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## **Social Integration of Migrants under European Social Charter – right or duty?**

The social integration of migrants is quite often perceived as a certain actual action aimed at facilitating the functioning of migrants. However, it seems that integration-related actions should not be considered as a form of actual activity, but, instead, as a human right that should be granted to each migrating individual.

Such view is assumed by the Revised European Social Charter with respect to migrant workers. This act is an element of the social rights protection system established pursuant to the standards of the Council of Europe. It contains a series of employee rights, applicable both to individual and collective employment relationships. It also contains regulations that refer to the rights of migrants and persons particularly prone to exclusion (such as the unemployed, the homeless or minors).

The Revised European Social Charter was signed on the 3<sup>rd</sup> of May, 1996 and it became effective on the 1<sup>st</sup> of July 1999.

Migrant rights have been regulated in Art. 19 of the RESC. This regulation imposes a series of obligations towards workers who migrate onto their territory on states that decided to ratify the provision. Art. 19 of the RESC is modelled on the revised ILO Convention concerning Migration for Employment (No. 97), adopted on June 9, 1942, during the 32<sup>nd</sup> General Conference of ILO.<sup>1</sup>

Most of the obligations regulated by the provisions of Art. 19 of the RESC are aimed at the integration of migrants with the society in which they have arrived.

### Obligation to provide assistance to migrant workers

First of all, one should emphasise the obligation to establish or maintain certain services to assist migrant workers (Art. 19, item 1 of the RESC). The main objective of such services should be conducting information activities. It is doubtless that it is appropriately selected information that allows for faster and more efficient integration of migrants in the state to which they have immigrated. Pursuant to Art. 19, item 1 of the RESC, the provided information should include data about the possibility to become employed or to conduct income-generating activity independently. Information should be reliable and objective and cover issues such as formalities to be completed and the living and working conditions they may expect in the country of destination (such as vocational guidance and training, social security, trade union membership, housing, social services, education and health)<sup>2</sup>.

In its judgments issued pursuant to the provisions of Art. 19, item 1 of the RESC, the European Committee of Social Rights emphasised that the information should be provided before, during and after the end of the process of migrating for employment between the Member States of the Council of Europe. For the information process to be effective,

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<sup>1</sup> H. Wiebringhaus, *The European Social Charter and International Labour Standard: I*, (1961) LXXXIV-5, *International Labour Review* 375.

<sup>2</sup> *Conclusions III* (1973), Cyprus

information should be provided in an appropriate form. Thus, it should be worded in a clear manner and, first of all, it should be communicated to those who are planning to migrate for employment in their mother tongues.<sup>3</sup> It should be assumed that to enable the integration process of migrant workers it is essential that they have access to information that they are able to understand. The language issue is fundamental. Even very precise information, which has been drawn up in a language incomprehensible for a foreigner, will have very weak impact and it will hardly contribute (or not contribute at all) to the integration process of such person.

Moreover, the European Committee of Social Rights pointed out that such information should be provided free of charge.<sup>4</sup> At the same time, it considered that the information procedure does not have to be necessarily conducted by public services. The only important objective is to ensure that information about the working and living conditions in the receiving country will actually reach the migrants. Thus, entrusting such tasks to non-governmental institutions should be deemed acceptable.<sup>5</sup>

An interesting issue analysed by the European Committee of Social Rights was the issue of the scope of the subjective information obligation towards migrant workers. Initially, the Committee expressed the view that such information obligations should be realised towards all citizens of states that have signed the Charter. However, after some time it changed its views, assuming that information has to be provided only to those who are actually planning to emigrate. In practice, this means that Member States may limit the information obligation to citizens of those states, from which migrants actually arrive. In my opinion, such view should be considered reasonable. Although it might result in preceding certain groups of migrants, on the other hand it allows the public services of the given state to focus on actual migration trends and providing efficient information to those interested in migrating from one member state to another according to the most popular tendencies.<sup>6</sup>

The obligation of co-operation between social services in emigration and immigration countries

The duties of services responsible for providing assistance to immigrants are not limited to internal tasks only. Pursuant to Art. 19, item 3 of the RESC, with a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries. The aim of such co-operation is to protect the rights and interests of immigrants in the destination country and to guarantee such protection to own citizens in countries to which they have emigrated.<sup>7</sup> Such activity is important with respect to the integration of migrant workers, as it enables to identify the needs of immigrants better and often to implement the solutions for their needs even before a given person arrives at the host state.

The obligation to prevent the distribution of misleading information concerning emigration and immigration

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<sup>3</sup> Conclusions III, p. 87 Cyprus

<sup>4</sup> A. M. Świątkowski, *Karta Społeczna Rady Europy*, Warszawa 2006, p. 484 [*Charter of Social Rights of the Council of Europe*]

<sup>5</sup> Conclusions IV, p. 114 (Germany)

<sup>6</sup> Conclusions XIII-3, p. 408 (Turkey), Conclusions XIII-2, p. 185 (Ireland)

<sup>7</sup> Conclusions XIII-1 p. 268 (Turkey)

In my opinion, from the point of view of effective integration of migrant workers the duty specified in Art. 19, item 1 of the RESC to prevent the distribution of misleading information concerning emigration and immigration, is essential. One of the common reasons for integration difficulties of migrant workers is the reluctant attitude on part of native residents of the destination country. Such reluctance is usually based on irrational judgment and stereotypical opinions on foreigners. Such attitude creates barriers and hinders integrating migrants in the functioning social structures. Due to that, the activities of the state should focus on dispelling false myths concerning immigrants. The ECSR specified this issue directly, stating that "These measures must target national populations and are, in its view, necessary in combating the diffusion of stereotypes, for instance, according to which migrants are violent criminals given to drug abuse and prone to disease."<sup>8</sup>

Such measures should prevent the communication of misleading information to nationals leaving the country and act against false information targeted at migrants seeking to enter.<sup>9</sup> To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease.

While investigating whether states take any actions to prevent the dissemination of false information concerning immigration, the European Committee of Social Rights strived to determine, among others, whether the given states have implemented regulations that forbid discrimination based on race, ethnic origin, nationality or religion, whether they employ penal sanctions for failure to react to misleading propaganda concerning immigration<sup>10</sup>, whether state officials participate in training courses to raise their awareness of the need to react to instances of racism and xenophobia.

#### Facilitating the departure, journey and reception of migrant workers and their families

Another important right guaranteed by the Revised European Social Charter is the obligation of states to adopt appropriate measures to facilitate the departure, journey and reception of migrant workers and their families (Art. 19 §2 of the RESC). One may easily notice that such measures may significantly accelerate the migrant integration process.

Reception must include not only assistance with regard to placement and integration in the workplace, but also assistance in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures.<sup>11</sup>

Assistance on part of the destination country should be provided first of all on the day of arrival in such country, as well as during several weeks immediately following that day.<sup>12</sup> The European Committee of Social Rights emphasised that the obligation to provide assistance to migrant workers who arrive in the given state requires this member state to treat this group of people favourably.<sup>13</sup>

In the opinion of the ECSR, the realisation of the aforementioned duties does not require establishing specialised institutions. The needs of immigrants may be satisfied by

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<sup>8</sup> Conclusions XV-1 - Italy - Article 19-1

<sup>9</sup> Conclusions XIV-1, Greece, p. 366

<sup>10</sup> Conclusions XV-1, p. 653 (Great Britain),

<sup>11</sup> Conclusions IV, Germany, p. 116

<sup>12</sup> Conclusions IV, p. 115, Conclusions XIII-3, p. 410 (Portugal)

<sup>13</sup> Conclusions III, p.88

commonly operating social services.<sup>14</sup> The Committee also considered that the given state fulfils the analysed obligation if it imposes the duty to follow it on employers (provided that this does not mean that the state is released from the duty to ensure that assistance will be provided on an appropriate level)<sup>15</sup>. It may seem doubtful whether institutions that focus mainly on providing assistance for their own citizens and/or employees will actually be able to help migrant workers. The difficulties will result both from language and cultural barriers. Thus, it should be assumed that, pursuant to Art. 19, item 2 of the RESC, states should take additional measures aimed at providing assistance to migrants, including the introduction of special

### Measures to facilitate the reunion of families of migrant workers

From the point of view of the efficiency of the foreigner integration processes, those solutions that allow migrants to build their family life in the destination country are also important. The importance of this issue is known to the authors of the Revised European Social Charter. It obliges states – signatories of the Charter - to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory (art. 19 §6). One cannot expect a person to actually integrate with society, if their family lives in a different country. It would be extremely difficult for such persons to establish their centres of vital interests in the host country.

For the purposes of Art. 19 §6, the RESC defines family as at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.<sup>16</sup> However, the right to family reunion is not absolute and it may depend on meeting certain conditions. For example, some of the circumstances that constitute grounds for the refusal to grant for family reunion include: specific illnesses which are so serious<sup>17</sup> as to endanger public health<sup>18</sup>, having sufficient or suitable accommodation to house the family or certain family members<sup>19</sup>, as well as the adequate financial means to sustain the family. States may also require a certain length of residence of migrant workers before their family can join them. A period of a year is acceptable under the Charter. On the contrary, a period of three years is not in conformity with this provision of the Charter.<sup>20</sup> The ECSR has pointed out multiple times that the nature of the introduced limitations should not be too restrictive. One may even claim that consent for the migrant's family to settle in the destination country should be refused only in exceptional cases.

In its interpretation of the provisions of the RESC, the European Committee of Social Rights noticed the importance of keeping families united. It stated that, once a migrant worker's family members have exercised the right to family reunion and have joined him or her in the territory of a State, they have an independent right to stay in that territory. This is a fully justified view. A person, who would fear that their family might be removed from the

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<sup>14</sup> Conclusions XIII-5, p. 114 (Finland)

<sup>15</sup> Conclusions IV, p. 117 (Great Britain),

<sup>16</sup> Appendix to Revised European Social Charter

<sup>17</sup> These are the diseases requiring quarantine which are stipulated in the World Health Organisation's International Health Regulations of 1969, or other serious contagious or infectious diseases such as tuberculosis or syphilis. Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish, on a case-by-case basis, that the illness or condition constitutes a threat to public order or security (Conclusions XVI-1, Finland, pp. 227-228)

<sup>18</sup> Conclusions XVI-1, Greece, p. 316

<sup>19</sup> Conclusions IV, Norway, p. 126

<sup>20</sup> Conclusions I, Germany, p. 216-217

territory of the state to which they have immigrated, might have problems with integration and establishing their centre of vital interests in this country.

Finally, the Committee pointed out that the obligation to enable migrant families to be reunited should not be confined simply to eliminating any legal obstacle preventing the members of a migrant worker's family from joining him, but that a country was also required to introduce appropriate practical administrative and social measures, particularly in regard to housing.<sup>21</sup> Thus, states who are bound by the provisions of Art. 19 §6 should conduct an active policy (with respect both to the regulations and to the economic conditions) that will allow families to settle in the country of arrival of migrant workers.

Promoting and facilitating the learning of the national language of the receiving state by migrant workers and their families

The issue of knowing the language of the receiving state as the key to efficient integration of migrant has already been signalled. Literature points out that "Teaching adults the official national language of the destination state is important for the integration of migrant workers, providing them with equal opportunities on the labour market and equal treatment in employment relationships."<sup>22</sup> The Revised European Social Charter also noticed the importance of language knowledge for the assimilation processes. This issue is regulated by the provisions of Art. 10 §11 of the RESC. It obliges states bound by this provision 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.

The Committee stresses that the teaching of the national language of the host country is one of the primary means of integrating migrant workers and their families into employment and society as a whole. It considers that Contracting Parties should facilitate the learning of the national language by (a) children of school age and (b) migrant workers themselves and members of their families who are no longer of school age.<sup>23</sup>

States must furthermore encourage the teaching of the national language in the workplace, in the voluntary sector or in public institutions, such as universities. Such language classes must be provided free of charge in order not to worsen the already difficult position of migrants on the labour market.

Equal treatment of migrant workers and citizens of the receiving state

Several provisions of the Revised European Social Charter emphasises the necessity to treat migrant workers and citizens of the receiving state equally.<sup>24</sup> Equal treatment is important for the integration of migrants. Unequal treatment of people arriving in a state and those who have lived there since they were born creates barriers that hinder the integration of immigrants in the social structures functioning in the given country. Due to that, the equal treatment obligation should be considered as one of the fundamental measures enabling migrants to integrate.

Pursuant to Art. 19 of the Revised European Social Charter, states are obliged to ensure:

- 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

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<sup>21</sup> Conclusions II - Cyprus - Article 19-6

<sup>22</sup> A. M. Świątkowski, *Karta Społeczna Rady Europy*, Warszawa 2006, p. 520 [*Charter of Social Rights of the Council of Europe*]

<sup>23</sup> Conclusions 2006 - Albania - Article 19-11

<sup>24</sup>M. Mikkola, *Social human rights of Europe*, Parvoo, Karelactio Leisactio 2010 s. 567

respect of the following matters: remuneration and other employment and working conditions; membership of trade unions and enjoyment of the benefits of collective bargaining; accommodation; (art. 19 §4)<sup>25</sup>

- treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons (art. 19 §5)

-treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in Art. 19 (art. 19 §7)

In the light of the equal treatment obligation, the European Committee of Social Rights considered the obligation to participate in the costs of language teaching of foreigners, imposed on employers by the Swedish government, non-compliant with the standards of the Charter. The Committee concluded that such practices may result in actual discrimination of foreigners. Employers, who can choose between employing a foreigner, which may involve bearing additional costs of a language course and a citizen of their own country, will most likely decide to employ the latter, as this will not require them to bear any additional costs.<sup>26</sup>

The equal treatment obligation becomes particularly important in periods of recession and increasing unemployment. Higher unemployment rate results in a deterioration of the situation of foreigners, because they are the first to encounter problems finding jobs. The European Committee of Social Rights pointed out that, in such situation, the state should grant special legal protection to foreign citizens who have settled in the given country for employment purposes.<sup>27</sup>

## Conclusion

The analysis of the content of the Revised European Social Charter allows us to claim that the integration of migrant workers should be considered an obligation of the receiving states. Host states are not only entitled, but also obliged to take measures that will facilitate the integration of foreigners with societies in which they function. Such measures should be based, on the one hand, on providing active assistance in the adaptation period and on the other hand, on creating possibilities for the migrants to function permanently in the receiving state. Without subjective treatment of migrants, their integration will be impossible. It will be possible only provided that the receiving state treats migrants in the same way as it treats its own citizens. The Revised European Social Charter defines the areas in which the rights of migrants should be ensured at the same level as rights granted to citizens of the given state. It is worth noting that the provisions of Art. 19 of the Revised European Social Charter are considered as so-called hard-core provisions.<sup>28</sup> As the European Committee of Social Rights pointed out "Article 19, and especially paragraphs 4, 5, 6 and 8 have preserved every dimension of their original importance and topicality, and are of fundamental importance for the effective implementation of social rights in modern Europe. The Committee therefore asks states to do their utmost to ensure observance of these provisions".<sup>29</sup>

As it has already been mentioned, measures to support migrants should be perceived as a legal obligation of the state. The grounds for this obligation derive from such

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<sup>25</sup> S. Clauwert, Art. 19 §4 The right of Migrant Workers and Their Families to Protection and Assistance [in:] The European Social Charter and the employment relation ed. by N. Bruun, K. Lörcher, I. Schömann, P. Clauwert, Haart Publishing 2017, p. 340-357

<sup>26</sup> Conclusions VII, p. 104 (Sweden)

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

<sup>28</sup> L. Samuel, Fundamental social rights, Case law of the European Social Charter, Council of Europe Publishing 2002, p. 402, A. Świątkowski Charter of Social Rights of the Council of Europe, The Hague, Kluwer Law International 2007, p. 349

<sup>29</sup> Conclusions XIV-1, General Introduction

fundamental human rights as the right to respect human dignity or the right to equal treatment. The fact that the Revised European Social Charter considered the measures aimed at the integration of migrant workers as obligations that realise the fundamental human rights confirms this trend.

One should call for the aforementioned rights to be considered as a sine qua non condition for complete and actual integration of migrant workers and perceived as a responsibility of the host state.