be improved will require opening up dialogue on the difficult topic of greater consistency in resource allocation throughout.**

## Mobility

As the only completely unrecognised right called for by various bodies, mobility requires greater discussion and definition. The essence of such a right includes the non-tangible part to mobility, in other words providing the self-awareness and education to be able to be a mobile member of society. This is dealt with in the education section.

But the physical interpretation of mobility requires that the approach to dealing with young individuals and their "connection" or "ties" with a state in which they reside is, when conflicting against other competing interests of the State, to be rebalanced in favour of the young individual and their interests.

For example, there needs to be far greater emphasis on rehabilitation rather than punishment when dealing with the issue of criminal justice. And if punishment in the form of imprisonment is necessary, all rights (including access to education) need to be guaranteed at the same level as is applicable to other young persons outwith criminal institutions.

A right to mobility, in both senses of the word, requires express protection either through: (a) creating newly stated right(s); or (b) facilitating mobility through the addition of supplementary wording which ensures the protection of the two aspects in independent provisions (for instance, adding new wording in relation to the rights safeguarding educational training and rights guaranteeing right to private life).

Further dialogue and recommendations are necessary as to how best to achieve enforceable mobility right(s).

## Health

- I. A right to health cannot be stated purely in terms of prevention.
- II. In any case, preventative measures need to be expanded upon by more specific guarantees for young persons – particularly the issues of sexual exploitation and sex education.
- III. The right to healthcare and treatment is so far uncovered by existing European instruments. More needs to be done to ensure greater equality in the availability of health care, requiring member states – when forming policy and allocating resources – to take greater consideration of this issue.

**A newly stated right to healthcare for young persons needs to be discussed and formulated.**



## Enforcement of recommendations & the need for further discussion

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**H**aving identified improvements to be made in the central areas of a young person's life, the real difficulty arises as to how the standards necessary can be stated and in what form they ought, and can, take in order to have practical effect.

The majority of the improvements stated are, at present, strongly tied to policy formulations. The issue, however, is that without a rights-based approach upon which policy can be based, there will be discrepancies and variations between states, and therefore, inequalities will arise. As a result, mere policy guidelines to enact these suggestions will not be sufficient to ensure consistency and coherency. A change in policy would merely be a short-term distraction that does not get to the core of the right young people require.

The gaps that exist in the law at present are not all of equal depth and seriousness, and varying degrees of amendment to existing structures are required. Of course, a new instrument in this area codifying the rights which young people can enjoy – using the areas stated in this report as a starting point – is one possible solution. The problem, however, is how to enact significant rights-based protection without introducing a new binding instrument.

This is one of the central issues which requires greater debate and discussion around Europe. The recent United Nations discussion on this topic suggested “a step-by-step approach”<sup>32</sup> as one potential long-term strategy. One interpretation of such a plan would be to focus on each particular issue and reform the way the currently unrealised rights are construed; from the way states introduce measures in-line with the European guarantees, to how courts interpret the provisions. Greater and prioritised recommendations can be made for those areas requiring the most work. Some type of regulatory body, or watchdog, would be necessary to ensure this occurs and to suggest methods of implementation, updating periodically as the rights required by young people evolve. This may also work, or at least be supplemented by, the creation of a young person's ombudsperson as suggested in Recommendation 2015 (2013).

At present, it is acknowledged that multiple organisations and bodies exist to pick holes in the current framework as regards youth rights. In fact, the call for the introduction of youth rights is by no means a debate which has started overnight! But what is necessary is greater “bite” in the way people and organisations operate and recommend improvements, beyond merely lobbying. The Council of Europe, as an institution, has the power to do this and grant the necessary legal tools to organisation(s). This would allow for the quicker, yet still long-term, evolution of existing rights in such a way that they address the unique concerns of young persons. Once the rights begin to develop and recognise these distinct vulnerabilities young people endure, member state policy has no option but to follow suit, providing the enforceable standards upon which young people can rely.

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32. United Nations, “Expert Meeting on Human Rights of Youth”, 25-26 July 2013 in Geneva. Summary available at:

# Appendix I – Relevant extracts from the European Convention on Human Rights

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## **Preamble**

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

### ■ **Article 1 – Obligation to respect human rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

## **Section I – Rights and freedoms**

### ■ **Article 2 – Right to life**

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a in defence of any person from unlawful violence;
- b in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c in action lawfully taken for the purpose of quelling a riot or insurrection.

### ■ **Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### ■ Article 4 – Prohibition of slavery and forced labour

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this article the term “forced or compulsory labour” shall not include:
  - a any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
  - d any work or service which forms part of normal civic obligations.

### ■ Article 5 – Right to liberty and security

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a the lawful detention of a person after conviction by a competent court;
  - b the lawful arrest or detention of a person for non compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

### ■ Article 6 – Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

- 3 Everyone charged with a criminal offence has the following minimum rights:
- a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b to have adequate time and facilities for the preparation of his defence;
  - c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### ■ Article 7 – No punishment without law

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### ■ Article 8 – Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### ■ Article 9 – Freedom of thought, conscience and religion

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### ■ Article 10 – Freedom of expression

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ■ Article 11 – Freedom of assembly and association

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention

of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### ■ Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

### ■ Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

### ■ Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### ■ Article 15 – Derogation in time of emergency

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

### ■ Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

### ■ Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

### ■ Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

### ■ Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

### ■ Article 35 – Admissibility criteria

- 1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
- 2 The Court shall not deal with any application submitted under Article 34 that
  - a is anonymous; or
  - b is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
- 3 The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :
  - a the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
  - b the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
- 4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

## Protocol 1

### ■ Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

### ■ Article 3

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## Appendix II – Relevant extracts from the European Social Charter

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### ■ Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
- 2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
- 3 to establish or maintain free employment services for all workers;
- 4 to provide or promote appropriate vocational guidance, training and rehabilitation.

### ■ Article 2 – The right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

- 1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
- 2 to provide for public holidays with pay;
- 3 to provide for a minimum of four weeks' annual holiday with pay;
- 4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
- 5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
- 6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
- 7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

### ■ Article 3 – The right to safe and healthy working conditions

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

- 1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
- 2 to issue safety and health regulations;
- 3 to provide for the enforcement of such regulations by measures of supervision;
- 4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

### ■ Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- 1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
- 2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- 3 to recognise the right of men and women workers to equal pay for work of equal value;
- 4 to recognise the right of all workers to a reasonable period of notice for termination of employment;
- 5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wagefixing machinery, or by other means appropriate to national conditions.

### ■ Article 5 – The right to organise

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

### ■ Article 6 – The right to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;
- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

### ■ Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

- 1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
- 2 to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
- 3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
- 4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
- 5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
- 6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;



7 to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

8 to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

9 to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

### ■ Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1 to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

2 to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

3 to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

4 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

5 to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

### ■ Article 9 – The right to vocational guidance

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

### ■ Article 10 – The right to vocational training

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

2 to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;

3 to provide or promote, as necessary:

a adequate and readily available training facilities for adult workers;

b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;

4 to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed

- 5 to encourage the full utilisation of the facilities provided by appropriate measures such as:
  - a reducing or abolishing any fees or charges;
  - b granting financial assistance in appropriate cases;
  - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
  - d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.

### ■ Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

- 1 to remove as far as possible the causes of illhealth;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

### ■ Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- 1 to establish or maintain a system of social security;
- 2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
- 3 to endeavour to raise progressively the system of social security to a higher level;
- 4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
  - a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
  - b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

### ■ Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
- 2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
- 3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

### ■ Article 14 – The right to benefit from social welfare services

With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- 1 to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
- 2 to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

### ■ **Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community**

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

- 1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
- 2 to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
- 3 to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

### ■ **Article 16 – The right of the family to social, legal and economic protection**

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

### ■ **Article 17 – The right of children and young persons to social, legal and economic protection**

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1
  - a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b to protect children and young persons against negligence, violence or exploitation;
  - c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

### ■ **Article 19 – The right of migrant workers and their families to protection and assistance**

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- 1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3 to promote cooperation, as appropriate, between social services, public and private, in emigration and immigration countries;

4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

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

5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10 to extend the protection and assistance provided for in this article to selfemployed migrants insofar as such measures apply;

11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

12 to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

### ■ **Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c terms of employment and working conditions, including remuneration;
- d career development, including promotion.

### ■ **Article 21 – The right to information and consultation**

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

### ■ Article 30 – The right to protection against poverty and social exclusion

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b to review these measures with a view to their adaptation if necessary.

### ■ Article 31 – The right to housing

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1 to promote access to housing of an adequate standard;
- 2 to prevent and reduce homelessness with a view to its gradual elimination;
- 3 to make the price of housing accessible to those without adequate resources.

# Appendix III – Compilation of relevant case-law of the European Court of Human Rights on Young People between 18 and 35 Years

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## **Selected case-law of the European Court of Human Rights on Young People**

The document is available for downloading at [www.echr.coe.int](http://www.echr.coe.int) (Case-Law – Case-Law Analysis – CaseLaw Research Reports).

This document has been prepared by the Research Division and does not bind the Court. The text was finalised in November 2012, and may be subject to editorial revision.

This compilation summarises the relevant case-law of the European Court of Human Rights on specific areas of importance for young people between 18 and 35 years:

► **Access to a professional career (under A.)**

*Bigaeva v. Greece*, No. 26713/05, 28 May 2009

► **Conscientious objection (under B.)**

*Savda v. Turkey*, No. 42730/05, 12 June 2012

*Bayatyan v. Armenia* [GC], No. 23459/03, ECHR 2011

*Thlimmenos v. Greece* [GC], No. 34369/97, ECHR 2000IV

*Koppi v. Austria*, No. 33001/03, 10 December 2009

*Gütl v. Austria*, No. 49686/99, 12 March 2009

*Löffelmann v. Austria*, No. 42967/98, 12 March 2009

*Ülke v. Turkey*, No. 39437/98, 24 January 2006

*Autio v. Finland*, No. 17086/90, Commission decision of 6.12.1991

*Johansen v. Norway*, No. 10600/83, Commission decision of 14 October 1985

*N. v. Sweden*, No. 10410/83, Commission decision of 11.10.1984

*Grandrath v. FRG*, No. 2299/64, Commission report of 12.12.1966

► **Expulsion of second-generation migrants (under C.)**

*Maslov v. Austria* [GC], No. 1638/03, ECHR 2008

*Kaya v. Germany*, No. 31753/02, 28 June 2007

*Üner v. the Netherlands* [GC], No. 46410/99, ECHR 2006XII

*Radovanovic v. Austria*, No. 42703/98, 22 April 2004

*Yilmaz v. Germany*, No. 52853/99, 17 April 2003

*Yildiz v. Austria*, No. 37295/97, 31 October 2002

*Boultif v. Switzerland*, No. 54273/00, ECHR 2001IX

*Ezzouhdi v. France*, No. 47160/99, 13 February 2001

*Baghli v. France*, No. 34374/97, ECHR 1999VIII

*Boujlifa v. France*, 21 October 1997, Reports of Judgments and Decisions 1997VI

*Mehemi v. France*, 26 September 1997, Reports of Judgments and Decisions 1997VI

*El Boujaïdi v. France*, 26 September 1997, Reports of Judgments and Decisions 1997VI

*Boughanemi v. France*, 24 April 1996, Reports of Judgments and Decisions 1996II

*Nasri v. France*, 13 July 1995, Series A No. 320B

*Moustaquim v. Belgium*, 18 February 1991, Series A No. 193

► **Forced labour (under D.)**

*Elisabeth Kawogo v. the United Kingdom*, No. 56921/09

*C.N. v. the United Kingdom*, No. 4239/08

*C.N. and V. v. France*, No. 67724/09, 11 October 2012

*Siliadin v. France*, No. 73316/01, ECHR 2005VII

*Rantsev v. Cyprus and Russia*, No. 25965/04, ECHR 2010 (extracts)

*Van der Mussele v. Belgium*, 23 November 1983, Series A No. 70

► **University studies (under E.)**

*İrfan Temel and Others v. Turkey*, No. 36458/02, 3 March 2009

*Leyla Sahin v. Turkey* [GC], No. 44774/98, ECHR 2005-XI

## A. Access to a professional career

### — *Bigaeva v. Greece, No. 26713/05, 28 May 2009*

**FACTS** – The applicant, a Russian national, was born in 1970 and lives in Athens. In 1993 she settled in Greece, obtained a work permit and was admitted to the Athens Law Faculty. She obtained a residence permit on the basis of her student status. In 2000 she obtained a Master’s degree, then in 2002 a postgraduate qualification, and decided to continue with her doctorate. In the meantime, the applicant had been admitted to pupillage by the Athens Bar Council (the “Council”). Under the Legal Practice Code, an eighteen-month pupillage is a prerequisite for admission to the Bar. According to a certificate issued by the Council, the applicant had been admitted to pupillage by mistake; it had been assumed that she was a Greek citizen as she had a Master’s degree from a Greek university. After she had completed her pupillage, the Council refused to allow her to sit for the Bar examinations on the grounds that she was not a Greek national, as required by the Legal Practice Code. The applicant then lodged an application to have that refusal set aside together with a request for the stay of execution of the decision in question with the Supreme Administrative Court.

In September 2002 the Supreme Administrative Court granted the applicant’s request for a stay of execution so that she could sit for the examinations. After passing them, she applied to the Ministry of Justice to be admitted to the Athens Bar Council’s roll. As the Ministry failed to reply, the applicant again appealed to the Supreme Administrative Court, this time against the Ministry’s tacit refusal to admit her to the Council’s roll. The Supreme Administrative Court dismissed the applicant’s two appeals in 2005, taking the view, among others, that in view of the important role of lawyers in the administration of justice, the State enjoyed wide discretion in regulating the conditions of access to the profession. Accordingly, the Supreme Administrative Court found that the rejection of the applicant’s request to sit for the Bar examinations had been legal and had not infringed her right to the free development of her personality and, accordingly, that the Ministry of Justice had justifiably denied her request for admission to the Bar Council’s roll.

**LAW** – The Court observed that restrictions imposed on professional life might fall within the ambit of Article 8 when they affected the way an individual built his social identity by developing relationships with other human beings. In the present case, the prospect of sitting for the examinations after her pupillage was the climax of a long personal and academic endeavour for the applicant, reflecting her desire to become integrated into Greek society. The authorities, who did not raise the issue of nationality until the end of the process, allowed her to carry out her pupillage and left her with hope, even though she was clearly not going to be entitled to sit for the subsequent examinations. The Court held that there had been a violation of Article 8, as the authorities had shown a lack of coherence and respect towards the applicant and her professional life.

In addition, the applicant accused Greece of excluding non-EU foreign nationals from access to the legal profession, in an arbitrary and discriminatory manner. The Court reiterated that the Convention did not guarantee the right to freedom of profession and that the legal profession was somewhat special because of its public-service aspects. It was therefore for the Greek authorities to decide on the conditions of nationality for admission to legal practice. The Court could not call into question the decision they had taken not to allow the applicant to sit for the examinations organised by the Council on an objective and reasonable basis, namely the Legal Practice Code. The Court accordingly held that there had been no violation of Article 8 taken together with Article 14 of the Convention.

**CONCLUSION** – Violation of Article 8 of the Convention; no violation of Article 8 taken together with Article 14 of the Convention.

## B. Conscientious objection

### — *Savda v. Turkey, No. 42730/05, 12 June 2012*

**FACTS** – Following his conscription into the army in 2004, the applicant declared to be a conscientious objector and refused to serve in the armed forces. He became a leading member of the anti-militarist movement in Turkey, running a website set up by “War Resisters International” (an association founded in 1921 to promote non-violent action against the causes of war). In 1994 he was sentenced to a prison term for aiding and abetting the PKK (Workers’ Party of Kurdistan). Having served his sentence, the applicant was conscripted in May 1996 and deserted in August of the same year. Arrested some months later in possession of a weapon, he was accused of carrying out acts in favour of the PKK; he was detained on remand. The Adana State Security



Court sentenced him to 14 years and 7 months' imprisonment for membership of the PKK. In November 2004, after serving his sentence, he was taken to the gendarmerie station for the purpose of his military service, then, to his regiment, where he refused to don a military uniform. A range of criminal proceedings were brought against him; in the meantime he continued to refuse to integrate into his regiment for the purpose of military service. He was tried on four occasions for desertion. In April 2008 the applicant was transferred to a military hospital, where psychological tests were conducted. A panel of military doctors diagnosed an "anti-social personality" disorder and concluded that he was unfit for military service. Having been exempted from military service, he was discharged from his regiment. He was released in November 2008 once his last prison sentence had been served.

**LAW** – In Turkey all male citizens who are found fit for national service are obliged to perform military service. Given that no substitute civilian service exists, conscientious objectors have no other choice, if they are to remain true to their convictions, but to refuse to be drafted into the army. In so doing, they open themselves to a form of "civil death", on account of the numerous criminal proceedings that the authorities invariably bring against them, the cumulative effects of the resulting criminal convictions and the possibility of being prosecuted throughout their lives.

The applicant was sentenced to prison terms on three occasions for refusing to wear a military uniform. On several occasions he was placed in solitary confinement, for periods ranging from 2 to 8 days, always on the same ground. Finally, the applicant was subjected to various criminal prosecutions and convictions, which were likely to continue indefinitely had the decision to demobilise him not been taken. The Court considered that the treatment to which the applicant had been subjected had caused serious pain and suffering that went beyond the usual element of humiliation inherent in a criminal conviction or detention. The Court therefore concluded that there had been a violation of Article 3.

With regard to Article 9, the Court noted that the applicant complained not only about specific actions on the part of the State, but also about the latter's failure to have enacted a law implementing the right to conscientious objection. It noted that the Government had put forward no convincing or compelling reason that would justify this failure. The Government was unable to explain in what way recognition of the right to conscientious objection was incompatible, in the contemporary world, with the State's duties in relation to territorial integrity, public safety, the prevention of disorder and protection of the rights of others.

The Court noted that the applicant's case was characterised by the absence of a procedure to examine his request for recognition of conscientious objector status. In the absence of a procedure to examine requests for the purpose of establishing conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict with an individual's conscience. There was therefore an obligation on the authorities to provide the applicant with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested. A system which provided for no alternative service or any effective and accessible procedure by which the person concerned was able to have examined the question of whether he could benefit from the right to conscientious objection failed to strike the proper balance between the general interest of society and that of conscientious objectors. It followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention.

The Court further noted that under Turkish criminal law an individual was considered to be a serviceman from the moment of incorporation into his regiment. Following his conscription, the applicant refused to wear military uniform and stated that he did not wish to carry out military service for reasons of conscience. In the Court's opinion, such a situation could hardly be regarded as similar to that of a regular soldier who willingly agreed to submit to a system of military discipline. The Court considered it understandable that the applicant, having had to face purely military charges before a court made up entirely of servicemen, had been apprehensive about being tried by judges who could be equated with a party to the proceedings. As the applicant could legitimately have feared that the court could be influenced by biased considerations and given that his doubts as to that court's independence and impartiality were objectively justified, the Court held that there had been a violation of Article 6 § 1.

**CONCLUSION** – Violations of Articles 3, 9 and 6 § 1 of the Convention.

## ■ *Bayatyan v. Armenia* [GC], No. 23459/03, ECHR 2011

**FACTS** – The applicant, a Jehovah’s Witness who had been declared fit for military service, informed the authorities that he refused to serve in the military on conscientious grounds but was ready to carry out alternative civil service. When summoned to commence his military service in May 2001 he failed to report for duty and temporarily left his home for fear of being forcibly taken to the military. He was charged with draft evasion and in 2002 was sentenced to two and a half years’ imprisonment. He was released on parole after serving about ten and a half months of his sentence. At the material time in Armenia there was no law offering alternative civil service for conscientious objectors.

**LAW** – This was the first case in which the Court had examined the issue of the applicability of Article 9 to conscientious objectors. Previously, the Commission had in a series of decisions refused to apply that provision to such persons, on the grounds that, since Article 4 § 3 (b) of the Convention excluded from the notion of forced labour “any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service”, the choice whether or not to recognise conscientious objectors had been left to the Contracting Parties. The question was therefore excluded from the scope of Article 9, which could not be read as guaranteeing freedom from prosecution for refusing to serve in the army. However, that interpretation of Article 9 was a reflection of ideas that prevailed at that time. Since then, important developments had taken place both on the international level and in the domestic legal systems of Council of Europe member States. By the time of the alleged interference with the applicant’s Article 9 rights in 2002-03, there was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection. After the applicant’s release from prison, Armenia had recognised that right also. The United Nations Human Rights Committee considered that the right to conscientious objection could be derived from Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the Charter of Fundamental Rights of the European Union explicitly stated that the right to conscientious objection was recognised in accordance with the national law governing its exercise. Moreover, the Parliamentary Assembly of the Council of Europe and the Committee of Ministers had on several occasions called on the member States which had not yet done so to recognise the right to conscientious objection and this had eventually become a pre-condition for admission of new member States into the Organisation. In the light of the foregoing and of its “living instrument” doctrine, the Court concluded that a shift in the interpretation of Article 9 was necessary and foreseeable and that that provision could no longer be interpreted in conjunction with Article 4 § 3 (b). In any event, it transpired from the travaux préparatoires on Article 4 that the sole purpose of subparagraph 3 (b) was to provide further elucidation of the notion “forced or compulsory labour”, which neither recognised nor excluded a right to conscientious objection. It should therefore not have a delimiting effect on the rights guaranteed by Article 9.

Accordingly, although Article 9 did not explicitly refer to a right to conscientious objection, the Court considered that opposition to military service motivated by a serious and insurmountable conflict between the obligation to serve in the army and an individual’s conscience or deeply and genuinely held religious or other beliefs constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9. This being the situation of the applicant, Article 9 was applicable to his case.

The applicant’s failure to report for military service had been a manifestation of his religious beliefs and his conviction therefore amounted to an interference with his freedom to manifest his religion. Given that almost all Council of Europe member States had introduced alternatives to military service, any State which had not done so enjoyed only a limited margin of appreciation and had to demonstrate that any interference corresponded to a “pressing social need”. At the material time, however, the existing system in Armenia imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. Such a system therefore failed to strike a fair balance between the interests of society as a whole and those of the individual. In the Court’s view, the imposition of a criminal sanction on the applicant, where no allowances were made for the exigencies of his religious beliefs, could not be considered a measure necessary in a democratic society. The Court further observed that the applicant’s prosecution and conviction had occurred after the Armenian authorities had officially pledged, upon acceding to the Council of Europe, to introduce alternative service within a specific period and they had done so less than a year after the applicant’s conviction. In these circumstances, the applicant’s conviction, which had been in direct conflict with the official policy of reform and legislative changes in pursuance of Armenia’s international commitment, could not be said to have been prompted by a pressing social need.

**CONCLUSION** – Violation of Article 9 of the Convention.

■ ***Thlimmenos v. Greece [GC], No. 34369/97, ECHR 2000IV***

**FACTS** – The applicant, a Jehovah’s Witness, was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later he was refused appointment as a chartered accountant on the grounds of his conviction despite his having scored very well in a public competition for the position in question.

**LAW** – The Court held that the applicant’s exclusion from the profession of chartered accountant was disproportionate to the aim of ensuring appropriate punishment of persons who refuse to serve their country, as he had already served a prison sentence for this offence. It found a violation of Article 14 in conjunction with Article 9 of the Convention,

■ ***Koppi v. Austria, No. 33001/03, 10 December 2009***

**FACTS** – The applicant had been working as a municipal preacher for a registered religious community “Bund Evangelischer Gemeinden in Österreich”. Recognised by the Ministry of Internal Affairs as a conscientious objector, and, as such exempt from military service, the applicant was still liable to perform civilian service. His request to be exempted from civilian service claiming that he held a comparable clerical position to members of recognised religious societies who, because they performed specific services relating to worship or religious instruction were exempt, was dismissed.

**LAW** – The Court found that a difference in treatment between religious groups resulting from their being granted a specific status in law – to which substantial privileges were attached – was compatible with the requirements of Article 14 as long as the State had set up a framework for conferring legal personality on those groups and as long as each group had had a fair opportunity to apply for the specific status, using established criteria in a non-discriminatory manner. There was no indication that the applicant’s religious community had applied for recognition as a religious society or that such a request had been refused, let alone refused on grounds incompatible with the requirements of Article 9. There had therefore been no violation of Article 14 taken in conjunction with Article 9 of the Convention.

■ ***Gütl v. Austria, No. 49686/99, 12 March 2009***

■ ***Löffelmann v. Austria, No. 42967/98, 12 March 2009***

**FACTS** – The applicants were members of the Jehovah’s Witnesses. They complained of having been forced to perform civil service in lieu of their military service while members of other recognised religious societies holding religious functions comparable to theirs were exempted from that requirement.

**LAW** – The Court held unanimously that there had been a violation of Article 14 taken in conjunction with Article 9 of the Convention on account of discrimination against the applicants on the ground of their religion.

■ ***Ülke v. Turkey, No. 39437/98, 24 January 2006***

**FACTS** – The applicant refused to do his military service, on the ground that he had firm pacifist beliefs, and publicly burned his call-up papers at a press conference. He was initially convicted of inciting conscripts to evade military service and, having been transferred to a military regiment, repeatedly convicted for his refusals to wear a military uniform. He served almost two years in prison and later hid from the authorities.

**LAW** – The Court maintained that the applicable legal framework in Turkey did not provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one’s beliefs. Because of the nature of the legislation the applicant ran the risk of an interminable series of prosecutions and criminal convictions. The constant alternation between prosecutions and terms of imprisonment, together with the possibility, that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. The Court found a violation of Article 3 of the Convention

■ ***Autio v. Finland, No. 17086/90, Commission decision of 6.12.1991***

**FACTS** – The applicant complained that the length of his substitute service was discriminatory in comparison with the length of ordinary military service.

**LAW** – Although the duration of substitute service in Finland was considerably longer than that of military service the Commission was satisfied that the differential treatment in question pursued a legitimate aim and fulfilled the requirement of proportionality taking into account the State’s margin of appreciation. The legislation in question had relieved all those opting for substitute service from the duty to prove the genuineness of their conviction. An adequate prolongation of the term of such service was deemed an appropriate indicator of a conscript’s convictions. The Commission declared the application inadmissible as manifestly ill-founded.

#### ■ ***Johansen v. Norway, No. 10600/83, Commission decision of 14 October 1985***

**FACTS** – Being a pacifist, the applicant was opposed to military service. In addition, he objected to civilian service. He was recognised by the Ministry of Justice as a conscientious objector and exempted from military service but subsequently convened to appear before the Administration for Civilian Conscripts in order to perform sixteen months of civilian service. The applicant complied with this order but only to declare that he did not wish to carry out any kind of civilian service. Through this refusal the applicant risked an enforcement of the civilian service in prison.

**LAW** – The Commission considered the obligation under Norwegian law to perform civilian service an obligation which was sufficiently “specific and concrete” to conform with the terms of Article 5 § 1 (b). The Convention did not oblige the Contracting States to make available for conscientious objectors to military service any substitute civilian service. In States which recognise conscientious objectors and provide for alternative service it was fully compatible with the Convention to require the objectors to perform alternative service. This was to be derived from the text of Article 4 § 3 (b) which specifically sets out that service exacted from conscientious objectors instead of compulsory military service is not to be regarded as “forced or compulsory labour”. From this provision it came clear that an obligation to perform civilian service was in principle compatible with the Convention. Since the Convention thus expressly recognised that conscientious objectors may be required to perform civilian service it was clear that the Convention did not guarantee a right to be exempted from civilian service under Article 9 either. The convention did not prevent a state from taking measures to enforce performance of civilian service or from imposing sanctions on those who refuse such service as in the case before it. The case was declared inadmissible.

#### ■ ***N. v. Sweden, No. 10410/83, Commission decision of 11.10.1984***

**FACTS** – The applicant, a pacifist, was convicted for refusing to perform compulsory military service. He did not ask for a possibility to perform substitute civilian service. Before the Commission, he alleged to be a victim of discrimination, since members of various religious groups were exempted from service while philosophical reasons such as being a pacifist did not constitute valid grounds for discharging him from his obligation to serve in the army.

**LAW** – The Commission declared the case inadmissible. It did not find an appearance of a violation of Article 14 in conjunction with Article 9 of the Convention, stating that it was not discriminatory to limit full exemption from military service and substitute civil service to conscientious objectors belonging to a religious community which required of its members general and strict discipline, both spiritual and moral.

#### ■ ***Grandrath v. FRG, No. 2299/64, Commission report of 12.12.1966***

**FACTS** – The applicant, a minister of Jehovah’s Witnesses, was a “total objector”, seeking to be exempted both from military and from civilian service. He complained about his criminal conviction for refusing to perform substitute civilian service and alleged that he was discriminated against in comparison with Roman Catholic and Protestant ministers who were exempt from this service.

**LAW** – The Commission examined the case under Article 9 and under Article 14 in conjunction with Article 4. It concluded that there had been no violation of the Convention, as conscientious objectors did not have the right to exemption from military service, and that each Contracting State could decide whether or not to grant such a right. If such a right was granted, objectors could be required to perform substitute civilian service, and did not have a right to be exempted from it.

## C. Expulsion of second-generation migrants

### — **Maslov v. Austria [GC], No. 1638/03, ECHR 2008**

**FACTS** – The applicant, a Bulgarian national, had arrived in Austria in 1990 at the age of six and was lawfully resident there with his parents and siblings. He obtained an unlimited settlement permit in 1999. In 2001, at the age of 16, he was issued with a ten-year exclusion order by the Federal Police Authority with effect from his eighteenth birthday. The order was made following his convictions by a juvenile court for offences of aggravated burglary, extortion and assault committed at the ages of 14 and 15 and for which he had received prison sentences. After serving his sentences and attaining his majority, the applicant was deported to Bulgaria in December 2003.

**LAW** – The decisive feature of the case was the young age at which the applicant had committed the offences and, with one exception, their non-violent nature. His convictions had essentially been for acts of juvenile delinquency. Where expulsion measures against a juvenile offender were concerned, the obligation to take the best interests of the child into account included an obligation to facilitate his or her reintegration. Reintegration would not be achieved by severing family or social ties through expulsion, which had to remain a means of last resort in the case of a juvenile offender. Following his release from prison, the applicant had stayed a further 18 months in Austria without reoffending. Little was known about his conduct in prison or the extent to which his living circumstances had stabilised after his release, so the question of his conduct since the commission of the offences carried less weight than the other applicable criteria, in particular the fact that the offences were mostly non-violent and had been committed when the applicant was a minor. The applicant had his main social, cultural, linguistic and family ties in Austria, where all his relatives lived, and no proven ties with his country of origin. The fact that the exclusion order was of limited duration was not decisive. In view of the applicant's young age, a ten-year exclusion order banned him from living in Austria for almost as much time as he had spent there and for a decisive period of his life. In the circumstances, it was disproportionate to the legitimate aim pursued and thus not necessary in a democratic society.

**CONCLUSION** – Violation of Article 8 of the Convention.

### — **Kaya v. Germany, No. 31753/02, 28 June 2007**

**FACTS** – The applicant, a Turkish national, was born in 1978 in Germany where he lived with his parents and sister until his arrest in January 1999. In September 1999 he was sentenced to three years and four months' imprisonment for, in particular, attempted trafficking in human beings, aggravated battery and drugs offences and was ordered to be deported to Turkey on his release from prison.

**LAW** – The Court noted the particular seriousness of the applicant's offences and found that a fair balance had been struck in that his expulsion had been proportionate to the aims pursued, namely the maintenance of public safety and prevention of crime, and was therefore necessary in a democratic society. The Court held that there had been no violation of Article 8 of the Convention.

### — **Üner v. the Netherlands [GC], No. 46410/99, ECHR 2006-XII**

**FACTS** – The applicant, a Turkish national, came to the Netherlands at the age of 12 with his mother and two brothers to join his father. In 1988 he obtained a permanent residence permit. In 1991 he started living with a Netherlands national and they had a son. The applicant moved out in 1992, but remained in close contact with both his partner and son. In 1994 the applicant was convicted of manslaughter and assault and sentenced to seven years' imprisonment. He had already been convicted for violent offences and for a breach of the peace. A further son was born to him in 1996. His partner and sons visited him in prison at least once a week. Both his sons have Netherlands nationality and have been recognised by him. Neither his partner nor his children speak Turkish. In 1997 the Deputy Minister of Justice withdrew the applicant's permanent residence permit and imposed a ten-year exclusion order on him in view of his conviction in 1994. He was deported to Turkey in 1998.

**LAW** – The Court did not doubt that the applicant had strong ties with the Netherlands. However, it could not overlook the fact that the applicant had lived with his partner and first-born son for a relatively short period only and that he had never lived together with his second son. Moreover, the Court was not prepared to accept that he had spent so little time in Turkey that, at the time when he was returned to that country, he no longer had any social or cultural (including linguistic) ties with Turkish society. The offences of manslaughter and

assault were of a very serious nature and given his previous convictions, he might be said to have displayed criminal propensities. When the exclusion order became final, the applicant's children had been very young still – six and one-and-a-half years old respectively – and therefore of an adaptable age. Given that they had Dutch nationality, they would – if they followed their father to Turkey – be able to return to the Netherlands regularly to visit other family members living there. In the particular circumstances of the case, the family's interests were outweighed by other considerations. Given the nature and the seriousness of the applicant's offences and bearing in mind that the exclusion order was limited to ten years, the Court could not find that the authorities had assigned too much weight to the State's own interests when deciding to impose that measure. Hence a fair balance had been struck in that the applicant's expulsion and exclusion from the Netherlands had been proportionate to the aims pursued and therefore necessary in a democratic society.

**CONCLUSION** – No violation of Article 8 of the Convention.

### ■ ***Radovanovic v. Austria*, No. 42703/98, 22 April 2004**

**FACTS** – The applicant, a Serbia and Montenegro national, was born in Austria where he lived for the first seven months of his life with his parents, who are both Serbia and Montenegro nationals and legally resident in Vienna. He then moved to live with his grandparents in the former Federal Republic of Yugoslavia, now Serbia and Montenegro, where he completed primary school. He spent his annual school holidays with his parents in Austria and, when he was 10, came back to live with them and his sister in Austria, where he finished secondary school and completed a three-year vocational training as a butcher. He received an unlimited residence permit in 1993.

In July 1997 a Juvenile Court convicted the applicant of aggravated robbery and burglary and sentenced him to 30 months' imprisonment, with 24 months suspended with a probationary period of three years. When fixing the sentence, the court considered as mitigating circumstances that the applicant had had no criminal record, that he had admitted the offences and had partly made amends, and that in two cases the offences remained attempts.

In September 1997 a residence prohibition of unlimited duration was issued against the applicant, in accordance with regulations of the Aliens Act, under which a residence prohibition is to be issued against an alien, if he has been sentenced to more than three months' imprisonment by final judgment of a domestic court.

The applicant served his prison sentence until October 1997. Subsequently he was transferred to a detention centre with a view to his expulsion. His various appeals were unsuccessful and, in February 1998, he was expelled to the former Federal Republic of Yugoslavia.

**LAW** – Without disregarding the serious nature of the applicant's offences, the Court noted that he had committed them as a juvenile, that he had had no previous criminal record and that the major part of his relatively high sentence was suspended. The Court was not therefore convinced that the applicant constituted a serious danger to public order which necessitated the imposition of the measure concerned.

Given the applicant's birth in Austria, where he later also completed his secondary education and vocational training, while living with his family, and also taking into account that his family had been legally resident in Austria for a long time and that the applicant himself had had an unlimited residence permit when he committed the offence, and considering that, after the death of his grandparents in Serbia and Montenegro, he no longer had any relatives there, the Court found that his family and social ties with Austria were much stronger than with Serbia and Montenegro.

The Court therefore considered that the imposition of a residence prohibition of unlimited duration was an overly rigorous measure. A less intrusive measure, such as a residence prohibition of a limited duration, would have sufficed. The Court concluded that the Austrian authorities, by imposing a residence prohibition of unlimited duration against the applicant, had not struck a fair balance between the interests involved and that the means employed were disproportionate to the aim pursued.

**CONCLUSION** – Violation of Article 8 of the Convention.

### ■ ***Yilmaz v. Germany*, No. 52853/99, 17 April 2003**

**LAW** – The applicant, a Turkish national, was born in 1976 in Germany. In 1992 he obtained unlimited permission to reside in Germany. His parents and sisters live in Germany and have authorisation to reside there. In January 1999 the applicant began cohabiting with a German national with whom he had a son, born in February 1999.

In August 1996 the applicant was sentenced by a Juvenile Court to one year and ten months' imprisonment, suspended on probation, for offences which included four counts of aggravated robbery as a member of a gang and preparing and inciting to commit aggravated robbery with violence. In November 1996 the Neu-Ulm Juvenile Court sentenced him to three years' imprisonment, unsuspended, which was to include the term of imprisonment imposed earlier, for aggravated assault occasioning bodily harm and joint coercion to engage in sexual acts on account of acts committed between prisoners while he was detained pending trial. He was released in December 1997, after serving two-thirds of his sentence.

In September 1998 the administrative authorities informed the applicant that if he did not leave Germany he would be removed to Turkey and excluded from German territory for an indefinite period. He made a number of unsuccessful administrative appeals up until to the Federal Constitutional Court (Bundesverfassungsgericht) and finally left Germany for Turkey in March 2000. In June 2000 the German authorities refused to grant him a temporary residence permit so that he could visit his child.

**LAW** – The Court considered that the applicant's deportation was not disproportionate to the legitimate aim, preventing disorder or crime, pursued by the authorities. However, the fact that the applicant's exclusion from German territory had been ordered for an indefinite period amounted to a disproportionate interference in view of his family situation – particularly the birth of his son and the latter's young age – and the fact that he had previously held unlimited permission to reside there. The Court accordingly held unanimously that there had been a violation of Article 8 of the Convention.

### ■ ***Yildiz v. Austria, No. 37295/97, 31 October 2002***

**FACTS** – The applicants, Mehmet, Güler and Yesim Yildiz, all Turkish nationals, were born in 1975, 1976 and 1995 respectively.

The first applicant went to Austria in 1989 to live with his parents and siblings. As from 1994 he cohabited with the second applicant, who was born in Austria and had lived there all her life. They married under Muslim law in April 1994 and under Austrian civil law in March 1997. Their daughter, the third applicant, was born in August 1995.

In 1993 the first applicant, while still a minor, was convicted twice by the criminal courts, once for shop-lifting with a sentence of three days' imprisonment suspended on probation, and once for theft without a sentence being pronounced. Between 1992 and April 1994 he was convicted seven times of traffic offences, in particular driving without a licence and once ignoring a red light and high speeding. The fines imposed on him totalled some 2000 EUR.

In September 1994 the competent District Authority imposed a five-year residence ban on the first applicant. His subsequent appeal was dismissed on the ground that a residence ban has to be issued against an alien, among other things, if he has been convicted more than once for similar offences by a domestic or foreign court, or if a fine has been imposed on him more than once for a grave administrative offence by an administrative authority. Despite the first applicant's high degree of integration in Austria, it was also found that the public interest in issuing a residence ban outweighed his interest in staying.

In May 1995 the first applicant was taken into detention with a view to his expulsion. His complaints with the Administrative Court were dismissed. In June 1997 an order to leave Austrian territory was served on the first applicant, with which he complied and left to Turkey. The validity of his residence ban expired in September 1999. However, he claims that the possibilities of legally returning to Austria are very limited and involve long waiting periods. In March 2001 the first and the second applicant divorced.

**LAW** – The Court observed that the first applicant was not a second-generation immigrant; he came to Austria in 1989 at the age of 14 and had therefore to have links with his country of origin and to be able to speak Turkish. On the other hand, he was still an adolescent when he came to Austria, where his close family was still living. In December 1996, when the Administrative Court confirmed the residence ban against him, he had been living in Austria for seven years, he had been working there and had been co-habiting for a little less than three years with the second applicant, a Turkish national, who was born in Austria and had lived there all her life. Their daughter, the third applicant, was one year and four months old at the time. In fact, the Austrian authorities issuing the residence ban acknowledged that the first applicant had reached a high degree of integration in Austria. Nevertheless, the Court considered that, regarding the possible effects of the residence ban on his family life, the authorities failed to establish whether the second applicant could be expected to follow her husband to Turkey, in particular whether she spoke Turkish and maintained any links, other than her

nationality, with that country. While it was true that the applicants' family situation had changed in the meantime, the Court had to make its assessment in the light of the position when the residence ban became final.

Concerning the offences committed by the first applicant, the Court found that, though they were not negligible, the domestic authorities considered them to be of a minor nature, as was shown by the modest penalties imposed. Moreover, the first applicant did not commit any further offences between April 1994 and December 1996, when the residence ban proceedings were terminated. The Court concluded that the authorities failed to strike a fair balance between the different interests involved and that the interference with the applicants' right to respect for their family life was not proportionate to the legitimate aim pursued.

**CONCLUSION** – Violation of Article 8 of the Convention.

### ■ ***Boultif v. Switzerland*, No. 54273/00, ECHR 2001-IX**

**FACTS** – The applicant, an Algerian national, entered Switzerland with a tourist visa in December 1992. In March 1993 he married M.B., a Swiss national. In May 1998 he started a two-year prison sentence for robbery and other offences and the Swiss authorities refused to renew his residence permit. In December 1999 the Federal Aliens' Office ordered the applicant to leave Switzerland by 15 January 2000. At an unspecified date in 2000 he left the country for Italy. He complained that the order resulted in him being separated from his wife, who did not speak Algerian and could not be expected to follow him to Algeria.

**LAW** – The Court considered that the applicant had been subjected to a serious impediment to establish family life, since it was practically impossible for him to live with his family outside Switzerland. In addition, when the Swiss authorities had decided to refuse to renew his residence permit, he only presented a comparatively limited danger to public order. The interference was, therefore, not proportionate to the aim pursued. The Court held, unanimously, that there had been a violation of Article 8 of the Convention.

### ■ ***Ezzouhdi v. France*, No. 47160/99, 13 February 2001**

**FACTS** – The applicant, a Moroccan national born in 1970, complained about the decision to impose a definitive prohibition order on him, for repeated drug-related offences, excluding him from French territory. He had lived in France from the age of five with his family. He was educated in France and had worked in France.

**LAW** – The Court noted that, at the time the order was imposed, the applicant's conviction was for offences primarily concerning the personal use of drugs and that neither this nor his previous convictions indicated that he posed a serious threat to public order meriting an exclusion order. Noting the applicant's strong ties with France the Court found the imposition of a definitive exclusion order a particularly severe punishment. It held that there had been a violation of Article 8 of the Convention.

### ■ ***Baghli v. France*, No. 34374/97, ECHR 1999-VIII**

**FACTS** – The applicant, an Algerian national, entered France in 1967 at the age of two. He lived there ever since, as did all the members of his family. All of his seven brothers and sisters are French nationals. The applicant did the whole of his schooling in France where he obtained a professional diploma (*certificat d'aptitude professionnelle*) as a fitter in 1982. Between 1982 and 1992 he did various jobs and attended a number of professional training courses. Between January 1984 and December 1985 he performed his military service in Algeria but apart from this time the applicant lived continuously in France until his exclusion from French territory.

In January 1992 the applicant was convicted of drug trafficking and sentenced on appeal to three years' imprisonment, two of which were suspended. In addition, the courts made an order excluding him from French territory for a period of ten years. After serving his sentence, the applicant was deported to Algeria in May 1994.

**LAW** – The Court noted that the applicant had spent almost his entire life in France, was educated in France and had worked there for several years. However, the Court considered the applicant, a single without children, to have not shown that he had close ties with either his parents or his brothers and sisters living in France. His relationship with Miss I., a French national, had begun only in December 1992 when the exclusion order had already been imposed; accordingly he must have been aware of the precariousness of his position.

Furthermore, the applicant retained his Algerian nationality and had never suggested that he could not speak Arabic. He performed his military service in his country of origin and went there on holiday several times. It appeared that he never evinced a desire to become French when he was entitled to do so. Thus, even though his main family and social ties were in France, there existed evidence, that the applicant had preserved ties, going beyond mere nationality, with his native country.



In addition, the Court considered the offence due to which the applicant's exclusion order was issued to constitute a serious breach of public order undermining the protection of the health of others. In view of the devastating effects of drugs on people's lives, the Court understood why the authorities showed great firmness with regard to those who actively contribute to the spread of this scourge. In the light of the foregoing, the Court considered that the ten-year exclusion order was not disproportionate to the legitimate aims pursued.

**CONCLUSION** – No violation of Article 8 of the Convention.

### ■ ***Boujlifa v. France*, 21 October 1997, Reports of Judgments and Decisions 1997-VI**

**FACTS** – The applicant was born in Morocco in 1962. He entered France at the age of 5 when he joined his father under the family reunion procedure. Three of his eight brothers and sisters have French nationality.

When he was 20 the applicant committed a number of criminal offences. In May 1985 he was first sentenced to six years' imprisonment for armed robbery and in November of the same year to eighteen months' imprisonment for robbery. After having served these sentences the applicant was extradited to Switzerland to serve a prison sentence for theft from May 1987 to August 1988. At the end of that period he returned to France and went to live with his parents. He asserted that he was gainfully employed from June 1989 to January 1991.

Not having had a valid residence permit since February 1983, the applicant went to the responsible Prefecture in January 1990 in order to regularise his situation. In November 1990 he was informed that deportation proceedings had been commenced against him on account of the convictions pronounced in 1985. His appeals against the deportation order remained ineffective.

**LAW** – The Court noted that the question whether the applicant had a private and family life within the meaning of Article 8 was to be considered in light of his position on date of the deportation order. The applicant was living in France, although he was not entitled to claim at that time to be involved in a relationship with his French cohabitant, and seemed to have remained in touch with his family. The Court considered the applicant to have overall strong ties with France. He had arrived there at the age of 5 and had lived there since 1967, apart from one period of fifteen months. He had received his education there, had worked there for a brief period and his parents and eight brothers and sisters lived there. On other hand, he had never shown any desire to acquire the French nationality.

Yet the Court attached greater importance to the offences committed by the applicant. Due to their seriousness and severity of penalties they attracted, they constituted particularly serious violation of security of persons and property and of public order. In the instant case requirements of public order outweighed personal considerations which had prompted the application. The Court therefore found no violation of Article 8 of the Convention.

### ■ ***Mehemi v. France*, 26 September 1997, Reports of Judgments and Decisions 1997-VI**

**FACTS** – Enforcement of an order for permanent exclusion from French territory of an Algerian national born in France convicted for drug offences. The applicant had lived in France for more than thirty years prior to his exclusion. His parents and four brothers and sisters lived there. He was the father of three minor children of French nationality whose mother he had married.

**LAW** – The Court held that it had not been established that the applicant had links with Algeria other than his nationality. The fact that in 1989 the applicant had participated in conspiracy to import a large quantity of hashish counted heavily against him. Yet, in view of the fact that the permanent exclusion order had separated him from his minor children and his wife, the measure in question was disproportionate to the aims pursued. The Court found that there had been a violation of Article 8 of the Convention.

### ■ ***El Boujaïdi v. France*, 26 September 1997, Reports of Judgments and Decisions 1997-VI**

**FACTS** – The applicant, a Moroccan national, was born in 1967. Together with his mother, his three sisters and his brother he moved to France to join his father there in 1974. He went to school in France, where he also worked for several years. The applicant's parents and siblings were lawfully resident in France. In addition, the applicant had recognised paternity of the child of a French woman with whom he had been cohabiting.

In October 1986 the applicant was charged with consumption of and trafficking in prohibited drugs. On appeal in January 1989 the applicant was sentenced to six years' imprisonment, with ineligibility for parole during the first two-thirds thereof. In addition, a permanent exclusion order from the French territory was imposed on him.

In December 1992, following an attempted robbery, the applicant – who had been released in June 1991 – was arrested and detained under a committal warrant. For this offence and the fact that he had stayed in France in spite of the permanent exclusion order imposed on him, he was sentenced to one year's imprisonment. The exclusion order was enforced against the applicant in August 1993.

**LAW** – The Court acknowledged that there had been an interference with the applicant's private and family life as he had arrived in France at the age of 7, received most of his schooling there and worked there, and his parents and sibling lived there. The applicant could not rely on his relationship with the French woman or the fact that he was the father of her child since these circumstances had come into being long after the exclusion order had become final.

The Court concluded, however, that the expulsion of the applicant had been necessary in a democratic society. Despite of his strong social and family ties in France he did not claim not to know Arabic or that he had never returned to Morocco, nor did it appear that he had ever shown any desire to acquire French nationality. It could therefore not be established that he had lost all links with his country of origin. In addition, the seriousness of the offences he had committed and his subsequent conduct counted heavily against him. The Court found no violation of Article 8 of the Convention.

### ■ ***Boughanemi v. France*, 24 April 1996, Reports of Judgments and Decisions 1996-II**

**FACTS** – The applicant, a Tunisian national born in 1960, immigrated to France from Tunisia in 1968 and lived there continuously until his deportation. His parents and his ten brothers and sisters resided in France. Eight of his brothers and sisters were born there. He claimed that he lived with a woman of French nationality (Miss S.), whose child, born in June 1993, he formally recognised in April 1994.

The applicant was convicted on a number of occasions. In December 1981 he was sentenced to ten months' imprisonment, four of which were suspended, for burglary. In September 1983 he was sentenced to two months' imprisonment for an assault resulting in the victim's not being fit for work for a period exceeding eight days. In September 1986 he was fined 1,500 francs for driving without a licence and without insurance and in March 1987 he was sentenced to three years' imprisonment for living on the earnings of prostitution with aggravating circumstances.

A deportation order issued against the applicant was executed in November 1988 but the applicant returned to France and lived there illegally. All his subsequent appeals against the deportation order up to the Conseil d'Etat remained unsuccessful. In July 1994 the applicant was arrested for breach of the deportation order, sentenced to three months' imprisonment and deported again to Tunisia in October 1994.

**LAW** – The Court considered that doubts as to the reality of family ties between the applicant and Miss S. were not wholly unfounded. It appeared that their life together did not begin until after the applicant's return as an illegal immigrant and only lasted one year. When he was deported for the second time the couple had already separated; this separation occurred several months before the child's birth.

However, in the Court's opinion these observations did not justify finding that the applicant had no private and family life in France. In the first place, the applicant recognised, admittedly somewhat belatedly, the child born to Miss S. The concept of family life on which Article 8 is based embraced, even where there is no cohabitation, the tie between a parent and his or her child, regardless of whether or not the latter is legitimate. Although that tie may be broken by subsequent events, this can only happen in exceptional circumstances. In the present case neither the belated character of the formal recognition nor the applicant's alleged conduct in regard to the child constituted such a circumstance. Secondly, the applicants' parents and his ten brothers and sisters were legally resident in France and there was no evidence that he had no ties with them. The applicant's deportation had the effect of separating him from them and from the child. It was therefore to be regarded as an interference with the exercise of the right guaranteed under Article 8.

However, in the Court's view, the circumstances of the present case were different from those in the cases of *Moustaquim v. Belgium*, *Beldjoudi v. France* and *Nasri v. France*, which all concerned the deportation of aliens convicted of criminal offences and in which the Court found a violation of Article 8. Above all the Court attached particular importance to the fact that the applicant's deportation was decided after he had been sentenced to a total of almost four years' imprisonment, non-suspended, three of which were for living on the earnings of

prostitution with aggravating circumstances. The seriousness of that last offence and the applicant's previous convictions counted heavily against him. In sum, the Court did not find that the applicant's deportation was disproportionate to the legitimate aims pursued.

**CONCLUSION** – No violation of Article 8 of the Convention.

### ■ ***Nasri v. France*, 13 July 1995, Series A No. 320B**

**FACTS** – The applicant, an Algerian national, was born deaf and dumb in 1960 in Algeria as the fourth of ten children, one of whom is deceased and six of whom are French nationals. He came to France with his family in February 1965.

As early as 1977 the applicant came to the notice of the police as a result of a number of thefts. He appeared in court on several occasions. At March 1992 his police file recorded the following convictions:

- ▶ from 1981 to 1983 he was on three occasions sentenced to terms of imprisonment ranging from six months to one year for theft and attempted theft;
- ▶ in 1986 he was sentenced to five years' imprisonment, two of which were suspended, and five years' probation for gang rape;
- ▶ in 1987 he was sentenced to one year and three months' imprisonment for theft with violence;
- ▶ in 1988 he was sentenced to ten months' imprisonment for theft with violence;
- ▶ in 1989 he was fined two thousand francs for assaulting a public official;
- ▶ in 1990 he was sentenced to six months' for theft with violence and receiving stolen goods.

The Minister of the Interior ordered the applicant's deportation on the ground that his presence on French territory represented a threat to public order. In January 1992 the applicant complied with a summons requiring him to report to the responsible Prefecture, where he was first taken into police custody and then placed in administrative detention by order of the Prefect, for a period of twenty-four hours, with a view to his deportation to Algeria. As it proved impossible to deport him within that period, a compulsory residence order requiring the applicant to live with his parents was issued. That measure was renewed ever since.

**LAW** – The Court noted that the decision to deport the applicant had been principally based on his conviction for rape. Because of this crime, the applicant's case was much more serious than in the cases of *Moustaquim v. Belgium* or *Beldjoudi v. France*. In view of an accumulation of special circumstances, however, notably his situation as a deaf and dumb person, capable of achieving a minimum psychological and social equilibrium only within his family, the majority of whose members are French nationals with no close ties with Algeria, the Court considered that the decision to deport the applicant, if executed, would not have been proportionate to the legitimate aim pursued. It would have infringed the right to respect for family life and therefore constituted a breach of Article 8 of the Convention.

### ■ ***Moustaquim v. Belgium*, 18 February 1991, Series A No. 193**

**FACTS** – The applicant, a Moroccan national, was born in Casablanca in 1963. He arrived in Belgium with his mother in July 1965 at the latest, in order to join his father, who had emigrated some time before and ran a butcher's shop. Until he was deported in June 1984, the applicant lived in Belgium and had a residence permit. Three of his seven brothers and sisters were born in Belgium. One of his elder brothers already had Belgian nationality at the material time.

While the applicant was still a minor in criminal law, the competent Juvenile Court dealt with 147 charges against him, including 82 of aggravated theft, 39 of attempted aggravated theft and 5 of robbery. It made various custodial, protective and educative orders.

In November 1982, when the applicant was no longer a minor, he was found guilty on 22 of the 26 charges pleaded. The appeal court passed prison sentences of two years (for 4 offences of aggravated theft, 12 offences of attempted aggravated theft, 1 offence of theft and 1 of handling stolen goods), one month (destroying a vehicle), two periods of eight days (on two counts of assault) and fifteen days (on a count of threatening behaviour). As none of these sentences was suspended, his immediate arrest was ordered.

A royal order, which was served on the applicant in March 1984 and was to take effect from the moment of his release, required him to "leave the Kingdom and not return for ten years, ... except by special leave of the Minister of Justice". As all his appeals lodged against the deportation order remained unsuccessful the applicant

left Belgium in June 1984. He first went to Spain and later to Sweden. In December 1989 the deportation order was temporarily suspended. Subsequently, the Aliens Office sent the applicant a safe-conduct authorising him to enter Belgian territory and remain there for thirty days. The applicant returned to Belgium and received a renewable residence permit in April 1990 initially valid for one year.

**LAW** – Since the initial order to deport the applicant was merely suspended but no reparation was made for its consequences, which the applicant suffered for more than five years, the Court considered that the case had not become devoid of purpose.

The Court noted that the alleged offences by the applicant in Belgium had a number of special features. They all went back to when the applicant was an adolescent. Furthermore, proceedings were brought in the criminal courts in respect of only 26 of them. The latest offence of which he was convicted dated from 21 December 1980. There was thus a relatively long interval between then and the deportation order of February 1984. During that period the applicant was in detention for some sixteen months but at liberty for nearly twenty-three months.

At the time the deportation order was made, all the applicant's close relatives – his parents and his siblings – had been living in Belgium for a long while; one of the older children had acquired Belgian nationality and the three youngest had been born in Belgium. The applicant himself was less than two years old when he arrived in Belgium. From that time on he had lived there for about twenty years with his family or not far away from them. He had returned to Morocco only twice, for holidays. He had received all his schooling in French. His family life was thus seriously disrupted by the measure taken against him.

Having regard to these various circumstances, the Court noted that, as far as respect for the applicant's family life was concerned, a proper balance had not been achieved between the interests involved, and that the means employed were therefore disproportionate to the legitimate aim pursued.

**CONCLUSION** – Violation of Article 8 of the Convention.

## D. Forced labour

### ■ ***Elisabeth Kawogo v. the United Kingdom, No. 56921/09***

**FACTS** – The applicant, a Tanzanian national having arrived in the United Kingdom on a domestic working visa valid until November 2006, was made to work daily for the parents of her previous employer, from 7 a.m. till 10.30 p.m., without payment, for several months after her visa expired. She escaped in June 2007. She complains she was subjected to forced labour, in breach of Article 4.

*Communicated to the Government in June 2010.*

### ■ ***C.N. v. the United Kingdom, No. 4239/08***

**FACTS** – The applicant, a Ugandan national, claims that – escaping sexual abuse in Uganda – she arrived in the United Kingdom with a false passport. Upon arrival, she had her documents confiscated and was made to work for free, being on call day and night, for an elderly person suffering from Parkinson. She was kept in isolation and was threatened repeatedly with violence and expulsion. She complains in particular that the UK breached Article 4 as she could not claim protection in the British courts given that the law applicable at the time did not include the offences of servitude and forced labour.

*Communicated to the Government in March 2010.*

### ■ ***C.N. and V. v. France, No. 67724/09, 11 October 2012***

**FACTS** – The applicants, two sisters (C.N. and V.), both French nationals, who were born in 1978 and 1984 respectively in Burundi. They left that country following the 1993 civil war, during which their parents were killed. They arrived in France in 1994 and 1995 respectively, through the intermediary of their aunt and uncle (Mr and Mrs M.), Burundi nationals living in France. The latter had been entrusted with guardianship and custody of the applicants and their younger sisters at a family meeting in Burundi. Mr and Mrs M. lived in a detached house in Ville d'Avray with their seven children, one of whom was disabled.

The applicants were accommodated in the basement of the house and alleged that they were obliged to carry out all household and domestic chores, without remuneration or any days off. C.N. claimed that she had also been required to take care of Mr and Mrs M.'s disabled son, including occasionally at night. The applicants allege that they lived in unhygienic conditions (no bathroom, makeshift toilets), were not allowed to share family meals and were subjected to daily physical and verbal harassment.

In December 1995 the competent social action department submitted a report on children in danger to the local public prosecutor but, following an investigation by the police child protection team, it was decided not to take any further action.

V. was a pupil in a primary school from 1995, then in the general and vocational adapted learning department (Segpa) of a secondary school from 1997. In spite of difficulties in integrating and learning French, she obtained good school results. When she returned from school she did her homework, then helped her sister with the domestic chores. The applicants claimed that they were physically and verbally harassed on a daily basis by their aunt, who regularly threatened to send them back to Burundi.

In January 1999 the association "Enfance et Partage" drew the attention of the public prosecutor's office to the applicants' situation; on the following day the applicants ran away from Mr and Mrs M.'s home and were taken into the association's care.

In the context of the judicial investigation that was subsequently opened, C.N. and V. confirmed that their situation had gradually deteriorated since 1995, a point when "things were not (yet) going too badly" with their aunt. A medico-psychological report on the applicants found, among other things, that the psychological impact of the acts to which they had been subjected was characterised by mental suffering and, in the case of C.N., by an experience of fear and sense of abandonment, as the threat of being sent back to Burundi was synonymous in her opinion with a threat of death and abandonment of her younger sisters.

By a judgment of 17 September 2007 the Nanterre Criminal Court found Mr and Mrs M. guilty of all of the charges brought against them (for both spouses, having subjected individuals to working and living conditions that were incompatible with human dignity by taking advantage of their vulnerability or state of dependence; and for Mrs M., aggravated assault). However, following the judgment of the Versailles Court of Appeal on 29 June 2009, only the finding that Mrs M. was guilty of aggravated intentional assault against V. was upheld. Mrs M. was ordered to pay a criminal fine of 1,500 EUR and to pay V. the sum of one euro as compensation for non-pecuniary damage, in line with her claim. The public prosecutor did not appeal on points of law against that judgment. The appeals on points of law lodged by the applicants and by Mrs M. were dismissed by the Court of Cassation.

**LAW** – As Mrs M. had been convicted with final effect by the domestic courts on charges of aggravated assault and V. had obtained compensation corresponding to the amount claimed by her, V. could no longer claim to be a "victim" within the meaning of Article 34. In consequence, the Court dismissed the complaint under Article 3 as manifestly ill-founded.

The Court reiterated that Article 4 enshrined one of the basic values of democratic societies. The first paragraph of this Article made no provision for exceptions and no derogation from it was permissible, even in the event of war or other public emergency threatening the life of the nation within the meaning of Article 15 § 2. The Court further reiterated that "forced or compulsory labour" within the meaning of Article 4 § 2 meant work required "under the menace of any penalty" and performed against the will of the person concerned. It was necessary to distinguish "forced work" from work which could reasonably be required in respect of mutual family assistance or cohabitation, taking into account, among other things, the nature and amount of work in issue. In this case, C.N. had indeed been forced to work without having offered herself for it voluntarily. In addition, she had been obliged to perform so much work that, without her help, Mr and Mrs M. would have been required to have recourse to a professional – and thus paid – employee. The Court did not reach such a conclusion with regard to V., who did not provide evidence that she had contributed in a disproportionate manner to the upkeep and cleaning of Mr and Mrs M.'s house. As to the "menace of any penalty", the Court noted that Mrs M. regularly threatened to send the applicants back to Burundi, a country that was synonymous for C.N. with death and abandonment of her younger sisters. The Court therefore concluded that she had been subjected to "forced or compulsory work" within the meaning of Article 4 § 2, unlike V., in respect of whom the Court considered that the work performed did not fall within the scope of Article 4 § 2. Moreover, it was not established that the ill-treatment experienced by V. was directly related to the alleged exploitation; nor did they come within the scope of Article 4.

The Court then considered the existence of “servitude” within the meaning of Article 4 § 1. Servitude was “aggravated” forced or compulsory labour, based on the fact that it was impossible for the individual concerned to change his or her situation. In the present case, the essential feature distinguishing servitude from forced or compulsory labour was the victims’ feeling that their condition could not be altered and that there was no potential for change, in particular C.N.’s belief that she could not escape from Mr and Mrs M.’s guardianship without finding herself in an illegal situation, and her understanding that, without vocational training, she would be unable to find external employment. Since this situation had moreover lasted for four years, the Court considered that C.N. had been kept in a state of servitude by Mr and Mrs M. This was not the case for V., who, given that she was attending school, developed in another atmosphere and was less isolated. She had also had time to do her homework after school.

Finally, the Court examined the issue of France’s obligations under Article 4. It noted, firstly, as in the *Siliadin* case, that, on the one hand, the relevant criminal-law provisions and their interpretation had not provided the victim with practical and effective protection and, on the other, the appeal to the Court of Cassation had concerned only the civil aspect of the case, since the public prosecutor had not appealed on points of law against the Court of Appeal’s judgment of 29 June 2009. There had therefore been a violation of Article 4 in respect of C.N. with regard to the State’s positive obligation to put in place an adequate legislative and administrative framework to combat servitude and forced labour effectively. As to the State’s obligation to investigate situations of potential exploitation, the Court found that there were no grounds for calling into question the conclusions of the investigation conducted by the child protection team in 1995. It also emphasised that the applicants had admitted that the situation had not yet deteriorated at that time. In consequence, the Court concluded that there had been no violation of Article 4 with regard to the State’s obligation to conduct an effective investigation into instances of servitude and forced labour. Having regard to this conclusion, it did not consider it necessary to examine separately the applicants’ complaint under Article 13.

**CONCLUSION** – A violation of Article 4 of the Convention in respect of the first applicant (C.N.), as the State had not put in place a legislative and administrative framework making it possible to fight effectively against servitude and forced labour.

No violation of Article 4 in respect of the first applicant (C.N.) with regard to the State’s obligation to conduct an effective investigation into instances of servitude and forced labour; and, no violation of Article 4 in respect of the second applicant (V.).

### ■ ***Siliadin v. France*, No. 73316/01, ECHR 2005VII**

**FACTS** – The applicant, a Togolese national, was made to work as an unpaid servant after being brought to France by a relative of her father before she had reached the age of sixteen. As an impecunious illegal immigrant in France, whose passport had been confiscated, she was forced against her will and without respite to work for Mr and Mrs B., doing housework and looking after their three, and later four, young children. The applicant worked from 7 a.m. until 10 p.m. every day and had to share the children’s bedroom. The exploitation continued for several years, during which time Mr and Mrs B. led the applicant to believe that her immigration status would soon be regularised. Finally, after being alerted by a neighbour, the Committee against Modern Slavery reported the matter to the prosecuting authorities. Criminal proceedings were brought against the couple, who were acquitted of the criminal charges. Proceedings continued in respect of the civil aspect of the case and resulted in the couple’s being convicted and ordered to pay compensation in respect of non-pecuniary damage to the applicant for having taken advantage of her vulnerability and dependent situation by making her work without pay.

**LAW** – The Court noted that Article 4 imposed positive obligations on States, consisting in the adoption and effective implementation of criminal law provisions making the practices set out in Article 4 a punishable offence. In accordance with modern standards and trends in relation to the protection of human beings from slavery, servitude and forced or compulsory labour, States were under an obligation to penalise and punish any act aimed at maintaining a person in a situation incompatible with Article 4.

In the instant case the applicant had worked for years for Mr and Mrs B., without respite, against her will and without being paid. She had been a minor at the relevant time, unlawfully present in a foreign country and afraid of being arrested by the police. Indeed, Mr and Mrs B. had maintained that fear and led her to believe that her status would be regularised. Hence the applicant had, at the least, been subjected to forced labour within the meaning of Article 4.

With regard to slavery, although the applicant had been deprived of her personal autonomy, the evidence did not suggest that she had been held in slavery in the proper sense, in other words that Mr and Mrs B. had exercised a genuine right of ownership over her, thus reducing her to the status of an object. Accordingly, it could not be considered that the applicant had been held in slavery in the traditional sense of that concept.

As to servitude, that was to be regarded as an obligation to provide one's services under coercion, and was to be linked to the concept of slavery. The forced labour imposed on the applicant lasted almost 15 hours a day, seven days a week. Brought to France by a relative of her father, she had not chosen to work for Mr and Mrs B. As a minor, she had no resources and was vulnerable and isolated, and had no means of subsistence other than in the home of Mr and Mrs B., where she shared the children's bedroom. The applicant was entirely at Mr and Mrs B.'s mercy, since her papers had been confiscated and she had been promised that her immigration status would be regularised, which never happened. Nor did the applicant, who was afraid of being arrested by the police, have any freedom of movement or free time. In addition, as she had not been sent to school, despite the promises made to her father, the applicant had no prospect of seeing any improvement in her situation and was completely dependent on Mr and Mrs B. In those circumstances, the Court considered that the applicant, a minor at the relevant time, had been held in servitude within the meaning of Article 4.

Slavery and servitude were not as such classified as criminal offences under French criminal law. Mr and Mrs B. had been prosecuted under articles of the Criminal Code which did not make specific reference to the rights secured by Article 4. Having been acquitted, they had not been convicted under criminal law. Hence, despite having been subjected to treatment contrary to Article 4 and having been held in servitude, the applicant had not seen the perpetrators of those acts convicted under criminal law. In the circumstances, the Court considered that the criminal-law legislation in force at the material time had not afforded the applicant specific and effective protection against the actions of which she had been a victim. Consequently, the French State had not fulfilled its positive obligations under Article 4.

**CONCLUSION** – Violation of Article 4 of the Convention.

### ■ ***Rantsev v. Cyprus and Russia, No. 25965/04, ECHR 2010 (extracts)***

**FACTS** – The applicant, a Russian national, is the father of Ms Oxana Rantseva, also a Russian national, born in 1980, who died in strange and unestablished circumstances having fallen from a window of a private home in Cyprus in March 2001.

Ms Rantseva arrived in Cyprus on 5 March 2001 on an "artiste" visa. She started work on 16 March 2001 as an artiste in a cabaret in Cyprus only to abandon her place of work and lodging three days later leaving a note that she was going back to Russia. After finding her in a discotheque in Limassol some ten days later, at around 4 a.m. on 28 March 2001, the manager of the cabaret where she had worked took her to the police asking them to declare her illegal in the country and to detain her, apparently with a view to expelling her so that he could have her replaced in his cabaret. The police, after checking their database, concluded that Ms Rantseva did not appear to be illegal and refused to detain her. They asked the cabaret manager to collect her from the police station and to return with her later that morning to make further inquiries into her immigration status. The cabaret manager collected Ms Rantseva at around 5.20 a.m.

Ms Rantseva was taken by the cabaret manager to the house of another employee of the cabaret, where she was taken to a room on the sixth floor of the apartment block. The cabaret manager remained in the apartment. At about 6.30 a.m. on 28 March 2001 Ms Rantseva was found dead in the street below the apartment. A bedspread was found looped through the railing of the apartment's balcony.

Following Ms Rantseva's death, those present in the apartment were interviewed. A neighbour who had seen Ms Rantseva's body fall to the ground was also interviewed, as were the police officers on duty at Limassol police station earlier that morning when the cabaret manager had brought Ms Rantseva from the discotheque. An autopsy was carried out which concluded that Ms Rantseva's injuries were the result of her fall and that the fall was the cause of her death. The applicant subsequently visited the police station in Limassol and requested to participate in the inquest proceedings. An inquest hearing was finally held on 27 December 2001 in the applicant's absence. The court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment in which she was a guest, but that there was no evidence to suggest criminal liability for her death.

Upon a request by Ms Rantseva's father, after the body was repatriated from Cyprus to Russia. Forensic medical experts in Russia carried out a separate autopsy and the findings of the Russian authorities, which concluded that Ms Rantseva had died in strange and unestablished circumstances requiring additional investigation,

were forwarded to the Cypriot authorities in the form of a request for mutual legal assistance under treaties in which Cyprus and Russia were parties. The request asked, inter alia, that further investigation be carried out, that the institution of criminal proceedings in respect of Ms Rantseva's death be considered and that the applicant be allowed to participate effectively in the proceedings.

In October 2006, Cyprus confirmed to the Russian Prosecution Service that the inquest into Ms Rantseva's death was completed on 27 December 2001 and that the verdict delivered by the court was final. The applicant has continued to press for an effective investigation into his daughter's death.

The Cypriot Ombudsman, the Council of Europe's Human Rights Commissioner and the United States State Department have published reports which refer to the prevalence of trafficking in human beings for commercial sexual exploitation in Cyprus and the role of the cabaret industry and "artiste" visas in facilitating trafficking in Cyprus.

**LAW** – As regards Cyprus, the Court considered that the chain of events leading to Ms Rantseva's death could not have been foreseen by the Cypriot authorities and, in the circumstances, they had therefore no obligation to take practical measures to prevent a risk to her life.

However, a number of flaws had occurred in the investigation carried out by the Cypriot authorities: there had been conflicting testimonies which had not been resolved; no steps to clarify the strange circumstances of Ms Rantseva's death had been made after the verdict of the court in the inquest proceedings; the applicant had not been advised of the date of the inquest and as a result had been absent from the hearing when the verdict had been handed down; and although the facts had occurred in 2001 there had not yet been a clear explanation as to what had happened. There had therefore been a violation of Article 2 as a result of the failure of the Cypriot authorities to investigate effectively Ms Rantseva's death.

As regards Russia, the Court concluded that there it had not violated Article 2 as the Russian authorities were not obliged themselves to investigate Ms Rantseva's death, which had occurred outside their jurisdiction. The Court emphasised that the Russian authorities had requested several times that Cyprus carry out additional investigation and had cooperated with the Cypriot authorities.

The Court held that any ill-treatment which Ms Rantseva may have suffered before her death had been inherently linked to her alleged trafficking and exploitation and that it would consider this complaint under Article 4.

The Court noted that, like slavery, trafficking in human beings, by its very nature and aim of exploitation, was based on the exercise of powers attaching to the right of ownership; it treated human beings as commodities to be bought and sold and put to forced labour; it implied close surveillance of the activities of victims, whose movements were often circumscribed; and it involved the use of violence and threats against victims. Accordingly the Court held that trafficking itself was prohibited by Article 4. It concluded that there had been a violation by Cyprus of its positive obligations arising under that Article on two counts: first, its failure to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas, and, second, the failure of the police to take operational measures to protect Ms Rantseva from trafficking, despite circumstances which had given rise to a credible suspicion that she might have been a victim of trafficking. In light of its findings as to the inadequacy of the Cypriot police investigation under Article 2, the Court did not consider it necessary to examine the effectiveness of the police investigation separately under Article 4.

There had also been a violation of this Article by Russia on account of its failure to investigate how and where Ms Rantseva had been recruited and, in particular, to take steps to identify those involved in Ms Rantseva's recruitment or the methods of recruitment used.

The Court found that the detention of Ms Rantseva for about an hour at the police station and her subsequent confinement to the private apartment, also for about an hour, did engage the responsibility of Cyprus. It held that the detention by the police following the confirmation that Ms Rantseva was not illegal had no basis in domestic law. It further held that her subsequent detention in the apartment had been both arbitrary and unlawful. There was therefore a violation of Article 5 § 1 by Cyprus.

**CONCLUSION** – No violation of positive obligations under Article 2 but a procedural violation of Article 2, a violation of positive obligations under Article 4 and a violation of Article 5 of the Convention by Cyprus. No violation of Article 2 or of positive obligations under Article 4 but a procedural violation under Article 4 of the Convention by Russia.



### ■ ***Van der Musselle v. Belgium*, 23 November 1983, Series A No. 70**

**FACTS** – The applicant, a pupil advocate, was called upon to provide free lawyer’s services to assist indigent defendants. He complained that that represented forced labour.

**LAW** – The free legal aid service the applicant was asked to provide was connected with his profession, he received certain advantages for it, like the exclusive right to audience in the courts, and it contributed to his professional training; it was related to another Convention right (Article 6 §1 – the right to legal aid) and could be considered part of “normal civic obligations” allowed under Article 4 § 3. Finally, being required to defend people without being paid for it did not leave the applicant without sufficient time for paid work. The Court found no violation of Article 4 of the Convention.

## **E. University studies**

### ■ ***Irfan Temel and Others v. Turkey*, No. 36458/02, 3 March 2009**

**FACTS** – The applicants were eighteen Turkish nationals who, at the time of the events, were students at various faculties attached to Afyon Kocatepe University in Afyon (Turkey). On various dates in December 2001 and January 2002 the applicants petitioned the University requesting that optional Kurdish language classes be introduced. As a reaction to their petition, in January 2002 they were suspended from the University for a period of two terms starting from the spring, except for one of them, who, having shown remorse, was suspended for one term. The applicants requested the domestic courts to first stop the execution of the suspension decisions and then to annul them altogether. Their suspension requests were dismissed. Their requests for annulment were also initially rejected by the courts, the main arguments being that the petitions were likely to give rise to polarisation on the basis of language, race, religion or denomination, and that they represented part of the PKK2’s new strategy of action of civil disobedience.

In December 2003, however, the Supreme Administrative Court quashed the lower courts’ decisions and sent the cases for re-examination to the first instance court. In May 2004, the competent court annulled the disciplinary sanctions against the applicants, finding that their petitions to the authorities for optional Kurdish language classes were fully in line with the general aim of the Turkish higher education, which was to train students in becoming objective, broad-minded and respectful of human rights. In the meantime, the applicants were acquitted on charges of aiding and abetting an illegal armed organisation.

**LAW** – The Court first observed that the applicants had been sanctioned disciplinarily for merely submitting petitions which expressed their views on the need for Kurdish language education, and requesting that Kurdish language classes be introduced as an optional module. The Court further noted that they had not committed any reprehensible act, nor had they resorted to violence or breach, or attempt to breach the peace or order in the university.

For the Court, neither the views expressed in the applicants’ petitions, nor the form in which they had been conveyed, could be construed as an activity which would lead to polarisation of the University population on the basis of language, race, religion or denomination. The Court consequently found that the imposition of such a disciplinary sanction could not be considered as reasonable or proportionate. Although these sanctions had been subsequently annulled by the administrative courts on grounds of unlawfulness, the Court found it regrettable that by that time the applicants had already missed one or two terms of their studies. The Court therefore held that there had been a violation of Article 2 of Protocol No. 1 to the Convention.

### ■ ***Leyla Sahin v. Turkey [GC]*, No. 44774/98, ECHR 2005-XI**

**FACTS** – In February 1998 the Vice-Chancellor of Istanbul University issued a circular directing that students wearing the Islamic headscarf would be refused admission to lectures, courses and tutorials. At the material time the applicant was a student at the faculty of medicine of the university. In March 1998 she was refused access to a written examination on one of the subjects she was studying because she was wearing the Islamic headscarf. Subsequently, on the same grounds, the university authorities refused to enrol her on a course, and to admit her to various lectures and a written examination. The faculty also issued her with a warning for contravening the university’s rules on dress and suspended her from the university for a semester for taking part in an unauthorised assembly that had gathered to protest against the rules. All the disciplinary penalties imposed on the applicant were revoked under an amnesty law. The applicant lodged an application for an order setting aside the circular, but it was dismissed by the administrative courts, who found that that a

university vice-chancellor had power to regulate students' dress for the purposes of maintaining order by virtue of the legislation and decisions of the Constitutional Court and the Supreme Administrative Court, and that the regulations and measures criticised by the applicant were not, under the settled case-law of those courts, illegal.

**LAW** – The circular placing restrictions of place and manner on the students' right to wear the Islamic headscarf, constituted an interference with the applicant's right to manifest her religion. As to whether the interference had been "prescribed by law", the Court noted that the circular had a statutory basis which was supplemented by a decision by the Constitutional Court. In addition, the Supreme Administrative Court had by then consistently held for a number of years that wearing the Islamic headscarf at university was not compatible with the fundamental principles of the Republic. Furthermore, regulations on wearing the Islamic headscarf had existed at Istanbul University since 1994 at the latest, well before the applicant had enrolled there. Accordingly, there was a legal basis for the interference in Turkish law, the law was accessible and its effects foreseeable so that the applicant would have been aware, from the moment she entered the university, that there were restrictions on wearing the Islamic headscarf and, from 23 February 1998, that she was liable to be refused access to lectures and examinations if she continued to wear the headscarf. The interference pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order.

As to whether the interference was necessary, the Court noted that it was based in particular on the principle of secularism, which prevented the State from manifesting a preference for a particular religion or belief and whose defence could entail restrictions on freedom of religion. That notion of secularism was consistent with the values underpinning the Convention and upholding that principle could be considered necessary to protect the democratic system in Turkey. In the Turkish context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire to be worn on university premises. As regards the conduct of the university authorities, the Court noted that it was common ground that practising Muslim students in Turkish universities were free, within the limits imposed by educational organisational constraints, to manifest their religion in accordance with habitual forms of Muslim observance. In addition, various forms of religious attire were forbidden at Istanbul University. Further, throughout the decision-making process, the university authorities had sought to avoid barring access to the university to students wearing the Islamic headscarf, through continued dialogue with those concerned, while at the same time ensuring that order was maintained on the premises. In those circumstances, and having regard to the Contracting States' margin of appreciation, the Court found that the interference in issue was justified in principle and proportionate to the aims pursued, and could therefore be considered to have been "necessary in a democratic society".

On the question of the applicability of Article 2 of Protocol No. 1, the Court reiterated that while the first sentence essentially established access to primary and secondary education, it would be hard to imagine that institutions of higher education existing at a given time did not come within its scope. Nevertheless, in a democratic society, the right to education, which was indispensable to the furtherance of human rights, played such a fundamental role that a restrictive interpretation of the first sentence of Article 2 would not be consistent with the aim or purpose of that provision. Consequently, any institutions of higher education existing at a given time came within the scope of the first sentence of Article 2 of Protocol No. 1, since the right of access to such institutions was an inherent part of the right set out in that provision. In the case before it, by analogy with its reasoning under Article 9, the Court accepted that the regulations on the basis of which the applicant had been refused access to various lectures and examinations for wearing the Islamic headscarf constituted a restriction on her right to education. As with Article 9, the restriction was foreseeable to those concerned and pursued legitimate aims and the means used were proportionate. The decision-making process had clearly entailed the weighing up of the various interests at stake and was accompanied by safeguards (the rule requiring conformity with statute and judicial review) that were apt to protect the students' interests. Further, the applicant could reasonably have foreseen that she ran the risk of being refused access to lectures and examinations if she continued to wear the Islamic headscarf. Accordingly, the ban on wearing the Islamic headscarf had not impaired the very essence of the applicant's right to education.

The regulations on the Islamic headscarf were not directed against the applicant's religious affiliation, but pursued the legitimate aim of protecting order and the rights and freedoms of others and were manifestly intended to preserve the secular nature of educational institutions. The Court held that there had been no violation of Articles 8, 10 and 14 of the Convention.

**CONCLUSION** – No violation of Articles 8, 9, 10 and 14 of the Convention and Article 2 of Protocol 1 to the Convention.

## Appendix IV – Recommendation 2015(2013): “Young people’s access to fundamental rights”

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1. The Parliamentary Assembly is firmly convinced that unhindered access of young people to fundamental rights is an essential element in building a culture of human rights, democracy and the rule of law, and is concerned that youth policies in the Council of Europe member States do not sufficiently safeguard these rights.
2. The Assembly therefore reiterates its call for a binding legal framework at European level in order to secure young people’s access to fundamental rights, including socio-economic rights.
3. Conscious of the challenge that the preparation of a binding instrument in this field will involve, the Assembly calls on the Committee of Ministers to prepare as a first step a recommendation on “Improving young people’s access to fundamental rights”, instructing the European Steering Committee for Youth, the Advisory Council on Youth and the Steering Committee for Education Policy and Practice, in co-operation with the European Committee for Social Cohesion, to draft this recommendation. This should bring together and complete the acquis of previous Committee of Ministers’ recommendations, also building on the following texts: key proposals put forward by Youth sector representatives at the Conference of Ministers responsible for Youth held in St Petersburg from 24 to 25 September 2012; the text adopted by the Youth Assembly held in Strasbourg from 5 to 7 October 2012; and relevant resolutions and recommendations of the Parliamentary Assembly.
4. The Assembly welcomes the launch, in February 2013, of a Council of Europe campaign “Nurturing human rights” with a view to promoting rights and freedoms enshrined in the European Convention on Human Rights (ETS No. 5), with an emphasis on young people. It believes that the campaign should be further widened to encompass also the rights enshrined in the European Social Charter (revised) (ETS No. 163).
5. The Assembly also recommends that the Committee of Ministers take action to enhance member States’ capacity to evaluate young people’s access to rights, prevent violations of these rights, provide adequate follow-up and redress, and consider innovative ways to empower young people in accessing their rights. To this end, the Assembly invites the Committee of Ministers to:
  - 5.1. reinforce the cross-sectoral and rights-based approach to youth policy throughout the Organisation, asking different Council of Europe bodies to give careful consideration to young people’s rights in the development of standards, programmes and monitoring activities, and to explore measures to improve the access of young people to these rights;
  - 5.2. instruct specifically the Steering Committee for Human Rights and its Gender Equality Commission to pay due attention in their work to the situation of young people in each and every Council of Europe member State;
  - 5.3. reinforce the programme of international reviews of national youth policies, under the responsibility of the European Steering Committee for Youth, paying particular attention to the establishment of mechanisms ensuring effective access of young people to their rights, and taking corrective action as necessary;
  - 5.4. urge the Joint Council on Youth, in co-operation with other sectors of the Council of Europe, to conduct a thorough study concerning young people’s access to rights, to identify difficulties and good practice in this area and to prepare a handbook of instruments, programmes and policies on youth rights;

5.5. instruct relevant bodies of the Council of Europe to intensify the promotion and implementation of the Revised European Charter on the Participation of Young People in Local and Regional Life;

5.6. make use of existing platforms, particularly the European Centre for Global Interdependence and Solidarity (North-South Centre), to promote, facilitate and improve co-operation between educational institutions, youth organisations and non-governmental organisations (NGOs) from the European Union/European Economic Area (EU27/EEA) and other members of the Council of Europe and neighbouring countries, including southern Mediterranean countries;

5.7. initiate a project to develop transversal policies aimed at fostering intergenerational dialogue and supporting the effective exercise of social and economic rights by young people, in line with the results of the 2nd Council of Europe Conference of Ministers responsible for Social Cohesion “Building a secure future for all”, held on 11 and 12 October 2012 in Istanbul, and to invite the European Union to participate in such a project;

5.8. consider the appointment of an ombudsperson at the Council of Europe level to ensure that the rights of young people are respected and protected.

5.9. recommend to the governments of the member States of the Council of Europe to closely monitor the compliance with the basic rights of young people to freely express their political differences, including non-violent protest, and to prevent subsequent detention for political reasons.”

Elements prepared by the Secretariat in view of possible comments by the CDDH: They were, with minor changes, endorsed by the Bureau at its 88th meeting (13-14 June 2013). the CDDH is therefore invited to discuss draft comments as they appear in Appendix III to the meeting report CDDH-BU(2013)R88.

# Appendix V – “Young people’s access to rights” by Antonina Bejan

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## Young people’s access to rights The case-law of the ECHR and the Social Charter

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Paper prepared Ms Antonina Bejan (trainee)  
for discussion during the Statutory meetings in Budapest on 3-5 April 2013

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### Introduction

Rights are not always known and easily accessible to young people. This is a major problem which was discussed during the Youth Event held in St. Petersburg on 22-23 September 2012 prior to the 9th European Conference of Ministers responsible for Youth.

In order to ensure the protection and full realisation of young people’s rights, the promotion of a legal framework at European level is necessary.

The European Court of Human Rights and the European Committee of Social Rights should promote regular case-law compilations to make the status of violations of young people’s rights better known.

A better evidence-based policy could make a difference to the lives of European young people. It would improve the policies, procedures and services that many young people encounter daily. It could prevent breaches of human rights (including social rights), and could provide ways of resolving those breaches that were not prevented.

In this paper we will identify and carefully consider how decisions impact on rights of young people.

## Young people’s rights under the European Convention on Human Rights

Human rights are the basic rights and freedoms that belong to every person. They are the fundamental rights in order for human beings to flourish and participate fully in society. As a result they are particularly important for some of the more vulnerable or less powerful in our society, such as young people.

The European Convention on Human Rights, drawn up in 1950, has been signed and ratified by all the Member States of the Council of Europe. The Convention helps to ensure, among others, that young people have access to education<sup>33</sup>, that they can express their own views<sup>34</sup> and have their own beliefs<sup>35</sup>, that they do not experience abuse<sup>36</sup>, that they are not forced to work<sup>37</sup>, that they are treated without discrimination<sup>38</sup>, and much more.

The responsibility for upholding human rights lies with the state. States have a responsibility to ensure that everyone’s rights are protected and fulfilled, being authorised to limit or restrict some rights in certain circumstances, but in respect of the principle of proportionality, which is at the heart of a human rights framework. This principle ensures that any restriction of a person’s human rights is kept to a minimum.

While young people’s rights are not explicitly referred to in the ECHR, the rights that are set out apply just as much to children as to young people and adults. As a result, public authorities of states signatory to the ECHR must comply with the ECHR and take additional measures to guarantee enjoyment of those rights to young and old.

In carrying out an impact assessment of the adoption of the European law, it will, therefore, be essential to consider the most relevant case-law of the European Court of Human Rights on specific areas of importance for young people between 18 and 35 years.

### Access to a professional career

Although Member States do not have an obligation under the Convention to ensure the effective exercise of the right to work, the Court defends young people’s right to access to a professional career, underlining the need of coherence and respect towards young people and their professional life (Article 8).<sup>39</sup>

### Conscientious objection

Despite the European Court’s “margin of appreciation” doctrine, which is still interpreted in a considerably wide fashion with regard to freedom of thought, conscience and religion, it is important to monitor national decisions that address indirect discrimination of protected categories inter alia on the basis of religious practice and beliefs.

The Strasbourg Court also follows the doctrine of indirect discrimination stating that to apply the same policy or rule to all individuals can amount to unjustified discrimination.

Before 2000, the European Court of Human Rights considered that it was up to each Member State whether or not to grant a right to conscientious objection. Thus, in certain European states where military service was obligatory, the lack of right to exemption from this service did not violate the Convention.<sup>40</sup>

The situation altered with a change of case-law only rather recently.<sup>41</sup> According to the Court today, where practices based on religious beliefs enter into conflict with certain legally imposed obligations, a state may have to make provision for certain exemptions, the absence of which may lead to infringements of rights under the Convention. The subsequent decisions confirm the Court’s solution,<sup>42</sup> pointing out the tendency to protect young people and their right to conscientious objection.

33. Right to education Protocol No.1 Article 2.

34. Freedom of expression Article 10.

35. Freedom of thought, conscience and religion Article 9.

36. Right to respect for private and family life Article 8.

37. Prohibition of slavery and forced labour Article 4.

38. Prohibition of discrimination Article 14.

39. *Bigaeva v. Greece*.

40. *Grandrath v. Germany, N. v. Sweden*.

41. *Thlimmenos v. Greece*.

42. *Ülke v. Turkey, Bayatyan v. Armenia, Savda v. Turkey*.

## Expulsion of second-generation migrants

The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences.<sup>43</sup>

Currently, criminal offenders who are imprisoned for more than a year may be considered for deportation, but also allowed to remain in the host country, if an expulsion would breach their human rights. Respectively their rights to life<sup>44</sup> and to be protected from torture<sup>45</sup> are confronted with the rights to life and to protection of property and peaceful enjoyment of possessions<sup>46</sup> of others. The Court has thus elaborated the relevant criteria in its case-law which would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued.<sup>47</sup>

## Forced Labour

The European Court of Human Rights has noted that the victims were young, female and migrant, “today’s slaves are predominantly female and usually work in private households, starting out as migrant domestic workers...”<sup>48</sup>

January 2010 was marked by “a historic first judgment concerning cross border human trafficking in Europe”<sup>49</sup> unanimously finding that trafficking in persons falls within the parameters of Article 4 of the Convention. The ECHR demonstrates that it perceives the Convention as a contemporary document that “progressively incorporates changing European social and legal developments”<sup>50</sup> in safeguarding fundamental human rights and freedoms.

## University studies

The Convention guarantees the right to education<sup>51</sup> “in conformity with religious and philosophical convictions”<sup>52</sup>. However, the ban on wearing religious dress and displaying religious symbols is justified in order to preserve the secular character of educational institutions. This interdiction does not impair the very essence of young people’s right to education.<sup>53</sup>

## **Young people’s rights under the European Social Charter**

The revised European Social Charter is the major European treaty which secures children’s social rights as well as those of young persons. The Charter contains specific rights relating exclusively to children and young persons, such as the right to social, legal and economic protection<sup>54</sup>, the right to education<sup>55</sup> and right to protection of health<sup>56</sup>.

The Revised European Social Charter which entered into force in 1999 and which is ratified by 32 member states<sup>57</sup> is more relevant than ever. It is one of the most significant human rights treaties of the Council of Europe, aimed at safeguarding the social rights of each person.

While respecting the diversity of national traditions of the European states, which constitute common European social values, it is important to consolidate adherence to the shared values of solidarity, non-discrimination and participation by applying equally effectively the rights embodied in the Charter in all the Council of Europe member states.

43. *Üner v. The Netherlands, Mehemi v. France, Boultif v. Switzerland.*

44. Article 2, ECHR.

45. Article 3, ECHR.

46. Article 1 Protocol No.1.

47. *Boultif v. Switzerland, Üner v. The Netherlands, Maslov v. Austria.*

48. *Siliadin v. France, C. N. v. United Kingdom, C.N. and V. v. France, Elisabeth Kawogo v. United Kingdom.*

49. Strasbourg Observers *Rantsev v. Cyprus and Russia.*

50. Trafficking in Persons and the European Court of Human Rights, Strasbourg Observers.

51. Article 2 Protocol No.1.

52. *İrfan Temel and Others v. Turkey.*

53. *Leyla Sahin v. Turkey.*

54. Articles 7, 17 ESC.

55. Article 10 ESC.

56. Article 11 ESC.

57. Status of ratification of the revised European Social Charter.

But the primary responsibility for implementing the ESC naturally rests with national authorities.

It is customary to say that rights are only worth as much as the means of enforcing them. There are still four countries among the 47 Council of Europe member states which have not acceded to the Charter at all, whether the original one of 1961 or the revised one of 1996. In these conditions, it is very hard to reach the main and most prominent goal of the ESC, which is to spread the idea of social rights and to facilitate the access of young people.

But the Charter is not made up of the text of the Charter alone. It is fleshed out by the case-law of the European Committee of Social Rights and complemented by the activities of all the national and international partners, even at national level.

The impact of the case-law of the Committee has increased considerably. For example, the European Court of Human Rights referred to the Committee’s work in important cases revealing synergy or convergence of reasoning<sup>58</sup> or in cases involving an evolutive interpretation of the European Convention on Human Rights in line with the Charter<sup>59</sup>.

The case-law examples give visibility and credibility to the work of the European Committee of Social Rights and they demonstrate that the Charter is a binding and living instrument.

### **Protection of young persons in the work place: specific working conditions between the ages of 15 and 18**

Young people at work are visibly protected by the law. Not only by limitation of working hours, but also in what concerns wage and work conditions. Article 7 paragraphs 2, 4 -9 provide special rights for young workers.

### **Right to protection of health**

The right of children and young people to protection of health is one of the priorities of public health policies of European states. The goal is to preserve the future by preserving those who will participate in its construction.

Nevertheless every country is free to organise its own system as it sees fit, provided it addresses the concerns set out in the Charter. In the current economic conditions, European states are trying to reduce costs by employing a mixture of funding mechanisms: taxation, national insurance contributions, etc. The boundaries vary between social protection linked to occupational activity, insurance and assistance for those who have never been able to obtain occupation-based social protection.<sup>60</sup>

### **Protection from sexual and other forms of exploitation**

Article 7§10 guarantees the right of children to be protected against all forms of exploitation. All forms of commercial sexual exploitation of children are covered.

In light of the spread of exploitation of children through the means of information technologies, the ECSR has broadened the scope of Article 7§10, which “ensures special protection against physical and moral dangers” to cover the protection of children against trafficking and the misuse of information technologies.

### **Young offenders**

Article 17 of the Charter requires that the age of criminal responsibility must not be too low, with a criminal procedure adapted to their age. In what concerns young people, the Committee gives decisions based on article 17, which requires the young offenders’ rehabilitation and social reintegration.

### **Right to education**

The ECSC’s efforts are concentrated on the use of education and training programmes for young people.

58. *Sørensen and Rasmussen v. Denmark.*

59. *Demir and Baykara v. Turkey.*

60. *International Federation of Human Rights Leagues v. France*, Complaint No. 14/2003: enjoyment of the right to medical assistance by children of illegal immigrants.



The ideological point of departure of human rights conventions is that all people can in fact continue in some form of education after primary schooling. This dimension is strongly affirmed in Article 17§2 of the ESC. We cannot realistically and correctly expect that all will obtain the education they desire since the social and industrial structure as well as other corresponding factors require a specific type of educational structure.

### **Free primary and secondary education**

The Charter secures the right to education from primary to higher education and the right to vocational training through a range of provisions. It guarantees an accessible and effective primary and secondary education and vocational training system, as well equal access to higher education.

The education system must also be both accessible and effective.

In assessing whether the system is effective the ECSR examines whether there is a functioning system of primary and secondary education, the number of children enrolled in school, the number of schools, class sizes, the teacher pupil ratio, and the system for training teachers. School drop-out rates and the number of children who successfully complete compulsory education and secondary education must be monitored.

The Committee's conclusions on European states have as main target the reduction of the level of non-attendance at compulsory schooling<sup>61</sup>.

### **Professional guidance**

According to Article 9, the right to vocational guidance must be guaranteed within the school system and within the labour market.

Vocational guidance shall address in particular school-leavers, job-seekers and unemployed young people. It must be provided free of charge, by qualified and sufficient staff. Equal treatment with respect to vocational guidance must be guaranteed to everyone, including non-nationals. According to the Appendix to the Charter, equality of treatment shall be provided to nationals of other European countries lawfully resident or regularly working on the territory of the state concerned.

### **Professional training**

Articles 9,<sup>62</sup> 10,<sup>63</sup> 15§1<sup>64</sup> and 17§1<sup>65</sup> of the ESC cover access of young people to professional training. The ECSR has also dealt with the right to education of persons with autism<sup>66</sup>. The ECSR found many European states in violation of the right to vocational training for persons with disabilities and right of children to assistance, education, and training, whether alone or read in combination with Article E (non-discrimination) of the revised European Social Charter.

### **Apprentices**

Accordingly to the ESC, a system of apprenticeships and other systematic arrangements for training young people in their various employments must exist. Any fees or charges must be reduced or abolished and financial aid in appropriate cases should be granted. The effectiveness of apprenticeship and other training schemes for young people must be monitored.

### **Access to Universities**

Equal access to education for children from vulnerable groups is required. The ECSC pays a particular attention to vulnerable groups. It concerns children from minorities, children seeking asylum, refugee children, children in hospital, children in care, pregnant teenagers, teenage mothers, and children in young offender institutions/serving custodial sentences.

However special measures for Roma children must not involve the establishment of separate/segregated schooling facilities<sup>67</sup>.

61. Moldova and Romania have been found to be in violation (Conclusions 2003, Conclusions 2005).

62. Right to vocational guidance.

63. Right to vocational training.

64. Right to vocational training for persons with disabilities.

65. Right of children to assistance, education, and training.

66. Autism-Europe v. France (Complaint No. 13/2002, decision on the merits of 4 November 2003).

67. Conclusion in respect of Slovenia (Conclusions 2005).

## Access and procedures

The main merit of the European Court of Human Rights and the European Committee of Social Rights is the priority provided to youth to access the legal process. Young people can be sure that they are seen and heard, despite their limited access to justice.

Under the European system, since the entry into force of Protocol No. 11 to the Convention<sup>68</sup>, individuals have direct access to the Court and the jurisdiction of the Court has become mandatory for Parties to the European Convention on Human Rights. The Convention provides for both inter-state and individual complaint procedures, with the requirement set out in Article 35,<sup>69</sup> which requires any petitioner to exhaust local remedies before bringing a complaint to the Court.

Young people, nationals or foreigners, may lodge an application with the Court, if they consider themselves a victim of violation by a state-party, of the rights and guarantees set out in the Convention or its Protocols. A human rights lawyer or human rights organization will be able to provide advice and help lodge the complaint.

As regards the European Committee of Social Rights, a monitoring procedure based on national reports of States Parties to the Charter is set. The annual reports indicate how they implement the Charter in law and in practice. The Committee’s decisions on those reports, known as “conclusions”, are published every year.

In its assessment of national situations in different states under the reporting procedure the Committee, has found that France violates Article 13.1 of the Charter on the ground that young persons aged under 25 are not entitled to the adequate social assistance.<sup>70</sup> The Committee also found that the Netherlands violates Article 4.1 of the Charter on the ground that the minimum wage paid to workers aged 18-22 is manifestly unfair.<sup>71</sup>

Under a protocol opened for signature in 1995, which came into force in 1998, complaints of violations of the Charter may be lodged with the Committee, without the obligation to exhaust domestic remedies. The Appendix points out that the Charter is limited to “foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”. Hence in order to lodge a complaint with the Committee, the applicant has to be national of a State Party to the Charter and his complaint can only be against the same or another state which has also ratified the Charter.

Despite the fact that the wording of the European Social Charter excludes irregular migrants from its scope of application, there are examples of exceptions in its interpretation even more, putting aside its provisions, particularly where cases relate to children. The Committee states that “legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter”.<sup>72</sup> Likewise, the Committee goes “contra legem”, deciding that the right to shelter is directly linked to the respect for the child’s human dignity and best interests. It concludes that: “States Parties are required, under Article 31.2 of the revised Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction”.<sup>73</sup> This approach evinces the flexibility of the Committee regarding young people and children and its willingness to protect them.

In the case of states that accepted the Collective Complaint procedure, international organisations of employers and trade unions, employers’ organisations and trade unions in the country concerned and a list of INGOs with participative status with the Council of Europe are entitled to apply. Seventy-five international NGOs are registered on the list of organisations entitled to submit collective complaints.<sup>74</sup>

It is very important for young people, who can express their complaints through all these international organisations, which can represent them at the Committee.<sup>75</sup>

States can also recognise the right for national NGOs to lodge collective complaints, though only Finland has done so to date. Henceforward, this will give the opportunity to youth NGOs to lodge directly with the Committee.

68. 1 November 1998.

69. Admissibility criteria.

70. Conclusion 2010, France.

71. Conclusion 2010, the Netherlands.

72. *The International Federation of Human Rights Leagues (FIDH) v. France.*

73. *Children International v. the Netherlands.*

74. List of INGOs entitled to submit collective complaints.

75. No. 66/2011 *General Federation of employees of the national electric power corporation (GENOP-DEI)/Confederation of Greek Civil Servants’ Trade Unions (AEDDY) v. Greece.*

## Conclusion

The European Social Charter and the European Convention on Human Rights are the Council of Europe's most important achievements, and stand out as the pillars of a common legal space in all of Europe<sup>76</sup>. However their influence on young people is mitigated.

On the one hand, the Convention and its Protocols contain rights that are, for the most part, civil and political in nature and it is not a document designed exclusively for children and young people.

However, that should not undermine its relevance for young people. There have been numerous cases that have dealt with young people's rights. The Court has adopted a very robust approach to the interpretation of Convention's Articles in young people's cases taking into account changing legal and social conditions. At the present time, compelling issues lie in the areas of forced labour of young people and expulsion of second-generation migrants, for which a case in point is the Roma problem.

On the other hand, in the last decade, despite some notable progress in terms of anti-discrimination measures, Europe-wide basic social rights are no longer prominent in policy-making, with the current-day economic and social challenges posed by globalisation, climate change and demographic development.

We are seeing new abuses directed against certain vulnerable groups such as women and the Roma. Also, despite the protection of the right to education and work, there are large numbers of young people who are unable to access the labour market due to their exclusion. Millions of youngsters leave school without any qualifications. Millions of young Europeans, including graduates, are unemployed or move from one temporary placement to the next.

The Committee made considerable efforts to find solutions to these problems. The States Parties should also take a serious approach and provide pertinent responses to all these difficulties that young people are confronted with. For example, if more states were to accept the collective complaints procedure, social partners and NGOs would display a more diligent use of it, in filing complaints of young people.

It is striking to note that appellants never assert the articles of the Charter alone. They are systematically accompanied by articles of the European Convention on Human Rights, the EU Charter of Fundamental Social Rights, and the EU Charter of Fundamental Rights or EU directives. This might suggest an insufficient knowledge of the ways of interpretation of the Charter. Although many of them are similar, the provisions of the various instruments are not always strictly equivalent.

Young people need to know their rights, and the recommendations and decisions already taken by the Committee. It will allow them to use the Charter before domestic tribunals, bound by the treaties and by the existing case-law.

In the end, the impact the European Convention on Human Rights and the European Social Charter will have on young people in the future depends on the willingness of the domestic courts to put into practice the relevant case-law.

Overall it is necessary to build a human rights culture, based on commitment and engagement. There is a need for effective training in human and social rights principles and practice. Young people need to be encouraged to take part in our democratic society, and to discuss and debate decisions made by public bodies about their lives.

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76. Thorbjørn Jagland's speech at the conference marking the 50th anniversary of the European Social Charter.

Since its inception, the Youth Sector of the Council Europe has placed a high importance on the elaboration of policies that increase the access of young people to their fundamental rights. But youth in Europe are sometimes faced with specific challenges that are different from those of children or other adults. This publication looks at how the existing Council of Europe human rights instruments, notably the European Convention on Human Rights and the European Social Charter, attempt to remedy these problems.

Meant as a first case-law compilation of important decisions involving young people, from the European Court on Human Rights and the European Committee of Social Rights, this publication is a contribution to the ongoing evidence-based policy debate on how young people's access to rights can be improved. It includes an initial analysis of the case-law and identifies those areas in which the rights of young people have been violated.

Published on the initiative of the Advisory Council of Youth, this document presents an open invitation to researchers and policy actors at the national and European level, governments and NGOs, to consider how the European human rights instruments can be further strengthened to ensure that every person in Europe can enjoy their fundamental rights.

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The Council of Europe is the continent's leading human rights organisation. It includes 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.