CHAPTER III
(REVISED) EUROPEAN SOCIAL CHARTER

Article 1 RESC

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.


The right to work to which Article 1 RESC is devoted, according to its heading, is not defined within it. On the other hand, by adopting Article 1 RESC, the Signatory Parties (hereinafter the Parties) have committed themselves to ensure the effective exercise of that right. For this purpose, they shall undertake various typologies of action listed within Article 1 RESC.

First, the Parties "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". This means they shall develop employment policies that allow pursuing those goals. Therefore, one may say that it “implies an obligation as to means rather than ends”.¹

However, the European Committee of Social Rights (hereinafter ECSR) has developed detailed, formal and substantial, indicators of reviewing Parties’ conformity with Article 1, holding them to be in non-conformity on a number of occasions.²

Indicators range from the provisions of full employment as legal commitment within national law, to the level of expenditures on employment policies, to the number of unemployed who benefits from passive and active labor market measures. Non-conformity has been qualified on the bad performance in relation to those indicators.³

As second commitment, the Parties undertake “to protect effectively the right of the worker to earn his living in an occupation freely entered upon”.⁴

² S Deakin, op. cit., 155.
³ As well known, however, the negative assessment from the side of the ECSR has mere a political effect, which does not always represent an effective deterrent against states’ violation of any provision of the RESC, Article 1 included.
⁴ This commitment is also recalled in Part I RESC: “1 Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”
This provision has been given by the ECSR a very broad interpretation to include the prohibition of any form of discrimination in employment, which extends to recruitment, employment conditions and benefits, and dismissal. Such a broad interpretation leads to an unavoidable overlapping with Article 20 and 15(2) RESC (respectively equal treatment and protection of people with disabilities). Article G RESC has been recalled by the ESRC in order to define the scope of legitimate grounds of differentiation that cannot be regarded as direct or indirect discriminations, above all as far as nationality is concerned. On the other hand, non-conformity cases include a wide range of omissions from the Parties, such as, for instance, the failure to provide a legal power to set aside discriminatory provisions in collective agreements, employment contracts or company regulations; the failure to provide for protection against retaliatory dismissal; or the failure to provide for the reversal of the burden of proof.

The commitment “to protect effectively the right of the worker to earn his living in an occupation freely entered upon” has been given by the ECSR an interpretation also to include the prohibition of forced or compulsory labor. This has been defined, following Article 2 of ILO Convention No. 29 as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. From the perspective of forced or compulsory labor, the strong link between the interpretation of Article 1 RESC and the case law of the European Court of Human Rights on Article 4 ECHR has been pointed out, in particular with reference to situations of precarious and exploitative work.

Furthermore, prison work has been taken into consideration by affirming that its terms and conditions, pay included, must be as “similar as possible” to those applying to work performed on the market.

Conditionality in the entitlement to income support benefits has been looked at by the ECSR as falling within the scope of “the right of the worker to earn his living in an occupation freely entered upon”. This in the sense that national activation policies have been deemed to be in non-conformity with Article 1 RESC if requiring the acceptance of any job offer, whatever the pay and professional terms, as condition to remain within the employment services circuit i.e. not to lose the possibility to be supported in case of further unemployment. In our view, this does not mean that any workfare measure has to be regarded as not conform with Article 1(2) RESC, with the extreme consequence to be assimilated to prison work. Conditionality can be exercised in a way respectful of human dignity and professionality, and be looked at as instrument effective from the point of view of activation on the labor market and, consequently, of social inclusion.

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5 ECSR Conclusions XVIII-1, Iceland; Conclusions 2006, Albania; Conclusions 2006; Lithuania.
6 ECSR Conclusions XVI-1, Austria.
7 See the Comment by M Bell in this book.
8 See the Comment by M Bell in this book.
9 ECSR Conclusions XVI-1, Greece.
10 ECSR Conclusions XVI-1, Iceland.
11 Ibidem.
12 ECSR Conclusions 2006, Albania.
13 See the Comment by M A Moreau in this book.
15 S Deakin, op. cit., 158-159. On Article 4 ECHR see the Comment by E Ales in this book.
16 ECSR Conclusions XVI-1, Germany.
17 Conclusions 2012, Statement of Interpretation on Article 1(2).
18 S Deakin, op. cit., 161.
As third commitment, according to Article 1(3) RESC, states undertake to establishing or maintaining, if already existing, free of charge employment services for all workers. This is an important part of the social right to work i.e. a right that to be realised needs the activation, through policies and benefits in cash and/or in kind, of the public authorities and/or employers. On may wonder whether such services should be completely free of charge for employers too, as authoritatively advocated. In our view, a national provision charging employers with some costs of a job seeking and selection service would be in conformity with Article 1(3) RESC, above all in case it would be provided by private entities authorized to deliver it within the framework of an employment service system. On the contrary, one has to agree that charging employers with a fee for the notification of vacancies has been correctly deemed to be in non-conformity with Article 1(3).

As fourth commitment, according to Article 1(4) RESC, states undertake to provide or promote appropriate vocational guidance, training and rehabilitation. This is a further important part of the social right to work in the meaning already clarified in the above, in particular in the sense that public authorities can directly provide appropriate vocational guidance, training and rehabilitation or promote them by involving authorized and supervised private entities into their delivery.

Takign into account the last two commitments the Parties shall undertake according to Article 1(c)(d), one can argue that the right to work as affirmed by Article 1 RESC can be qualified as social right to work. This means something more than a right to access the labor market, a formula that recalls more the freedom to work as affirmed within the CFREU. In order to realize a social right to work, a strong institutional (public or public authorized and supervised) intervention on the labor market is needed. However, it does not oblige to look at the labor market as an institution in itself. On the contrary, the institutionalized intervention is meaningful only if one looks at the labor market as a free place of encounter between labor demand and supply, encouraged, facilitated and assisted in its transitions by the institutionalized intervention.

Article 2 RESC
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 pro-

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20 In this sense, S Deakin, op. cit., 160.
21 Conclusions XIV-I, Statement of interpretation on Article 1(3) RESC.
22 S Deakin, op. cit., 148.
23 See the Comment on Article 5, 15 and 29 CFREU by E Ales in this book.
24 S Deakin, op. cit., 148.